



CENTRAL BANK OF
TRINIDAD & TOBAGO

Mergers and Acquisitions Guideline

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LIST OF ABBREVIATIONS

| Abbreviation | Name |
|---------------------|--|
| CQD | Corporate Questionnaire and Declaration Form |
| DIC | Deposit Insurance Corporation of Trinidad and Tobago Limited |
| FHC | Financial Holding Company |
| FIA | Financial Institutions Act, 2008 |
| IA | Insurance Act, 2018 |
| Minister / MoF | Minister of Finance |
| PQD | Personal Questionnaire and Declaration Form |
| TTSEC | Trinidad and Tobago Securities and Exchange Commission |
| UBO | Ultimate beneficial owner |

1. INTRODUCTION

- 1.1 The primary objective of the Central Bank of Trinidad & Tobago (“Central Bank” / “Bank”), in its supervision of licensees¹ and registrants, is to maintain confidence in, and promote the soundness and stability of, the financial system in Trinidad and Tobago. Other objectives include the promotion of efficient and fair banking and insurance markets².
- 1.2 In this regard, the Central Bank has a statutory mandate to ensure that licensees, insurers and financial holding companies (FHCs) do not undertake any activity or enter into any transaction which the Central Bank considers may be detrimental to the interests of depositors and/or policyholders. Therefore, in accordance with the legislation, the Central Bank is required to approve the following:
- 1.2.1 **acquisitions of** licensees, insurers and FHCs;
- 1.2.2 **acquisitions** of financial entities **by** licensees, insurers and FHCs; and
- 1.2.3 a **merger or amalgamation** of a licensee, insurer or FHC with another financial entity³.
- 1.3 Additionally, in accordance with the legislation, the Central Bank must approve transactions that involve the sale or transfer⁴ of the business (assets or liabilities) of a licensee or insurer, or of a subsidiary of the licensee or insurer, or of an entity in which the licensee or insurer has a significant or controlling interest.
- 1.4 Where relevant, the Central Bank may also prescribe conditions, requirements or restrictions, to acquirers, significant and controlling shareholders, as well as the conditions under which a merger or acquisition would be allowed.

2. PURPOSE AND SCOPE

- 2.1. The aim of this **Mergers and Acquisitions Guideline** (“Guideline”) is to provide broad guidance to licensees, insurers, FHCs and their prospective acquirers, significant or controlling shareholders **on the application requirements (Appendix 1) and criteria taken into account by** the Central Bank (*Section 5*), in determining whether to grant approval for:
- 2.1.1. mergers and acquisitions involving a licensee or FHC in accordance with sections 71, 72, 73 and 74 of the FIA;
- 2.1.2. acquisitions of insurers or FHCs and transfers or amalgamations of insurance business in accordance with sections 47 to 64 of the IA; and
- 2.1.3. any sale or other transfer pursuant to sections 46 of the FIA and 88 of the IA.

¹ Licensee has the same meaning as in section 2 of the FIA.

² Sections 5(3) of the FIA and 7(3) of the IA.

³ Sections 73 FIA and 57(1) IA 2018. Note that the Minister approves the vesting order.

⁴ See meaning of transfer in Section 3 “Definition of Key Terms”.

- 2.2. In the case of the transfer and amalgamation of insurance business, the Guideline seeks to ensure that applicants are aware of their obligation towards policyholders and affected persons.
- 2.3. Notably, it is not the role of the Bank to counsel licensees, insurers, FHCs or their prospective acquirers, significant or controlling shareholders on their business strategies pertaining to a merger, acquisition, transfer or amalgamation but rather the Bank’s role is to critically assess the proposed transaction against its established criteria to ensure that it does not:
- 2.3.1. prejudice the interests of the depositors and/or policyholders;
 - 2.3.2. negatively impact the safety, soundness and stability of the financial institution or financial system in Trinidad and Tobago;
 - 2.3.3. breach applicable statutory requirements; or
 - 2.3.4. hinder the Central Bank’s ability to supervise the financial institution or financial group, effectively.
- 2.4. **This Guideline is not intended to be exhaustive and must be read in conjunction with all relevant statutes and guidelines which treat with mergers, acquisitions, transfers and amalgamations of financial institutions.**
- 2.5. As part of the due diligence conducted for mergers, acquisitions, transfers and amalgamations, it is imperative that adequate consideration be given to *inter alia* all legal requirements.

3. DEFINITION OF KEY TERMS

3.1 All expressions used in this Guideline (*except where defined below or where the context otherwise requires*) have the same meanings as defined in relevant legislation applicable to the financial institution, activity or function. **For the purpose of this Guideline the following definitions are provided:**

| | |
|------------------------------|--|
| financial institution | means a licensee, insurer or FHC. |
| home supervisor | means the regulator of the parent company of the financial group or FHC. |
| host supervisor | means the regulator principally responsible for the supervision and regulation of a regulated entity which is a subsidiary of a parent company |
| insurer | means an insurance company registered under the IA. |
| material change | means a change in significant or controlling shareholders or a transaction such as a merger, acquisition, transfer or amalgamation with or by a registrant, licensee or financial holding company. |
| transfer | <ul style="list-style-type: none"> • the transfer of part or all of the portfolio insurance business of one insurer to another under section 57 of the IA; or |

| | |
|--|---|
| | <ul style="list-style-type: none"> • sale or other transfers pursuant to section 46 of the FIA or 88 of the IA, namely, sale or transfers of: <ul style="list-style-type: none"> ○ at least ten (10) percent of the assets of: <ul style="list-style-type: none"> ▪ a licensee or insurer; ▪ a subsidiary of a licensee or insurer; or ▪ an entity in which a licensee or insurer has a significant or controlling interest; ○ a subsidiary of a licensee or insurer; and ○ a controlling or significant interest of a licensee or insurer in a financial entity. |
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4. LEGISLATIVE REQUIREMENTS AND GUIDELINES⁵

4.1. The regulatory framework governing mergers, acquisitions, transfers and amalgamations involving licensees, insurers or FHCs *as relevant* is governed **generally** by the following pieces of legislation⁶:

- 4.1.1. The FIA and subsidiary regulations;
- 4.1.2. The IA and subsidiary regulations;
- 4.1.3. The Companies Act, Chap. 81:01;
- 4.1.4. The Foreign Investments Act, Chap. 70:07⁷;
- 4.1.5. The Securities Act, Chap. 83:02⁸; and
- 4.1.6. The Securities Industry (Take-Over) By-Laws, 2005⁹.

4.2. In addition, the Central Bank considers the requirements of its **guidelines** in assessing applications for a merger, acquisition, transfer or amalgamation. Some key guidelines considered are:

- 4.2.1. Fit and Proper;

⁵ This section should be read in conjunction with the section 5 of this Guideline, which deals with regulatory considerations.

⁶ The Central Bank will also examine Anti-Money Laundering / Combating Financing Terrorism / Countering Proliferation Financing (AML/CFT/CPF) laws as well as applicability of the Tax Information Exchange Agreements (United States of America) Act, 2017.

⁷ Pursuant to section 5(2) of the Foreign Investment Act “A foreign investor may not acquire shares in a local public company without obtaining a licence where the holding of such shares by him either directly or indirectly results in thirty per cent or more of the total cumulative shareholding of the company being held by foreign investors.”

⁸ There are certain compliance and regulatory requirements a listed company has to observe e.g. disclosure of a material change as defined in the Securities Act Chap. 83:02 to the Trinidad and Tobago Securities Commission and investors etc.

⁹ This subsidiary legislation governs take-overs (including mergers) of publicly-traded companies.

- 4.2.2. Corporate Governance;
- 4.2.3. Anti-Money Laundering and Combatting of Terrorism Financing;
- 4.2.4. Security Systems for Safeguarding Customer Information;
- 4.2.5. New and Materially Different Banking Products and Services;
- 4.2.6. New or Significantly Amended Insurance Policies; and
- 4.2.7. Consolidated Prudential Reporting for Licensees under the FIA.

LEGAL PROVISIONS PERTAINING TO MERGERS, ACQUISITIONS & TRANSFERS IN THE FIA

- 4.3 The **prior approval** of the Central Bank must be sought for mergers or acquisitions of a licensee or the FHC of a licensee (Sections 73 and 74) and for sale or transfers (Section 46).

Mergers

- 4.4 Where a proposed merger involves a licensee or the FHC of a licensee, the FIA requires an application to be made **in writing** to the Central Bank by all the companies proposing to merge. The applicants are also required to furnish, along with the application, a copy of the proposed amalgamation agreement along with any other required documents that the Central Bank may require as stipulated in **Appendix I**¹⁰.
- 4.5. With a merger, the Central Bank is required to consider, *without limitation*:
- 4.5.1. the terms of the proposed amalgamation agreement;
 - 4.5.2. the requirements listed in the Second Schedule of the FIA and the Bank's Fit and Proper Guideline. This includes, *inter alia*:
 - a review of the composition of the board of directors, the prudent conduct of the business and the integrity and professional skill with which the business is to be conducted, as well as the minimum net assets of the merged company;
 - the size and concentration of the economic power in the proposed merged company¹¹; and
 - whether the business or part of the business of the merging companies or a company of which a merging company is the holding company has failed, or is being conducted in an unlawful or unsound manner, or are otherwise in an unsound condition¹².

¹⁰ As may be required pursuant to sections 221 – 224 of the Companies Act, Chap. 81:01.

¹¹ Section 73(4)(c) of the FIA.

¹² What is unsound generally relates to actions that are not consistent with prudent operation and behaviour, the possible consequences of which, if continued, would be a risk of loss or damage to a licensee or registrant, its depositors, policyholders or consumers (where applicable). In this case, it refers to circumstances in which one of the merging companies or a company of which it is a holding company is conducting business in an unsafe and unsound manner.

- 4.6. In assessing the size and concentration of economic power in the proposed merged company, the Central Bank is required to consider, without limitation¹³:
- 4.6.1. the size of the proposed merged company in terms of any combined market share that will be serviced or controlled by the proposed merged company in Trinidad and Tobago;
 - 4.6.2. the size of any of the affiliates of the proposed merged company; and
 - 4.6.3. whether such size and concentration will prevent or lessen substantially, or is likely to prevent or lessen substantially, competition in the financial services industry in Trinidad and Tobago.
- 4.7. Where the percentage of any combined market share¹⁴ in Trinidad and Tobago of the proposed merged company and any financial entity that will be affiliated with it would exceed forty (40) percent, the Bank must refer the application for the proposed merger together with its recommendation and other relevant document to the Minister for determination¹⁵.

Acquisitions

- 4.8. Where a financial entity or the significant or controlling shareholder of a financial entity intends to acquire ten (10) percent or more of the voting power of a licensee or its FHC, the FIA requires the submission of an application to be made **in writing** to the Central Bank by the proposed acquirer along with such other information/documentation that the Bank may require (Appendix I).
- 4.9. In determining an application, the Central Bank must consider, without limitation the factors outlined under section 74 of the FIA.
- 4.10. Additionally, a licensee is required to obtain the approval of the Central Bank when directly or indirectly establishing or acquiring a subsidiary in or outside of Trinidad and Tobago¹⁶.
- 4.11. In determining an application, the Central Bank must consider the relevant factors detailed under Section 5 of this Guideline.

Transfers

- 4.12. A licensee must obtain the prior approval of the Central Bank where it intends to sell or otherwise transfer ten (10) percent or more of its assets or the assets of one of its subsidiaries or an entity in which the licensee has a controlling or significant interest.

¹³ Section 73(5) of the FIA.

¹⁴ The Central Bank may consider a variety of factors in its determination of market share, including but not limited to assets, income, deposits, number of customer accounts, total policyholder liabilities (insurance) etc.

¹⁵ Section 73(7) of the FIA.

¹⁶ While some of the documents listed in Appendix I may be required for the Central Bank to assess a transaction of this nature, the Central Bank will advise the entity of the required submissions once the Bank ascertains the nature of the proposed transaction. Some of the considerations in section 5 may also be applicable depending on the nature of the transaction.

- 4.13. A licensee must also obtain the prior approval of the Central Bank where it intends to sell or otherwise transfer a subsidiary or an entity in which it has a controlling or significant interest¹⁷.
- 4.14. In determining an application, the Central Bank must consider the relevant factors detailed under section 5 of this Guideline.

LEGAL PROVISIONS PERTAINING TO ACQUISITIONS, TRANSFERS & AMALGAMATIONS IN THE IA

- 4.15. The **prior approval** of the Central Bank must be sought for transfers, amalgamations or acquisitions which involve an insurer or the FHC of the insurer.
- 4.16. Transfers and amalgamations often take place in order to, *inter alia*:
- 4.16.1. provide finality for insurers running off a portfolio;
 - 4.16.2. transfer an active portfolio of business; or
 - 4.16.3. rationalize legal entities within the same group, often following an acquisition, in order to remedy retrospectively any issues that may have emerged.

Schemes of Transfer and Amalgamation

- 4.17. An insurer or its FHC which is considering transferring any class of insurance business, either in whole or in part, or an amalgamation must obtain prior approval in writing from the Central Bank or the Minister¹⁸.
- 4.18. Section 61 of the IA prescribes the matters which the Central Bank¹⁹ must consider when an insurer or FHC wishes to carry out an amalgamation or transfer²⁰, and include the following:
- 4.18.1. the terms of the proposed transfer or amalgamation agreement and any amendments thereto;
 - 4.18.2. the impact on policyholders and other persons affected by the scheme;
 - 4.18.3. the proposed changes to the articles of incorporation or continuance of the companies; and
 - 4.18.4. the requirements listed in the Schedule 5 of the IA as it applies to all companies proposing to transfer or amalgamate, including, *inter alia*:

¹⁷ While some of the documents listed in Appendix I may be required for the Central Bank to assess a transaction of this nature, the Central Bank will advise the applicant 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.

¹⁸ Section 57 and section 62 of the IA, respectively. Appendix I contains the Documentation Checklist for acquisitions or mergers / amalgamations / transfers involving licensees, insurers and FHCs.

¹⁹ If the scheme is being approved by the Minister, consideration is given to the matters set out in section 62(2) of the IA.

²⁰ In relation to transfers and amalgamations, there is an additional element, namely 'scheme of transfer'. This is discussed at Appendix II.

- the fitness and propriety of directors, officers, actuaries, acquirers, significant shareholder, controlling shareholder, the insurer and its FHC, as applicable;
- a review of the composition of the board of directors, the prudent conduct of the business, and the integrity and professional skill with which the business is to be conducted, as well as the minimum net assets of the merged company; and
- whether the business or a part of their business of the companies engaged in the transfer or amalgamation or any of their holding companies has failed, or is being conducted in an unlawful or unsound manner, or are otherwise in an unsound condition (see paras. 4.6 and 4.7 under “*Relevant Information for Licensees*”, which substantially replicates the requirements for insurers as well).

4.18.5 the size and concentration of economic power of the companies engaged in the transfer or amalgamation.

Sale or other Transfers of Assets and Subsidiaries

- 4.19. An insurer must obtain the prior approval of the Central Bank where it intends to sell or otherwise transfer ten (10) percent or more of its assets or the assets of one of its subsidiaries or an entity in which the insurer has a controlling or significant interest. An insurer must also obtain the prior approval of the Central Bank where it intends to sell or otherwise transfer a subsidiary or an entity in which it has a controlling or significant interest.
- 4.20. In determining an application, the Central Bank must consider the factors outlined in section 5 of this Guideline.

Acquisitions

- 4.21. Where a financial entity or the significant or controlling shareholder of a financial entity intends to acquire ten (10) percent or more of the voting power of an insurer or its FHC, the IA requires the submission of an application for an acquirer’s permit to be made in writing to the Central Bank by the proposed acquirer along with such other information/documentation that the Bank may require (see Appendix I).
- 4.22. In determining an application, the Central Bank must consider, without limitation the factors outlined under section 74 of the FIA.
- 4.23. Additionally, an insurer is required to obtain the approval of the Central Bank when directly or indirectly establishing or acquiring a subsidiary in or outside of Trinidad and Tobago.
- 4.24. In determining an application, the Central Bank must consider the relevant factors detailed under section 5 of this Guideline.

VESTING ORDERS IN THE FIA AND IA

- 4.25. The vesting of assets, rights, liabilities and obligations of one company in another company may occur to effect a transfer.
- 4.26. The applicant must inform the Central Bank at the time of the submission of the application whether they intend to apply to the MoF for a vesting order.
- 4.27. Thereafter, the licensee or insurer is responsible for obtaining updates on the status of the application from the MoF.
- 4.28. A copy of the vesting order must be provided to the Central Bank within fourteen (14) days of receipt.

SIGNIFICANT AND CONTROLLING SHAREHOLDER PERMITS²¹ UNDER THE IA AND FIA

- 4.29. A written request / application is required to be submitted to the Central Bank to become a significant or controlling shareholder of a financial institution.
- 4.30. Every person who is to be a controlling or significant shareholder of the financial institution must be a fit and proper person to hold the particular position which he/it is to hold. In determining an application, the Central Bank must consider, without limitation the factors outlined under the Second Schedule of the FIA or Schedule 5 of the IA.
- 4.31. Section 71(1) of the FIA and section 52(1) of the IA make it clear that a person shall not become a **controlling shareholder** of a licensee or insurer, respectively, without first obtaining a written permit from the Central Bank. Section 72(1) of the FIA and section 53(1) of the IA has a similar provision in respect of a **significant shareholder** of a licensee or insurer, respectively.
- 4.32. Subsequent to the Central Bank's assessment of the application, the Central Bank shall issue a controlling or significant shareholder permit, with or without conditions, to the applicant. The proposed new controlling shareholder or significant shareholder will be required to submit evidence of the transfer of shares to the Central Bank within a reasonable timeframe.
- 4.33. A **controlling shareholder permit** is required in respect of a licensee or insurer where a person would:
 - 4.33.1. be able to exercise more than fifty (50) percent of the voting rights at any meeting of shareholders of the licensee / insurer;
 - 4.33.2. have the power to elect directors of the licensee / insurer;
 - 4.33.3. have the power to ensure that the business of the licensee / insurer is conducted in accordance with its wishes;
 - 4.33.4. be able to exercise dominant influence over the licensee / insurer²²; or

²¹ Notably, significant / controlling shareholders permits as well as an acquirer's permit must be issued where a person meets the criteria for both.

- 4.33.5. be able to act in concert with other persons to exercise control. It should be noted that the exercise of control can be either *de facto* or *de jure* control.²³
- 4.34. The organization structure of the proposed controlling shareholder, relevant shareholder agreements, and information regarding the relationship amongst shareholders must be submitted to the Central Bank to facilitate a determination whether the threshold of “control” exists.
- 4.35. **Notably, control can be exercised by direct and indirect shareholdings, electing the majority of directors, or exercising dominant influence.** Control could also be exercised by persons acting together with affiliates, relatives, connected parties or other persons. As such, in assessing control, the Central Bank may require information in addition to the organization chart and shareholders’ agreement to determine whether persons would be able to exercise control directly or indirectly or together with other persons.
- 4.36. Similarly, section 72(1) of the FIA and section 53(1) of the IA require that a person shall not become a **significant shareholder** of a licensee or insurer, respectively, without first obtaining a written permit from the Central Bank. 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, at least twenty (20) percent of the voting power at a general meeting of a licensee or insurer must first acquire a significant shareholder’s permit.

ACQUIRER PERMIT²⁴ UNDER THE FIA AND IA

- 4.37. Section 74(1) of the FIA and section 54 of the IA state that an **acquirer permit** is required once a **financial entity** or the controlling shareholder / significant shareholder of a financial entity:
- 4.37.1. on its own²⁵ is entitled to exercise ten (10) percent or more of voting power at any general meeting of a licensee / insurer or its FHC; or
- 4.37.2. is entitled to exercise ten (10) percent of the voting power at any general meeting of a licensee/insurer when said voting power is combined with that of a relative, affiliate or a connected party²⁶.

²² The IA specifically states that the definition of control includes the ability to “**directly or indirectly**, exercise dominant influence over the conduct of business and affairs over an entity.” Once a person or entity in the insurance sector is being referenced in this document, this definition will apply.

²³ The meaning of “control” encompasses both *de jure* and *de facto* control. Essentially, the former is concerned with the exercise of control by way of the ability to pass resolutions at general meetings and/or elect directors by virtue of a majority shareholding. The latter includes other means by which a party may effectively control a company - some non-exhaustive examples being by way of shareholder agreements, commercial or contractual relationships, economic dependency, or influence of a family member over another family member who is a shareholder in the corporation. Further, “control” is expressed as the power to exercise control and is not limited to circumstances when control has actually been exercised.

²⁴ Notably, significant / controlling shareholders permits as well as an acquirer’s permit must be issued where a person meets the criteria for both.

²⁵ Through direct ownership of shares in the company.

²⁶ The financial entity or the controlling shareholder/significant shareholder of a financial entity and the relative/ affiliate/connected party must be able to vote.

- 4.38. Similar to other assessments required in the determination of a person's level of control, the Central Bank would assess any documentation, including any shareholder agreements and organizational or group charts that may assist in the determination of whether the 10 percent voting power threshold exists.

FHC PERMIT UNDER THE FIA AND IA

- 4.39. Sections 67 of the FIA and 47 of the IA give the Central Bank the power to direct the controlling shareholder of a licensee or insurer to restructure to form a FHC.
- 4.40. Section 48 of the IA makes restructuring mandatory in certain circumstances and sections 68 of the FIA and 49 of the IA set out the circumstances where restructuring is not required. These sections are relevant in assessing mergers and acquisitions as restructuring may be required to make the financial group supervisable prior to obtaining or in order to attain regulatory approval.
- 4.41. If a directive to restructure is given, the controlling shareholder of the newly formed financial holding company must apply for a financial holding company's permit under section 74(1) of the FIA / section 51 of the IA.

TERMS AND CONDITIONS OF PERMITS²⁷

- 4.42. Conditions may be applied to any of the permits issued by the Central Bank as they allow the Central Bank to impose certain terms, conditions, requirements and restrictions in order to strengthen supervision and oversight of the relevant permit holder or further mitigate some identified risk. The Central Bank would discuss the conditions to be imposed and their rationale with the applicants prior to issuance of the permits.
- 4.43. The types of terms and conditions that may be included on a permit may seek to give the Central Bank the ability to, *inter alia*:
- 4.43.1. examine the affairs of unregulated entities within the financial group to assess the risk that entity can pose to the group;
 - 4.43.2. request information to determine the condition of any entity within the group²⁸;
 - 4.43.3. require the FHC to seek the permission of the Central Bank before acquiring or disposing any subsidiary within the group;
 - 4.43.4. restrict certain intra-group transactions; and
 - 4.43.5. impose special reporting requirements.

²⁷ The FIA and IA give the Central Bank the right to impose terms and conditions (for example - see sections 51(6), 52(7), 53(6) and 54(6) of the IA and sections 71(8), 72(6), 73(6) and 74(5) of the FIA)

²⁸ See also section 62 of the FIA.

5. REGULATORY CONSIDERATIONS IN ASSESSING MERGERS / AMALGAMATIONS, TRANSFERS AND ACQUISITIONS²⁹

5.1 In determining whether to approve an application for a merger, acquisition, transfer or amalgamation of financial institutions, the Central Bank examines a myriad of factors, as relevant, for each particular type of transaction. This includes *inter alia*: -

5.1.1 A **financial soundness risk assessment** which considers -

- (i) *The entity being acquired, and whether the acquirer and the significant and controlling shareholders of the acquirer, are financially sound and able to provide financial support to the entity being acquired on an ongoing basis. This includes an assessment of inter alia, asset quality, funding, debt, policyholder liabilities, capital, liquidity, earnings and profitability.*
- (ii) *The financial soundness and risks of the entities being merged, the proposed merged entity, and the controlling and significant shareholders of the proposed merged entity*
- (iii) *Whether the financial institution would have adequate capital to meet regulatory requirements and its own internal capital targets or requirements, taking into account its risk profile, following any material change in its structure.*
- (iv) *Whether the dividend policy of the acquirer or the proposed dividend policy for the entity being acquired or merged would impact its ability to meet regulatory capital requirements or its own internal capital targets.*
- (v) *The source of funds for the transaction. How is the transaction being financed? By own funds or borrowed funds?*
- (vi) *Whether the nature of the financing would result in the acquirer or the parties to the merger being overleveraged.*
- (vii) *Whether the sale or transfer of assets would weaken the viability of the licensee or insurer in the long-term.*

5.1.2 A **governance risk assessment** which –

- (i) *Requires identification of all nominal and beneficial shareholders who own five (5) percent or more of the entities to be acquired or merged.*
- (ii) *Considers whether the parties to the transaction and their significant and controlling shareholders, directors, officers, and UBO are fit and proper persons.*

²⁹ The Central Bank advises that the considerations in this section do not represent an exhaustive list. Accordingly, the Bank may consider other factors that may be relevant for the assessment of risks to depositors, policyholders and the financial system. Further, wherever merger and acquisition are mentioned, transfer and amalgamation are also inferred.

- (iii) *Considers whether the acquirer, and the significant and controlling shareholders of the acquirer and their directors, officers, and UBO are fit and proper persons.*
- (iv) *Considers the proposed composition of the Board, the suitability of the directors, the number of independent directors, the number and type of Board committees and their composition.*
- (v) *Examines the organisational structure of the financial institution and acquirer of the financial institution or the merged entity, paying particular attention to the reporting lines of control functions (e.g. internal audit, risk and compliance) within the financial institution.*
- (vi) *Examines the pre- and post-merger or acquisition group structure. The group structure and accompanying documentation must clearly illustrate all the entities in the group, identify their main activities, indicate whether the entity is regulated or not and if regulated, specify the name of the regulator and indicate the percentage shareholding held.*

5.1.3 A **business risk assessment** which considers -

- (i) *The rationale for the merger or acquisition. Is it sound and informed by appropriate due diligence and risk analysis of current, emerging, and future risks and prospects?*
- (ii) *The business plan and strategy for the merged or acquired entity and the impact on the group.*
- (iii) *Whether the 3 to 5 year projected pro-forma financial statements reflect the business plan and strategy for the merged or acquired entity.*
- (iv) *The due diligence report and feasibility studies conducted by the applicant(s) for the merger or acquisition.*
- (v) *The impact of the proposed merger or acquisition on the interests of depositors / policyholders / or financial system.*
- (vi) *The nature of products / services to be offered by the merged or acquired entity.*
- (vii) *The key risks of the acquired or merged entity and policies for the mitigation of those risks, e.g. credit, market, operational, liquidity, AML, reinsurance, technology/ cyber. The corporate governance and code of ethics policies are also reviewed.*
- (viii) *Whether the Information Technology (IT) systems of the entities to be merged or acquired are compatible and can be easily integrated. If not, what are the IT plans and the timeframe for it to be addressed? What are the potential implications for regulatory reporting? Can consolidated reporting and risk assessments be supported by the IT system? The IT System should be able to provide management with information that is accurate, timely and relevant to*

manage the institution's risks. The system should be integrated with minimal manual intervention, and the risks emanating within various departments should be consolidated in the management reports. The IT System should also be able to serve the needs of its customers adequately.

5.1.4 A **systemic / concentration / public interest risk assessment** which considers –

- (i) *The impact of the merger or acquisition on concentrations and competition. What is the proposed market share that the merged entity or the acquirer would control post-merger or acquisition?*
- (ii) ***Whether the proposed combined market share exceeds forty (40) percent. Where this is the case, the application together with the Central Bank's recommendation must be forwarded to the Minister of Finance for his consideration and approval.***

5.1.5 A **legal and regulatory risk assessment** which examines–

- (i) *The draft constituent documents (articles of incorporation / continuance / bylaws / annual returns) for the merged entity, the acquirer and the entity to be acquired.*
- (ii) *The terms and conditions of the Share Purchase Agreement or Amalgamation Agreement. For example, whether these agreements were made subject to receiving regulatory approval.*
- (iii) *Letters of approval/ no objection from other domestic or foreign regulators, as relevant.*
- (iv) *Regulatory examination reports.*
- (v) *The history of compliance and non-compliance of all applicants in respect of matters such as governing legislation³⁰, guidelines and supervisory directives. Cross-border supervisory issues with other regulators would also be assessed.*
- (vi) *International AML/CFT databases (e.g. World Check, UN terrorist lists etc.).*
- (vii) *Whether the resulting post acquisition group structure is supervisable. (See section 5.2).*

5.1.6 A **human resource and people risk** analysis which considers –

- (i) *Whether sufficient consideration has been given to potential HR issues such as employee anxiety or dissatisfaction as a consequence of the merger or acquisition.*
- (ii) *Potential cultural or language barriers that may adversely impact the success of the merger or acquisition. Accordingly, where applicable, official*

³⁰ Including but not limited to the FIA, IA, POCA, Companies Act, etc.

translations of all relevant documents should be submitted to the Central Bank. Documents must be accompanied by official attestation as to their accuracy. This may include a requirement for an apostille³¹ or other formal declaration.

- (iii) *The pre- and post- merger or acquisition staffing plans, including any separation plans for staff.*
- (iv) *Whether there is key person risk.*
- (v) *Whether change management or integration plans have been developed to ensure the success of the merger or acquisition.*

5.1.7 In addition, the Bank may consider such other factors as may be relevant to the particular transaction being undertaken. Accordingly, the documentation to be submitted with the application must be sufficiently clear to enable an adequate assessment of the key issues stipulated in this section, as applicable.

GROUP STRUCTURE AND CONSOLIDATED SUPERVISION

5.2 As indicated in section 5.1 above, the structure of the financial group, its transparency and how it facilitates adequate consolidated supervision is a key consideration in determining whether or not to approve a merger or acquisition. The financial group pre- and post-transaction must be structured in such a manner as to facilitate consolidated supervision of the entities in the group, and must consider *inter alia*:

- 5.2.1 *The laws of the home / host jurisdiction must permit consolidated supervision of all financial entities in the group by a home / host supervisor.*
- 5.2.2 *Where the financial institution is part of a mixed conglomerate group, the financial entities in the group must be appropriately ring-fenced from the non-financial entities in the group by establishment of a FHC.*
- 5.2.3 *The complexity of the group structure and whether there are opaque structures in the group that may hinder transparency, access to information and consolidated supervision. For example, is the proposed structure indicative of a parallel owned banking group?³²*
- 5.2.4 *Whether language barriers may contribute to compliance issues or compromise the adequacy of regulatory reporting on a consolidated basis.*
- 5.2.5 *Whether there are legal barriers which address issues such as, inter alia, the sharing of information.*

³¹ An apostille is an authentication stamp attached to official documents issued by a national authority.

³² In the case of parallel-owned banks or insurers, a bank or insurer set up in one jurisdiction may have the same ownership as another bank or insurer in another jurisdiction, but neither is a subsidiary of the other. This type of structure does not generally facilitate consolidated supervision by a single regulator and may contribute to opacity in terms of intra-group transactions and regulatory risks.

- 5.2.6 *Whether holding companies or financial entities in the group are located in jurisdictions sanctioned by the FATF or other similar international regulatory bodies for non-compliance with AML or tax laws.*
- 5.3 Both the FIA and the IA contain provisions that would allow the Central Bank to require the restructuring of a group to facilitate consolidated supervision. The structure of the financial group should be transparent to enable easy identification of all significant and controlling shareholders and the UBO.
- 5.4 Where the licensee, insurer or FHC is part or will become part of a financial group after a merger, acquisition, transfer or amalgamation, the financial group must demonstrate its ability to maintain appropriate corporate governance, management, internal control and risk-management systems, including internal audit and compliance, in order to monitor and limit all the risk exposures within the risk tolerance levels approved by the board upon completion of the transaction.

REGULATORY CO-OPERATION AND INFORMATION SHARING

- 5.5 Regulatory cooperation and information sharing is another important consideration in assessing an application for a merger or acquisition. Both the FIA³³ and the IA³⁴ allow for sharing of information with other domestic and foreign regulatory authorities. The Central Bank has also entered into several Memoranda of Understanding with its domestic, regional, and international counterparts.
- 5.6 Consequently, where a prospective merger or acquisition impacts several domestic, regional or international regulators, the regulators would discuss the application among themselves³⁵, but the final decision to approve or not approve rests with the particular home or host jurisdiction as the case might be.

6. APPLICATION DOCUMENTS

- 6.1 As stated previously in this Guideline, all applications for a merger, amalgamation, transfer or acquisition must be submitted to the Central Bank in writing. The assessment of such applications requires a significant amount of detailed information to be submitted to the Bank.
- 6.2 **Appendix 1** sets out the information that is generally required when assessing a merger or acquisition by a financial institution.
- 6.3 **Appendix II** sets out the procedures required in respect of a Scheme of Transfer or Scheme of Amalgamation for an insurer and documentation typically required for that assessment.

³³ Section 8(2) of the FIA.

³⁴ Section 16(2) of the IA.

³⁵ Where applicable, the considerations outlined under sections 5.1 – 5.4 may be discussed among regulators.

APPENDIX I: DOCUMENTS WHICH MAY BE REQUESTED FROM APPLICANTS: IA AND FIA

Where applicable, the following information would be required by the Central Bank to facilitate its assessment of an application for the approval of acquisitions or mergers / amalgamations / transfers involving licensees, insurers and FHCs.

The list is not exhaustive and not all documents would be applicable in all cases. In addition, some documents may be used for more than one purpose.

A. Application Documents

- (i) Cover letter to the Inspector of Financial Institutions advising of the transaction.
- (ii) Joint application from each company that is party to the merger or scheme of transfer or amalgamation.

1. Application for permit as a controlling shareholder and significant shareholder

- (i) Written letter of application.
- (ii) Necessary documents to determine fitness and propriety of applicants as per Schedule 5 / Second Schedule of the IA and FIA respectively and including completed Personnel Questionnaire and Declaration Forms (PQDs) for every director, controller, manager and officer.
- (iii) Where the significant or controlling shareholder is a legal entity, a Corporate Questionnaire and Declaration Form (CQD) is required to be submitted.
- (iv) For intestacy situations – written application and evidence of intestacy and entitlement to the shares, within one month of knowledge of information.

2. Application for permit as an acquirer by a financial entity or its controlling / significant shareholder

- (i) Written letter of application.
- (ii) Necessary documents to determine fitness and propriety of applicants as per Schedule 5 / Second Schedule of IA and FIA respectively and including completed Personnel Questionnaire and Declaration Forms (PQDs) for every director, controller, manager and officer.
- (iii) Where the acquirer, or the significant or controlling shareholder of the acquirer, is a legal entity, Corporate Questionnaire and Declaration Forms (CQDs) are required to be submitted.

B. Financial Information

- (i) Audited financial statements of target and applicant(s) for the last 3 years, including the most recent financial year
- (ii) At least a three (3) year Pro-forma projected Financial Statements (should include the core financial statements comprising: the statement of financial position, statement of income, statement of comprehensive income, etc., with the relevant assumptions detailed)
- (iii) Details of funding / financing of the transaction and evidence of the ability to financing the transaction and meet capital requirements.
- (iv) Dividend policy of the acquirer.
- (v) Proposed dividend policy for the entity being acquired or merged.
- (vi) Report by the Actuary.

C. Governance Information

- (i) List of all nominal and beneficial shareholders who own five (5) percent or more of the entities to be acquired or merged.
- (ii) Name of the UBO of the proposed merged company or acquired entity.
- (iii) The necessary documents to determine the fitness and propriety of the directors and officers of the proposed merged/amalgamated company (section 73(4)(b) of the FIA and 61(1)(c) of the IA), including completed Personnel Questionnaire and Declaration Forms (PQDs) for every director, controller, manager and officer.
- (iv) Corporate Questionnaire and Declaration Forms (CQDs) for the entity to be merged/amalgamated or acquired, the acquirer, and all the corporate significant and controlling shareholders of the applicant.
- (v) Corporate governance, code of conduct or conflicts of interest policies for the merged / acquired entity, including any group policies.
- (vi) Copies of the Board resolution approving the transaction.
- (vii) Pre- and post- merger or acquisition group structure.

D. Business / Operational Information

- (i) At least a three (3) year Strategic Plan of the acquirer and the entity to be merged or acquired
- (ii) At least a three (3) year Business plan(s) for the merged/ acquired entity. The business plan should inform the three (3) year projected pro-forma financial statements required to be submitted
- (iii) Detailed due diligence report or conducted for the transaction which clearly identifies strengths, weaknesses, opportunities and threats to the transaction, including all material risks and risk mitigation strategies. The due diligence report should clearly identify and consider any market share / competition issues that may arise from the transaction.
- (iv) Information Technology (IT) consolidation / integration plan.
- (v) List of material lawsuits brought in various jurisdictions, settlement agreements reached with other parties to claims and orders, awards and judgments made by courts and tribunals (if any).
- (vi) Listing of all products / services of the entity to be merged or acquired.
- (vii) Key risk management policies pertaining to capital, credit, market, operational, AML, insurance, reinsurance, liquidity, and technology risks.
- (viii) Business continuity and recovery plans.
- (ix) Reinsurance arrangements.
- (x) Where the entity has an international rating, the independent assessment from an international rating agency.

E. Legal and Regulatory

- (i) Share Purchase / Sale Agreement
- (ii) Proposed amalgamation agreement
- (iii) Draft Vesting Order
- (iv) Proposed scheme of transfer / amalgamation
- (v) Signed, executed scheme of transfer (after review of the Central Bank)
- (vi) Copies of documents filed at the Companies Registry (post-approval/confirmation)
 - a. Articles of Amalgamation
 - b. Shareholders' Resolution
 - c. Statutory Declaration of Directors

- d. Executed Amalgamation Agreement
 - e. Certificate of Amalgamation
 - f. Registered Scheme of transfer / amalgamation
 - g. Notice of Directors / Change in Directors
 - h. Notice of Address of Registered Office / Change of Address of Registered Office
 - i. Notice of Secretary / Change of Secretary
- (vii) The constituent documents (articles of incorporation/ continuance, bylaws and annual returns) for the merged entity, the acquirer and the entity to be acquired
 - (viii) Copies of regulatory approvals / No objection letters from all jurisdictions or regulatory authorities for entities which are party to the transaction
 - (ix) Copy of any licence granted under the Foreign Investment Act Chap. 70:07 for the acquisition of the shares. (Where a foreign investor is seeking to acquire 30% or more of the shares of a local company, they must obtain a foreign investor license from the Ministry of Finance. Certain exceptions apply with respect to CARICOM member states)
 - (x) Copy of any Securities and Exchange Commission approvals for matters relating to shares trading on the local Stock Exchange
 - (xi) Vesting Order
 - (xii) Proof of registration with equivalent of FIU in the applicant's jurisdiction
 - (xiii) Regulatory examination reports

F. Human resources and people

- (i) Proposed organisational and operational structure for the merged or acquired entity showing clearly the reporting lines of officers and control functions to the CEO and/or the Board
- (ii) Copies of the staff bulletins, press releases and other such information generated or to be issued relating to the transaction.

G. Group Structure

- (i) Pre- and post- transaction group structure showing clearly the position of the merged or acquired entity in the group as well as all subsidiaries and affiliated companies and the percentage shareholding by the parent company of each entity in the group.
- (ii) List (including description) of the business of the entities in the group and whether regulated in this jurisdiction or elsewhere and the name of the regulatory agency, where applicable.
- (iii) List of the companies' divestments and acquisitions in the past 5 years.

APPENDIX II: SCHEME OF TRANSFER OR SCHEME OF AMALGAMATION PROCEDURE UNDER THE IA

1. As previously discussed a scheme of transfer is required for the transfer of any class of insurance business, either in whole or in part, or an amalgamation where one of the transferring or amalgamating companies is an insurer or the financial holding company of an insurer.
2. Where the percentage of any market share in Trinidad and Tobago of the transferee or amalgamated company and any financial entity which will be affiliated with it would **not** exceed forty (40) percent of the market share, the Central Bank in considering whether to approve the scheme must give directions concerning:
 - a) *The publication of advertisements of the scheme;*
 - b) *The giving of notices to shareholders, policyholders or creditors of the companies; and*
 - c) *The holding of meetings of any insurer or financial holding company affected.*
3. Where the percentage of any market share exceeds forty (40) percent, the matter shall be forwarded with the Central Bank's recommendations to the Minister for consideration before the scheme is confirmed or rejected.
4. The market share calculations of all companies pre-transfer / amalgamation and of the amalgamated company with respect to gross premium income, assets and liabilities in relation to the insurance sector of Trinidad and Tobago would be determined.
5. As part of this determination, the following steps are required in order for the Central Bank to give directions in respect of the scheme of transfer or amalgamation:

A. INFORMATION TO POLICYHOLDERS

6. Policyholders should, at a minimum, be advised:
 - a) *that the insurer proposes to transfer/amalgamate the policyholder's policy or policies to/with another insurer on or after a specified date;*
 - b) *of the full name and contact details of the other insurer / company;*
 - c) *of the effect of the transfer/amalgamation (this explanation may be brief and may, for example, explain that from the date of the transfer/amalgamation, all rights and liabilities under the policies will be transferred/amalgamated to/with the other insurer, so that premiums will have to be paid to, and claims will have to be lodged with, that insurer);*
 - d) *whether any action is required and if so, what action will the policyholder be required to take before or as a result of the transfer/amalgamation (for example, any changes in arrangements relating to paying premiums or lodging claims), and of their right to terminate the contract (policyholders should be entitled to a pro-rated refund premium on cancellation);*
 - e) *where the policyholder can obtain further information and inspect the documents that may be available for public inspection;*
 - f) *of the period of inspection and the period for objection by policyholders;*
 - g) *that the policyholder can make an application to the Central Bank on any matter connected with the scheme before it is confirmed; and*

- h) *of any other relevant information requested by the Central Bank.*
7. This information must immediately be made available on the companies' internet website as well as published in any other manner requested by the Central Bank³⁶.

B. PUBLICATION OF NOTICE OF INTENTION

8. Where the Central Bank is satisfied that the scheme of transfer or amalgamation is ready for inspection, the Central Bank shall direct the applicants to publish in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago as may be approved by the Central Bank, a notice of intention to transfer or amalgamate within twenty (20) business days of the date of such direction³⁷.
9. The applicants are required to submit a copy of the proposed notice of intention to the Central Bank for approval to ensure the duration and content of the wording is appropriate.
10. The Central Bank would inform the applicants of any required changes/amendments. The approved publication must be published within twenty (20) business days.

C. INSPECTION

Inspection of Scheme

11. The Scheme must be open for inspection by any policyholder or shareholder affected by it for a period of fifteen (15) business days after the publication of the notice at the office of each company engaged in the transfer or amalgamation³⁸.
12. Any person who objects or is aggrieved by the proposed transfer or amalgamation may inform the Central Bank and the insurer / applicant of their objection either during the period of inspection or within twenty (20) business days after the expiration of such period of inspection.
13. Objections may be lodged either:
- a) electronically for that purpose³⁹; or
 - b) via hardcopy.

Objections from the public

14. The Central Bank would request copies of all queries/objections received from the public concerning the scheme of transfer or amalgamation from the insurer(s), together with corresponding responses to the public. The Central Bank would also investigate any queries/objections raised and ensure that they are clarified and/or settled⁴⁰.

³⁶ Section 59(2) of the IA, 2018

³⁷ Section 59(2) of the IA, 2018

³⁸ Information Communication Technology (ICT) may be considered to facilitate inspection.

³⁹ The email address will be established for that purpose and communicated appropriately at the time that the scheme of transfer is being considered by the Central Bank.

⁴⁰ Each objection must be considered. However, the weight and effect on the proceedings would vary depending on the nature of the issue.

15. Any person who objects or is aggrieved by the proposed transfer or amalgamation shall inform the Central Bank and the companies of his objection either during the period of inspection or at any time during the period of inspection or within twenty business days after the expiration of the period of inspection.
16. After the period of objection, the Central Bank is required to notify the insurer / applicant and any person who objects to, or is aggrieved by the transfer or amalgamation of the date for the hearing of confirmation of the scheme.

D. DECISION – CONFIRMATION OF SCHEME OF TRANSFER OR AMALGAMATION

17. The Central Bank is required to:
 - a) Issue a covering letter to the applicants enclosing the written confirmation of the Decision signed by the Governor⁴¹ and the amended certificate of registration (if applicable), and any reasons given for rejecting the scheme, where applicable;
 - b) If the scheme was confirmed, remind the applicants that the following documents are required to be submitted to the Central Bank within twenty (20) business days after the transfer or amalgamation:
 - i) A Certified copy of the Agreement, Deed or Vesting Order under which the transfer or the amalgamation was effected.
 - ii) A Statutory Declaration made by the Chairman of the Board of Directors of the Insurer:
 1. Specifying every payment made or to be made to any person in respect of the transfer or amalgamation;
 2. Stating that to the best of his knowledge and belief no other payment, other than those specified has been or is to be made in monies, policies, bonds, valuable securities, property of any description or any other valuable considerations by or with the knowledge of any parties to the transfer or amalgamation;
 - iii) A copy of the registered scheme of transfer/amalgamation.
 - iv) A copy of the notarized declaration form.
18. If the scheme was confirmed, the directors of any company involved in the scheme shall cause a copy of the scheme to be filed with the Registrar of Companies.
19. Notably, the Central Bank may impose conditions, restrictions and/or requirements on the scheme per section 61(2) of the IA.

⁴¹ This function may be delegated to another employee of the Central Bank.

Documentation Requirements

20. The following documents would be required for a scheme of transfer or amalgamation. Additional information as listed in Appendix 1 may also be required:
- a) The scheme of transfer or amalgamation ;
 - b) A copy of the proposed notice to be published in the Gazette and draft letter to policyholders;
 - c) A copy of the Actuarial and other reports, if any, upon which the scheme was founded;
 - d) A copy of the proposed notice to be published in the Gazette and draft letter to policyholders;
 - e) Audited returns at a specified date;
 - f) Draft of statutory declarations required under the Companies Act;
 - g) A plan of action for the activities of the transfer/amalgamation which should include:
 - i) *The rationale for transfer/amalgamation of the insurance portfolios, the expected effect of the transfer/amalgamation and any such assessment/feasibility study.*
 - ii) *Classes of business to be discontinued and continued by the amalgamated institution after the transfer date.*
 - h) Draft of proposed transfer documents under which the transfer or amalgamation will be effected (i.e. agreement, deed or Vesting Order).
 - i) Detailed list of assets to be transferred / amalgamated, clearly indicating all related party assets to be amalgamated / transferred valued as at a date to be specified.
 - j) Policyholders' liabilities in respect of Trinidad and Tobago business or foreign business as the case may be:
 - i) *Listing policies in force as at the transfer/amalgamation date.*
 - ii) *Unearned premium reserve showing policy number, insured, object of insurance, risks insured, period of insurance, insurance premiums, sum insured, premium reserve and conditions to resign the contract.*
 - iii) *Unexpired Risk amount – detailed schedule.*
 - iv) *Aged listing of claims outstanding to be amalgamated/transferred – summary and detailed, including categorization by type and class of business for both companies as at a date to be specified by the Central Bank of the companies to be amalgamated / transferred.*
 - v) *Contingent Liabilities.*
 - vi) *Aged Receivables for outstanding premiums – summary and detailed.*
 - k) Independent Report by the actuary on the Scheme to be made, where all expenses incurred by the Central Bank in obtaining the report shall be defrayed by the companies engaged in the transfer/amalgamation.
 - l) Proposed Articles of Incorporation of the amalgamated company/proposed changes to the Articles of Incorporation / Continuance of the transferee.
 - m) Draft documents required under the Companies Act (for amalgamations).

- n) Any changes in capital to support the amalgamated company.
- o) Financial statements showing the financial position at the amalgamation date.
- p) Three year projected financial statements for the amalgamated company.
- q) 3 – 5 year Strategic plan of amalgamated company.
- r) Contingency plans in place to safeguard policyholders' liabilities in the event of: decreases in the value of assets amalgamated subsequent to the amalgamation date; and claims experience being worse than actual reserves and IBNR.
- s) Copies of correspondence between all the applicants and the regulators in all jurisdictions in regard to the proposed transfer/amalgamation, and copies of approvals granted.
- t) Proposed changes to be made to management and staff.
- u) Completed Personnel Questionnaire and Declaration Forms (PQDs) for every director, controller, manager, actuary and executive team of the proposed amalgamated company.
- v) Corporate Questionnaire and Declaration Forms (CQDs) of the proposed amalgamated institution.
- w) Source of funding for the transfer/amalgamation.
- x) A copy of any Securities and Exchange Commission approvals for matters relating to shares on the local Stock Exchange (if applicable).
- y) The Proposed Organizational and Operational Structure of the amalgamated institution.
- z) Provision of information on operations, management etc. to assess contagion and other risks.