

MERGERS AND ACQUISITIONS GUIDELINE

MATRIX OF INDUSTRY COMMENTS AND CENTRAL BANK OF TRINIDAD & TOBAGO'S (CBTT) RESPONSES

No.	SECTION / CLAUSE	COMMENT	CBTT RESPONSE
1	List of Abbreviations	Update the citation for the Financial Institutions Act from "Financial Institutions Act, 2008" to "Financial Institutions Act, Chap 79:09".	While it is understood and agreed that the most current citation of the FIA is Chap. 79:09 as stated CBTT maintains the year reference in certain documents to differentiate this version of the Act from previous versions and subsequent versions that may come into existence.
2	Definition of Key Terms – Clause 3.1	The defined terms "home supervisor" and "host supervisor" do not appear to be used in the Draft Guideline. Clause 5.2 includes a reference to "home regulator". We suggest amending definition to "home regulator"	Amended accordingly. The reference to "home regulator" was changed to "home supervisor".
3	Legislative Requirements and Guidelines – Clause 4.1	The Tax Information Exchange Agreements Acts should be included in this section.	<p>While the Tax Information Exchange Agreements (United States of America) Act, 2017 is a piece of legislation with which institutions are required to comply in the normal course of their business, it is not relevant during the merger process save and except as part of the compliance history assessment.</p> <p>The Guideline has been amended to address this (see footnote at paragraph 4.1).</p>
4	Legal Provisions Pertaining to	Guidance is required on the meaning of the terms "unsound manner" and	What is unsound generally relates to actions that are not consistent with prudent operation and behaviour, the possible consequences

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	Mergers, Acquisitions & Transfers in the FIA - Clause 4.5	“unsound condition”. How is this determined or examined by the CBTT?	of which, if continued, would be a risk of loss or damage to a licensee or registrant, its depositors, policyholders or consumers (where applicable). A footnote has been added to reflect this.
5	Section 4.4 – Mergers	<p>The Guideline at Section 4.16 acknowledges that mergers are also used as a tool to rationalize legal entities within the same financial group.</p> <p>We recommend that a separate section be added to the Guideline to address short form amalgamations or amalgamations within a financial group where there is no change in UBO. These short form amalgamations should have reduced or simplified regulatory considerations to reflect the overall approval and transaction completion timeframes.</p>	<p>Even in a short form amalgamation, certain information will be required to assess the group e.g. regulatory capital changes, fit and proper assessments. Therefore, while it is acknowledged that the process for amalgamation in a group via a short form amalgamation may be less lengthy, the CBTT will still require an application and some of the documents listed in Appendix I. In this regard, it is noted that Section 4.4 states that the bank “may” require certain documents listed in Appendix I. The Bank will therefore tailor the requirements as necessary when the details of the short form amalgamation are being assessed.</p> <p>A footnote has been inserted at 4.5.</p>
6	Section 4.12 and 4.13 Transfers	<p>Sections 4.12 and 4.13 of the Guideline repeat the language of section 46(1) (b) and 46(2) (a) of the FIA and refers to “a licensee entering into an agreement for sale or otherwise transfer....”</p> <p>We seek guidance on the types of transactions the CBTT considers falling within the meaning of “otherwise transfer”</p>	The business decisions of a licensee will dictate what is considered “otherwise transfer”. This may include, <i>inter alia</i> , a transfer as a result of a bankruptcy, a non-cash transfer or a reassignment of a controlling or significant interest.

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		under section 46(1) (b) and 46(2) (a) of the FIA.	
7	Mergers – Clause 4.6	If the requirements of the legislation take into consideration cross border mergers and acquisitions, it may be useful for the Guideline to specify/explain that the “combined market share” relates to the holdings of the resulting company/acquired entity in another jurisdiction.	<p>The consideration of combined market share for the purposes of this section relate to the market share in Trinidad and Tobago. Notably, the host regulator may also have provisions in the law regarding competition / market share.</p> <p>Further in assessing the application the Central Bank will consider the size of the market to the controlled in the foreign jurisdiction and the potential impact on the overall financial position and reputation of the parent company or group in the home jurisdiction</p>
8	Transfers - Clause 4.13	It is noted that transfers are also governed by S.46 of the FIA. Similar comments as above on Clause 4.10.	<p>There are many nuances to a proposed sale, acquisition or transfer therefore the Guideline seeks to provide general guidance but cannot cater for each type of transaction. Therefore <i>“While some of the documents listed in Appendix I may be required for the CBTT to assess a transaction of this nature, the Central Bank will advise the entity of the required submissions once it is advised of the nature of the proposed transaction. Some of the considerations in section 5 may also be applicable depending on the nature of the transaction.”</i></p> <p>A footnote at this section has been included to clarify.</p>
9	Vesting Orders – Clauses 4.25 – 4.28	It is noted that S. 89 of the FIA requires the making of “a written application to the Minister, notice of which shall be published in the Gazette and in at least two daily newspapers published and	The Central Bank requires information on any proposed vesting order in order have a complete picture of the transaction as part of its assessment of the matter before it, including timeframes and projected actions that might be needed in relation to the transaction such as, change of name and board engagement which may become

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		<p>circulated in Trinidad and Tobago”. Further subsection (3) of requires the Vesting Order, once granted, to be published in the Gazette and two daily newspapers.</p> <ul style="list-style-type: none"> • It appears that under the legislation there is already a built in a mechanism through which the CBTT will be informed if the licensee will be utilizing a Vesting Order to effect the transfer as well as when one has been issued. • As such, this Clause places a new requirement on licensees to inform the CBTT whether the licensee intends to apply for a Vesting Order or the progress of such application in the context of a merger and/or acquisition. • Therefore, clarification is required on the purpose of this requirement at the time that an application is made for consent to a merger/ acquisition and the reason for this being done by way of the Guideline. 	<p>necessary depending on the structure of any transaction involving a vesting order. The Central Bank may also wish to confirm that the vesting order will comply with the approved transaction.</p> <p>Additionally, it should be noted that the Central Bank, should never, in its supervision of an entity, obtain knowledge of the transfer of its assets via notice in a newspaper or the Gazette.</p>
10	Acquisitions - Clause 4.10	It is noted that S. 74 of the FIA identifies the circumstances under which an acquirer’s permit is required by an entity for an acquisition of a licensee and the	Some of the documents listed in Appendix I and section 5 may be required for a section 46 application. However, what will be needed will depend on the circumstances of proposed transaction. There are many nuances to a proposed sale, acquisition or transfer therefore

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		<p>accompanying Appendix I of the Guideline sets out the documents that can be requested by CBTT when treating with this application.</p> <ul style="list-style-type: none"> • However, it is S. 46 of the FIA that sets out the requirement for approval by the CBTT where a licensee is establishing or acquiring a subsidiary outside of Trinidad and Tobago. As such, the licensee is not required to obtain a permit for this process. • As such, the Guideline should clearly set out whether entities that may be acquiring a subsidiary will/will not be subject to S.5 or called to submit the documents outlined in Appendix I when seeking the CBTT's approval under S. 46 of the FIA as opposed to acquiring a permit under S.74. 	<p>the Guideline seeks to provide general guidance but cannot cater for each type of transaction. Further clarifying language has been included in the Guideline to address this. The wording below has been included in a footnote.</p> <p><i><u>“While some of the documents listed in Appendix I may be required for the CBTT to assess a transaction of this nature, the Central Bank will advise the entity of the required submissions once it is advised of the nature of the proposed transaction. Some of the considerations in section 5 may also be applicable depending on the nature of the transaction.”</u></i></p>
11	Significant and Controlling Shareholder permit – Clause 4.36	The term ‘another party’ should be deleted and specific reference made to who this party may be. e.g. affiliate, connected party etc. based on their definitions in the Act.	<p>Agreed. The clause has been amended to reflect the persons with whom a significant shareholder relationship might exist as follows:</p> <p><i>“Any person, who, either directly or indirectly, would be able to exercise, whether alone or with one or more affiliates or relatives or connected parties...”</i></p>
12	Conditions of	The Guideline should identify whether the	Some conditions will be self-explanatory; however the Central Bank



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	permits – Clause 4.42	CBTT will provide its reason to the applicant for imposing the conditions. It is our view that some notice should be given to the entity/person prior to imposing the conditions.	will discuss the reasons for special conditions with the applicants. A statement to this effect has been included in the Guideline. Notably, the reason for a condition will always relate to the risk associated with the transaction and the need to ensure proper supervision of the parties to the transaction.
13	Section 5.1.5 – Legal and Regulatory Risk Assessment	As the legal and regulatory assessment will be conducted prior to the licensee, insurer or FHC receiving approval from CBTT, the references to the constituent documents should be references to the draft constituent documents.	While some of the documents will be in draft form, e.g. those related to the merged entity, the constituent documents of the acquirer and the entity to be acquired will not be in draft form as these would already exist. However the word “draft” was included before the documents referenced for the “merged entity”.
14	Section 5.1.5(v) – Legal and Regulatory Risk Assessment	With respect, the reference to “compliance history” is vague, as such it is unclear what the CBTT will be assessing. Please consider whether the reference should be to the entity’s history of “non-compliance”, rather than “compliance”.	The clause has been amended to address the concern as follows: <i>“(v) The history compliance history of compliance and non-compliance of all applicants in respect of matters such as governing legislation, guidelines and supervisory directives. Cross-border supervisory issues with other regulators would also be assessed.</i>
15	Regulatory Considerations in Assessing – Clause 5.1.6	Kindly clarify the meaning of the term “key person risk” or how this is assessed.	This relates to risks associated with key persons in the company. It extends to any person who performs a key function in various business lines in the organization and on whom the company is heavily reliant and whose absence may therefore affect the organization. An institution will be expected to make an assessment of who should be considered a key person which the Central Bank may review.

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16	Group structure & Consolidated Supervision – Clause 5.2	The term “facilities” in line two should be replaced with “facilitates”.	Amended accordingly.
17	Group structure & Consolidated Supervision – Clause 5.6	The CBTT has identified that it is the “College of Regulators” that meet to discuss the performance of the entities, business risk etc. involved in the merger/acquisition/sale/transfer. It will be useful if this reference is used and instead of the term “commonality of views” the Guideline should indicate what is discussed by the Regulators as part of the decision making for approvals.	<p>The matters discussed in a college of regulators are not necessarily those that will be discussed for the purposes of a merger or acquisition. However the term “commonality of views” has been deleted.</p> <p>A footnote has been included to clarify.</p>
18	Clause 5 (General Comment)	<p>It is our respectful submission that some of the considerations listed in this Clause arguably fall more within the realm of business considerations to be made by the licensee/insurer rather than the regulator when granting an application.</p> <ul style="list-style-type: none"> For example, in 5.1.6 (i), while it is agreed that employee dissent could affect the success of a merger, this consideration is very broad. Further clarification on the 	<p>The matters listed in section 5 all affect the supervision of a company and the impact of a merger, acquisition or transfer on the company. Therefore, while it is expected that a financial institution will undertake many of these assessments themselves the Central Bank will be required to either review those assessments or perform its own assessment as necessary. It should also be noted that it is not possible to determine in advance what specific additional documents may be needed for each assessment as this may be triggered by documentation submitted; or the weight to be applied to each factor as this will be guided by the nature of the transaction and potential impact on the financial system. With respect to</p>



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		<p>mechanism/ nature of documentation which will be requested for such an analysis to be made should be provided as well as the extent to which this factor will affect the licensee being granted approval.</p> <ul style="list-style-type: none">• It is also noted that the list of factors provided in the Guideline is not exhaustive.• It is suggested that in the interest of effectiveness at minimum, there be a risk rating or some other relevant system to allow licensees to be better able to assess the extent to which these factors will affect their ability to obtain consent for a merger, acquisition etc. If a hierarchy is outlined then licensees would be better able focus on different requirements at different stages in the process.• Further guidance on all documentation that may be required for this assessment should be outlined.• It is also suggested that some form of appeal process be introduced in	<p>appeals please refer to sections 253 of the IA 2018 and 112 of the FIA.</p>

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		<p>the Guideline in cases where applications were refused, for example, if a company believed that too much weight was put on one factor by the CBTT.</p>	
19	Appendix II, C. Inspection – Item 16	<p>Time frame for notification by the Bank should be stipulated so that the process is not unduly hampered, and the expectations of the insurer / applicant can be appropriately managed.</p>	<p>It would not be feasible to include a specific timeframe for response as this is driven by the nature of the objections received and the matters that may need to be considered following same. It is, however, understood that this period of time will be reasonable in all the circumstances.</p>
20	General Comment on Guideline	<ul style="list-style-type: none"> • In the case of cross-border acquisitions involving applications to both a home supervisor or regulator and host supervisor or regulator, the respective roles of those supervisors or regulators as well as the application requirements should be clarified. Provision should be made for cooperation between the supervisors or regulators. • Given that the Guidelines are meant to be read in conjunction with other pieces of legislation (for 	<ul style="list-style-type: none"> • MOUs exist between several regional and international regulators to facilitate inter alia discussion and exchange of information as may be required during the assessment of a merger/acquisition/transfer. Section 5.6 of the Guideline indicates that the relevant regulators would discuss the application. • This is not a procedural document but a general guideline as such it would not be feasible to provide the specific details requested in this Guideline.

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		<p>example amalgamation requirements under the Companies Act), there should be a more holistic approach in terms of all the factors to be assessed by the CBTT when granting approval in light of the requirements set out in other pieces of legislation.</p>	