

# THE BANKING SECTOR CLEAN-UP IN GHANA, AND THE LEGAL EFFECTS OF THE APPOINTMENTS OF A RECEIVER AND CONSOLIDATED BANK GHANA LTD AS A BRIDGE INSTITUTION: AN ANALYSIS OF THE CASE OF CHANCELLOR OPPONG KYEKYEKU KOHL V. CONSOLIDATED BANK OF GHANA LTD.

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## Abstract

On 1st August, 2018, the Bank of Ghana (BOG), in exercise of its constitutional and statutory powers, undertook the 'banking sector clean-up' in Ghana. Among other things, BOG revoked the banking licences of some banks namely uniBank Ghana Limited, the Royal Bank Limited, Beige Bank Limited, Sovereign Bank Limited, and Construction Bank Limited (hereinafter 'the affected banks'). BOG also appointed Mr. Nii Amanor Dodoo of KPMG as the Receiver for the affected banks. On the same day, the Government of Ghana incorporated Consolidated Bank Ghana Limited (CBG), and BOG granted it a banking license. BOG also appointed CBG as a 'bridge bank' for the affected banks. Further, BOG transferred selected assets and liabilities of the affected banks to CBG. Following this, there have been misconceptions about the legal relationship between CBG and the affected banks.

The paper addresses the statutory corporate relationship between CBG and the affected banks. To achieve this, the paper discusses the powers of BOG to revoke the banking licenses of banks in Ghana, the legal effect of the revocation of a banking license and the appointment of a Receiver, and the legal effects of the appointment of CBG as a 'bridge institution.' The paper also answers the question of whether CBG is liable for the pre-existing liabilities or debts of the affected banks. Using the doctrinal method, the paper analyses the case of Chancellor Oppong Kyekyeku Kohl v. Consolidated Bank of Ghana (CBG) to answer these questions. The paper combines prescriptive and descriptive study analyzing the scope and mandate of receiverships and bridge institutions in Ghana. The paper argues that CBG is a separate legal entity different from the affected banks; it is not an amalgamation or merger of the affected banks; and CBG did not take over the affected banks, or the entire assets and liabilities of the affected banks. As a result, an action to enforce a debt or liability of the affected banks prior to the incorporation of CBG should be against the Receiver, except where the liability in question is one specifically transferred by BOG to CBG.

## 1. INTRODUCTION

Constitutionally, the Bank of Ghana (BOG) is the central bank of Ghana.<sup>1</sup> It is entrusted with enormous powers in the Ghanaian financial sector. Among other powers, BOG exercises overall supervisory and regulatory authority in all matters concerning deposit-taking business<sup>2</sup> in Ghana.<sup>3</sup> In August 2018, BOG in the exercise of its statutory administrative, regulatory and supervisory functions, revoked the banking licences of some banks, namely uniBank Ghana Limited, The Royal Bank Limited, Beige Bank Limited, Sovereign Bank Limited, and Construction Bank Limited (hereinafter ‘the affected banks’). The affected banks, among other things, had ‘inadequate capital, high levels of non-performing loans, and weak corporate governance’.<sup>4</sup> BOG appointed Mr. Nii Amanor Dodoo of KPMG as the Receiver for the affected banks<sup>5</sup> and proceeded to grant a universal banking licence to Consolidated Bank Ghana Limited (CBG), which was established by the Government of Ghana. All deposits of the affected banks were transferred to CBG; the Board of Directors and shareholders of the affected banks lost their positions and roles in the affected banks but the members of staff of the affected banks became the staff of the CBG.<sup>6</sup> Also, BOG appointed CBG as ‘a bridge bank’ to assume selected assets and liabilities of the affected banks.<sup>7</sup> Following this banking sector clean up by BOG, there have been misconceptions about the legal relationship between CBG and the affected banks. The most pressing question amidst these misapprehensions is; what is the true position of the law on the extent to which CBG is liable for pre-existing liabilities or debts of the affected banks?

This paper satisfactorily answers the above question by discussing the legal consequences of BOG’s banking sector clean up in the light of the Ghanaian Constitution of Ghana, 1992, Bank of Ghana Act<sup>8</sup>, Banks and

<sup>1</sup> The Constitution of Ghana, 1992, Art 183.

<sup>2</sup> Under section 4(5) of Banks and Specialized Deposit-Taking Institutions Act, 2016 (Act 930), *deposit-taking business means; any business that takes money on deposit and makes loans or other advances of money, and any other financial activity that the BOG prescribes as deposit-taking business.*

<sup>3</sup> Banks and Specialized Deposit-Taking Institutions Act, 2016 (Act 930), s 3(1)

<sup>4</sup> Bank of Ghana Press Release dated 1 Aug 2018, p 1. Prior to revoking the banking licenses of the affected banks, BOG had earlier in August 2017 closed UT Bank and Capital Bank for similar reasons.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid

<sup>7</sup> Ibid, p 3

<sup>8</sup> Bank of Ghana Act, 2002 (Act 612)

Specialised Deposit-Taking Institutions Act<sup>9</sup>, and the Court of Appeal decision in the case of *Chancellor Oppong Kyekyeku Kohl v. Consolidated Bank of Ghana* (CBG) (the Chancellor Kohl case)<sup>10</sup>. The paper is organised in six parts. Part one introduces the paper; part two discusses the evolution of banking system in Ghana and the role of BOG as a regulator and supervisor of financial institutions in Ghana; while part three discusses the history of banks' collapse in Ghana. In part four, the paper analyses the legal effect of BOG's Press Release on 1<sup>st</sup> August 2018 relating to the banking sector clean up and the import of the same viz-a-viz the legal requirements of takeover, amalgamation and merger of companies. Part five discusses the Court of Appeal decision in the Chancellor Kohl case, and part six concludes the paper.

There have been civil and criminal proceedings involving some directors and shareholders of the affected banks, BOG and the State after BOG's revocation of the banking licenses of the affected banks. However, the scope of this paper does not cover those cases. Also, the lead author conducted the *Chancellor Kohl* case from the trial court to the Court of Appeal, where it ended.<sup>11</sup>

## 2. EVOLUTION OF GHANA'S BANKING SYSTEM

The banking system is an important part, if not the most important in the financial system in Ghana.<sup>12</sup> The banking system of Ghana has its roots in the colonial administration in the then Gold Coast, which opened a branch of the British Bank of West Africa (BBWA) in 1896 which became Standard Chartered Bank in 1969. The Colonial Bank followed in 1917 becoming Barclays Bank [Dominion, Colonial and Overseas (DCO)] on 1925, now ABSA Bank Ghana PLC. These banks dominated banking in the colonial era. Until independence, the BBWA functioned as the central bank by issuing currency<sup>13</sup> under the auspices of the West African Currency Board (WACB).<sup>14</sup> The WACB was charged with issuing the West African pound in the four British territories in West Africa–Nigeria, Gold Coast,

<sup>9</sup> Banks and Specialized Deposit – taking Institutions Act, 2016 (Act 930)

<sup>10</sup> 2022 181 GMJ 694 CA

<sup>11</sup> Flora Mensh-Bonsu, Esq. and Akua Nyantakyiwa-Sarpong, Esq. did extensive research when the submissions of this case.

<sup>12</sup> Martin Brownbridge and Augutine Fritz Gockel, 'The Impact of Financial Sector Policies on Banking in Ghana' (YPFS Resources Library, 1996) < <https://elischolar.library.yale.edu/ypfs-documents/10452> > accessed 28 August 2025

<sup>13</sup> Sam Mensah, Banking and Capital Markets: The Evolution of Ghana's Financial Sector and Future Prospects, in Aryeetey, Ernest, and Ravi Kanbur (eds), *The Economy of Ghana Sixty Years after Independence* (Oxford, 2017; online edn, Oxford Academic, 23 Mar. 2017)

<sup>14</sup> West African Currency Board is set up in 1912 and operated among Gambia, Ghana, Nigeria, and Sierra Leone

Sierra Leone, and the Gambia.<sup>15</sup> The banks that existed during the colonial era mainly served the expatriate community. Native Africans participated in the banking system primarily as depositors.<sup>16</sup>

During the era of political independence movements, there were agitations for the creation of a national bank to serve the needs of native entrepreneurs. As a result, in 1951, the Colonial Government commissioned Sir Cecil Trevor to examine the feasibility of a new bank in the Gold Coast, and made valuable considerations leading to the establishment of indigenous banks in the Gold Coast.<sup>17</sup> Pursuant to the Bank of Gold Coast Ordinance,<sup>18</sup> the Bank of the Gold Coast, was established to provide credit services to the indigenous people.<sup>19</sup>

Prior to attaining political independence in Gold Coast, some politicians moved for the establishment of a bank that will be the local banker to the Government, and also to provide for the peculiar needs of the indigenous section in the Gold Coast economy.<sup>20</sup> Following Ghana's independence in 1957, the Bank of Ghana was established to serve as a central bank for the economy.<sup>21</sup> The Bank of Ghana was then divided into the Bank of Ghana as the central bank for Ghana, and Ghana Commercial Bank (currently GCB Bank PLC) as the only holder of accounts of public corporations.<sup>22</sup> Thus, as at August 1957, the banking system in Ghana had these banks: the Bank of Ghana (operating as a central bank); the Ghana Commercial Bank; the Bank of British West Africa (which changed its name to Bank of West Africa, and was later acquired by Standard Bank, and subsequently merged with Chartered Bank forming the present Standard Chartered Bank PLC);<sup>23</sup> and Barclays Bank (now ABSA Bank Ghana Limited).<sup>24</sup>

<sup>15</sup> Leigh A. Gardner, Trade and Money in British West Africa, 1912–1970, African Economic History, 01 Jun 2025 (Vol. 53 Issue 1).

<sup>16</sup> Sam Mensah (n13).

<sup>17</sup> Sir Cecil Trevor noted that Africans experienced difficulty in obtaining their financial requirements at reasonable rates, owing to lack of confidence by the banks in their credit worthiness. Trevor added that the then existing banks were unwilling to lend to their indigenous customers included lack of a reputation for commercial reliability, poor accounting records that made it difficult to assess their credit worthiness, inability to provide banks with acceptable security, lack of fixed capital assets which can provide a margin of collateral for advances and the tendency to be secretive over financial and commercial matters. See Rowan, David, Banking Adaptation in the Gold Coast: A Critique of the Recent Report by Sir Cecil Trevor, C.I.E'. (1952) 20(4) South African Journal of Economics, 345–65. Cited in Sam Mensah, *supra*.

<sup>18</sup> Bank of Gold Coast Ordinance, 1957 (Act 34).

<sup>19</sup> The Bank of the Gold Coast later became known as the Ghana Commercial Bank and now called and now GCB Bank PLC

<sup>20</sup> 'About the Bank-Bank of Ghana'<<https://www.bog.gov.gh/about-the-bank/>>accessed 27 August 2025

<sup>21</sup> Joachim Harnack, Sergio Pereira, et al, Ghana: Economic Development in a Democratic Environment, International Monetary Fund, (November, 2000).

<sup>22</sup> 'A Banking History of Ghana' (n 20)

<sup>23</sup> *Ibid.*

<sup>24</sup> About the Bank-Bank of Ghana' (n 20).

Subsequently, other privately-owned banks<sup>25</sup> were established.<sup>26</sup> By the end of the 20<sup>th</sup> Century, the banking system in Ghana had seventeen (17) banks.<sup>27</sup> Presently, the financial sector of Ghana comprises of different types banks: commercial banks, development banks, merchant bank, rural banks and community banks, and non-financial institutions.<sup>28</sup>

Over the years, the central bank has been governed by a lot of legal and regulatory instruments<sup>29</sup> and a number of legislative instruments since 1989 to date.<sup>30</sup>

Since its inception, BOG, as the central bank of Ghana, has performed regulatory and supervisory functions, ensuring that the financial sector operates smoothly and securely.<sup>31</sup> During what has been aptly described as the banking crises in Ghana,<sup>32</sup> BOG's supervisory and regulatory duties stood out. The next session of the paper discusses BOG as a regulator and supervisor of financial institutions in Ghana.

## 2.1 The role of BOG as a regulator and supervisor of financial institutions in Ghana

Constitutionally, BOG is the central bank of Ghana.<sup>33</sup> Like most central banks in the world, it performs sensitive functions of enormous importance including acting as the banker and financial advisor to the Government of

<sup>25</sup> This happened after the enactment of the repealed Banking Law, 1989 (PNDCL 225). These banks included Ecobank Ghana PLC, UMB Bank PLC, CAL Bank PLC, Barclays Bank Ghana PLC, now ABSA Bank PLC. etc.

<sup>26</sup> A Banking History of Ghana' (n 10). The PNDCL 225 allowed entities incorporated in Ghana to operate the business of banking under a licence duly applied for, and issued to the entity.

<sup>27</sup> Joachim Harnack, Sergio Pereira. Leite, Stefania Fabrizio, Luisa Zanforlin, Girma Begashaw and Anthony J. Pellechio, 'Financial Sector Issues' <<https://www.elibrary.imf.org/display/book/9781557759603/ch08.xml>> accessed 31 August 2025

<sup>28</sup> A Banking History of Ghana' (n 20)

<sup>29</sup> The Bank of Ghana Ordinance, 1957 (No. 34) which established the Bank of Ghana was later repealed by the Bank of Ghana Act, 1963 (Act 182). Act 182 was amended by the Bank of Ghana (Amendment Act), 1965 (Act 282). This was repealed by the Bank of Ghana Law, 1992 (PNDCL 291). In 2002, PNDCL 291 was repealed by the Bank of Ghana Act, 2002 (Act 612). The current law is Bank of Ghana Act, 2002 (Act 612) as amended by the Bank of Ghana (Amendment) Act, 2016 (Act 918)

<sup>30</sup> In 1989, the Banking Law, 1989 (PNDCL 225) was passed to regulate banking and related matters. It was repealed by the Banking Act, 2004 (Act 673). Act 673 was also repealed by the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) to regulate the business of deposit-taking and its related matters.

<sup>31</sup> 'About the Bank-Bank of Ghana' (n 18)

<sup>32</sup> Nathaniel Blankson, Godfred Amewu and Ebenezer Bugri Anarfo, 'The Banking Crises in Ghana: Causes and Remedial Measures' (AREF, December 2021) <<https://www.african-review.com/journal/online-first/AREF>> accessed 30 August 2025

<sup>33</sup> The Constitution of Ghana, 1992, Art 183(1). As the central bank of Ghana, the BOG is the only institution with the authority and power to issue the currency of Ghana. Under Article 183(2) of the 1992 Constitution, the BOG is; responsible promoting and maintaining a stable Ghanaian currency and also in charge of regulating the currency system for economic growth in the country; the only custodian of state funds in and out of Ghana and may give out an authorization notice duly published in the Gazette permitting any person or authority to act as a custodian of any such public fund; responsible for encouraging and promoting economic development and the effective use of the country's resource by effective and efficient banking and credit system operation in the country.

Ghana.<sup>34</sup> BOG has overall supervisory and regulatory authority in all matters relating to deposit-taking business in Ghana.<sup>35</sup> Flowing from this authority, BOG is required to prevent practices of banks and specialised deposit-taking institutions that are unlawful or improper.<sup>36</sup> BOG performs these regulatory and supervisory functions through its Banking Supervision Department.<sup>37</sup>

A major component of BOG's supervisory and regulatory functions is the issuance of licences to banks and specialised deposit-taking businesses. It is a statutory requirement that before an entity<sup>38</sup> engages in the business of deposit-taking in Ghana, it must obtain a licence from BOG.<sup>39</sup> An application to BOG for a banking licence must satisfy the requirements set out in Act 930.<sup>40</sup> The applicant must also precisely specify what type of licence it is applying for.<sup>41</sup> BOG may verify the particulars of the application by interviewing any promoter, proposed director or key manager of the applicant.<sup>42</sup> It may also inspect the applicant's books, records and the premises within which the applicant intends to carry out the business of deposit-taking.<sup>43</sup> All these measures ensure that in the interest of the general public, only worthy corporate entities engage in the business of banking and deposit-taking in Ghana. Thus, where it is satisfied that an applicant has met all the necessary requirements,<sup>44</sup> BOG shall issue a licence to the applicant.<sup>45</sup> Flowing from the above, it is presumed<sup>46</sup> that because the affected banks operated with banking licences, they satisfied BOG that they had met the requirements of the law.

<sup>34</sup> See the Bank of Ghana Act, 2002 (As Amended), s 4 for the full list of BOG's functions. They have been repeated at the BOG's website ('About the Bank-Bank of Ghana' (n 20)). A few of these functions are: regulating, supervising and directing the banking and credit system; ensuring a smooth financial operation in Ghana; overseeing payment and settlement systems; the issuance and redemption of the Ghanaian currency; maintaining and managing the external financial services of the country effectively.

<sup>35</sup> Act 930, s 3(1)

<sup>36</sup> Act 930, s 3(2)

<sup>37</sup> Bank of Ghana Act, 2002 (As Amended), s 54

<sup>38</sup> Act 930, s 4(1). The first hurdle to applying for a banking licence is that the entity must be a corporate body duly incorporated under the laws of Ghana. Act 930, s 4(2), where a body corporate not established under the laws of Ghana wishes to engage in the business of deposit taking, it must first seek the written consent of BOG.

<sup>39</sup> Act 930, s 6(1)

<sup>40</sup> Per Act 930, s 9

<sup>41</sup> Act 930, s 7(3)

<sup>42</sup> Act 930, s 7(4)(a)

<sup>43</sup> Act 930, s 7(4)(b). The BOG, under section 7(6) of Act 930 may also require that an Applicant verifies, certifies or authenticate the information provided it in a manner that the BOG prescribes.

<sup>44</sup> The BOG does not issue a licence unless it is satisfied that the applicant meets the pre-requisites under section 9 of Act 930.

<sup>45</sup> Act 930, s 12

<sup>46</sup> This presumption is premised on section 37(1) of the Evidence Act, 1975 (NRCD 323) which provides; "It is presumed that an official duty has been regularly performed."

As part of its supervisory and regulatory functions, BOG also has the power to revoke the licences of banks and specialised deposit-taking institutions when it appears necessary to do so, in the greater interest of the financial sector and the public as a whole.<sup>47</sup> Among other things, BOG may revoke a banking licence where a bank or specialised deposit-taking institution carries on its business in a way that prejudices the interest of depositors or the public; where a bank or specialised deposit-taking institution engages in practices that are unsafe or unsound; or where a bank or specialised deposit-taking institution persistently violates provisions of Act 930, or any regulations, directives or orders made under the Act 930.<sup>48</sup> It is for some of these reasons that the BOG, on August 1, 2018, revoked the licence of the affected banks.<sup>49</sup>

The findings of BOG, prior to revoking the banking licenses of the affected banks, revealed that those banks had indeed collapsed. BOG therefore needed to take the necessary actions in accordance with the law, to save and protect the interest of depositors. A review of Ghana's history of financial sector reveals that the collapse of the affected banks is not novel.

### 3. HISTORY OF BANKS' COLLAPSE IN GHANA: AN OVERVIEW

#### 3.1 The A-life Scandal

In the 2000, BOG liquidated two commercial banks; the Ghana Cooperative Bank (GCOB) and the Bank for Housing and Construction (BHC).<sup>50</sup> The banks were liquidated because of the huge financial losses they suffered, poor performing loan portfolios<sup>51</sup> and unfavourable assets to liability ratio resulting in their inability to satisfy the minimum capital requirement under the law.<sup>52</sup> The immediate cause of these problems were a series of fraudulent withdrawals by, and advances of large sums of money to, A-Life Supermarket Trading Company Limited (A-Life),

<sup>47</sup> See section 16(1) of Act 930 for the various reasons based of which the BOG may revoke the licence of a bank or specialised deposit-taking institution.

<sup>48</sup> Act 930, s 16

<sup>49</sup> Bank of Ghana Press Release dated 1 Aug 2018, p 1 and 2

<sup>50</sup> Samuel Alesu-Dordzi, 'Ghana's 2000 Banks Collapse (Part 1)' (Ghana Law Hub, 1 April 2019) <<https://ghanalawhub.com>> accessed 31 August 2025. The GCOB was established in 1948 with the Ghana Cooperative Societies and the Government of Ghana as its initial shareholders.<sup>50</sup> It was liquidated in 1961 but subsequently revived in 1973 and started operations in 1975. Subsequently, the shareholders of GCOB became the Bank of Ghana, the Social Security and National Insurance Trust and the State Insurance Company. The BHC on the other hand, was a development bank established in 1973 with the Government of Ghana and Bank of Ghana as the shareholders. Its functions included financing mortgages and entering into joint venture projects in the construction sector.

<sup>51</sup> Ibid.

<sup>52</sup> 'Government Closes Down Two State-Owned Banks' (n 53)

tracing back from 1997 (the A-Life scandal).<sup>53</sup> Upon investigations into the scandal, it came out that these fraudulent withdrawals stemmed from collusion between members of staff of the banks and officers of A-life.<sup>54</sup> As a result, the Managing Director of A-Life Supermarket and some staff of the banks were prosecuted for their involvement in that scandal.<sup>55</sup>

### 3.2 Collapse of UT Bank Ltd and Capital Bank Ltd

In August 2017, BOG revoked the banking licenses of UT Bank Ltd and Capital Bank Ltd (the two banks); and thereafter executed a Purchase and Assumption Agreement to enable the GCB Bank Ltd take over all deposits, liabilities and selected assets of the two banks. BOG then appointed PricewaterhouseCoopers (PWC) as a receiver to the two banks.<sup>56</sup> The receiver was empowered to manage the remaining assets that were not taken over by GCB Bank PLC under the Purchase and Assumption Agreement, and to distribute the proceeds in accordance with the Act 930.<sup>57</sup>

<sup>53</sup> Samuel Alesu-Dordzi (n 52). It was revealed that A-life had caused debt of between One Hundred and Thirty-Five and Two Hundred Billion Cedis to the two Ghana Commercial Bank and the two banks.

<sup>54</sup> Ibid.

<sup>55</sup> Joachim Harnack, Sergio Pereira, et al (n 21). In January 1997 the Banking Supervision Department of the Bank of Ghana uncovered a large cheque fraud involving three publicly – owned banks – Ghana Commercial Bank Ltd, GCOB and BHC, the owner of the A-life supermarket chain, and 10 other, associated companies. A-life had opened a series of bank accounts at these banks at both their Accra headquarters and in regional branches. Many of the accounts were also opened in the name of the associated companies. At that time, there was a lengthy clearing time between Accra and the regional branches because banks were then not fully automated. Also, there was complicity of some employees and directors of the banks. Cheques were issued on accounts held in the regional branches and then cashed in Accra. The cheques were held for a long time before they were presented to the clearinghouse and the corresponding accounts debited. The size of the cheque float increased in the clearinghouse over time. It was when it reached a considerable amount that the authorities realized the extent of the irregularities and intervened. At that time the total amount of cheques in suspense accounts amounted to ₦129 billion (approximately 1 percent of GDP) in 1996. About ₦50 billion worth of checks had been written and cashed under the check purchase facility; the remainder consisted of overdrawn accounts held by the banks involved.

The Serious Fraud Office intervened and froze the assets of the perpetrators; meanwhile the Bank of Ghana banned the purchase of cheques over the counter. GCB's exposure to the fraud was about ₦22 billion, of which 70 percent was in the form of checks purchased. The remainder was written against accounts held in BHC and GCOB in equal parts. As a result, their net worth became negative. Top management of the banks involved was dismissed and imprisoned. After some investigations and suits in the High Court, in September 1997 the accounts of the A-life company were unfrozen, and the company was allowed to resume its full business under court supervision, in the hope that the profits generated would help recover some of the debt. A special account was set up to collect proceeds from the sales of the assets and the profits from the commercial activity toward the recovery of the debt. As of May 1998, ₦25 billion had been recovered, but subsequent amounts recovered were negligible. Most of the funds had been transferred abroad before the fraud was uncovered.

'A-Life Case Adjourned'<<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/A-Life-Case-Adjourned-693>>accessed 1 September 2025

<sup>56</sup> This was done pursuant to section 123 of Act 930

<sup>57</sup> 'GCB Bank takes over UT Bank and Capital Bank: Frequently Asked Questions'<[http://www.bog.gov.gh/resolution\\_faqs/faq-gcb-bank-takes-over-ut-bank-and-capital-bank/](http://www.bog.gov.gh/resolution_faqs/faq-gcb-bank-takes-over-ut-bank-and-capital-bank/)>accessed 1 September 2025

The above regulatory measures were taken following an Asset Quality Review (AQR) that BOG conducted on banks between 2015 and 2016. The AQR revealed that, some indigenous banks, including the two banks, had high levels of non-performing loans and weak corporate governance systems.<sup>58</sup> According to BOG, these steps were necessary because the liabilities of the two banks far exceeded their assets; they had become insolvent as they were unable to satisfy their obligations as and when they fell due.<sup>59</sup> The BOG made attempts to find other alternatives to revive the two banks but the banks could not come up with a feasible plan hence, BOG's revocation of their banking licences.<sup>60</sup>

The Purchase and Assumption Agreement executed by BOG and GCB Bank PLC allowed depositors of the two banks to have access to their funds through GCB Bank PLC. The customers of the two banks became the customers of GCB Bank PLC; the customers continued to bank via UT Bank Ltd and Capital Bank Ltd branches they previously transacted at. However, those branches were now the branches of GCB Bank PLC. All the ATMs of the two banks continued to be available to the customers.<sup>61</sup> Equally, all loan agreements with the two banks continued to be binding, except that some of the loans were taken over by the GCB Bank PLC whilst others were transferred to the receiver.<sup>62</sup>

### **3.3 Collapse of the affected banks: uniBank Ghana Limited Ltd, The Royal Bank Ltd, Beige Bank Ltd, Sovereign Bank Ltd, and Construction Bank Ltd**

A year after BOG revoked the banking licences of UT Bank Ltd and Capital Bank Ltd, BOG revoked the banking licences of above-mentioned banks (i.e., the affected banks) in the interest of a safe, strong and stable financial sector, and also to protect depositors' funds. It thereafter appointed a receiver for the affected banks.<sup>63</sup> BOG had realized that there were a lot of legacy problems in the banking sector that had made the sector vulnerable.<sup>64</sup> Some of these legacy problems were macroeconomic factors, poor corporate governance and risk management practices, related party transactions, regulatory non-compliance, poor supervision, questionable licensing

<sup>58</sup> Bank of Ghana Press Release dated 1<sup>st</sup> August 2018.

<sup>59</sup> GCB Bank takes over UT Bank and Capital Bank: Frequently Asked Questions (n 57)

<sup>60</sup> Ibid

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Bank of Ghana Press Release dated 1<sup>st</sup> August 2018, page 1

<sup>64</sup> ibid

processes and weak enforcement of legal and regulatory requirements.<sup>65</sup> BOG assessed in detail, the various problems that led to the revocation of the licences of each of the affected banks and these are mentioned below.

### **3.3.1 uniBank Ghana Limited (uniBank)**

In an attempt to revive uniBank, BOG appointed KPMG as the Official Administrator (OA) to assist in ascertaining the exact financial standing of the bank. The report submitted by the OA revealed that as at the time of its appointment, uniBank was insolvent.<sup>66</sup> The OA reported that it was impossible to sustain the operations of uniBank because: the bank was seriously undercapitalized; the sources of income of the bank could not cover its liabilities; a huge portion of the bank's loans was non-performing; the bank had weak governance and internal control environments; there were series of unlawful transactions that involved shareholders, related and connected parties.<sup>67</sup> The report also revealed that without going through the approved process, uniBank had given out loans and advances in the sum of GHS1.6 billion to its shareholders and related parties.<sup>68</sup> An additional GHS3.7 billion had been given out to shareholders without going through the recognized credit delivery processes and had not also been added to the bank's loan portfolio. Neither of these transactions were secured with collaterals nor was there any interest yielding to the bank.<sup>69</sup> It was determined that the bank was principally surviving on liquidity support and would need an estimated amount of GHS3.0 billion by the end of 2018 to meet its obligations.<sup>70</sup> In essence, the condition of uniBank was beyond saving and BOG had to prevent it from operating as a bank.

### **3.3.2 Royal Bank Ltd**

The conditions of Royal Bank Ltd were not so much different from that of uniBank. The 2016 updated Annual Quarterly Report showed that the Royal Bank was also undercapitalized.<sup>71</sup> BOG conducted on-site examination at the bank in March, 2018 and identified several irregularities which had made the bank insolvent. The bank was severely affected by capital impairment as a result of: under-provision for loans; over estimation of the bank's investments placed with other financial institutions among others.<sup>72</sup> BOG also observed that over seventy-eight

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<sup>65</sup> ibid

<sup>66</sup> ibid

<sup>67</sup> ibid

<sup>68</sup> ibid

<sup>69</sup> ibid

<sup>70</sup> ibid

<sup>71</sup> ibid

<sup>72</sup> ibid, page 7

percent (78%) of the total loans of the bank were non-performing. Like uniBank, the Royal Bank had transacted with its shareholders and related parties to the sum of GHS161.92 million without going through due process.<sup>73</sup> Again, the bank, for purposes of meeting the capital adequacy requirement, had overstated its stated capital position.<sup>74</sup>

### **3.3.3 Beige Bank Limited**

BOG's investigation into the affairs of this bank only after six months of operations showed that the bank applied for and obtained a banking licence with non-existent capital.<sup>75</sup> BOG also found out that the funds that were pretentiously used to recapitalized the bank by its parent company emanated from the bank itself through one of its affiliate companies.<sup>76</sup> Thus, from its inception, the bank did not satisfy the capital adequacy requirement to undertake the business of deposit taking. Its capital adequacy ratio was negative, and it had non-performing loan ratio of 72.80%.<sup>77</sup> This, according to BOG, led to the revocation of its banking license.

### **3.3.4 Sovereign Bank Limited (Sovereign Bank)**

The issues with Sovereign Bank came to light through BOG's investigations into the failure of Capital Bank Ltd. BOG observed that Sovereign Bank also obtained a banking licence through false pretences by using suspicious and non-existent capital in its application.<sup>78</sup> It was revealed that the bank's initial capital contribution from its shareholder was from Capital Bank Ltd, which Sovereign Bank presented to BOG as its investment.<sup>79</sup> Sovereign Bank also invested huge portions of its capital with another financial institution, which it could not retrieve because it emerged that, that investment had been liquidated by its shareholders and related parties.<sup>80</sup> BOG also found that the promoters of the bank did not pay for the shares they subscribed to.<sup>81</sup> Despite this, and contrary to law,<sup>82</sup> the

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<sup>73</sup> ibid, page 8

<sup>74</sup> ibid

<sup>75</sup> ibid, 2

<sup>76</sup> ibid, 8

<sup>77</sup> ibid, 8

<sup>78</sup> ibid, 2

<sup>79</sup> ibid, 9

<sup>80</sup> ibid, 9

<sup>81</sup> This breached section 45(1) of the Companies Act, 2019 (Act 992) which provides that generally, shares shall not be issued otherwise than for paid valuable consideration or payable to the company and unless otherwise agreed, shares shall be paid for in cash.

<sup>82</sup> Companies Act, 2019 (Act 992), section 61(2) provides that "shares shall not be ... purchased or acquired by the company so long as there is an unpaid liability on those shares."

promoters surrendered their unpaid shares to the bank.<sup>83</sup> Flowing from this, the bank recorded a negative capital adequacy ratio causing BOG to declare it insolvent. Indeed, as at May 2018, the bank was surviving on liquidity support of GHS12 million that BOG had granted to it.<sup>84</sup>

### 3.3.5 The Construction Bank Limited (Construction Bank)

BOG's investigations revealed that this bank applied for and obtained a banking licence under false pretences using suspicious and non-existent capital.<sup>85</sup> During the official administration of uniBank, BOG discovered that certain transactions of uniBank involved Construction Bank Ltd. BOG identified that contrary to law,<sup>86</sup> the initial payments made by the bank's shareholders and promoters toward its capital were loans they obtained from the National Investment Bank Limited (NIB). Portion of the bank's paid-up capital was placed with NIB and uniBank, and GHS80million of these amounts could not be accessed by the bank. Depositors' funds of the bank were unsafe because the bank was incapable of injecting additional capital in order to meet the minimum capital requirement.<sup>87</sup> Eventually, BOG revoked the licence of the bank because none of the revival plans submitted by the shareholders were capable of saving the bank.<sup>88</sup>

After investigating the above banks, BOG published its confidential investigations and findings highlighted above during its press conference and press release on 1<sup>st</sup> August, 2018. The legal effects and consequences of this are discussed below.

## 4. THE LEGAL EFFECT OF BOG'S PRESS RELEASE OF 1<sup>ST</sup> AUGUST, 2018

On August 1, 2018, BOG released a press statement informing the public about the revocation of the banking licences of the affected banks. It also published other important regulatory and supervisory steps it had taken toward achieving a stable, safe and sound financial system in Ghana. After revoking the licences of the affected

<sup>83</sup> BOG Press Release dated 1 Aug 2018, 9

<sup>84</sup> ibid, 9

<sup>85</sup> ibid, 2

<sup>86</sup> Act 930, 9(d) provides that "The Bank of Ghana shall not issue a licence to an applicant unless the Bank of Ghana is satisfied that(d) the paid-up capital of the applicant is adequate and the original sources of capital are acceptable and do not include borrowed funds."

<sup>87</sup> BOG Press-Release dated 1 Aug 2018, 9-10

<sup>88</sup> ibid, 10.

banks,<sup>89</sup> BOG granted a universal banking licence to CBG, which was established of the Government of Ghana on the same day. Exercising its statutory powers,<sup>90</sup> BOG appointed Mr. Nii Amanor Dodoo of KPMG as the receiver for the affected banks.<sup>91</sup> BOG transferred all deposits of the affected banks to CBG. Accordingly, customers of the affected banks could transact with CBG from their various banks which became branches of CBG.<sup>92</sup> The staff of the affected banks became the staff of CBG but the board of directors and shareholders of the affected banks lost their positions.<sup>93</sup>

BOG then appointed CBG as a bridge bank<sup>94</sup> for the affected banks. CBG was also ‘to assume [SOME] of the assets and liabilities of the affected banks’.<sup>95</sup> BOG also approved a Purchase and Assumption Agreement (the Agreement) between CBG and the receiver of the affected banks. The terms of the Agreement were that CBG will acquire ‘all deposits and other specified liabilities, and good assets of the affected banks’.<sup>96</sup> Subsequent to the regulatory and supervisory steps BOG undertook, there have been a lot of legal misconceptions about: (1) the legal status of the affected banks viz-a-viz CBG. (2) The legal effect of the appointment of a receiver for the affected banks. (3) Whether CBG, after being appointed as a bridge bank for the affected banks, is one and the same as the affected banks. (4) Whether CBG merged with, or is an amalgamation of, or took over, the affected banks. (5) Whether CBG is liable for all the pre-existing debts and liabilities of the affected banks. The next sessions of the paper address these questions.

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<sup>89</sup> Act 930, section 123(1): “(1) Where the Bank of Ghana determines that the bank or specialised deposit-taking institution is insolvent or is likely to become insolvent within the next sixty days, the Bank of Ghana shall revoke the licence of that bank or specialised deposit-taking institution.”

<sup>90</sup> Act 930, section 123(2): The Bank of Ghana shall appoint a receiver at the effective time of revocation of the licence under subsection (1).

<sup>91</sup> BOG Press-Release dated 1 Aug 2018, 1

<sup>92</sup> *ibid*, 1

<sup>93</sup> *ibid*, 1

<sup>94</sup> Act 930, section 127(11) a “bridge institution” is an institution established by the Government or the Bank of Ghana for a temporary period for the purpose of resolving a bank or specialised deposit-taking institution in distress.

<sup>95</sup> BOG Press-Release dated 1 Aug 2018, 3

<sup>96</sup> *ibid*, 3

#### **4.1 The legal effect of the BOG's revocation of the banking licences of the affected banks and the subsequent appointment of a receiver for them**

BOG is the only entity in Ghana authorised to issue banking licenses to banks and deposit-taking institutions in Ghana.<sup>97</sup> A person who intends to undertake banking or deposit-taking business<sup>98</sup> in Ghana must meet two primary conditions: firstly, it must be incorporated under the laws of Ghana<sup>99</sup> and thus, clothed with the statutory powers of a corporate body.<sup>100</sup> Secondly, the entity must have been issued with a banking licence by the Bank of Ghana.<sup>101</sup> BOG will issue a banking licence to an entity only when it is satisfied that that entity has met the relevant statutory requirements.<sup>102</sup>

Thus, it is reasonable to submit that all the affected banks were duly incorporated under the laws of Ghana before BOG issued them with a banking licence. Consequently, when BOG revoked the banking licences of the affected banks, it rendered the banks incapable of undertaking banking or deposit-taking the business in Ghana. Thus, unless those banks were subsequently liquidated, their corporate personality legally remained intact. The affected banks still remained incorporated entities recognized under the laws of Ghana. However, because the affected banks had the word 'bank' in their respective names, they lacked the legal right to use their registered corporate names simply because BOG has revoked their banking licenses.<sup>103</sup>

<sup>97</sup> Act 930, section 5.

<sup>98</sup> Act 930, section 4(5) provides: *deposit-taking business means the business of (a) taking money on deposit and making loans or other advances of money; and (b) financial activities prescribed by the Bank of Ghana for purposes of this definition.*

<sup>99</sup> Act 930, section 4(1) provides: *a person shall not carry on a deposit-taking business in or from within the country unless that person is a body corporate formed under the laws of Ghana.*

<sup>100</sup> Per section 18 of the Companies Act, 2019 (Act 992), "...a company shall have (a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction: and (b) full rights, powers and privileges for the purpose if paragraph (a).

<sup>101</sup> Act 930 section 6(1) provides that: *A person shall not accept a deposit from the general public or carry on a deposit-taking business in or from within the country without a licence issued in accordance with this Act.*

<sup>102</sup> Act 930, s 9 provides that "*The Bank of Ghana shall not issue a licence to an applicant unless the Bank of Ghana is satisfied that (a) the feasibility report submitted by the applicant under section 7 is based on sound analysis under reasonable assumptions; (b) the proposed directors and key management personnel of the applicant are fit and proper persons; (c) the significant shareholders are suitable and the ownership structure of the proposed bank or specialised deposit-taking institution will not hinder effective supervision, including supervision on a consolidated basis; (d) the paid-up capital of the applicant is adequate and the original sources of capital are acceptable and do not include borrowed funds; (e) the arrangements for governance, including accounting, risk management, and internal control systems and records of the applicant are adequate; (f) the applicant is not a shell company; and (g) the applicant has complied with this Act, the Regulations, directives, and other legally-binding instruments made under this Act and any conditions that the Bank of Ghana may impose.*"

<sup>103</sup> Act 930, s 23(1) provides: (1) Except as otherwise provided for in this Act, a person, other than a company holding a banking licence, shall not hold itself out as a bank or use the word "bank" or any of its derivatives in any language, or any word that sounds like "bank" in the description or title under which that person is carrying on financial services business in Ghana, or make a representation to this effect in any billhead, letter, paper, notice, advertisement or in any other manner.

Under Act 930, the revocation of the banking licences of the affected banks also automatically triggers the appointment of a receiver.<sup>104</sup> The receiver becomes the agent of BOG and so acts on the directives, instructions and guidelines of BOG,<sup>105</sup> and account only to the BOG.<sup>106</sup> The functions of the receiver include taking possession and control of the assets and liabilities of the bank or specialised deposit-taking institution, in this case, the affected banks.<sup>107</sup> The receiver also becomes the only legally recognized representative of the bank or specialised deposit-taking institution; takes up all the rights and powers of the shareholders, directors and key management personnel of the bank or specialised deposit-taking institution<sup>108</sup> subject only to specific functions the receiver instructs a director, shareholder or a key management personnel to do.<sup>109</sup> The receiver has the following powers and rights: he manages, operates and represents the bank or specialised deposit-taking institution; he takes over the books, all records and assets of the bank or specialised deposit-taking institution; and he initiates or defends the bank or specialised deposit-taking institution in legal proceedings.<sup>110</sup>

Analysing the law and the regulatory and supervisory actions BOG undertook in relation to the affected banks on 1<sup>st</sup> August 2018, the following stands out:

- BOG revoked the banking licences of the affected banks and appointed Mr. Nii Amanor Dodoo as the receiver for them.
- The receiver legally took over the assets and liabilities of the affected banks that BOG did not transfer to CBG.
- The receiver became the sole legal representative of the affected banks.
- The receiver was vested with, and took over, all the rights and powers of the shareholders, directors and key management personnel of the affected banks.
- The receiver took possession of the books, records and assets of the affected banks.

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<sup>104</sup> Act 930, s 123(2) provides (2) The Bank of Ghana shall appoint a receiver at the effective time of revocation of the licence under subsection (1).

<sup>105</sup> Act 930, s 126(1)

<sup>106</sup> Act 930, s 126(2)

<sup>107</sup> Act 930, s 123(3)

<sup>108</sup> Act 930, s 127(1)

<sup>109</sup> Act 930, s 127(2)

<sup>110</sup> Act 930, s 127(3)

- The receiver became responsible for the management and operation of the affected banks.
- The receiver became the legal person with the sole and individual responsibility to initiate or defend legal proceedings involving the affected banks.

These are the statutory pre-determined and pre-destined consequences that follow BOG's revocation of banking licenses and subsequent appointment of a receiver. No other interpretation or misconception can refute these statutory consequences. Further, BOG's appointment of a bridge institution for banks whose licenses are revoked, as happened with CBG, does not whittle down the above-mentioned statutory consequences. This is explained in the following sessions.

#### **4.2 Appointment of CBG as a 'bridge bank' and its relationship with the affected banks**

As has been discussed earlier, after revoking the banking licences of the affected banks and appointing a receiver for them, BOG issued a universal banking licence to CBG and designated it as a 'bridge bank'.<sup>111</sup> A bridge institution is an 'institution established by the Government or the Bank of Ghana for a temporary period for the purpose of resolving a bank or specialised deposit taking institution in distress'.<sup>112</sup> Through the bridge institution, the receiver, with the written approval of BOG, may 'continue the viable or necessary operations' of the affected banks.<sup>113</sup> As a bridge bank (or institution), CBG acted as a temporary link or medium through which BOG and the receiver dealt with the pre-existing customers of the affected banks. Thus, BOG transferred all deposits of the affected banks to CBG and permitted customers of the affected banks to transact with CBG from their respective branches.

Under the Purchase and Assumption Agreement, CBG 'acquired all deposits and other specified [not all] liabilities, and good assets of the affected banks'.<sup>114</sup> This presupposes that, CBG became liable to the customers of the affected banks only to the extent that those liabilities fell within the 'specified liabilities' that CBG acquired from BOG. The corollary is that the receiver inherited all the assets and liabilities of the affected banks,<sup>115</sup> minus all deposits, specified liabilities, and good assets of the affected banks that CBG acquired. Thus, if a customer or

<sup>111</sup> BOG PRESS-RELEASE dated 1 Aug 2018, 3

<sup>112</sup> Act 930, s 127(11)

<sup>113</sup> Act 930, s 127(10)(c)

<sup>114</sup> BOG PRESS-RELEASE dated 1 Aug 2018, 3

<sup>115</sup> Act 930, s 123(3)

service provider of any of the affected banks intends to enforce a liability that any of the affected banks owed to him or her by prior to the incorporation of CBG, he or she ought to initiate an action against the receiver not CBG.

It is a basic principle of company law that it is from the date of incorporation that a company becomes a body corporate by its corporate name, and thus capable of performing the functions of an incorporated company.<sup>116</sup> Also, after incorporation the company is clothed with the powers of a natural person<sup>117</sup> of full capacity and obtains the full rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction.<sup>118</sup> Further, it is after incorporation that a company becomes capable of entering into an agreement and being bound by it or claim rights under a deed or mortgage or other instrument.<sup>119</sup> Lord Macnaughten summarised the incidences of incorporation in the case of *Salomon v Salomon*<sup>120</sup> thus:

*... a body corporate...attains maturity on its birth... The company is at law a different person altogether from its subscribers... and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them.*<sup>121</sup>

Justice Sophia Akuffo (who later became the Chief Justice of Ghana), in the case of *Morkor v Kuma (No1)*,<sup>122</sup> also opined that:

*... a company after its registration, has all the powers of a natural person of full capacity to pursue its authorized business. In that capacity, a company is a corporate being, which, within the bounds of the [Companies Act, 2019 (Act 992)] and the [constitution] of the company, may do everything that a natural person might do... A company is, thus, a legal entity with a capacity separate, independent and distinct from the persons constituting it or employed by it.*<sup>123</sup>

<sup>116</sup> Act 992, s 14(2).

<sup>117</sup> Regulation 1 of the Second and Thirds Schedules of Act 992

<sup>118</sup> Act 992, s. 18(1)(a) and (b).

<sup>119</sup> Act 992, s 18(2)

<sup>120</sup> [1896] AC 22.

<sup>121</sup> [1896] AC 22 at 51 (Emphasis added)

<sup>122</sup> *Morkor v Kuma (No 1)* [1999-2000] 1 GLR 721, SC.

<sup>123</sup> Page 733, *ibid*.

Consequently, CBG is liable for the pre-existing debts and liabilities of the affected banks only where CBG admits that liability<sup>124</sup> or the person who claims that CBG is liable, proves that the liability in question emanates from the limited ones transferred by BOG to CBG.<sup>125</sup>

On the basis of the above discussion, it is obvious that CBG did not take over the affected banks neither was there a merger or amalgamation of CBG with the affected banks. CBG was, and still remains, a separate legal entity or bank distinct and different from the affected banks.

#### **4.3 CBG did not to takeover or merge with the affected banks neither was there an amalgamation of CBG and the affected banks**

The spirit of what BOG did, based on the wording of the press release it issued on 1<sup>st</sup> August 2018, did not meet the legal indicia for a merger, amalgamation and takeover. It is discernible that the use of the word ‘Consolidated’ in the corporate name of CBG, i.e., ‘Consolidated Bank Ghana Ltd’ gives the misconception that the affected banks were ‘consolidated’<sup>126</sup> into one bank – ‘Consolidated Bank Ghana Ltd’.<sup>127</sup> This misconception has no basis in law and fact. In the first place, if BOG intended to consolidate the affected banks into a single unit entity, it would have expressly stated so. Also, the law that governs what BOG did, as discussed above, does not support the merger, amalgamation and takeover argument.

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<sup>124</sup> As a general principle of law, an allegation that is not claimed nor challenge in any way is deemed admitted or so proved that it demands no further proof. *Fori v Ayirebi* (1966) GLR; *In Re Ashalley Botwe Lands* (2003-2004) GLR 420 at 437. Also, Order 23 rule 6 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) as amended provides that (1) Where an admission of the truth of a fact or the authenticity of a document is made

(a) in an affidavit filed by a party;  
 (b) in the examination for discovery of a party or a person examined for discovery on behalf of a party; or  
 (c) by a party on any other examination under oath or affirmation in or out of Court;  
 any party may apply to the Court or Judge in the same or another cause or matter for such order as the party may be entitled to on the admission without waiting for the determination of any other question between the parties, and the Court or Judge may make such order as is just.

<sup>125</sup> Evidence Act, 1975 (NRCD 323), s 10(2)(b) would require the person to prove this on the preponderance or probabilities.

<sup>126</sup> The ordinary meaning of ‘consolidate’ is combine several things, especially businesses, so that they become more effective, or to be combined in this way. Cambridge Online Dictionary.

<sup>127</sup> Kwabena Danso, ‘Overview of the Banking Crises in Ghana’ (2022) <[http://www.researchgate.net/publication/367021477\\_Overview\\_of\\_the\\_Banking\\_Crises\\_in\\_Ghana](http://www.researchgate.net/publication/367021477_Overview_of_the_Banking_Crises_in_Ghana)> accessed 26th September 2025

A takeover means the acquisition of ownership or control of a corporation. It is accomplished by a purchase of shares or assets, a tender offer, or a merger.<sup>128</sup> A merger occurs when more than one business is combined or united together.<sup>129</sup> A merger may also be by absorption or formation of a new company.<sup>130</sup> A merger is by absorption when the undertaking, property and liabilities of one or more companies are transferred to another company already in existence.<sup>131</sup> Merger by formation of a new company takes place when the undertaking, property and liabilities of two or more companies are transferred to a new company for consideration of shares to be taken up by the members of the transferor company in the transferee company whether with or without any further cash payment to the members.<sup>132</sup> Amalgamation is also defined as the act of combining, uniting or consolidating two small companies to form a new company.<sup>133</sup>

Takeover, merger and amalgamation of companies are creatures of statute.<sup>134</sup> For a merger to take place, there must be resolution of the directors of each of the merging companies stating that in the opinion of the directors, the merger is in the best interest of the company, and there must be reasonable grounds for the directors to believe that immediately after the merger, the transferee company shall be solvent.<sup>135</sup> There must be at least a merger proposal that sets the terms of the intended merger.<sup>136</sup> The merger becomes effective upon registration.<sup>137</sup> Additionally where the institutions involved in the merger or amalgamation are banks or specialised deposit-taking institution, the merger or amalgamation must be approved by BOG.<sup>138</sup>

From the forgoing, the assertion that CBG took over, merged or amalgamated with the affected banks is untenable because there is no evidence that the statutory conditions precedent mentioned above were met. Thus, the only legal relationship that exists between CBG and the affected banks is that CBG operates as a bridge bank to serve

<sup>128</sup> Bryan A. Garner (ed), *Black's Law Dictionary*, 9<sup>th</sup> Edition (West Publishing Company, Dallas 009)

<sup>129</sup> *ibid*

<sup>130</sup> Act 992, s 383 (First Schedule)

<sup>131</sup> Act 992, s 383 (First Schedule)

<sup>132</sup> Act 992, s 383 (First Schedule)

<sup>133</sup> *Black's Law Dictionary*, 9<sup>th</sup> edition.

<sup>134</sup> Act 992 remains the primary law on the subject but in respect of the various sectors, there are other special laws that must be observed. In the banking sector Act 930 is instructive.

<sup>135</sup> Act 992, s 243(1) (a) & (b). Sub section 3 of section 243 provides a long list of items that must be exchanged between the directors of the merging companies within 28 days before the merger takes effect.

<sup>136</sup> Act 992, s 242. See section 242(1) (a)-(p) for the least content of a merger.

<sup>137</sup> Act 992, s 245, provides a list of documents that must be submitted to the Registrar of Companies for registration. The documents include the approved merger proposal and a report regarding the fairness of the merger.

<sup>138</sup> Act 930, s 52

the needs of the customers of the affected banks. CBG has an entirely new and different legal persona as an incorporated entity, separate, distinct and different from the affected banks.

In the midst of the several misconceptions that arose after BOG's actions on 1<sup>st</sup> August, 2018, the Court of Appeal, Kumasi, coram; Justice Angelina M. Domakyaareh (Mrs), Justice Alex B. Poku-Acheampong and Justice Samuel K. A. Aseidu (now a Justice of the Supreme Court), seized the opportunity in the case of *Chancellor Oppong Kyekyeku Kohl v. Consolidated Bank Ghana Ltd*<sup>139</sup> to explain the legal effect of what BOG did on 1<sup>st</sup> August, 2018 and the legal relationship that exists between CBG and the affected banks.

## 5. THE CASE OF *CHANCELLOR OPPONG KYEKYEKU KOHL V CONSOLIDATED BANK GHANA LTD*<sup>140</sup>

Chancellor Oppong Kyekyeku Kohl, Plaintiff/Appellant (hereinafter the Appellant), issued a Writ of Summons and Statement of claim at the Circuit Court, Kumasi against CBG for the following reliefs:

1. An order to compel the Defendant to pay the remaining balance of the Plaintiff's interest amount of GH¢ 32, 493.2 of his one-year investment of GH¢ 198,000.00 at interest rate of 27% per annum with Defendant which commenced on 4<sup>th</sup> April, 2018 and matured on 4<sup>th</sup> April, 2019.
2. Interest on the said remaining balance of the Plaintiff's interest amount of GH¢ 32, 493.2 from 5<sup>th</sup> April, 2019 till date of final payment at the prevailing bank rate...<sup>141</sup>

The Appellant's case, per his Statement of Claim, was that he made a one-year fixed deposit investment of GHS198,000.00 with the erstwhile Beige Bank Ltd with commencement date of 4<sup>th</sup> April 2018 and a maturity date of 4<sup>th</sup> April, 2019, at an interest rate of 27% annum. At the agreed interest rate, the Appellant's investment would have yielded a total interest of GHS53,460.00. On 19<sup>th</sup> December, 2018, he withdrew GHS30,000.00 from Beige Bank Ltd, reducing his investment from GHS198,000.00 to GHS168,000.00 at the same rate of interest. According to the Appellant, upon the release of BOG's 1<sup>st</sup> August, 2018 Press Statement, CBG took over the management of Beige Bank, and failed to pay him the full amount due him under his pre-existing investment upon maturity. Among

<sup>139</sup> *Chancellor Oppong Kyekyeku Kohl v. Consolidated Bank Ghana Ltd* (n 1)

<sup>140</sup> [2022] 181 G.M.J. 694

<sup>141</sup> Ibid, p 716

other things, the Appellant averred that CBG used 13% to calculate the interest payable to him instead of the 27% he agreed with Beige Bank Ltd.

CBG denied the Appellant's claim but admitted that it paid the Appellant his principal and interest calculated at the interest rate of 13% from 1<sup>st</sup> August, 2018. CBG argued that the events of 1<sup>st</sup> August, 2018 that led to the collapse of Beige Bank Ltd was not a merger, amalgamation or takeover of Beige Bank Ltd by CBG. Rather, BOG appointed it as a bridge bank pursuant to the provisions of Act 930, only to assume selected assets and liabilities of the affected banks, including Beige Bank Ltd. CBG also averred that upon the revocation of the banking licence of Beige Bank Ltd, it was placed under receivership. Thus, all assets and liabilities of Beige Bank Ltd that did not form part of the selected assets and liabilities assumed by CBG was taken over by the receiver. Accordingly, CBG argued that, it did not inherit the interest rate of 27% that Beige Bank Ltd agreed with the Appellant. CBG added that, from 1<sup>st</sup> August, 2018, it was required to calculate the Appellant's interest using the interest rate of 13% which was the interest rate CBG paid on all fixed deposits investments and not 27%. CBG therefore argued that if the Appellant intended to enforce the interest rate of 27% it agreed with the Beige Bank Ltd, then the proper defendant to have been sued, in accordance with Act 930, was the receiver and not CBG.<sup>142</sup>

### 5.1 Decision of the Circuit Court<sup>143</sup>

Based on the provisions of Act 930 and the defence set up in its Statement of Defence, CBG applied to the trial Circuit Court for an order dismissing the suit. The Appellant opposed the Application, arguing that, it was not lawful for his already existing investment to be replaced with a new interest rate. He also contented that, CBG was the right defendant to the suit as the receiver was only appointed to trace the assets and liabilities of the affected banks, and not charged with the duty of making payments to customers of the affected banks.

<sup>142</sup> [2022] 181 G.M.J. 694 pp 719-720. The Respondent calculated the Appellant's interest of in the following manner: "GHS17,282.00 for the period 4<sup>th</sup> April, 2018 to 1<sup>st</sup> August 2018 [the period from the investment date to the date before BOG's Press Release] calculated at 27% p. a. on the principal of GHS198,000.00. GHS9,943.40 for the period 1<sup>st</sup> August 2018 to 19<sup>th</sup> December, 2018 [the period after the BOG's Press Release but before the Appellant took GHS30,000.00 from Beige Bank, reducing his principal] calculated at 13% on the GHS198,000.00 and GHS6,342.58 for the period 19<sup>th</sup> December 2018 to 4<sup>th</sup> April 2019 [the period after the Appellant reduced his investment to the date of final maturity] calculated at the interest rate of 13% on the new investment of GHS168,000.00"

<sup>143</sup> [2022] 181 G.M.J. 694 pp 720-721

Accepting the arguments of the lawyer for CBG, the trial judge granted the application and dismissed the suit against CBG. The court held that pursuant to the provisions of Act 930,<sup>144</sup> the proper defendant to the suit should have been the receiver and not the CBG. Dissatisfied with this decision, the Appellant appealed to the Court of Appeal.

## 5.2 Decision of the Court of Appeal

The Appellant filed a total of seven (7) grounds of appeal to challenge the ruling of the Circuit Court. However, six (6) of the grounds were struck out<sup>145</sup> following an application<sup>146</sup> filed by the lawyer for CBG. Accordingly, the only ground of appeal that remained was that the ruling of the Circuit Court Judge was against the weight of evidence. The Court of Appeal, in a unanimous decision delivered by Justice Angelina M. Domakaareh (Mrs), dismissed the Appellant's appeal with limited variation of the Circuit Court's ruling. The Court of Appeal described the submissions of the Appellant as 'largely false/hollow',<sup>147</sup> and in the alternative upheld the arguments of Counsel for CBG, who is the lead author of this paper.

The court held that the Appellant's initial contract with Beige Bank Ltd was frustrated by the BOG's administrative action on 1<sup>st</sup> August, 2018. Thus, the Appellant's argument that his investment which attracted interest rate of 27% was still valid and same could not be reviewed by CBG without his agreement was untenable.<sup>148</sup> The court disagreed with the Appellant's argument that after BOG revoked the banking licence of Beige Bank Ltd, CBG assumed management of Beige Bank Ltd.<sup>149</sup> Rather, the court held that the evidence on record, i.e., BOG's 1<sup>st</sup> August, 2018 Press Release pointed to the fact that CBG was appointed as a bridge bank to the affected banks including Beige Bank Ltd.<sup>150</sup> As a bridge bank, CBG acted as a temporary vehicle through which BOG resolved the issues with the affected banks. Thus, CBG acted as a 'channel through which the Bank of Ghana and the Receiver paid monies to

<sup>144</sup> Particularly section 127(3)(b) and (k) of Act 930

<sup>145</sup> The basis for striking out the six grounds of appeal was that they were argumentative, vague and in general terms. This sinned against Rule 8(6) of the Court of Appeal Rules, 1997 (C.I. 19) as amended.

<sup>146</sup> The application was filed pursuant to 8(7) of the Court of Appeal Rules, 1997 (C.I. 19) as amended.

<sup>147</sup> Ibid, p 733

<sup>148</sup> Ibid, pp 726-728. The Court relied on the case of *Barclays Bank (Ghana) Ltd v. Sakari* [1997-98] 1 GLR 746 SC, and held that the investment agreement between the Appellant and the erstwhile Beige Bank was legally altered by the revocation of the latter's banking licence and appointment of the Respondent to assume selected assets and liabilities of the bank.

<sup>149</sup> Ibid, pp 725 and 732

<sup>150</sup> In terms of section 127(11) of Act 930.

selected customers of the affected banks and could therefore not be sued in respect of matters arising therefrom.<sup>151</sup>

Agreeing with the submissions of the Lawyer for CBG, the Court reviewed the provisions of Act 930 and concluded that the receiver assumed the management and control and all assets and liabilities of a bank or specialised deposit-taking institution whose licence is revoked, including taking over its books and records, and also, initiating and defending legal proceedings involving the bank or specialized deposit-taking institution whose banking licenses were revoked.<sup>152</sup> Thus, the receiver, Mr. Nii Amanor Dodo of KPMG, was the proper party to have been sued in respect of any liability falling outside those assumed by CBG.

On the question of whether the Appellant could enforce the interest rate of 27% against BOG after the appoint of the receiver, the court answered in the negative.<sup>153</sup> Relying on the relevant provision in Act 930,<sup>154</sup> the Court held that from the moment the receiver was appointed, all liabilities of Beige Bank Ltd became due and payable. Equally, calculation of interest based on the previous interest rate of 27% ceased, and the Appellant's investment was now subject to a new interest rate [in this case 13%] determined by the BOG pursuant to the powers conferred on it by law. In that regard, the interest rate of 27% on the Appellant's investment was only enforceable against the receiver and not CBG.

The Court further held that the case against CBG was rightly dismissed by the trial court because the Appellant's case was statutorily barred having regard to the provisions of Act 930. However, the court found that CBG had admitted liability to the Appellant in the sum of GHS16,285.98 which was the Appellant's outstanding interest on his investment calculated at the interest rate of 13%. CBG was therefore ordered to pay it to the Appellant together with interest.

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<sup>151</sup>Ibid, pp, 737

<sup>152</sup> Act 930, ss 123(3), 127(1), 127(3)(a), (b), and (k).

<sup>153</sup>[2022] 181 G.M.J. 694 pp 737-739.

<sup>154</sup> The sections that:

"128. When a receiver has taken possession of a bank or specialised deposit-taking institution, (b) the calculation of interests and penalties against the obligations of the bank or specialised deposit-taking institution shall be suspended and no other charge or liability shall accrue on the obligations of the bank or specialised deposit taking institution" "130 (2) A liability shall be deemed due and payable and interest shall cease to accrue as from the date of the appointment of the receiver. (3) An unmatured liability shall be discounted to its present value at the rate of interest determined by the Bank of Ghana."

## 6. CONCLUSION

This paper discussed the evolution of the Ghanaian banking sector and the history of the collapse of banks in Ghana. It also discussed BOG's statutory administrative, supervisory and regulatory powers. It analysed the banking sector clean-up that BOG undertook on 1<sup>st</sup> August, 2028, leading to the revocation of the banking licences of five (5) banks. The factors that led to this were also discussed. The paper further discussed BOG's appointment of a receiver for the affected banks as well as the statutory powers and functions of the receiver in relation to the affected banks. The paper subsequently discussed the legal effect of BOG's appointment of (CBG) as a bridge bank for the affected banks before discussing the case of *Chancellor Oppong Kyekyeku Kohl v. Consolidated Bank Ghana Ltd* which addressed all of these issues. The paper, after the above discussions, concludes that CBG did not take over or merge with the affected banks. That, despite the use of 'Consolidated' in its corporate name, CBG is not an amalgam of the affected banks. Rather, CBG is a distinct corporate entity, separate and different from the affected banks. And, in the whole process of the banking sector clean up, CBG only acted a bridge bank with its roles statutorily delineated.