THE BANKING AND FINANCIAL INSTITUTIONS (CAPITAL ADEQUACY) REGULATIONS, 2008

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THE BANKING AND FINANCIAL INSTITUTIONS ACT

(CAP 342)

REGULATIONS

(Made under Section 71)

THE BANKING AND FINANCIAL INSTITUTIONS (CAPITAL ADEQUACY) REGULATIONS, 2008

PART I
PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Banking Financial Institutions (Capital Adequacy) Regulations, 2008 and shall come into operation on the date of publication in the Gazette.

2. These Regulations shall apply to all banks and financial institutions save for microfinance companies and financial cooperatives.

3. These Regulations, unless the context requires otherwise:

   “Act” means the Banking and Financial Institutions Act;
   “Bank” means the Bank of Tanzania;
   “bank” has the meaning ascribed to it in the Act;
   “community bank” means a financial institution serving a defined geographical area whose primary activities shall be restricted to acceptance of deposits and lending and such other activities as the Bank may specify;
   “core capital” or “tier 1 capital” has the meaning ascribed to it in the Act;
   “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” has the meaning ascribed to it in the Act;
   “financial cooperatives” has the meaning ascribed to it in the Banking and Financial Institutions (Financial Cooperative Societies) Regulations, 2005;
   “financial institution” has the meaning ascribed to it in the Act;
   “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;

“off-balance sheet exposure” has the meaning ascribed to it in the Act;

“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 company” has the meaning ascribed to it in the Act;

“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;

“short position” means the holding by the 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” has the meaning ascribed to it in the Act;

“subordinated debt” means a debt with original fixed term maturity of not less than 5 years and satisfying the Bank’s conditions for tier 2 capital as stipulated in regulation 14 of these regulations;

“subsidiary” has the meaning ascribed to it in the Act;

“supplementary capital” or “tier 2 capital” has the meaning ascribed to it in the Act;

“total capital” has the meaning ascribed to it in the Act;

“officer” has the meaning ascribed to it in the Act;

“undercapitalized” means core capital of less than the minimum capital required under these Regulations.

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 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) help promote and maintain public confidence in the Tanzanian banking sector.

PART II
CAPITAL ADEQUACY REQUIREMENTS

5. Every bank shall commence operations with and maintain at all times a minimum core capital of not less than five billion shillings or such higher amount as the Bank may determine.
6.- (1) A financial institution other than a community bank, microfinance company and financial cooperative shall commence operations with a core capital not less than two billion five hundred million shillings or such higher amount as the Bank may determine.

(2) A financial institution shall not accept deposits payable upon demand or subject to withdrawal by cheque unless it has minimum core capital of five billion shillings and has received the prior approval of the Bank.

7.- (1) A community bank shall commence operations with a core capital not less than two hundred and fifty million shillings or such higher amount as the Bank may determine.

(2) A community bank shall not establish a branch, agency or other office unless it has minimum core capital of five hundred million shillings and has obtained prior approval of the Bank.

(3) Shareholders of the community bank shall increase the core capital to not less than twice the minimum amount specified under sub-regulation (1) within a period of five years from the date of approval of its license, in accordance with a capital build-up programme approved by the Bank at the time of licensing.

(4) Every holder of a significant interest in a community bank shall execute an undertaking to fulfil, *inter alia*, 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.

8. Every microfinance company or financial cooperative shall commence operations with a minimum core capital as prescribed in the Banking and Financial Institutions (Microfinance Companies and Microcredit Activities) Regulations, 2005 and The Banking and Financial Institutions (Financial Cooperative Societies) Regulations, 2005, respectively.

9. Where a financial institution fails to comply with provisions of Regulations 6 or 7 at the date on which Regulations come into operation, the Bank may prescribe an additional period within which the financial institution shall increase its capital to the amount required.

10. Every bank or financial institution shall maintain at all times a minimum core capital and total capital equivalent to ten percent and twelve percent respectively of its total risk-weighted assets and off-balance sheet exposures.

11. The total risk-weighted assets and total risk-weighted off-balance sheet exposure shall be determined in accordance with procedures...
Available capital

12. In determining the amount of available capital for the purposes of computing the minimum capital required under regulations 5, 6, 7, 10 and 11, the bank or financial institution shall consider the following:
   (a) fifty per cent of the year to date profits where accounts are unaudited;
   (b) One hundred percent of the year to date profits where accounts have been audited subject to submission of the signed accounts to the Bank;
   (c) amount of the investment of the bank or financial institution in the capital of another company, firm, entity or subsidiary to the extent of the reciprocal investment of such company, firm, entity or subsidiary in the capital of the bank or financial institution shall be deducted from the capital of that bank or financial institution.

Subordinated debt

13. The aggregate amount of subordinated debt that may be eligible and recognized by the Bank as supplementary capital is limited to fifty percent of core capital, provided that such subordinated debt shall:
   (a) be discounted by a cumulative factor of twenty percent per year during the last five years to maturity;
   (b) be unsecured, uninsured and are not a deposit;
   (c) have an original maturity of not less than five years;
   (d) be subordinated to claims of all depositors and general creditors of the bank or financial institution;
   (e) not be redeemable at the option of the holder prior to maturity, except with the prior approval of the Bank; and
   (f) have no requirement for payments of principal or interest except to the extent that the bank or financial institution is solvent and shall remain solvent immediately thereafter.

Hybrid instruments or preferred stock

14.-(1) A bank or financial institution intending to include hybrid instruments or preferred stocks not qualifying as tier 1 capital in supplementary capital for the purposes of satisfying the requirements of regulations 5, 6, 7, 10 and 11 shall apply to the Bank for approval.
   (2) In considering an application under sub-regulation (1), the Bank shall take into account whether the instruments satisfy the requirements for eligible subordinated debt specified in regulation 13.

Additional capital requirements

15.-(1) The Bank may prescribe additional capital requirements based on the risk profile of a bank or financial institution.
(2) A bank authorized to carry out the function of a trustee, to establish a branch or subsidiary abroad, or to perform additional activities specified in the Banking and Financial Institutions (Licensing) Regulations, 2008 shall be required to satisfy additional capital requirements prescribed by the Bank.

16.-(1) Where a bank or finance institution owns or controls another bank or financial institution, directly or indirectly, 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 and financial institution in Tanzania 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 financial institutions that controls another bank or financial institutions directly or indirectly.

17. Where, in the opinion of the Bank, a bank or financial institution is undercapitalized, the Bank shall take measures prescribed in the Banking and Financial Institutions (Prompt Corrective Action) Regulations, 2008 to address the undercapitalization and nothing in such Regulations or these Regulations shall preclude the Bank from taking other remedial measures provided by the Act.

18.-(1) Every bank or financial institution shall measure and apply capital charges in respect of market risk.

(2) The minimum capital requirements for foreign exchange risk, interest rate risk and equity position risk shall be determined by applying the Standardized Measurement Method specified in the Basel Committee on Banking Supervision or such other methods as the Bank may approve.

19. 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 that on a continuing basis-

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

**Trading book**

20. Financial instruments, including derivative products such as forwards, options or swaps, shall be allocated to the trading book if they are-

(a) held for short-term resale;
(b) purchased with the intention of benefiting in the short term from actual and/or expected differences between their buying and selling prices (arbitrage), or from other price or interest rate variations;
(c) arising from broking or market-making;
(d) held in order to hedge other elements of the trading book.

**Computation of capital adequacy ratio**

21.-(1) The individual market risk capital charges calculated under regulation 18 shall be multiplied by the reciprocal of the minimum capital adequacy ratio of twelve percent and added to the sum of risk-weighted assets.

(2) The capital adequacy ratios for a bank or financial institution shall be calculated in relation to the sum mentioned in sub-regulation (1) by using core capital and total capital to determine whether the bank or financial institution satisfies the minimum requirements.

**PART III MISCELLANEOUS PROVISIONS**

22. Every 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.

23. A bank or financial institution shall, unless exempted under regulation 19, submit to the Bank a monthly report on its market risk exposure within fifteen days following the end of the reference month in accordance with the format prescribed by the Bank.

24. Every bank or financial institution shall require its independent auditor to compute its capital position as at the end of each financial year, taking into account the requirements of the Act and all Regulations issued
Banking and Financial Institutions (Capital Adequacy)

G.N. No. 373

thereunder and draw a note on the adequacy of its capital in the Audited Financial Statement.

25. Every bank or financial institution shall submit to the Bank information provided under regulation 24 not later than three months after the close of the financial year.

26.- (1) Without prejudice to other 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 letter of credit/guarantee;
(f) suspension of capital expenditure;
(g) revocation of banking license;
(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 institutions in Tanzania.

(2) Any director, officer or employee of a bank 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 paragraphs (b) to (f) of sub-regulation (1) shall be suspended from office.

(3) The suspension from office prescribed under paragraph (h) of sub-regulation (1) shall be without prejudice to any other punitive measures the Bank may take against the defaulting director, officer or employee.

27. The Capital Adequacy Regulations, 2001 are hereby revoked.

Dar Es Salaam, 3rd December 2008

BENNO J. NDULU
Governor