

Rwanda

Regulation of the National Bank of Rwanda governing the Shareholding, Acquisition and Amalgamation of Banks Regulation 23 of 2019

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Regulation of the National Bank of Rwanda governing the Shareholding, Acquisition and Amalgamation of Banks
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Pursuant to Law N° 48/2017 of 23/09/2017 governing the National Bank of Rwanda especially in its articles 6, 8, 9, 10 and 15;

Pursuant to Law N° 47/2017 of 23/9/2017 governing the organization of banking, especially in articles 20, 22, 23, 24, 25, 26, 27 and 28;

Having reviewed the regulation N° 05/2011 on mergers and acquisition of banks;

The National Bank of Rwanda, hereinafter referred to as “Central Bank”, decrees:

Chapter One General provisions

Article One – Purpose

This regulation aims at establishing requirements under which the Central Bank may authorize transactions related to shareholding, acquisition and amalgamation of banks.

Article 2 – Definitions

In this regulation, unless the otherwise, the following words and expressions shall mean:

- 1° **Acquisition:** process of getting a bank by another, following purchase, an exchange of shares, a combination of both, donation or succession;
- 2° **Banking group:** includes the holding company, the bank and its offices, subsidiaries, affiliates, and joint ventures, both domestic and foreign;
- 3° **Amalgamation or merger:** The fusion of two or more banks licensed under the banking Law;
- 4° **Receiving bank:** the bank to which assets and liabilities are transferred through a transaction effected under this regulation;
- 5° **Parent bank:** the bank that has one or more subsidiaries;
- 6° **Significant holding:** a shareholding in a bank that, directly or indirectly, alone or in conjunction with others, represents at least five percent (5%) of the equity capital or voting rights, or that makes it possible to exercise a significant influence over decisions related to the management of that bank.
- 7° **Control:** power by which natural persons or legal entities exercise control over a bank on account of:
 - a. holding more than fifty percent (50%) in the equity capital or voting rights;
 - b. having the right to appoint or remove majority of the members of the Board of Directors of a bank who are at the same time shareholders of that bank;

- c. having the power to exert influence over a bank on the basis of a contract entered into with that bank, or to a clause in the bylaws of said bank;
- 8° **Resulting bank:** the bank resulting from acquisition or amalgamation under this regulation;
- 9° **Transferor bank:** the bank which transfers its assets and liabilities to a receiving bank;
- 10° **Transfer of assets and liabilities:** The transfer of all the assets and liabilities of the transferor bank to the receiving bank;

Chapter II

Requirements for increase and acquisition of shares in a bank

Article 3 – Restrictions on shareholding in a bank

A natural person including his/her related party or a body corporate including its related party owned or controlled by one person other than a reputable financial institution or a reputable public company authorized by the Central Bank shall not directly or indirectly own or acquire more than twenty five percent (25%) of the shares of a bank.

The provisions of Paragraph One of this Article shall not apply to the Government of Rwanda and its institutions. It does not also apply to foreign governments, international institutions and any other person on conditions that they have been approved by the Central Bank.

Article 4 – Supervisory thresholds

It is established supervisory thresholds in the shareholding of a bank to allow the Central Bank to carry out a follow-up of the modification of the shareholding structure of a bank.

The supervisory thresholds of shareholding in respect of this regulation are equivalent to significant holding or controlling interest.

Article 5 – Bank application

A bank shall, on behalf of a person who is seeking to increase, acquire or transfer shares equivalent to significant holdings or controlling interests, apply in writing to the Central Bank providing details on the nature of the increase, acquisition or transfer and any such information that may be requested by the Central Bank.

A bank shall provide all information in respect of a person who is seeking to increase, acquire or alienate shares as specified in the Appendix 3, if corporate and Appendix 4 if a natural person of Regulation on licensing conditions of banks. The bank shall also provide details of the impact on its ownership and operational structure that will result from the proposed increase, acquisition, or alienation of shares.

The bank shall also provide the proof of financial strength and ability of the applicant to provide additional capital if needed.

The submission of any untrue or misleading information shall render the applicant a person not fit and proper and shall constitute grounds for rejection of the application for the increase, acquisition or alienation of shares.

In addition to above requirements, a new shareholder shall submit a statement to the effect that the proposed funding or investment is not from illegal, criminal, and suspicious activities as provided for in appendix 5 of the regulation on licensing conditions for banks.

A bank shall notify to the Central Bank any other transaction on the increase, acquisition or transfer of shares that is below the significant holdings.

Article 6 – Potential grounds for rejection of request for increase, acquisition, or transfer of shares

The Central Bank may refuse to authorize any increase, acquisition or transfer of shares or controlling interests that would:

- 1° compromise the quality of the bank’s management or its financial soundness;
- 2° jeopardize the interests of the bank’s depositors and the public interest;
- 3° hinder effective supervision of the bank on solo or on consolidated basis;
- 4° be detrimental to the banking sector in general;

The Central Bank has the power to reject any proposal for a change in significant ownership, including beneficial ownership, or controlling interest, or prevent the exercise of voting rights in respect of such investments to ensure that any change in significant ownership meets criteria comparable to those used for licensing of banks.

Article 7 – Specific review of major acquisitions in the banking group

The Central Bank shall review major acquisition by other entities in banking group to:

- 1° determine that these shares do not expose the bank to any undue risks or hinder effective supervision;
- 2° determines, where appropriate, that these new acquisitions will not hinder future effective of implementation of corrective measures.

The Central Bank where necessary, shall effectively address the risks to the bank arising from such acquisitions.

Based on the above paragraph, a bank belonging to a banking group shall notify to the Central Bank any acquisition being proposed in the banking group.

For the purpose of this article, major acquisition means a transaction that may lead to the acquisition of 5% of the banking group either directly or indirectly.

Article 8 – Final approval of the increase, acquisition, or transfer of shares

In case, the Central Bank is satisfied that it will approve the increase, acquisition, or transfer of shares, it shall inform the applicant to submit the new certificate of incorporation and the new structure of shareholding before granting the approval.

Article 9 – Other specific requirements on the transfer of significant holding and controlling interests

The Central Bank obtains from banks, through periodic reporting or on-site examinations, the names, and holdings of all significant shareholders or those that exert controlling influence, including the identities of beneficial owners of shares being held by nominees, custodians and through vehicles that might be used to disguise ownership.

The Central Bank has the power to take appropriate action to modify, reverse or otherwise address a change of control that has taken place without the necessary notification to or approval from the supervisor.

Banks shall notify to the Central Bank as soon as they become aware of any material information, which may negatively affect the suitability of a significant shareholder or a party that has a controlling interest.

Without prejudice to the above provisions, a bank shall notify to the Central Bank any change in the shareholding structure.

Chapter II

Requirements for merger or amalgamation

Article 10 – Application procedures

The application must be accompanied with a due diligence report signed by Managing Directors of the banks involved in the transaction and the report should at a minimum contain the following:

- 1° an extract of minutes of the general meeting of the shareholders of each of the banks involved in passing the resolutions to merge and terms and conditions of the relevant agreement;
- 2° a copy of resolutions of the board of directors of all the participating banks approving the proposed merger;
- 3° latest audited accounts for all the banks involved in the merger, a copy of consolidated accounts of banks duly certified by an independent firm of auditors as at the date of application for approval;
- 4° memorandum and articles of association of the resulting bank;
- 5° a statement of the nature and objectives of the merger and a copy of the proposed agreement for the merger or acquisition;
- 6° financial projections for the first three years of operation after merging transaction;
- 7° proposed details of the method of valuation and the valuer and proposed organization structure of the resulting bank;
- 8° proposed shareholding structure, board of directors and executive senior management;
- 9° proposed staff rationalization of post-merger program;
- 10° assessment of tax implications of the transaction;
- 11° operational contingencies and marketing plan;
- 12° business strategy plan including: Business Continuity Management, IT system to be adopted;
- 13° legal due diligence covering all areas of any legal concerns that may face the resulting bank with specification on current litigations and anticipated litigations;
- 14° the name under which they intend to use in case of name change;
- 15° communication plan to the public

Article 11 – Pre-approval assessment

The Central Bank shall not grant an approval to the merger transaction unless it is satisfied that:

- 1° the merger or amalgamation in question will not be detrimental to the public interest;
- 2° transaction is of banks only, and the new bank will be viable;
- 3° the business proposed by the applicant is part of that of an institution governed by the Banking Law;
- 4° the transaction will not hinder effective supervision of the bank on solo and consolidated basis;
- 5° it will not be detrimental to the banking sector in general;
- 6° Every person proposed as a director or senior manager in the new organization complies with “Fit and Proper” criteria in accordance with the Regulation on licensing conditions of banks;
- 7° The resulting bank shall comply with all prudential norms as required by the Central Bank.

Article 12 – Responding to the application

The Central Bank shall, within three months after receipt of a complete application, investigate and take a decision to the application.

The decision of the Central Bank may:

- 1° grant the approval if it is satisfied that the application satisfies the requirements;
- 2° grant the approval subject to the fulfilment of certain conditions that it may deem necessary;
- 3° refuse to grant the approval for reasons that shall be stated in the notice of decision or letter of refusal.

The Central Bank shall inform the applicant, in writing, of its decision to grant or refuse to grant the approval.

A notice communicating the decision not to grant an approval shall state the grounds upon which it is based.

Article 13 – Final approval of the merger or amalgamation

In case, the Central Bank is satisfied that it will approve merger or amalgamation, it shall inform the applicant to submit the new certificate of incorporation, the new shareholding structure and approval from the competent authority before granting the approval.

Article 14 – Post merger or amalgamation requirements

All rights, liabilities and facilities enjoyed by the merging companies, including correspondent banking facilities will need to be transferred to the new entity and any hire purchase or finance leases will need to be assigned or transferred.

The resulting bank shall inform the public on any change that resulted in the transaction that may affect them.

Article 15 – Maintenance of Records

It is essential to ensure that:

- 1° the right accounting systems and procedures are in place.
- 2° books of the entity being absorbed will be closed;
- 3° all bank accounts, income tax file, pay as you earn file, and others have been closed and/or transferred;
- 4° policy and procedures manual have been reviewed or consolidated.

Chapter III Penalties and final provisions

Article 17 – Repealing provisions

The regulation N°05/2011 on mergers and acquisition of banks and all prior provisions contrary to this Regulation are hereby repealed.

Article 18 – Drafting and consideration of this Regulation

This Regulation was prepared, considered, and approved in English.

Article 19 – Commencement

This regulation shall come into force on the date of its publication in the Official *Gazette* of the Republic of Rwanda.