

GOVERNMENT NOTICE No. 727 published on 6/10/2023

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

REGULATIONS

(Made under section 71)

THE BANKING AND FINANCIAL INSTITUTIONS (CAPITAL ADEQUACY)
REGULATIONS, 2023

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THE BANKING AND FINANCIAL INSTITUTIONS (CAPITAL ADEQUACY)
REGULATIONS, 2023

PART I
PRELIMINARY PROVISIONS

Citation	1. These Regulations may be cited as the Banking and Financial Institutions (Capital Adequacy) Regulations, 2023.
Application	2. These Regulations shall, except where prescribed otherwise by the Bank in any other Regulations, 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; “additional tier 1 capital” has the meaning ascribed to it under the Second Schedule;
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; “common equity tier 1” has the meaning ascribed to it under the Second Schedule; “community bank” means a financial institution serving a defined geographical area whose primary activities are restricted to acceptance of deposits and lending and such other activities as the Bank may specify; “credit accommodation” means loans, overdrafts and advances, leases, acceptances, performance and bid bonds, letters of credit, guarantees, foreign exchange contracts, and any other form of a direct or indirect financial obligation to a bank or financial institution; “deposit” means a sum of money paid on terms which- (a) require it to be repaid, with or without interest or premium of any kind, and either on demand or at a time in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and (b) is not referable to the provision of property or services or the giving of security, whether or not evidenced by any entry in a record of the person receiving the sum or by any receipt, certificate, note or other document, and references in this Act to money deposited and to the making of a deposit shall be construed accordingly; “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; “fully-fledged bank” means a bank or financial institution which conducts all permissible activities pursuant to the provisions of the Act;

- “limited-scope bank” means a bank or financial institution which carries out limited scope banking business including limitation of accepting deposits payable upon demand or subject to withdrawal by cheque;
- “long position” means the holding by a bank or financial institution of a currency, security or other asset for its own account in excess of all its contractual spot and forward transaction commitments in that currency, security or other asset;
- “market risk” means a current or prospective exposure to earnings or capital arising from adverse movements in market prices of foreign exchange, equity and commodity prices and interest rates;
- “microfinance bank” means a bank or financial institution which undertakes banking business mainly with individuals, groups and micro and small enterprises in rural or urban areas;
- “net open position” means the net sum of all foreign exchange assets and liabilities of a bank or financial institution inclusive of all of its spot and forward transactions and off balance sheet items in that foreign currency;
- “off balance sheet exposure” means all items not shown on the balance sheet but which constitute credit risk or other risks as determined by the Bank; and such items include guarantees, acceptances, performance bonds, letters of credit, interest and exchange rate related items, and other off balance sheet items deemed by the Bank to constitute risks;
- “officer” shall have the meaning ascribed to it under the Act;
- “short position” means the holding by a bank or financial institution of a currency, security or other asset for its own account less than all its contractual spot and forward transaction commitments in that currency, security or other asset;
- “significant interest” means a holding of five per cent or more of the voting shares of a bank or financial institution;
- “subsidiary” means a company that is owned or controlled by another company;
- “tier 1 capital” means the sum of common equity tier 1 capital and Additional tier 1 capital as prescribed under the Second Schedule;
- “tier 2 capital” has the meaning ascribed to it under the Second Schedule;
- “total capital” means the sum of tier 1 capital and tier 2 capital as prescribed under the Second Schedule; and
- “undercapitalized” means having tier 1 capital of less than the minimum capital required under these Regulations.

Objectives

4. The objectives of these Regulations are to-
- (a) ensure that banks and financial institutions maintain a level of capital which is adequate to protect them against the current and future risk of loss that may arise out of their business activities;
 - (b) ensure that banks and financial institutions maintain capital adequacy standards in line with internationally accepted best practices; and
 - (c) promote and maintain public confidence in the banking sector.

PART II
CAPITAL ADEQUACY REQUIREMENTS

Minimum tier 1 capital	5. A bank or financial institution shall commence operations with and maintain at all times a minimum tier 1 capital of not less than the amount indicated in the First Schedule or such higher amount as the Bank may determine.
Prohibition from operating demand deposit account	6. A bank or financial institution other than a fully-fledged bank shall not accept or receive money on current account subject to withdrawal by cheque unless it has minimum tier 1 capital of fifteen billion shillings and has obtained prior approval of the Bank.
Requirements for community banks	7.-(1) A community bank shall not establish a branch, agency or other office unless it has a minimum tier 1 capital of five billion shillings and has obtained prior approval of the Bank. (2) Shareholders of a community bank shall, in accordance with a capital build-up programme approved by the Bank at the time of licensing, increase the tier 1 capital to not less than twice the minimum amount specified under regulation 5 within a period of five years from the date of approval of its licence. (3) Every holder of a significant interest in a community bank shall execute an undertaking to fulfill, <i>inter alia</i>, his obligations under the capital build-up programme approved by the Bank, and to abide by any order, instruction or directive which the Bank may issue.

Capital adequacy ratios	8.-(1) A bank or financial institution shall at all times maintain a minimum- (a) common equity tier 1 capital of not less than eight and one half percent of its total risk-weighted assets and off balance sheet exposures; (b) tier 1 capital of not less than ten percent of its total risk-weighted assets and off balance sheet exposures; and (c) total capital of not less than twelve percent of its total risk weighted assets and off balance sheet exposures. (2) Elements of capital and their respective regulatory adjustments shall be as prescribed in the Second Schedule. (3) All banks and financial institutions existing prior to the commencement of these Regulations shall be given a moratorium of eighteen months from the date of publication of these Regulations to comply with the requirements provided under sub-regulation (1).
Capital buffers	9.-(1) In addition to the minimum capital requirements, every bank and financial institution shall maintain a capital conservation buffer of 2.5 percent of its total risk weighted assets and off balance sheet exposures made up of common equity tier 1 capital elements. (2) The Bank shall determine which banks or financial institutions are of domestic systemic importance and may require such banks or financial institutions to hold an additional capital buffer, other than capital conservation buffer as may be determined by the Bank. (3) The Bank may issue directives requiring a bank or financial institution to hold other capital buffers in addition to capital buffers referred to in subregulations (1) and (2). (4) For the purpose of regulation 9(2), domestic systemically important banks or financial institutions means a bank whose systemic risk profile is deemed to be of such importance that the bank's failure would trigger a wider financial crisis and threaten the domestic economy.
Failure to meet capital buffers	10. Where a bank or financial institution is not in compliance with the capital conservation buffer or combined buffer requirements, but is still meeting the minimum capital requirements, the bank or financial institution shall not declare, credit or pay any dividend or bonuses to senior management or make any other transfers from profits that will result into capital reduction until the buffer is restored.
Internal capital adequacy assessment process	11.-(1) A bank or financial institution shall have an internal capital adequacy assessment process for assessing overall capital adequacy in relation to their risk profile and a strategy for maintaining adequate capital levels. (2) The internal capital adequacy assessment process in subregulation (1) shall be - (a) prepared in accordance with the Guidelines issued by the Bank; (b) submitted to the Bank for annual review; and (c) subject to regular internal review to ensure that it remains comprehensive and proportionate to the nature, scale and complexity of the activities of the bank or financial institution. (3) All banks and financial institutions existing prior to the

commencement of these Regulations shall be given a moratorium of eighteen months from the date of publication of these Regulations to comply with the requirements provided under sub-regulation (1).

Leverage
ratio

12.-(1) A bank or financial institution shall at all time maintain a leverage ratio of at least 7 percent.

(2) The leverage ratio in subregulation (1) shall be calculated as prescribed in the Second Schedule.

(3) All banks and financial institutions existing prior to the commencement of these Regulations shall be given a moratorium of eighteen months from the date of publication of these Regulations to comply with the requirements provided under sub-regulation (1).

Risk
weighted
assets and off
balance sheet
exposures

13.-(1) The total risk-weighted assets and off balance sheet exposures shall be determined in accordance with procedures stipulated by the Bank.

(2) All banks and financial institutions existing prior to the commencement of these Regulations shall be given a moratorium of eighteen months from the date of publication of these Regulations to comply with the requirements provided under subregulation (1).

Capital
charge for
credit risk,
market risk
and
operational
risk

14.-(1) A bank or financial institution shall measure and apply capital charges in respect of credit risk, market risk and operational risk.

(2) Capital charge for credit risk, market risk and operational risk shall be determined in the manner prescribed by the Bank.

(3) All banks and financial institutions existing prior to the commencement of these Regulations shall be given a moratorium of eighteen months from the date of publication of these Regulations to comply with the requirements provided under subregulation (2).

Exemption
from market
risk
requirements

15. A bank or financial institution may apply to the Bank to be exempted from the capital adequacy requirements for market risk or any part thereof, provided it can demonstrate on a continuing basis that-

- (a) its foreign currency business, defined as the greater of the sum of its gross long and short positions in all foreign currencies, does not exceed one hundred percent of tier 1 capital, and its overall net open position does not exceed two percent of tier 1 capital; and
- (b) its total trading book assets do not exceed 5 percent of total assets.

Trading book	16.- (1) Trading Book shall be determined in accordance with procedures prescribed by the Bank. (2) All banks and financial institutions existing prior to the commencement of these Regulations shall be given a moratorium of eighteen months from the date of publication of these Regulations to comply with the requirements provided under subregulation (1).
Computation of capital adequacy ratio	17.-(1) The capital charges for market risk and operational risk calculated under regulation 14 shall be multiplied by a reciprocal of the minimum total capital adequacy ratio of twelve percent and added to the sum of risk-weighted assets and off balance sheet exposures for credit risk. (2) The capital adequacy ratios for a bank or financial institution shall be calculated by dividing Common Equity tier 1 capital, tier 1 capital and total capital by the sum mentioned in subregulation (1) to determine whether the bank or financial institution satisfies the minimum capital adequacy ratios prescribed under regulation 8.
Additional capital requirements	18.-(1) The Bank may prescribe additional capital requirements based on the risk profile of a bank or financial institution. (2) A bank or financial institution authorised to carry out the function of a trustee, or to perform additional activities specified in the Banking and Financial Institutions (Licensing) Regulations, 2014 shall be required to comply with additional capital requirements prescribed by the Bank.
GN. No. 297 of 2014	
Application on solo and consolidated basis	19.-(1) Where a bank or financial institution directly or indirectly owns or controls another bank or financial institution, the capital adequacy requirements shall be satisfied by each bank or financial institution on a solo basis, and the parent company shall comply with the capital adequacy requirements on a solo and consolidated basis. (2) For the purpose of computing the capital position, the principal office of each bank or financial institution in the United Republic and all its branches and agencies, regardless of country of domicile, shall be considered as a single unit. (3) For the purpose of this regulation parent company means the bank or financial institution that directly or indirectly controls another bank or financial institution.
Remedial measures	20. Where, in the opinion of the Bank, a bank or financial institution is undercapitalised, the Bank shall take measures prescribed in the relevant regulations relating to prompt corrective action, to address the undercapitalization: Provided that such regulations or these Regulations shall not preclude the Bank from taking other remedial measures under the Act.
Computation of capital	21. A bank or financial institution shall- (a) compute in the prescribed manner its capital position by comparing its required capital with its available capital as at the close of business for the day; (b) include in the computation of the required minimum capital any directive to increase its capital; and (c) maintain suitable and adequate records to facilitate verification of its capital position.

Banking and Financial Institutions (Capital Adequacy)

GN. NO.727 (Contd.)

Capital adequacy reports	22. A bank or financial institution shall submit to the Bank, capital adequacy reports in the format and frequency prescribed by the Bank.
External auditor's statement	23. A bank or financial institution shall require its external auditor to- (a) review its capital position as at the end of each financial year, taking into account the requirements of the Act and all regulations issued thereunder; and (b) draw a note on the adequacy of its capital in the audited financial statements.
Sanctions and penalties	24.-(1) Without prejudice to penalties and actions prescribed by the Act, failure to comply with any provision of these Regulations shall attract one or more of the following sanctions: (a) prohibition from declaring or paying dividends; (b) suspension from opening new branches; (c) suspension of access to the credit facilities of the Bank; (d) suspension from lending and investment operations; (e) suspension of the activity to issue letters of credit or guarantees; (f) suspension of capital expenditure; (g) revocation of banking licence; (h) suspension from office of the defaulting director, officer or employee; and (i) disqualification from holding any position or office in any bank or financial institution under the supervision of the Bank. (2) A director or officer of a bank or financial institution who intentionally sanctions or votes for the approval of any credit accommodation, branch expansion or capital expenditure while the bank or financial institution remains under suspension as provided under subregulation (1)(b) to (f) shall be suspended from office. (3) The suspension from office prescribed under subregulation (1)(h) shall be without prejudice to any other punitive measures the Bank may take against the defaulting director, officer or employee.
Revocation and savings GN No. 290 of 2014	25.-(1) The Banking and Financial Institutions (Capital Adequacy) Regulations, 2014 are hereby revoked. (2) Notwithstanding the revocation of the Banking and Financial Institutions (Capital Adequacy) 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.

FIRST SCHEDULE

(Made under regulation 5)

MINIMUM TIER 1 CAPITAL REQUIREMENTS FOR BANKS AND FINANCIAL INSTITUTIONS

S/No.	Types of Institutions	Minimum Tier 1 Capital
1.	Fully-fledged Banks	
	Commercial Banks	fifteen billion shillings
2.	Limited Scope Banks	
	Microfinance Banks	five billion shillings
	Community Banks	two billion shillings
3.	Specialised Institutions	
	Development Finance Institutions	two hundred billion shillings
	Finance Lease Companies	one billion shillings
	Housing Finance Companies	fifteen billion shillings
	Mortgage Refinance Company	thirty billion shillings
	Islamic Banks	fifteen billion shillings

SECOND SCHEDULE

(Made under regulations 8 and 12)

DEFINITION AND COMPUTATION OF CAPITAL

1. Total capital
Total capital shall consist of the sum of the following elements net of associated regulatory adjustments:
 - (a) tier 1 capital consisting of:
 - (i) Common Equity tier 1 capital; and
 - (ii) Additional tier 1 capital.
 - (b) tier 2 capitalThe criteria for the capital elements comprising the two tiers, as well as the various limits, restrictions and regulatory adjustments, to which they are subject, are described below.
2. Tier 1 capital
The tier 1 capital shall consist of the sum of the Common Equity tier 1 capital and additional tier 1 capital elements and instruments as defined under item 4 below.
3. Common Equity tier 1 elements
Common Equity tier 1 capital prior to regulatory adjustments, consists of the sum of the following elements:
 - (a) Ordinary shares issued by the bank or financial institution;
 - (b) Share premium resulting from the issue of instruments included in Common Equity tier 1;
 - (c) Retained earnings less foreseeable dividends;
 - (d) Other disclosed reserves; and
 - (e) Year to date profits of:
 - (i) Fifty per cent of the year-to-date profits less foreseeable dividends where accounts are unaudited; or
 - (ii) One hundred percent of the year-to-date profits, less foreseeable dividends, where accounts have been audited subject to submission of the signed accounts to the Bank.
4. Deductions from Common Equity tier 1 items
Banks and financial institutions shall deduct the following from Common Equity tier 1 capital:
 - (a) year to date losses;
 - (b) goodwill;
 - (c) other intangible assets;
 - (d) deferred tax assets that rely on future profitability;
 - (e) the amount of items where entities with which the bank has reciprocal cross holdings of Common Equity tier 1 instrument that the Central Bank considers to have been designed to inflate artificially the own funds of the bank;
 - (f) the amount of items required to be deducted from additional tier 1 items that exceed the additional tier 1 capital of the bank.
 - (g) pre-paid expenses; and
 - (h) pre-operating expenses.
5. Additional tier 1 items
Additional tier 1 items shall consist of the following:
 - (a) non-cumulative irredeemable preference shares;
 - (b) share premium arising from non-cumulative irredeemable preference shares; and

- (c) other qualifying additional tier-1 capital instruments plus any related share premium.
- 6. Deductions from additional tier 1 items.
Bank or financial institution shall deduct the following from additional tier 1 items:
 - (a) the amount of items required to be deducted from tier 2 items that exceed the tier 2 capital of the bank; and
 - (b) other items qualifying to be deducted from additional tier-1 capital.
- 7. Tier 2 elements
Tier 2 capital elements shall consist of the following:
 - (a) capital instruments and subordinated loans that meet the conditions under item 8;
 - (b) the share premium accounts related to instruments referred to in point (a);
 - (c) general provisions or general reserves for loan losses-up to maximum of 1.25% of credit risk-weighted assets; and
 - (d) instruments issued by consolidated subsidiaries and held by third parties that met the criteria indicated by paragraph 8.
- 8. Criteria for inclusion in tier 2 capital
Capital instruments and subordinated loans shall qualify as tier 2 instruments provided that the following conditions are met:
 - (a) the instruments are issued or the subordinated loans are raised, as applicable, and fully paid-up;
 - (b) the instruments are not purchased or the subordinated loans are not granted, as applicable, by any of the following:
 - (i) the bank or financial institution or its subsidiaries; or
 - (ii) an undertaking in which the bank or financial institution has participation in the form of ownership, direct or by way of control, of twenty percent or more of the voting rights or capital of that undertaking;
 - (c) the purchase of the instruments or the granting of the subordinated loans, as applicable, is not funded directly or indirectly by the bank or financial institution;
 - (d) the claim on the principal amount of the instruments or subordinated loans is wholly subordinated to claims of all non-subordinated creditors;
 - (e) the instruments or subordinated loans, as applicable, are neither secured, nor subject to a guarantee that enhances the seniority of the claim by any of the following:
 - (i) the bank or financial institution or its subsidiaries;
 - (ii) the parent undertaking of the bank or financial institution or its subsidiaries;
 - (iii) the parent financial holding company or its subsidiaries;
 - (f) the instruments or subordinated loans, as applicable, have an original maturity of at least five years;
 - (g) the provisions governing the instruments or subordinated loans, as applicable, do not include any incentive for their principal amount to be redeemed or repaid, as applicable by the bank or financial institution prior to their maturity.
- 9. Deduction from tier 2 capital
The following shall be deducted from tier 2 capital:
 - (a) direct, indirect and synthetic holdings by the bank or financial institution of own tier 2 instruments, including own tier 2 instruments that the bank or financial institution could be obliged to purchase as a result of existing contractual obligations;
 - (b) direct, indirect and synthetic holdings of the tier 2 instruments of financial sector entities with which the bank or financial institution has reciprocal cross holdings that the Bank considers to have been designed to inflate artificially the own funds of the bank or financial institution; and
 - (c) direct, indirect and synthetic holdings by the bank of the tier 2 instruments of financial sector entities.

10. Minority interest arising from the issue of common shares by a fully consolidated subsidiary of the bank or financial institution may receive recognition in Common Equity tier 1 capital, tier 1 capital or tier 2 capital only if-
 - (a) the instrument giving rise to the minority interest would, if issued by the bank or financial institution, meet all of the criteria for classification as Common Equity tier 1, tier 1 capital or tier 2 capital for regulatory capital purposes; and
 - (b) The subsidiary that issued the instrument is itself a bank or financial institution.
11. The amount of minority interest meeting the criteria that will be recognised in the consolidated Common Equity tier 1 capital, tier 1 capital or tier 2 capital will be calculated as total minority interest meeting the criteria given in paragraph 10(a) and (b) minus the amount of the surplus capital of the subsidiary. Surplus capital of the subsidiary that is attributable to the minority shareholders is calculated as follows:
 - (a) Surplus Common Equity tier 1 is calculated as the Common Equity tier 1 of the subsidiary minus the lower of;
 - (i) eleven percent of risk-weighted assets of the subsidiary and eleven percent of consolidated risk-weighted assets that relates to the subsidiary; and
 - (ii) the amount of the surplus Common Equity tier 1 that is attributable to the minority shareholders is calculated by multiplying the surplus Common Equity tier 1 by the percentage of Common Equity tier 1 that is held by minority shareholders
 - (b) Surplus tier 1 capital of the subsidiary is calculated as the tier 1 of the subsidiary minus the lower of:
 - (i) 12.5% of risk-weighted assets of the subsidiary and 12.5% of consolidated risk-weighted assets that relates to the subsidiary.
 - (ii) the amount of the surplus tier 1 that is attributable to the third party investors is calculated by multiplying the surplus tier 1 by the percentage of tier 1 that is held by third party investors.
 - (iii) the portion that will be recognised in tier 1 capital will exclude amounts recognised in Common Equity tier 1.
 - (c) Surplus total capital of the subsidiary is calculated as the total capital of the subsidiary minus the lower of-
 - (i) 14.5% of risk-weighted assets of the subsidiary and 14.5% of consolidated risk-weighted assets that relates to the subsidiary
 - (ii) the portion of the consolidated minimum total capital requirement plus the capital conservation buffer that relates to the subsidiary.
 - (iii) the amount of this total capital that will be recognised in tier 2 will exclude amounts recognised in Common Equity tier 1 and amounts recognised in additional tier 1.
 - (d) The amount of the surplus total capital that is attributable to the third party investors is calculated by multiplying the surplus under (a), (b) and (c) above by the percentage of total capital that is held by third party investors.

B: LEVERAGE RATIO

1. The leverage ratio is defined as the capital measure divided by the exposure measure, expressed as a percentage:

$$\text{Leverage Ratio} = \frac{\text{Capital Measure}}{\text{Exposure Measure}}$$

2. Capital measure: The capital measure is tier 1 capital as defined for purposes of the Basel III risk-based capital framework and relevant regulations relating to Capital Adequacy. In other

words, the capital measure for the leverage ratio at a particular point in time is the applicable tier 1 capital measure at that time.

3. Exposure measure: The exposure measure includes both on balance sheet exposures and off balance sheet (OBS) items.
- (i) On balance sheet exposures are generally included at their accounting value. Except where a different treatment is specified, no offset is allowed for physical or financial collateral held, guarantees in favour of the bank or financial institution or other credit risk mitigation techniques. Balance sheet assets that are deducted from tier 1 capital may also be deducted from the exposure measure.
 - (ii) Off balance sheet items arise from such transactions as credit and liquidity commitments, guarantees and standby letters of credit. The amount that is included in the exposure measure is determined by multiplying the notional amount of an OBS item by the relevant credit conversion factors. The credit conversion factors will be as follows:
- 2.1.1 Off balance sheet items shall be converted into credit exposures equivalents through the use of credit conversion factors (CCF) as follows:

S/N	Off Balance Sheet Item	Credit Conversion Factor
1.	Commitments that are unconditionally cancellable at any time by the bank or financial institution without prior notice, or that effectively provide for automatic cancellation due to deterioration in a borrower's credit worthiness.	10%
2.	Guarantees and Acceptances	100%
3.	Forward asset purchases, forward deposits and partly paid shares and securities, which represent commitments with certain drawdown.	100%
4.	Performance bonds, Bid bonds and Warranties	50%
5.	Short-term self-liquidating trade letters of credit arising from the movement of goods (eg documentary credits collateralized by the underlying shipment), to both issuing and confirming banks.	20%
6.	Other Letters of Credit	50%
7.	Undrawn commitments of Loans and Overdrafts that are unconditionally cancellable without prior notice.	10%
8.	Other Undrawn commitments of Loans and Overdrafts	50%

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EMMANUEL MPAWE TUTUBA,
Governor