

CAUGHT IN THE MIDDLE – THE SAGA OF THE COLLAPSED BANKS IN GHANA

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The background

Last year was a challenging period for the banking sector in Ghana. The Bank of Ghana (BoG) revoked the licenses of five banks UniBank Ghana Limited, the Royal Bank Limited, Beige Bank Limited, Sovereign Bank Limited, and Construction Bank Limited and appointed KPMG as the Receiver for the five banks **in respect of their assets and liabilities in August 2018**. The BoG then granted a universal banking license to Consolidated Bank Ghana (GBC) Limited established by the Government. As a result, all staff of these banks became staff of the Consolidated Bank. The Boards of Directors and shareholders of these banks no longer have any roles.

Additionally, in August 2017, the Bank of Ghana closed two banks (UT Bank and Capital Bank) and approved Ghana Commercial Bank (GCB) to acquire some of their assets and liabilities under a Purchase and Assumption Agreement. GCB also inherited the staff of the two banks. The alleged main reasons for the collapse of the banks has been assigned to poor governance, liquidity challenges which led to insolvency. PricewaterhouseCoopers (PwC) were Joint Receivers of UT and Capital bank.

The human issue

The collapse of the seven banks has led to job losses of over 5,000 employees. It has been alleged that out of the possible 5,000 ex-employees a total of 1,700 staff of the CBG have lost their jobs as part of the rationalization process. Additionally, over 700 of former workers of the UT and Capital bank have also allegedly lost their jobs.

The process issues

Mergers, acquisitions and insolvencies are all part of the business and is common in the world of business. So, why should the collapse of the banks be such an issue? It is an issue because of the process. The BoG has been criticized for not managing the process well, specifically their failure to adequately sensitize *all principal stakeholders* ahead of the takeover and the breaking of the news. The news broke allegedly without adequate communication to all staff, customers, and other stakeholders of the affected banks. It is also implied that the psychological wellbeing of the affected employees was not managed well nor were they provided with adequate supported during the interim as they waited to know their employment status.

The payout issues

It is clear that with the collapse of the banks people have lost their jobs. The ongoing issue has been around affected employees not receiving their redundancy pay and other entitlements. The debate so far has mainly focused on the mistakes of the banks as well as the assets and liability issues. The human issue has not received the same attention. In situations like these funds to pay is an issue in itself given the complexities of the issues surrounding the collapse of the Banks. The receiver is challenged to recover as much money as possible in order to settle as much of the banks debts as possible. The problem is who should be paid first? Should it be the shareholders, investors, customers, employees, suppliers or the government?

The legality

To answer the question of “*who should be paid first*”, we must first look at the laws and regulations laid out to govern the situations facing the receiver and the new employers.

The international labour organization (ILO)

The ILO's Convention 173 - Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. C173) is a Convention concerning the Protection of Workers' Claims in the event of the Insolvency of their Employer.

Article 1, of the conventions defines insolvency as (i) “situations in which, in accordance with national law and practice, proceedings have been opened relating to an employer's assets with a view to the collective reimbursement of its creditors”; (ii) for the purposes of this Convention, a Member may extend the term “insolvency” to other situations in which workers' claims cannot be paid by reason of the financial situation of the employer, for example where the amount of the employer's assets is recognised as being insufficient to justify the opening of insolvency proceedings; (iii) the extent to which an employer's assets are subject to the proceedings referred to in (i) above shall be determined by national laws, regulations or practice.

In relation to protection of wages the convention states in Article 5, that (ii) “In the event of an employer's insolvency, workers' claims arising out of their employment shall be protected by a privilege so that they are paid out of the assets of the insolvent employer before non-privileged creditors can be paid their share”. And further states that the privilege shall cover at least:

- a) the workers' claims for wages relating to a prescribed period, which shall not be less than three months, prior to the insolvency or prior to the termination of the employment;
- b) the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of the employment occurred, and in the preceding year;
- c) the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months, prior to the insolvency or prior to the termination of the employment;
- d) Severance pay due to workers upon termination of their employment.

However, there are limitation clauses in C173 which states in Article 7, that:

- ❖ *National laws or regulations may limit the protection by privilege of workers' claims to a prescribed amount, which shall not be below a socially acceptable level.*
- ❖ *Where the privilege afforded to workers' claims is so limited, the prescribed amount shall be adjusted as necessary so as to maintain its value.*

The convention C173 further outlines the ranks of privilege as follows:

- 1) *National laws or regulations shall give workers' claims a higher rank of privilege than most other privileged claims, and in particular those of the State and the social security system.*
- 2) *However, where workers' claims are protected by a guarantee institution in accordance with Part III of this Convention, the claims so protected may be given a lower rank of privilege than those of the State and the social security system.*

In light of the collapsed banks C173, could be used as a guide to address the payout issues of national laws as stipulated.

The Ghana labour act 2003 (ACT 651)

Why is convention 173, important? It is important because Ghana became a member of the ILO in 1957 and as such is obligated to work within the conventions of the ILO in its Labour practices. The Ghana Labour Act 2003 (Act 651) is requirement for member states of the ILO. The Ghana Labour Act (Act 651), Section 65 (1 & 2) provides a breakdown on redundancy and severance as follows:

- 1) When an employer contemplates the introduction of major changes in production, programme, organization, structure or technology of an undertaking that are likely to entail terminations of employment of workers in the undertaking, the employer shall
 - a) provide in writing to the Chief Labour Officer and the trade union concerned, not later than three months before the contemplated changes, all relevant information including the reasons for any termination, the number and categories of workers likely to be affected and the period within which any termination is to be carried out; and
 - b) Consult the trade union concerned on measures to be taken to avert or minimize the termination as well as measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

(2) Without prejudice to subsection (1), where an undertaking is closed down or undergoes an arrangement or amalgamation and the close down, arrangement or amalgamation causes (a) severance of the legal relationship of worker and employer as it existed immediately before the close down, arrangement or amalgamation; and (b) as a result of and in addition to the severance that worker becomes unemployed or suffers any diminution in the terms and conditions of employment, the worker is entitled to be paid by the undertaking at which that worker was immediately employed prior to the close down, arrangement or amalgamation, compensation, in this section referred to as “redundancy pay”. (3) In determining whether a worker has suffered any diminution in his or her terms and conditions of employment, account shall be taken of the past services and accumulated benefits, if any, of the worker in respect of the employment with the undertaking before the changes were carried out.



In light of the collapsed Therefore, Section 65 of the Labour Act can be applied to pay the affected workers whose employment are terminated and are eligible for redundancy or severance payout. Section 65 of (ACT 651) is in line with Article 5 of the ILO Convention in relation to how workers should be paid in situations where the *undertaking is closed down* and the worker becomes unemployed.

The Ghana insolvency act

Finally, the Ghana insolvency Act 1962, (Act 153) under section 47- Duty to Ascertain Priority of Debts states:

On the making of an insolvency order it shall be the duty of the Official Trustee, in relation to each debt which ranks for dividend, to ascertain into which of the following classes the whole or any part of the debt falls:

Class A. - A debt or part of a debt which answers either of the following descriptions, that is to say, the ACT prescribes how employees who are not relatives of the debtor should be remunerated and in the ACT the class A, addresses the remuneration of employees of the debtor.

The legality applied

So in the case of the collapsed banks in Ghana what is happening? On the surface it appears that nothing is being done. This is because the collapse of the banks is a complex situation with many stakeholders and legalities involved. This means processes have to be followed by the receivers in order to recover as much of the debts as possible in order to pay creditors including employees who are referred to as “privileged creditors”.

The approach

In the situation of the collapsed banks it appears that the regulations being applied are more aligned with the insolvency Act and also regulations laid down for financial institutions for situations like these. This is understandable but the fact still remains that affected employees should be paid what is due to them. It is understandable that the payout to affected employees may not be high especially if some of the prescribed methods of remuneration as outline in C173 and the insolvency Act is applied. This is because in C173 and section 47 of the Insolvency Act aims to offer at least a minimum payout than no payout. A minimum payout would benefit permanent employees of the affected banks. However, if some of the employees have taken loans from their employer it may also affect their payout.



The question then remains, what about those not eligible for a payout? This is the biggest problem. The banks have different employee types working for them. In the Ghana labour Act (651) we are aware that employees on probation, employees engaged under a contract of employment for a specified period of time or specified work as well as temporary and casual employees are not eligible for redundancy pay. Employees falling under this category in the banks could be paid up to when their employment ended, e.g. they could be paid for the period they worked up to the collapse of the banks. Furthermore, there are employees employed through placement services by staffing agencies. These types of employees may not receive a payout because they were not directly employed by the collapsed banks, they were sourced by the bank through an agency. The only way these workers may receive what they earned before the collapsed of the banks would be if the agencies they work under receive payment up to when the banks collapsed. Payout for these employee types would also depend on the agreement they had in place with their staffing agency concerning this type of situation.

The HR factor

There are no doubts that the HR leaders involved in managing the outplaced employee of the collapsed banks have a lot of work to do. At times like this being a practitioner is very difficult. The advice to the HR leaders involved in advising the leadership and implementing decisions is that, they should make sure the right things are done by supporting the management with facts and figures to make decisions. Where, decisions are in breach of the labour law and good practice they should be bold to explain to Management the consequences. This is an opportunity for HR to add value by doing what is does best, provide advice and support to both Management and the affected employees.

The selection process of who stays and who goes?

It was alleged that CBG had communicated to affected employee's that they would determine their employment status following an assessment of their performance for a period of 60 days. The GBG received a lot of criticisms mainly in relation to the timeline which was deemed to be too short for an assessment to be conducted. Our view is that selection

criteria's should be based on objective measures rather than subjective measures. It is easier to support decisions with criteria's that can be supported with documented evidence. It is also important that the scoring of criteria's are simple and clear to understand and explain. A fair and transparent selection criteria is the best approach when selecting people for termination due to redundancy. A fair approach would minimize law court claims of unfair terminations or breach of contracts.



How can affected employees be assisted?

The affected employees should be provided with outplacement support services to assist them to readjust and find new livelihoods. At OML we provide outplacement services and the aim is to ensure that affected employees are successful in moving into new roles or starting their own businesses. We do this through our employability and entrepreneurship outplacement program. It is not enough to simply give affected employees CV and interview workshops, they can get this information online. The issue is some of the affected workers of the banks may have become type cast, by this I mean they may have only ever worked in the banking industry. In such cases these types of employees need to be supported to career pivot if it is not likely that they will find another job in banking or if they want to move away from banking. They will need their skills, experience, qualifications etc., evaluated and assessed to see which areas of work they could pivot into. This can be a hard experience and process for the individuals concerned.

Then there are those who are lucky enough to receive adequate payout, they will need guidance on investment opportunities, financial management of their payout to ensure their money lasts as long as possible as well as ensure they do not mismanage their money. There are also those who may decide to work for themselves, such employees require advisory and workshops for business start-ups as well as guidance to transition from an employee mindset to self-employed mindset. It is important to note that GCB and CBG may not have the resources to help all affected employees and could for example decide to focus on affected permanent employees.

It is also possible that affected employees coming from staffing agencies may be offered other opportunities and therefore outplaced services would not be necessary. It is important that the affected employees also consider ways to help themselves in the event that they do not receive all the necessary help they may need under the circumstances.

In our HR due diligence consulting services for mergers and acquisitions we classify outplacement services as part of the transition stage for existing employees.

What about those left behind?

In the midst of all the saga those left behind should not be forgotten. The HR team of GBC and GBG would have to come up with strategies to manage those who were retained as well as deal with the organizational cultural issues that will emerge out of the consolidation and acquisitions. Those left behind usually pay attention to how those exiting colleagues are treated and this can either have a positive or negative impact. We would recommend that the HR develops a transition strategy to address integrating the workforce as well as addressing the impact left on those employees still in their jobs. Many companies usually forget about those left behind. This is usually due to the notion that business must go on. We believe that ensuring that those left behind are supported to move on is essential.

In conclusion

It is clear that the laws and regulations in place can be applied to address the issues pertaining to the affected employees in the Ghana banking saga. It is also clear that situations like this are complex, sensitive with a human factor. Therefore, communication is key. People tend to handle issues well when information is shared and processes are transparent. In relation to the banking saga, information has not consistently been shared and as a result it has generated a lot of perceived views, which may not necessarily be true. A structured communication plan which provides relevant and timely information to each stakeholder is essential. This communication plan would help manage perceived employees and public views.

The laws and regulations offer approaches to ensuring that affected employees receive their entitlements. Even if the affected employees cannot be treated as privileged creditors, they should still be at the upper end of the priority list to receive their payout. In relation to those who may not be eligible to a payout due to their employment type, we would recommend that they are paid their earnings up to the point their bank collapsed. Recently, it has been communicated in the media that some affected employees of UT and Capital bank have received some payments. This is positive news and we hope more ex-employees of the other collapsed bank also receive their entitlements.

Finally, the ex-employees as well as existing employees are caught in the middle of this saga and it is important that the issues affecting the human factor are addressed well. There is a lot of learning for both HR and management to take from this saga. The crisis in the financial sector in Ghana is still ongoing, we advocate for compliance to the law and good practice to set a positive precedence to other employers to emulate in cases of mergers, acquisitions, cessation and insolvencies.



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