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THE BANKING AND FINANCIAL INSTITUTIONS (PROMPT
CORRECTIVE ACTIONS) REGULATIONS, 2014

ARRANGEMENT OF REGULATIONS

Regulation

Title

PART I
PRELIMINARY PROVISIONS

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

PART II
CORRECTIVE ACTIONS

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

PART III
CAPITAL RESTORATION PLAN

12. Contents of capital restoration plan

Banking and Financial Institutions (Prompt Corrective Actions)

GN No.295

13. Review and approval of capital restoration plans
14. Disapproval of capital restoration plan
15. Failure to submit a capital restoration plan
16. Failure to implement a 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 sections 34 and 71)

THE BANKING AND FINANCIAL INSTITUTIONS (PROMPT
CORRECTIVE ACTIONS) REGULATIONS, 2014

PART I
PRELIMINARY PROVISIONS

- | | |
|----------------|--|
| Citation | 1. These Regulations may be cited as the Banking and Financial Institutions (Prompt Corrective Actions) Regulations, 2014. |
| Application | 2. These Regulations shall apply to all banks and financial institutions. |
| Interpretation | 3. In these Regulations, unless the context otherwise requires
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“Act” means the Banking and Financial Institutions Act;

“adequately capitalized” in relation to a bank or financial institution, means core capital of not less than twelve and one half per cent of total risk-weighted assets and off balance sheet exposure determined in accordance with the Banking and Financial Institutions (Capital Adequacy) Regulations;

“Bank” means the Bank of Tanzania;

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

“connected party” has the meaning ascribed to it in the Act;
“control” has the meaning ascribed to it in the Act; |

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

“critically undercapitalized” in relation to a bank or financial institution, means core capital of less than six and one half percent of risk-weighted assets and off balance sheet exposure determined in accordance with the Banking and Financial Institutions (Capital Adequacy) Regulations;

“financial institution” has the meaning ascribed to it in the Act;

"related party"

(a) in relation to a body corporate means-

- (i) its holding company or its subsidiary;
- (ii) a subsidiary of its holding company;
- (iii) a holding company of its associates;
- (iv) any person who controls the company or body corporate whether alone or with his related party or with other related parties of it; and

(b) in relation to 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 related parties; and
- (iii) any related party of his related parties,

and it includes connected party;

“significantly undercapitalized” in relation to a bank or financial institution, means core capital of less than eight and one half percent of total risk-weighted assets and off balance sheet exposure determined in accordance with the Banking and Financial Institutions (Capital Adequacy) Regulations;

“undercapitalized” in relation to a bank or financial institution, means core capital of less than twelve and one half percent of total risk-weighted assets and off balance sheet exposure determined in accordance with the Banking and Financial Institutions (Capital Adequacy) Regulations;

“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
capitalized bank
or financial
institution

5. -(1) Where in the opinion of the Bank, an adequately capitalized bank or financial institution is likely to incur a loss which may result in it becoming undercapitalized, 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 time-table 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 the Banking and Financial Institutions (Capital Adequacy) Regulations; 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 sub-regulation (1) include the practices listed in the Schedule to these Regulations.

Banking and Financial Institutions (Prompt Corrective Actions)

GN No.295

Discretionary actions for adequately capitalized 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 the position of management.

Mandatory actions for undercapitalized bank or financial institution

7. When a bank or financial institution is undercapitalized, the Bank shall-

- (a) take the 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 capitalized within such period as may be prescribed by the Bank.

Discretionary actions for undercapitalized 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 remuneration of the person appointed under sub-regulation (1) and the bank or financial institution shall pay such remuneration.

Banking and Financial Institutions (Prompt Corrective Actions)

GN No.295

Mandatory actions for significantly undercapitalized bank or financial institution

9. When a bank or financial institution is significantly undercapitalized, the Bank shall-
- (a) take the measures prescribed in regulation 7;
 - (b) prohibit the bank or financial institution from all transactions with related parties, except for repayment of any outstanding credit accommodation or any transaction specifically permitted by the Bank to facilitate recapitalization;
 - (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 undercapitalized 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 or 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 undercapitalized bank or financial institution

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

- (a) take actions prescribed in regulation 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 undercapitalized, appoint a statutory manager or liquidator,

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

- (a) core capital is greater than two 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 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 capitalized.
- (2) A capital restoration plan referred to under sub-regulation (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 capitalized;
 - (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 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 capitalized.

Banking and Financial Institutions (Prompt Corrective Actions)

GN No.295

Review and approval of capital restoration plans

13. the Bank shall, within thirty days after receiving a capital restoration plan under these Regulations, provide a written notice to the bank or financial institution of 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) Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized bank or financial institution shall be subject to any other actions that the Bank may determine.

(3) The provisions of sub-regulation (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 a 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 undercapitalized bank or financial institution.

(2) The provisions of sub-regulation (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 undercapitalized.

Banking and Financial Institutions (Prompt Corrective Actions)

GN No.295

Failure to
implement a
capital
restoration plan

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

(2) The provisions of sub-regulation (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 undercapitalized.

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 circumstance.

(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 paragraph (a) of sub regulation (1) shall apply to directors, officers or employees of the bank or financial institution.

Revocation
GN No. 372 of
2008

19. The Banking and Financial Institutions (Prompt Corrective Action) Regulations, 2008 are hereby revoked.

SCHEDULE

(Made under regulation 5)

Examples of 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.

GN No.295

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 Banking Practices:

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 over-all 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.

Dar es Salaam
_____, 2014

BENNO J. NDULU
Governor