GOVERNMENT NOTICE NO. 292 published on 22/08/2014

THE BANKING AND FINANCIAL INSTITUTIONS (FOREIGN EXCHANGE EXPOSURE LIMITS) REGULATIONS, 2014

ARRANGEMENT OF REGULATIONS

Regulation *Title*

G.N. No. 292

THE BANKING AND FINANCIAL INSTITUTIONS ACT
(CAP 342)

REGULATIONS

(Made under section 71)

THE BANKING AND FINANCIAL INSTITUTIONS (FOREIGN EXCHANGE EXPOSURE LIMITS) REGULATIONS, 2014

PART I
PRELIMINARY PROVISIONS

Citation

1. These Regulations may be cited as the Banking and Financial Institutions (Foreign Exchange Exposure Limits) Regulations, 2014.

Application

2. These Regulations shall apply to all banks and financial institutions except where prescribed otherwise by the Bank in any other Regulations.

Interpretation

3. In these Regulations, unless the context otherwise requires-

"Act" means the Banking and Financial Institutions Act;

"authorised foreign exchange dealer" means a bank or financial institution authorised to operate in the Inter-bank Foreign Exchange Market;

"Bank" means the Bank of Tanzania;

"core capital" has the meaning ascribed to it in the Act;

"correspondent bank" means a foreign bank which has correspondent relationship with a bank or financial institution in the United Republic;

"country risk" means the risk that a foreign government will significantly alter its policies or other regulations so that it negatively impacts the business climate in that country or the returns on a particular industry, company, or project;

"first class international bank" has the meaning ascribed to it in the Act;

"foreign currency" has the meaning ascribed to it in the Foreign Exchange Act;

"foreign currency assets" means all assets denominated in foreign currency;

"foreign currency liabilities" means all liabilities denominated in foreign currency;

"foreign exchange placement" means foreign exchange held or placed with other banks or financial institutions outside the United Republic;

"interbank foreign exchange market" means foreign exchange spot, forward or such other foreign exchange trading mechanism as authorised to be undertaken in the United Republic in accordance with rules, guidelines, regulations and directives issued by the Bank;

"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;

"net open position" means the net sum of all foreign currency 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" has the meaning ascribed to it in the Act;

"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;

"shorthand method" means the calculation of overall foreign exchange risk exposure by determining the greater of the sum of all net long positions or the sum of all net short positions in each currency, converted to Tanzania Shilling at the prevailing spot mid-rate; and

"transfer risk" means the risk associated with the possibility of a currency not being able to be sent out of the country, usually due to central bank restrictions or a national debt rescheduling.

Objectives

4. The objectives of these Regulations are to ensure that banks and financial institutions-

(a) have adequate policies and procedures to identify, monitor and manage foreign exchange risk; and

(b) maintain risk management standards that conform to established international norms.

PART II

ELIGIBILITY FOR FOREIGN EXCHANGE OPERATIONS

Board responsibility

5.-(1) The Board of Directors of a bank or financial institution shall ensure that policies consistent with principles set out in the Risk Management Guidelines for Banks and Financial Institutions issued by the Bank are put in place, and shall be fully responsible and accountable for the execution of such policies.

(2) The policies referred to in sub-regulation (1) shall at minimum include-

(a) description of the bank or financial institution's foreign exchange activities;

(b) clear, prudent and detailed limits of bank's or financial institution's foreign exchange risk exposure which are compatible with its operational and financial abilities, and risk levels it is ready to accept;

(c) description of authority levels at the bank or financial institution regarding foreign exchange operations and risk; and

(d) description of procedures and processes for identifying, measuring, monitoring and controlling country risk and transfer risk in its international lending and investment activities.

(3) The policies referred to under sub-regulation (1) shall be reviewed annually or more frequently as may be necessary to ensure that they remain appropriate and prudent.

Foreign currency lending

6. A bank or financial institution shall not lend in foreign currency unless-

(a) borrowers have foreign currency income or have taken other measures to mitigate foreign exchange risk; and

(b) foreign exchange credit facilities are granted to borrowers operating and investing in the United Republic.

Foreign exchange risk limit

7.-(1) The overall foreign exchange risk exposure of any bank or financial institution calculated using the shorthand method shall not exceed the limit prescribed by the Bank.

(2) The foreign exchange risk exposure in any single currency shall, irrespective of short or long position, be determined by the individual institution provided that the bank or financial institution remains within the overall exposure limit specified in sub-regulation (1).

(3) A bank or financial institution shall put in place limits on intra-day foreign exchange risk exposures and ensure that such limits are observed all the time.

Solo and consolidated application

8. Where a bank or financial institution directly or indirectly controls another bank or financial institution, the foreign exchange risk exposure limits shall be met by each bank or financial institution on a solo basis, and the parent bank or financial institution shall comply with the foreign exchange requirement on a solo and consolidated basis.

Limits on placements

9.-(1) A bank or financial institution shall not place or deposit, more than sixty percent of its total foreign exchange placements or deposits, in a foreign related or any other correspondent organisation which has minimum long term international rating of at least A or its equivalent.

(2) A bank or financial institution shall not place or deposit, more than forty percent of its total foreign exchange placements or deposits, in a foreign related or any other correspondent organisation which has minimum long term international rating of at least B or its equivalent.

(3) A bank or financial institution shall not place or deposit, more than twenty percent of its total foreign exchange placements or deposits, in a non-rated foreign related or correspondent organisation.

(4) The aggregate foreign exchange placement in a country other than a member of Organization for Economic Co-operation and Development shall be restricted to a maximum of twenty per cent of the bank's or financial institution's total foreign exchange placements.

(5) International rating agencies recognised by the Bank include Fitch Ratings, Standard and Poors and Moody's and any other rating agency that may be approved by the Bank.

Penalty charge

10. Where a bank or financial institution fails to observe the Foreign exchange risk limit and limits on placements prescribed under regulations 7 or 9 respectively, it shall be liable to a penalty equivalent to one percent per day of the amount in excess or one million shillings per day, whichever is higher.

Approval of correspondents

11.-(1) A bank or financial institution shall, in establishing correspondent relationships with any bank abroad, comply with limits prescribed under regulation 9.

(2) Notwithstanding provisions of sub-regulation (1), the bank or financial institution shall, not later than seven days after establishment of a relationship, notify the Bank and submit terms and conditions upon which such correspondent relationship has been established.

PART III
GENERAL PROVISIONS

Reporting requirements

12. A bank or financial institution shall report to the Bank its foreign exchange exposures in the form and frequency prescribed by the Bank.

Failure to report

13. Where a bank or financial institution fails to submit any return as required under these Regulations, it shall be liable to a penalty of one million shillings for every day in which the failure continues.

Misrepresentation of information

14. Where a bank or financial institution makes a misrepresentation of information on any of the returns, it shall be liable to a civil money penalty imposed under regulation 13 or other sanctions as prescribed under these Regulations.

Sanctions and Penalties

15.-(1) Without prejudice to penalties and actions prescribed by the Act, and unless otherwise required in these Regulations, 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;
(b) prohibition from participating in the Interbank Foreign Exchange Market;
(c) prohibition from declaring or paying dividends;
(d) suspension of the privilege to issue letters of credit or guarantee;
(e) suspension of access to the credit facilities of the Bank;
(f) suspension of lending and investment operations;
(g) suspension of capital expenditure;
(h) suspension of the privilege to accept new deposits;

(i) revocation of banking license;
(j) suspension from office of the defaulting director, officer or employee; and
(k) 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 paragraph (a) of sub regulation (1) shall apply to directors, officers or employees of the bank or financial institution.

Revocation GN. No. 369 of 2008

16. The Banking and Financial Institutions (Foreign Exchange Exposure Limits) Regulations, 2008 are hereby revoked.

Dar Es Salaam, **BENNO J. NDULU**
……………, 2014 *Governor*