

GOVERNMENT NOTICE No. 726 published on 6/10/2023

THE BANKING AND FINANCIAL INSTITUTIONS ACT,
(CAP 342)

REGULATIONS

(Made under section 71)

THE BANKING AND FINANCIAL INSTITUTIONS (PROMPT CORRECTIVE ACTIONS)
REGULATIONS, 2023

ARRANGEMENT OF REGULATIONS

<i>Regulation</i>	<i>Title</i>
-------------------	--------------

PART I
PRELIMINARY PROVISIONS

1. Citation.
2. Application.
3. Interpretation.
4. Objectives.

PART II
CORRECTIVE ACTIONS

5. Mandatory actions for adequately capitalised bank or financial institution.
6. Discretionary actions for adequately capitalised bank or financial institution.
7. Mandatory actions for undercapitalised bank or financial institution.
8. Discretionary actions for undercapitalised bank or financial institution.
9. Mandatory actions for significantly undercapitalised bank or financial institution.
10. Discretionary actions for significantly undercapitalised bank or financial institution.
11. Critically undercapitalised bank or financial institution.

PART III
CAPITAL RESTORATION PLAN

- 12. Contents of capital restoration plan.
- 13. Review and approval of capital restoration plans.
- 14. Disapproval of capital restoration plan.
- 15. Failure to submit capital restoration plan.
- 16. Failure to implement capital restoration plan.
- 17. Amendment of capital restoration plan.

PART IV
GENERAL PROVISIONS

- 18. Sanctions.
- 19. Revocation.

—————
SCHEDULE
—————

THE BANKING AND FINANCIAL INSTITUTIONS ACT,
(CAP. 342)

REGULATIONS

(Made under section 71)

THE BANKING AND FINANCIAL INSTITUTIONS (PROMPT CORRECTIVE ACTIONS)
REGULATIONS, 2023

PART I
PRELIMINARY PROVISIONS

- | | |
|----------------|--|
| Citation | 1. These Regulations may be cited as the Banking and Financial Institutions (Prompt Corrective Actions) Regulations, 2023. |
| Application | 2. These Regulations shall apply to all banks and financial institutions. |
| Interpretation | 3. In these Regulations, unless the context otherwise requires- |
| | “Act” means the Banking and Financial Institutions Act; |
| | “adequately capitalised” in relation to a bank or financial institution, means tier 1 capital of not less than ten per cent of total risk-weighted assets and off balance sheet exposure determined in accordance to relevant regulations in relation to capital adequacy; |
| Cap. 197 | “Bank” has the meaning ascribed to it under the Bank of Tanzania Act; |
| | “bank” means an entity that is engaged in the banking business; |
| | “connected party” in relation to - |
| | (a) a body corporate means- |
| | (i) its holding company or subsidiary; |

- (ii) a subsidiary of its holding company;
- (iii) a holding company of its associates;
- (iv) a person who controls the company or body corporate whether alone or with his connected party;
- (b) an individual means-
 - (i) any member of his family;
 - (ii) any company or other body corporate controlled directly or indirectly by him whether alone or with his connected parties;

“control” shall be presumed to exist when a person directly or indirectly-

- (a) owns, controls, or has the power to vote more than fifty percent of the voting shares of another person;
- (b) controls in any manner the election of a majority of the directors of another person; or
- (c) has the power to exercise a controlling influence over the management or policies of another person;

“critically undercapitalised” in relation to a bank or financial institution, means tier 1 capital of less than four percent of risk-weighted assets and off balance sheet exposure determined in accordance to relevant regulations in relation to capital adequacy;

“financial institution” means an entity engaged in the business of banking, but limited as to size, locations served, or permitted activities, as prescribed by the Bank or required by the terms and conditions of its licence;

“significantly undercapitalised” in relation to a bank or financial institution, means tier 1 capital of less than six percent of total risk-weighted assets and off balance sheet exposure determined in accordance to relevant regulations in relation to capital adequacy;

“tier 1 capital” has the meaning ascribed to it under relevant regulations in relation to capital adequacy;

“undercapitalised” in relation to a bank or financial institution, means tier 1 capital of less than ten percent of total risk-weighted assets and off balance sheet exposure determined in accordance to relevant regulations in relation to capital adequacy;

“unsafe or unsound practice” means any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would result in abnormal risk of loss or damage to a bank or financial institution, depositors or shareholders.

Objectives

4. The objectives of these Regulations are to-
- (a) ensure timely and effective actions to deal with a weakening bank or financial institution;
 - (b) enhance transparency by establishing minimum actions the Bank shall take in addressing identified weaknesses in a bank or financial institution; and
 - (c) maintain confidence in the banking sector.

PART II CORRECTIVE ACTIONS

Mandatory
actions for
adequately
capitalised bank
or financial
institution

5.-(1) Where in the opinion of the Bank, an adequately capitalised bank or financial institution is likely to incur a loss which may result in it becoming undercapitalised, or is otherwise conducting its business in an unsafe or unsound manner, the Bank shall-

- (a) require the bank or financial institution to submit within such reasonable period as it may specify, a written plan of corrective action which-
 - (i) identifies the existing weaknesses in the administration or operations of the bank or financial institution;
 - (ii) determines in detail the corrective measures required to remedy such weaknesses;

- (iii) offers a realistic timetable for implementing such measures;
 - (b) prohibit the bank or financial institution from declaring and paying any dividends which would, in the opinion of the Bank, likely cause the banking institution to fail to comply with the requirements prescribed under relevant regulations in relation to capital adequacy; and
 - (c) intensify its oversight and monitoring of the bank or financial institution in accordance with the principles of risk-based supervision.
- (2) Unsafe or unsound banking practices referred to under subregulation (1) shall include the practices listed in the Schedule.

- | | |
|---|--|
| Discretionary
actions for
adequately
capitalised bank
or financial
institution | 6. The Bank may, in addition to any other actions prescribed in regulation 5-
(a) impose civil money penalties;
(b) issue cease and desist orders; or
(c) suspend or remove any director, officer or any other person in a managerial position. |
| Mandatory
actions for under
capitalised bank
or financial
institution | 7. Where a bank or financial institution is undercapitalised, the Bank shall-
(a) take measures prescribed in regulation 5; and
(b) direct the bank or financial institution to submit within thirty days from the date of the directive or such period as the Bank may specify, a capital restoration plan which will ensure that the bank or financial institution becomes adequately capitalised within such period as may be prescribed by the Bank. |
| Discretionary
actions for under
capitalised bank
or financial
institution | 8.-(1) The Bank may, in addition to actions prescribed in regulation 7, appoint a suitably qualified person who shall-
(a) advise and assist the bank or financial institution in designing and implementing the capital restoration plan; and
(b) regularly submit to the Bank a progress report of the plan.
(2) The Bank shall fix and pay remuneration of the person appointed under subregulation (1). |

Mandatory
actions for
significantly
undercapitalised
bank or financial
institution

9. Where a bank or financial institution is significantly undercapitalised, the Bank shall-

- (a) take measures prescribed in regulations 5(1) and 7(b);
- (b) prohibit the bank or financial institution from all transactions with connected parties, except for repayment of any outstanding credit accommodation or any transaction specifically permitted by the Bank to facilitate recapitalisation;
- (c) prohibit the bank or financial institution from awarding any bonuses or increments in the salary, emoluments and other benefits of its directors and officers; and
- (d) prohibit the bank or financial institution from opening any branches or other expansion of operations.

Discretionary
actions for
significantly
undercapitalised
bank or financial
institution

10. The Bank may, in addition to actions prescribed in regulation 9-

- (a) impose on a bank or financial institution restrictions in growth of assets, liabilities, or both;
- (b) restrict the rate of interest on deposits;
- (c) require a bank or financial institution to cease lending or any other business activity; or
- (d) require a bank or financial institution to submit a revised business plan.

Critically
undercapitalised
bank or financial
institution

11.-(1) Where a bank or financial institution is critically undercapitalised, the Bank shall-

- (a) take measures prescribed in regulations 5(1), 7(b) and 9; and
- (b) require a bank or financial institution to obtain prior approval before doing any of the following:
 - (i) entering into any material transaction not within the scope of an approved capital restoration plan;
 - (ii) extending credit for transactions deemed highly leveraged by the Bank;

- (iii) amending the bank or financial institution's memorandum and articles of association, except to the extent necessary to comply with any law, regulation, guideline or directive; and
- (iv) making any material change in accounting methods and policies.

(2) The Bank shall, within ninety days after it has determined that a bank or financial institution is critically undercapitalised, appoint a statutory manager or liquidator:

Provided that, the Bank shall not appoint a statutory manager or liquidator where-

- (a) tier 1 capital is greater than 2 percent of its total risk-weighted assets and off balance sheet exposures; and
- (b) the bank or financial institution is operating in compliance with a capital restoration plan accepted by the Bank.

PART III CAPITAL RESTORATION PLAN

Contents of
capital
restoration
plan

12.-(1) A capital restoration plan referred to under regulation 7 (b) shall set a feasible plan for restoring the capital of the bank or financial institution to a level that will make the bank or financial institution adequately capitalised.

(2) A capital restoration plan referred to under subregulation (1) shall, at minimum-

- (a) specify the level of capital to be achieved and maintained in each quarter;
- (b) describe actions that will be taken by the bank or financial institution to become adequately capitalised;
- (c) establish a time bound schedule for completing the actions set forth in the plan;
- (d) describe actions that the bank or financial institution will take to comply with any mandatory and discretionary requirements imposed under these Regulations; and
- (e) specify the types and levels of activities, including

existing and new activities in which the bank or financial institution will engage during the term of the plan, and

- (f) be accompanied with a written commitment by all significant shareholders to restore the capital of the bank or financial institution to the level required to be adequately capitalised.

Review and approval of capital restoration plans

13. The Bank shall, within thirty days upon receipt of a capital restoration plan under these Regulations, provide a written notice to the bank or financial institution on whether the plan has been approved or rejected.

Disapproval of capital restoration plan

14.-(1) Where a capital restoration plan is not approved by the Bank, the bank or financial institution shall submit a revised capital restoration plan within a period to be specified by the Bank.

(2) Notwithstanding the provisions of subregulation (1), an undercapitalised bank or financial institution shall be subject to any other actions that the Bank may determine.

(3) The provisions of subregulation (2) shall be applicable until such time as a new or revised capital restoration plan submitted by the bank or financial institution has been approved by the Bank.

Failure to submit capital restoration plan

15.-(1) A bank or financial institution that fails to submit a written capital restoration plan within the period specified under these Regulations shall, upon expiration of that period, be subject to provisions applicable to a critically undercapitalised bank or financial institution.

(2) The provisions of subregulation (1) shall be applicable until such time the capital restoration plan is submitted by the bank or financial institution and has been approved by the Bank provided such bank or financial institution is not critically under capitalised.

Failure to
implement
capital
restoration
plan

16.-(1) An undercapitalised or significantly undercapitalised bank or financial institution that fails, in any material respect, to implement a capital restoration plan shall be subject to provisions applicable to a critically undercapitalised bank or financial institution.

(2) The provisions of subregulation (1) shall be applicable until such time the bank or financial institution has implemented the capital restoration plan to the satisfaction of the Bank, provided that the bank or financial institution is not critically undercapitalised.

Amendment
of capital
restoration
plan

17.-(1) A bank or financial institution may, after prior written notice to and approval by the Bank, amend an approved capital restoration plan to reflect a change in circumstances.

(2) The bank or financial institution shall implement the approved capital restoration plan until the proposed amendment has been approved.

PART IV GENERAL PROVISIONS

Sanctions

18.-(1) Without prejudice to penalties and actions prescribed by the Act, the Bank may impose on any bank or financial institution any of the following sanctions for non-compliance:

- (a) a penalty of the amount to be determined by the Bank; and
- (b) disqualification from holding any position or office in any bank or financial institution under the supervision of the Bank.

(2) The penalty referred to in subregulation (1)(a) shall apply to directors, officers or employees of the bank or financial institution.

Revocation
and savings
GN No.
295 of 2014

19.-(1) The Banking and Financial Institutions (Prompt Corrective Action) Regulations, 2014 are hereby revoked.

(2). Notwithstanding the revocation of the Banking and Financial Institutions (Prompt Corrective Action) Regulations of 2014, all rules, circulars, orders, directions, notices, notification or other administrative act issued or undertaken before the commencement of these Regulations and which are in force immediately before the date of coming into operation of these Regulations shall remain in force until they are revoked, cancelled or varied by rules, circulars, orders, directions, notices, notification or other administrative act issued or given under these Regulations.

SCHEDULE

(Made under regulation 5)

Unsafe and Unsound Banking Actions and Practices

- A. Lack of Action deemed "Unsafe or Unsound"
 - 1. Non-existence of a sufficient internal control system that would prevent the bank employees from carrying out unsafe or unsound banking practices or violating the regulations, laws and instructions;
 - 2. Failure to build adequate provisions for non performing loans;
 - 3. Failure to follow correct accountancy procedures or lack of documented and accurate data of the accounts, clients, or the collateral for extended facilities.
 - 4. Failure to institute appropriate mechanism for collection of non performing loans.
- B. Actions deemed "Unsafe or Unsound":
 - 1. To maintain capital that is less than the acceptable level, while taking into account the bank's or financial institution's types of assets.
 - 2. To carry out unsafe practices related to the granting, follow-up, and collection of facilities including, but not exclusively limited, to the following:
 - (a) Extending facilities without suitable guarantees.
 - (b) Extending overdraft facilities without sufficient controls.
 - (c) Extending facilities on the strength of the balance sheet without sufficient controls.
 - (d) Credit Concentration including single borrower, sectoral and country exposures.
 - 3. Undertaking banking activities without sufficient liquidity.
 - 4. Undertaking banking activities without adequate internal controls including, but not limited to segregation of authorities in the bank.
 - 5. Implementing an investment policy that includes speculation and high-risk practices.
- C. Conditions deemed "Unsafe and Unsound":

1. Maintaining a significantly low interest rate margin compared to market or industry practices.
 2. High overhead expenses given the volume of the bank's activities.
 3. Rise in the rate of the non-performing loans or watch list loans compared with the overall loans or capital of the bank.
 4. Rise in the rate of charge off loans.
 5. Rise in the rate of non-performing assets.
 6. Concentration in the sources of funds.
- D. Violation of the relevant laws, regulations, circulars or directives issued by the Bank.

Dodoma,
....., 2023

EMMANUEL MPAWE TUTUBA,
Governor