
REJOINDER:

CEASE AND DESIST ORDER TO GAT: STOP THE FRAUD

The attention of the Ghana Amalgamated Trust Plc (**GAT**) has been drawn to a letter titled “CEASE AND DESIST ORDER TO GAT: STOP THE FRAUD” dated 20 December 2021 and issued by Mahama Ayariga (Member of Parliament for Bawku Central) to the Governor of the Bank of Ghana and copied to selected persons and the media.

The purpose of this rejoinder is to highlight and correct the false statements of facts and extremely flawed conclusions in the letter.

1. GAT background

- 1.1 Following the Bank of Ghana’s announcement in 2017 of a new minimum capital requirement for banks, certain indigenous banks requested the Government of Ghana for assistance to prevent the revocation of their banking licences and to preserve indigenous participation in the banking industry.
- 1.2 The Government of Ghana responded to the request by forming a committee (comprised of representatives from the Ministry of Finance, the Bank of Ghana, the indigenous banks, and the Office of the President) to evaluate the situation and propose recommendations for state intervention to strengthen the indigenous banks.
- 1.3 The committee proposed, among others, the formation of a special purpose vehicle to raise funds from the private sector to assist with the capitalisation of the selected indigenous banks, provide business transformation support to these indigenous banks and enable the selected banks to become viable and competitive.
- 1.4 On the basis of the committee’s proposals, the Government of Ghana sponsored the incorporation of GAT as a special purpose vehicle with a mandate to (a) raise funds to recapitalise the selected banks (*including Prudential Bank Limited, Universal Merchant Bank Limited, OmniBSIC Bank Limited and Agricultural Development Bank (ADB) as the first set*) in order for the banks to meet the new minimum capital requirement, and (b) implement transformative changes to improve governance and management of the selected banks and create value for shareholders. All the selected banks are private companies except ADB (which is a public company listed on the Ghana Stock Exchange (the **GSE**)).
- 1.5 The shares of GAT are currently owned by the Government of Ghana (through NTHC, a nominee company controlled by the Government of Ghana). The board of directors of GAT is constituted by 5 persons (3 of whom are independent directors, including the chairman, Mr. Albert Essien). GAT is managed by a team headed by Mr. Eric Otoo and assisted by KPMG (acting as an administrator).

2. GAT investments in the first set of selected banks

- 2.1 In respect of GAT’s first mandate (and based on the aggregate capital gap identified by the Bank of Ghana for the first four selected banks) GAT determined that an amount of GHS 800 million was needed for the recapitalisation. GAT’s initial plan was to raise the GHS 800 million from the capital market but (in the light of time constraints) the Government of Ghana provided the funds by subscribing for GHS 800 million preference shares in GAT.

- 2.2 GAT has successfully completed its recapitalisation mandate (i.e. equity investment in the respective first set of selected banks, using the proceeds of the GHS 800 million preference shares). The recapitalisation process involved conducting the necessary legal and financial due diligence on the banks, negotiating share valuation of the selected banks (*the valuation was not at a discount and the same metric was used in determining the valuation of each privately held selected bank*), negotiating and entering into investment agreements with each of the selected banks and its shareholders) and obtaining the approval of the Bank of Ghana.
- 2.3 The investment agreements for each selected bank consisted of a share subscription agreement (documenting the subscription for shares in the bank) and a shareholders' agreement (documenting, among others, the governance and exit rights of GAT). Regarding ADB, GAT entered into only a subscription agreement. There was no shareholders' agreement to document governance and exit rights since ADB is a listed entity and so the company law and capital market rules for governance rights and exit rights differ from the rules applicable to private companies.
- 2.4 Under the investment agreements, GAT has (a) a 5-year timeline to exit the selected banks (except ADB) through the sale of its shares to (*first*) the relevant existing shareholders of the banks, and (*where the existing shareholders are not interested*) third parties, (b) negotiated board seats in line with its investment, and (c) agreed, with the banks, certain fees payable to GAT to cover the expenses of the transformation agenda.
- 2.5 Regarding GAT's transformation mandate (which covers influencing the right changes to the business strategy and general operations, information technology infrastructure, human capital, risk management policy and process and credit policy and process of the banks), GAT has made significant strides and continues to work with the banks to make the selected banks more viable, profitable and competitive. The results are clearly seen in the incremental improvement in the financials of the selected banks that are periodically published publicly.

3. Current proposed transaction

- 3.1 GAT is conscious that capital markets rules prevent it from fully discussing the proposed transaction since it has not yet been approved by the Securities and Exchange Commission (**SEC**).
- 3.2 Subject to approval of the SEC of a draft prospectus and the approval of the GSE for a listing application, GAT intends to undertake an initial public offer of preference shares primarily to Ghanaian institutional investors such as pension funds to redeem the GHS 800 million preference shares issued to the Government of Ghana. The shares will be listed on the GSE.
- 3.3 The proposed transaction does not involve any sale or divestment of shares held by GAT in the selected banks. It is rather a public offer of preference shares to be issued by GAT to raise funds to redeem the GHS 800 million provided by the Government of Ghana.
- 3.4 The proposed transaction is a public offer (and not a private sale or placement) and so any person can participate in the offer. The primary target is also Ghanaian pension funds and so the beneficial interest goes to the Ghanaian public through the pension funds. In fact, GAT has reached out to almost all the pension funds (and their fund managers and trustees) and has not made any presentation (during its market sounding efforts) to any private individuals.

4. Specific responses to the letter

In the light of the above background, GAT responds to the allegations in the letter as follows:

4.1 *Offloading GAT shares to its third party nominees without giving opportunity to original Ghanaian shareholders to buy same*

This is false. GAT is currently not involved in any sale of its shareholding in the selected banks. It has only proposed to undertake a public offer of its own shares (not the shares in the selected banks) to investors in the capital market for the purpose of redeeming the GHS 800 million preference shares issued to the Government of Ghana, subject to approval by the SEC of its draft prospectus and approval by the GSE of its listing application. Please refer to paragraph 3 above for more details.

If GAT decides to sell its shareholding in the selected banks, it will comply with the existing arrangement under the investment agreements to give priority (or right of first offer) to the relevant existing shareholders (as indicated under paragraph 2.4 above).

Again (and contrary to what has been stated in the letter), the Minister of Finance did not state anywhere in the 2022 Budget Statement that GAT will offload its shares to private individuals. The relevant portions on GAT can be found at paragraphs 400 to 404 and 420 of the Budget Statement, where the emphasis was on the intention to build on the success of GAT by converting it into a permanent investment vehicle to “*raise long-term capital to provide equity investments to strengthen financial institutions, and restructure companies in the hospitality, education, and export-oriented industries that were devastated by COVID-19.*”

4.2 *Investigation into board chairman and CEO of GAT for coordinating with the Ministry of Finance and the Bank of Ghana to implement the questionable transaction*

This has no basis. GAT conducts all its affairs and activities (including its investment in the selected banks) in compliance with applicable laws. Regarding any potential sale of GAT's shares in selected banks, when the time comes, GAT will do so in accordance with the investment agreements and applicable law.

4.3 *GAT's appointment of political directors who are representatives of Government is problematic*

This is also false and has no basis. *First*, GAT has not nominated or appointed any representative of Government to any of the selected banks. *Second*, all nominees of GAT for the boards of the selected banks have been selected in accordance with the Bank of Ghana's directives on corporate governance and fit and proper persons and other applicable law. *Third*, GAT has selected its nominee directors on the basis of competence and skill sets relevant for each selected bank. *Fourth*, GAT has influenced the selection of quality independent directors for the selected banks to ensure a balanced approach to board deliberations and decision making. *Fifth*, the Bank of Ghana goes through a rigorous process of vetting and approving the directors of the selected banks in accordance with the fit and proper person test. *Sixth*, GAT is not aware (nor has it received any complaint or adverse comment from a selected bank) that any of its nominee directors in the selected banks has disturbed (or is disturbing) or has politicised (or is politicising) the operations of any selected bank. *Finally*, there is no evidence to show that involvement of GAT and/or its nominee directors in the banks have adversely affected the banks. The evidence is rather clear that there has been an upturn in the performance of the banks as shown in the publicly reported financials of the selected banks.

4.4 *Fees charged by GAT are fraudulent or unethical*

This is also false and has no basis. All fees charged by GAT were disclosed, negotiated and agreed in the investment agreements (and related documents). The basis for the fees is to cover the expenses of GAT in relation to the assistance with the transformation agenda of the selected banks.

GAT has not received any formal or informal complaint from any selected bank on the fees or the fact the fees are affecting their operations or profits.

The argument that the fee will hamper the banks' ability to repay Government is also flawed. The banks are not responsible for repaying the Government since they do not have any contractual link with the Government.

5. Conclusions

- 5.1 From the above, the letter shows a lack of understanding of the rationale for GAT, what GAT has done and what GAT intends to do. We hope this brings clarity to the author of the letter, the general public and the potential investors of GAT.
- 5.2 GAT has kept its mandate, has been open, transparent and compliant with all applicable laws and will continue to do so. GAT will continue to engage with all stakeholders to ensure that the mandate is successfully and fully achieved.
- 5.3 GAT also wishes to reemphasize the following key benefits of the GAT intervention:
- (a) halting the downgrading of additional banks that would have added to the already stressed banking sector; and
 - (b) saving over 5,400 direct and 12,000 indirect jobs across the selected banks leading to job preservation and the creation of, at least, 1,000 further jobs through the business expansion component.

Issued by Ghana Amalgamated Trust Plc
Signed by Managing Director
24 December 2021
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