

Guidelines for Merger/Amalgamation of Banks/Financial Institutions

Introduction: -

(i) Banking Companies and Financial Institutions are primarily companies registered under the Companies Act and as such are subject to the provision of the Companies Act, 1994 ("CA-94") for all matters including merger or amalgamation except those covered in the Banking Companies Act, 1991 ("BCA-91") or the Financial Institutions Act, 1993 ("FIA-93"). Hence, it is open to (a) a Banking Company or a Financial Institution to get amalgamated with a Banking Company or (b) a Financial Institution with another Financial Institution in terms of Section 228/229 of the CA-94.

(ii) However, an important factor that distinguishes Banking Companies and Financial Institutions from other companies is that the Banks and Financial Institutions carry on their business largely with the money accepted as deposits from members of public and for this reason the Bangladesh Bank has been vested with power to ensure that Banks and Financial Institutions do not undertake any activity or enter into any transaction which the Bangladesh Bank considers as detrimental to the interest of the depositors and/or financial discipline of the country. Accordingly, various statutory provisions make it obligatory on the part of the Bangladesh Bank to consider impact of merger or amalgamation on the depositors and on the company itself as also the financial system of the country.

(iii) Banking Companies Act: - Section 49 (1) (c) of the BCA-91 requires Bangladesh Bank to assist as intermediary or otherwise in relation to a proposal for amalgamation of banking companies. Section 76 of the BCA-91 lays down that the High Court Division shall not approve a compromise or arrangement between a banking company and its members unless the same is certified by the Bangladesh Bank.

(iv) Financial Institutions Act- Reference is also made to Section 28 of the FIA-93 which lays down that amalgamation of a Financial Institution with any other Financial Institution shall not take place without prior approval of the Bangladesh Bank. Sub-section (2) further lay down that with a view to considering the proposal of amalgamation, the Bangladesh Bank may call for such information from the applicant, as it may deem necessary. Thus, the Financial Institutions are also required to approach Bangladesh Bank before they approach the High Court division under Section 228/229 of the CA-94.

(v) The net effect of the above provisions is that no merger / amalgamation of a Banking Company with another Banking Company or of a Financial Institution with another Financial Institution or of a Financial Institution with a Banking Company, is possible without the Bangladesh Bank being satisfied that such amalgamation is not detrimental to the interest of the depositors or the company or the financial system of the country.

(vi) In view of what is stated above, it is desirable to lay down a guideline to be followed by Banking Companies and Financial Institutions for their merger/amalgamation, including compromise, arrangement, reconstruction etc. Accordingly, the Bangladesh Bank lays down the following Guidelines: -

Scope of the Guidelines: -

These guidelines are intended to cover effort made towards merger/amalgamation by banking company/financial institution, in the private sector including foreign banks operating in Bangladesh and also to Nationalized Commercial Banks with such modifications as required in terms of the Bangladesh Banks (Nationalization) Order, 1972. The Guidelines will apply in the case a merger/amalgamation of (i) a banking company with another banking company, (ii) a financial institution with another financial institution and (iii) a banking company with a financial institution where bank is the transferee and (iv) in the case of a negotiated takeover of a bank by a financial institution where the bank is allowed to run as a subsidiary of the financial institution or else, in the opinion of Bangladesh Bank, the merged entity would qualify to have a license for carrying on banking business. The Guidelines will also apply to cases of reconstruction under a compromise or arrangement reached with another bank or financial institution for acquisition of certain branches, swapping of branches between two similar institutions, transfer of certain business to another bank or financial institution.

1. Proposal of Merger/Amalgamation including reconstruction etc.: -

Banking Companies carrying on business within the meaning of BCA-91 or Financial Institutions carrying on financing business within the meaning of FIA-93 and proposing to reconstruct themselves through a compromise/arrangement or carry out merger/amalgamation, shall get suitable resolutions passed by their respective Board of Directors agreeing in principle, to proceed in accordance with such resolution. The resolution so passed may be treated as Price-sensitive Information within the meaning under the Securities and Exchange Commission Act, 1993 read with the Securities and Exchange Commission (*Subidhabhogi Byabsaye Nishiddhakaran*) Rules, 1995.

2. Commencement of the Due-Diligence: -

In order to enable Bangladesh Bank to consider the propriety/effectiveness of merger/amalgamation of banking companies/financial institutions, the transferee company should seek prior approval in relation to commencement of the financial and legal due-diligence of itself and also of that part of the business of the transferor banking company or financial institution which is sought to be taken-over or of the whole transferor company, if merger is intended. For this purpose, the transferee company shall submit (a) its credentials (business background, resources, including net worth etc.) and (b) details regarding the team of Lawyers, Financial Advisors, Chartered Accountants, Valuers etc. for conducting due-diligence of the asset and liability position of both the companies. In identifying the team members for carrying on due-diligence, the transferee shall ensure that none are actively dealing in shares of or have any conflict of interest with, either the transferor or the transferee companies.

3. Parties to Maintain Confidentiality: -

(i) After obtaining approval from Bangladesh Bank for carrying out due-diligence of itself and of the transferor company, the transferee company shall submit an undertaking as per **Annexure A** to Bangladesh Bank confirming that all information, particularly all non-public domain information and documents etc. shall be kept strictly confidential and shall not, unless advised by Bangladesh Bank or legally required or required to comply with the regulatory requirements to do so, be divulged to any person, organization, not included in the due-diligence team. Provided that, where specific permission of Bangladesh Bank, under this clause, has not been obtained, the Bank shall be duly informed of such disclosure. In case of any breach of the undertaking, the approval given by the Bangladesh Bank shall be withdrawn.

(ii) The members of the due-diligence team, referred to in paragraph (2) above, shall also be bound under the aforesaid undertaking to keep the information, document etc. confidential and shall not divulge any information that they come across during the course of due-diligence. The team conducting the due-diligence shall not demand from the transferee/transferor companies, any information/observations made by Bangladesh Bank in relation to the affairs and the business of concerned companies or the Bangladesh Bank inspection report, either in part or full.

4. Submission of Due-Diligence Report: -

The team conducting the due-diligence on completion of its task shall submit a copy of the report to Bangladesh Bank giving details of-

- (i) The secured and unsecured debts and in the case of secured debts particulars of the securities, their value.
- (ii) The value of the property and the assets of the transferor and the transferee company calculated on the basis of **Annexure B**.
- (iii) The liabilities of the transferor and the transferee companies.
- (iv) In view of clauses (i) to (iii) above, the financial impact of the compromise/merger proposal on the two companies and their creditors, shareholders and depositors.

5. Consent of the shareholders/creditors in terms of the Companies Act: -

Based on the findings of the due diligence, the transferor and transferee companies shall prepare a scheme of merger/amalgamation/reconstruction as the case may be. The Board of Directors of the respective companies, while passing a resolution in this regard, shall consider the scheme so drawn and then, in terms of the provisions of CA-94, hold meetings of their respective members or class of members to consider and approve, the said scheme. If a majority in number representing three-fourth in value of members present in the meeting, either in person or by proxy, approve the scheme, the same shall be deemed to have the approval of the members. The scheme may involve (a) two or more banking companies or (b) a banking company and a financial institution where the bank is a transferee or (c) a financial institution with another financial institution or such other combinations as are covered under the scope of these Guidelines:

Provided that the above approval may not be necessary if, the transaction is not considered as material or transformational to the overall business of the bank/financial institution and as such, its Directors are empowered to take the said decision on behalf of their shareholders without violating any provision of the CA-94.

6. Submission of Scheme to Bangladesh Bank: -

With the requisite consent in terms of paragraph 5 above, the transferee company shall submit an application to Bangladesh Bank with a copy of the Scheme of reconstruction/merger/amalgamation, as the case may be, together with such other documents as are mentioned in Annexure C.

7. Examination of Draft Scheme: -

On receipt of the draft Scheme, Bangladesh Bank shall satisfy itself that the Scheme as proposed by the transferee company can be successfully implemented. In order to decide the matter, Bangladesh Bank will consider various factors as enumerated in Annexure D.

8. Valuation of Assets and Liabilities: -

It is for the transferor and the transferee companies to mutually agree to valuation of the assets. Bangladesh Bank shall generally not interfere in this regard except where there are reasons to believe that the valuation is not fair and reasonable. In a case where mutual agreement has not been possible in relation to certain items for example (a) valuation of a particular asset (b) classification of any advance (c) determination of any liability or any like issue, the bank / financial institution, shall highlight those areas and seek advice of Bangladesh Bank. The Bangladesh Bank shall play the role of a mediator and shall help resolve the differences. In case the mediation fails, the Bangladesh Bank shall decide the value or as the case may be determine the liability and the decision of the Bank in this regard shall be binding on the transferor and the transferee. Before taking any decision in this regard, Bangladesh Bank may obtain such technical advice, as it may consider necessary or appropriate in connection with the valuation of any item of assets or determination of any liabilities. The cost of obtaining such advice shall be borne by the transferor company.

9. Transaction Price: -

The transaction cost/price shall be mutually agreed between the transferor and the transferee on the basis of fair valuation of assets and liabilities proposed to be transferred. It would be open to the parties to fix the price at a premium or discount to valuation. Bangladesh Bank shall, however, have a right to be satisfied that the price as mutually agreed is fair and reasonable and for this purpose may ask for pricing rationale to examine the same and accept or suggest modification. For this purpose, an explanatory note on price mechanism along with supporting documents may be furnished to Bangladesh Bank.

10. Approval by Bangladesh Bank: -

On being satisfied that the Scheme as proposed can be implemented (i) to the benefit of the company or companies and/or the financial system of the country and (ii) that the scheme is not detrimental to the interest of the depositors, Bangladesh Bank may give its approval to the said Scheme with or without such modifications as deemed necessary.

11. Petition to High Court: -

(i) Once the scheme of merger/amalgamation has been approved by Bangladesh Bank, the transferor and the transferee shall proceed to comply with other formalities as required under the CA-94 and shall file an application in terms of Section 228/229 of the said Act before the High Court and submit the scheme for the reconstruction, merger/amalgamation, as the case may be. The transferee bank/financial institution, shall mark a copy of the application as filed before the Court together with annexure, if any, to Bangladesh Bank and shall keep the Bank informed of the developments in the matter, from time to time or at such intervals as directed. If for any reason, the company, after obtaining approval of the Scheme from the Bangladesh Bank, does not take any further steps as required under the CA-94, to implement the same, in the next three months from the date of the approval granted by Bangladesh Bank, the approval so granted shall, unless otherwise extended on justifiable consideration, lapse.

(ii) The High Court may either by the order sanctioning the Scheme or by any subsequent order make provisions for all or any of the following matters: -

- a) The transfer to the transferee bank/financial institution of the whole or any part of the undertaking and of the properties and liabilities.
- b) Appropriation by the transferee company of any shares, debentures policies or other like interest in the bank/financial institution.
- c) The reconstruction or amalgamation of the share capital by consolidation of shares of different classes or by division of shares into shares of different classes or both.
- d) The continuation by or against the transferee bank/financial institution, of any legal proceedings pending by or against the transferor bank/financial institution.
- e) The dissolution of the transferor bank/financial institution.
- f) Provision made by the transferor/transferee bank/financial institution, for the dissenting stakeholder.
- g) Such other matters as may become necessary in view of the proposal made in the scheme.

(iii) With a view to facilitating merger/amalgamation, the transferor/transferee company may make an application for grant of stay on commencement or continuation of any suit or proceeding against the company.

(iv) After hearing the application, the Court may order a meeting of the creditors or class of creditors and/or of members or class of members to be called to confirm the proposal made in the scheme affecting their interest. If such an order is made, the scheme will have to be explained to the creditors and/or members, as the case may be and their views obtained. If a majority in number representing three-fourth in value of creditors or of members present either in person or by proxy agree in the meeting to the proposal of reconstruction or merger/amalgamation, the Court may sanction the scheme.

(v) Where the proposal of the company in relation to the rights of the shareholders representing three-fourth in value has been approved the company may give notice to the dissenting shareholders that it desires to acquire their shares and obtain suitable orders to this effect from the Court.

(vi) After hearing the application for merger/amalgamation and after considering the objections if any, raised by any of the stakeholders, the Court may with or without such modification as it deems fit approve the Scheme.

(vii) Once the Scheme is approved, the petitioner company shall file a certified copy of the order with the Registrar of Joint Stock Companies and on such filing the scheme shall become binding on all creditors/shareholders and also on the company. Accordingly, the transferor and the transferee bank/financial institution will take such steps as necessary to implement the Scheme. A copy of the approved scheme shall be forwarded to the Securities and Exchange Commission by the transferee bank/financial institution for its consent for issue of capital, if required.

(viii) As regards the transferee company, if no change of name is proposed, the transferee bank or financial institution will continue to carry on its business under the existing name and licence. However, if change of name is proposed, the banking company/financial institution will have to seek approval of Bangladesh Bank.

Undertaking by Transferee of Company

This undertaking is executed on this day of the year 200... at..... We, M/s Ltd. are a company incorporated under the laws of Bangladesh having its registered office at herein after referred to as

Whereas we proposed to commence the process of due-diligence of Ltd. in pursuance of our intention to merge/amalgamate under a scheme as per the Companies Act, 1994 read with section 49(1)(c) and other provisions of the Banking Companies Act, 1991/section 28 and other provisions of the Financial Institutions Act, 1993 for which approval of Bangladesh Bank has already been obtained through letter no. dated (delete what is not applicable)

NOW THEREFORE IT IS HEREBY UNDERTAKEN:

- (i) That we shall keep the entire information/documents pertaining to due-diligence strictly confidential and shall not, unless advised by Bangladesh Bank or legally required or required to comply with the regulatory requirements to do so, be divulged to any person, organization, not included in the due-diligence team. Provided that, where specific permission of Bangladesh Bank, under this clause, has not been obtained, it shall be duly informed of such disclosure.
- (ii) That Bangladesh Bank inspection report in part or full and any other information given specifically to us by Bangladesh Bank shall neither be demanded by nor disclosed to the firm/person/entity conducting the due-diligence.
- (iii) That this undertaking shall also be binding upon all persons organizations or firms acting as our agents included in the due-diligence team comprising of Lawyers, Financial Advisors, Chartered Accountants etc. The said persons/entities/agents shall also not disclose to any one any information/documents that come to their knowledge in the course of carrying on due-diligence.
- (iv) That in case any information/documents, in part or full, is disclosed/divulged in violation of this undertaking, Bangladesh Bank shall have a right to take any action which shall not be limited to withdrawal of its approval for due-diligence without recourse to any other formality. Bangladesh Bank shall also have the right to initiate any legal proceedings as per law, against the persons/entities/organizations responsible for any breach of this undertaking.
- (v) No claim shall be launched with Bangladesh Bank for the amount/expenses incurred by us in respect of this compromise/arrangement or amalgamation/merger scheme in the case of withdrawal of approval due to aforesaid reasons. We are entering into the process of due-diligence at our own risk and cost.

IN WITNESS WHEREOF we have executed this document on the date and year first above mentioned.

For and on behalf of
M/s _____

Assessment of Value of Transferor/Transferee Company

- (i) Investments other than the Government securities shall be valued at the market rates prevailing as on the last date of the preceding month.
- (ii) The Government securities shall be valued on the basis of the circular issued in this regard by Bangladesh Bank.
- (iii) Other securities like Post office saving certificates, or any securities issued under the small saving scheme shall be valued at their face value or encashable value as on the last date of the preceding month.
- (iv) Where the principal is payable in instalment, the security shall be valued at such an amount as considered reasonable having regard to the instalments of principal and interest remaining due and payable in future.
- (v) Where the market value of any security, share, debenture, bond or other investment is not considered reasonable by reason of its having been affected by abnormal factors, the investment may be valued on the basis of its average market value over immediate preceding six months.
- (vi) Advances including bills purchased and discounted, book debts and sundry assets will be classified into two categories namely (i) advances considered good and readily realisable and (ii) advances considered not readily realisable or bad and doubtful for recovery and valued accordingly.
- (vii) Goodwill shall be calculated on the basis of difference between market value and net asset value.
- (viii) Premises and all other immovable properties and any assets acquired in satisfaction of a claim shall be valued at market rate.
- (ix) The furniture and fixtures etc. shall be valued at written down value.

Information and Documents to be furnished along with the Application for Approval of the Scheme.

- (i) Name, address and occupation of the Directors of the transferee company as proposed to be reconstituted after the amalgamation,
- (ii) Details of the proposed Chief Executive Officer of the transferee company after the amalgamation,
- (iii) Post-merger Branch Plan, Technology Plan, Human Resource Plan and proposal to address Corporate Governance issues.
- (iv) Information relevant for the consideration of the scheme and the swap ratio including in particular:
 - a. Report of the Valuer explaining the method of valuation and the justification for the same. If market value of shares has been considered in computation of swap ratio, the value so considered,
 - b. Annual report of each of the companies for the last three years,
 - c. Financial results, if any, published by companies covering the periods subsequent to the Annual reports,
 - d. Significant anticipated changes in service and products covering introduction or discontinuance.
 - e. Pro forma combined balance sheet of the transferee company as it will appear consequent to the amalgamation,
 - f. Computation based on such pro forma balance sheets of the following items:
 - i. Tier I Capital
 - ii. Tier II Capital
 - iii. Risk weighted assets
 - iv. Gross and net Non-Performing Loans (NPLs)
 - v. Ratio of tier I capital to risk weighted assets
 - vi. Ratio of tier II capital to risk weighted assets
 - vii. Ratio of total capital to risk weighted assets
 - viii. Ratio of tier I capital to total assets
 - ix. Ratio of gross and net NPLs to advances.
 - g. Such other information and explanations as Bangladesh Bank may require.

Matters to be considered by Bangladesh Bank for Approval of the Scheme.

- (i) **Capital of the merged entity:** - The capital base of the merged entity after making provisions for the bad and doubtful debt and depreciation in other assets of the transferor company.
- (ii) **Valuation of assets and liabilities:** - Value at which the assets, liabilities and the reserves of the transferor company are proposed to be incorporated into the books of the transferee company and whether such incorporation would result in revaluation of assets upwards or credit being taken for unrealized gains.
- (iii) **The consideration for transfer:** - The nature of the consideration which the transferee company will pay to the transferor company either in cash or shares or policies or other like interests or in any mixed form of consideration for distribution among the members of the transferor company.
- (iv) **Modality for payment and determination of swap ratio:** - The modality for payment to different classes of shareholders and where the consideration is payable in the form of shares, the basis for determination of swap ratio, based on which shares are intended to be allotted to the shareholders of the transferor company.
- (v) **Payment of liabilities of the transferor company:** - The manner in which the liabilities of the transferor company including savings bank account, current account, monthly deposit account, deposit payable at call or short notice, the non resident foreign currency deposit or any other deposit by whatever name called as also the contingent liability if any, are to be met.
- (vi) **The impact on the profitability:** - The impact of merger/amalgamation on the profitability and the capital adequacy of the transferee company. The Bangladesh Bank may like to consider how the post merger/amalgamation scenario is likely to result in financial gains and generate synergy for the transferee company.
- (vii) **Reorganisation of the branches of the transferor company:** - The manner in which the existing branches of the transferor company are to be integrated or shifted or closed down. For this purpose a Pro-forma Branch Plan may be submitted.
- (viii) **Technology plan:** - Specific plan for IT system restructuring and integration may be set for fast and effective integration as such integration hard-wares/soft-wares covering telecommunication, computer network etc. is critical for smooth functioning of the transferee banking company.
- (ix) **Treatment to employees:** - Treatment meted out to the employees of the transferor company including liabilities if any towards the retired employees of such company. The company may submit its post integration H.R. Plan explaining how it proposes to deal with the issue of cultural integration among the employees.
- (x) **The impact of merger/amalgamation on the market share** – The Bangladesh Bank shall examine the impact of merger/amalgamation on the market share to consider the existence or otherwise of market monopoly situation.
- (xi) **Share pattern of the merged/amalgamated entity:** - The likely share holding pattern of the merged/amalgamated entity.
- (xii) **The impact of merger/amalgamation on the Board:** - The changes proposed to be made in the Board of the transferee company.
- (xiii) **Change in Name:** - The change, if any, proposed in the name of the bank/financial institution.

The scheme as proposed must be so drawn as to cover each of the above aspects in sufficient detail.