

GOVERNMENT NOTICE No. 767 Published On. 29/10/2021

THE BANKING AND FINANCIAL INSTITUTIONS ACT,

(CAP. 342)

REGULATIONS

(Made under section 71)

ARRANGEMENT OF REGULATIONS

THE BANKING AND FINANCIAL INSTITUTIONS (CORPORATE GOVERNANCE)
REGULATIONS, 2021

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(CAP. 342)

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(Made under section 71)

THE BANKING AND FINANCIAL INSTITUTIONS (CORPORATE GOVERNANCE)
REGULATIONS, 2021

PART I
PRELIMINARY PROVISIONS

Citation

1. These Regulations may be cited as the Banking and Financial Institutions (Corporate Governance) Regulations, 2021.

Interpretation
Cap. 342

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

"Act" means the Banking and Financial Institutions Act;

"Bank" means the Bank of Tanzania;

"bank" means an entity that is engaged in the banking business;

"Board" means the Board of Directors of a bank or financial institution;

"conflict of interest" means a situation in which someone in a position of trust has competing professional, business or personal interest, making it difficult to fulfil his duties impartially;

"control functions" means the functions that provide objective assessment, reporting and assurance and includes risk management function, compliance function and the internal audit function;

"corporate governance" means a set of relationships between a company's management, its Board, its shareholders and other stakeholders, which provide the structure through which the objectives of the company are set, and the means of attaining those objectives

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and monitoring performance, including how the Board and senior management:

- (a) set the bank's or financial institution's strategy and objectives;
- (b) select and oversee personnel;
- (c) operate the bank's or financial institution's business on a day-to-day basis;
- (d) protect the interests of depositors, meet shareholder obligations, and take into account the interests of other recognized stakeholders;
- (e) align corporate culture, corporate activities and behaviour with the expectation that the bank or financial institution will operate in a safe and sound manner, with integrity and in compliance with applicable laws and regulations; and
- (f) establish and oversee control functions.

"director" means any person by whatever title or designation known, carrying out or empowered to carry out functions in relation to the direction of a bank or financial institution which are substantially the same as those carried out by a member of board of directors of a company incorporated under the Companies Act and Companies Decree;

"duty of care" means the duty of Board members to decide and act on an informed and prudent basis with respect to the bank or financial institution;

"duty of loyalty" means the duty of Board members to act in good faith and in

the interest of the bank or financial institution and it should prevent individual Board members from acting in their own interest, or the interest of another individual or group, at the expense of the company and shareholders;

"executive director" means a person who is involved in the day-to-day

management of a bank or financial institution or is in full time salaried employment of the bank or financial institution or any of its subsidiaries or affiliates and sits on the Board of directors;

"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;

"independent director" means a director who: -

- (a) does not hold any executive or management position in a bank or financial institution;
- (b) does not have, directly or indirectly, a significant interest in the bank or financial institution including any parent or subsidiary in a consolidated group with the bank or financial institution;
- (c) has not been employed by the bank or financial institution or a banking group of which he currently forms part in any executive capacity for the preceding three years;
- (d) is not a member of the family of an individual who is, or has been in any of the past three years, employed by the bank or financial institution or the banking group in an executive capacity;
- (e) is not a professional advisor to the bank or financial institution or the banking group;
- (f) is free from any business or other relationship which seems to interfere with the individual's capacity to act in an independent manner; and
- (g) does not receive remuneration contingent upon the performance of the bank or financial institution;

"member of a family" means parent, spouse, brother, sister, child, uncle, aunt, nephew, niece, grandfather, grandmother, stepfather, stepmother, stepchild, and adopted child of the person concerned, and in case of an adopted child his adopter or adopters;

"non-executive director" means a director who does not hold any executive or management position in a bank or financial institution;

"remuneration committee" means a Board committee responsible for overseeing the compensation system's design and operations on behalf of the Board;

"senior management" means a Chief Executive Officer, head of function, any other senior manager reporting to the Chief Executive Officer and any person, other than a member of the Board, who, individually or as a group-

- (a) makes or participates in making decisions that affect the whole or a substantial part of the business of the bank or financial institution;
- (b) has the capacity to affect the bank's or financial institution's financial standing; or
- (c) may affect the whole, or a substantial part, of the business of the bank or financial institution or its financial standing through their responsibility for:
 - (i) enforcing policies and implementing strategies approved by the Board of the bank or financial institution;
 - (ii) developing and implementing systems that identify, assess, manage or monitor risks in relation to the business of the bank or financial institution; or
 - (iii) monitoring the appropriateness, adequacy and effectiveness of risk management systems.

“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.

Objectives

3. The objectives of these Regulations are to:

- (a) promote and maintain public confidence in banks and financial institutions;
- (b) establish standards for corporate governance processes and structures; and
- (c) provide guidance to directors for proper discharge of their fiduciary responsibilities.

PART II

GOVERNANCE OF BANKS AND FINANCIAL INSTITUTIONS

Establishment
of Board

4. Banks and financial institutions shall establish Board of Directors which shall be the governing body of the bank or financial institution.

Members of Board

5.-(1) The Board shall be composed of not less than five members, two thirds of whom shall be non-executive.

(2) In appointing members of the Board, the appointing authority shall ensure that at least -

(a) two of the non-executive members are independent and have requisite experience in banking, finance, accounting, auditing, law or economics; and

(b) two of the members are Tanzanians.

(3) A person shall not simultaneously serve as a Board member or in any executive capacity in more than one bank or financial institution in Tanzania.

(4) Notwithstanding sub-regulation (3), and subject to prior approval of the Bank, a person may simultaneously serve as a Board member or in any executive capacity in more than one bank or financial institution, provided there is no conflict of interest.

Chairperson

6.-(1) The chairperson of the Board shall-

(a) be a non-executive member of the Board;

(b) not be a member of Audit Committee or Credit Committee of the Board; and

(c) not serve as chairperson of any Board Committee.

Formation of Committees

7.-(1) The Board may, subject to such terms and conditions as it may determine, form and appoint from among its members, such number of committees as it deems necessary for better carrying out of its oversight roles and other responsibilities.

(2) The Board shall form an Audit Committee, Credit Committee, Remuneration Committee and such other Committees as it may deem necessary for the discharge of its functions.

Committee charter

8. Each Committee shall have a charter or other instrument that sets out its mandate, scope and working procedures including the manner in which Committee will report to the Board and any tenure limits for serving on the Committee.

Committee members

9.-(1) The Board Committees shall consist of non-executive directors, and the number of Committee members shall not be less than three.

(2) Subject to sub-regulation (1), at least two of the Audit Committee members shall be independent members having accounting, auditing or related financial management experience.

(3) A member of the Audit Committee shall not simultaneously serve as a member of other Board Committees.

Disclosure of Committees

10. The Board shall disclose the committees it has established, their mandates and their composition in the audited financial statements.

Maintenance of records

11. Board and Committees shall maintain appropriate records of their deliberations and decisions.

Tenure of office

12.-(1) A Board member or a Chief Executive Officer of a bank or financial institution shall not hold office for a consecutive period of more than ten years.

(2) Where a bank or financial institution is a product of merger, acquisition, takeover or any other form of combination, the period of ten years referred to under sub-regulation (I) shall include the pre and post combination years of a Board member or Chief Executive Officer.

(3) A person who has served as Board member or Chief Executive Officer of a bank or financial institution for a consecutive period of ten years shall not qualify for appointment in his former bank or financial institution, or its subsidiaries in any capacity until after a period of three years.

(4) A Board member or chief executive officer of a bank or financial institution who has served for a period of ten years or more by the date these Regulations come into effect shall have a moratorium period of two years before ceasing to function in that capacity.

Cooling-off period

13. A person shall not be appointed as a director during the two-year period from the date when such person ceased to be a director of another bank or financial institution unless the permission of the Bank is obtained.

Persons not to be appointed as director

14. A member of National Assembly or House of Representatives or councilor of local government authority shall not be appointed as a director of a bank or financial institution.

Reporting of
vacancy and
exceptional
events

15. A bank or financial institution shall, in writing and within seven days, notify the Bank of any-

- (a) vacancy in a post of senior management or member of the Board; and
- (b) exceptional events that constitute a departure from the proper conduct of banking business, infringement of the provisions of the law or violation of the interests of stakeholders.

Selection
process

16.-(1) The Board shall have a clear process for identifying, assessing and selecting Board candidates.

(2) In assessing suitability of a person to be appointed to the Board, a bank or financial institution shall consider -

- (a) honesty, integrity, diligence, fairness, competence, capability and financial soundness of the candidate;
- (b) possession of knowledge, skills, experience and independence of mind given his responsibilities on the Board and in the business and risk profile of bank or financial institution;
- (c) availability of sufficient time to fully discharge his responsibilities;
- (d) conviction of an offence involving fraud or dishonesty;
- (a) non-involvement as a member of the management of Board in a bank or financial institution whose registration or licence has been revoked or cancelled or which has gone into liquidation;
- (b) absence of default record of any credit accommodation taken by him or his related parties from any bank or financial institution; and
- (c) absence of bankruptcy record or suspension of payments or composition with his creditors.

Approval for
appointment in
senior
management or
Board
membership

17. A bank or financial institution shall not appoint any person in senior management position or Board member and assign that person responsibilities unless it has obtained prior approval of the Bank.

Undertaking by
member of
Board

18. A member of the Board shall make and submit to the Bank a written undertaking that he shall:

- (a) fulfill his obligations towards maintaining a safe, sound and profitable bank or financial institution; and

- (b) comply with the provisions of the Banking and Financial Institutions Act, Bank of Tanzania Act, Foreign Exchange Act, regulations, guidelines and directives issued by the Bank from time to time.
- Induction and training programs
- 19.-(1) A bank or financial institution shall ensure that directors participate in induction programmes and have access to ongoing training on relevant issues.
- (2) A bank or financial institution shall, within thirty days from end of the year, submit a report to the Bank on induction programs and trainings under sub-regulation (1) conducted in the previous year.
- Conflict of interest
- 20.-(1) A Board member shall not have any conflict of interest that may impede his ability to perform his duties objectively.
- (2) The Board shall ensure that policies for identification of potential conflicts of interest are developed, implemented and monitored.
- (3) Notwithstanding the requirements of sub-regulation (1), a bank or financial institution may appoint a practicing professional as a director provided that he is not employed by or partner in a firm, which is engaged to conduct audit of or consultancy work for the bank or financial institution.
- (4) A practicing professional who is appointed as a director of a bank or financial institution shall exercise the highest degree of integrity and professionalism and shall avoid being involved or appearing to be involved in any self-serving practices and conflict of interest situations.

Regular
assessment

21.-(1) The Board shall, either alone or with the assistance of external expert, carry out assessment of the Board, its Committees and individual Board members by-

- (a) periodically reviewing its structure, size and composition;
- (b) assessing the ongoing suitability and performance of each Board member at least once annually;
- (c) either separately or as part of these assessments, reviewing the effectiveness of governance practices and procedures, determining where improvements may be needed, and making any necessary changes.

(2) A bank or financial institution shall submit the report of the assessment made under sub-regulation (1) to the Bank within thirty days from completion of the assessment.

PART IV
RESPONSIBILITIES OF THE BOARD AND LIABILITIES OF DIRECTORS

Responsibilities
of board

22. The Board shall be responsible for providing oversight on all affairs of the bank or financial institution including: -

- (a) risk management;
- (b) approval of overall business strategies and policies; (c) hiring capable senior management; and
- (d) ensuring senior management implements strategies and policies approved by the Board.

Appointment
and oversight
of senior
management

23. The Board shall appoint senior management and-

- (a) monitor performance of the senior management to ensure that their actions are consistent with the strategies, policies and risk appetite approved by the Board;
- (b) set appropriate performance and remuneration standards for senior management consistent with the long term strategic objectives and the financial soundness of the bank or financial institution;
- (c) hold members of senior management accountable for their actions;

- (d) ensure that senior management's knowledge and expertise remain relevant given the nature of the business and the bank's risk profile; and
- (e) ensure that there is appropriate succession plan for senior management positions.

Approval of strategies, plans and policies

24.-(1) The Board shall approve strategies, business plans and policies and monitor management's performance in implementing them.

(2) The bank or financial institution shall, within thirty days after approval, submit to the Bank the strategies, business plans and policies.

Promotion of sound corporate culture

25. The Board shall, for the purpose of promoting sound corporate culture-

- (a) set corporate values to be adhered to by the Board, senior management and other employees;
- (b) create a strong risk culture by-
 - (i) conveying the Board's expectation that it does not support excessive risk-taking; and
 - (ii) ensuring that all employees operate within the agreed risk appetite and risk limits;
- (c) ensure that appropriate steps are taken to communicate throughout the bank or financial institution the corporate values, professional standards or code of conduct; and
- (d) ensure that senior management and employees are aware that appropriate disciplinary or other actions shall be taken for breach of professional standards or code of conduct.

Setting lines of responsibility and accountability

26. The Board shall establish lines of responsibility and accountability, which shall be communicated throughout the bank or financial institution.

Duty of care and loyalty

27. Members of the Board shall exercise their duty of care and loyalty to the bank or financial institution in accordance with applicable laws and supervisory standards.

Capital adequacy assessment and capital plan

28. The Board shall approve and oversee the implementation of capital adequacy assessment process and capital plan of the bank or financial institution.

Risk management	29. The Board shall be responsible for managing risks in a bank or financial institution pursuant to Risk Management Guidelines for Banks and Financial Institutions.
Risk Management, compliance and audit functions	30.-(1) The Board shall ensure that departments or units responsible for risk management, compliance and audit are properly positioned, staffed and resourced; and carry out their responsibilities independently and effectively. (2) The Board shall utilize the work of risk management, compliance and audit functions as independent checks on the information received from management on the operations and performance of the bank or financial institution.
Annual review of risk management policies	31. The Board shall review all policies relating to various types of risks and determine the exposure limits for such risks and activity segments at least once a year.
Approval of new activities	32. The Board shall ensure that it is informed of all new activities and approves strategic activities of the bank or financial institution.
Stakeholders interests	33. The Board shall, in discharging its responsibilities, take into account the legitimate interests of depositors, shareholders and other relevant stakeholders.
Liabilities of Directors	34.-(1) In the performance of his functions under the Act and these Regulations a director- (a) shall execute an undertaking that he shall- (i) jointly and severally ensure that the bank or financial institution operates in a safe, sound and profitable manner; and (ii) be liable for non-compliance with such undertaking. (b) shall be responsible for complying with secrecy provisions of the Act; (c) shall not involve himself in fraud or deliberate mismanagement; (d) shall ensure that all credit facilities granted to him or his related parties by the bank of financial institution

to which he is a member of the Board, are given at an arm's length basis;

- (e) shall refrain from attending a meeting which deliberates or approves a transaction in which he is beneficiary;
- (f) has a duty of care and loyalty to the bank or financial institution's interests and shall be liable for damage caused where he breaches that duty;
- (g) shall be liable for non-diligent and negligent performance of his duties as a director; and
- (h) shall be responsible for exercising rational and independent judgment.

(2) A director who violates any provision of Acts or Regulations issued thereunder may be fined, removed from office, or disqualified from holding any position or office in any bank or financial institution.

Board meetings

35.-(1) The Board shall meet at least once every three months to discuss the affairs of a bank or financial institution.

(2) A member of the Board shall attend at least seventy-five percent of the Board meetings of the bank or financial institution in each year.

(3) A Board meeting may be held through:

- (a) physical appearance;
- (b) video conferencing; or
- (c) such other means as the Bank may prescribe or approve upon application by a bank or financial institution.

(4) For the purpose of sub-regulation (3) (b), a bank or financial institution may hold its Board meetings through video conferencing provided that:

- (a) meetings held through video conferencing in a year shall not exceed twenty-five percent;
- (b) majority of directors attending such meetings are physically present;
- (c) director shall not attend all Board meetings in any given year through video conferencing.

(5) A director who has, whether directly or indirectly, personal interest in a transaction that is tabled for discussion before the Board, or in a decision that the Board is about to make, shall declare his personal interest at the opening of the meeting at which the transaction is to be discussed.

(6) Upon declaration of his personal interest under sub-regulation (5), the director shall absent himself from the meeting and not be counted for purposes of determining a quorum required for that discussion.

PARTY INSIDER TRANSACTIONS

Policies on
insider
transaction

36. The Board shall establish, implement and regularly review policies that guide transactions with insiders and their related parties and ensure that-

- (a) such transactions are conducted on arm's length terms; and
- (b) corporate or business resources of the bank or financial institution are not misappropriated or misapplied.

Transactions
with insider

37. A bank or financial institution shall ensure that a transaction with an insider shall be on terms not more favourable than would be available to other customers.

Conditions for
credit
accommodatio
ns to insider

38.-(1) A bank or financial institution shall not directly or indirectly grant any credit accommodation to an insider unless the credit accommodation is approved by all members of the Board.

(2) Where a bank or financial institution grants a credit accommodation to an insider in accordance with sub-regulation (1), it shall, within seven days from the date it grants the credit accommodation, notify the Bank.

Credit limit to
single insider

39.-(1) The total amount of credit accommodation which any bank or financial institution may grant, directly or indirectly, to an insider shall not exceed ten percent of the core capital of the bank or financial institution.

(2) The limit prescribed under sub-regulation (1) shall apply regardless of the type and value of security held.

Aggregate
credit limit to
insider

40.-(1) A bank or financial institution shall not, directly or indirectly, grant to its insider's credit

accommodations whose aggregate amount exceeds twenty-five percent of its core capital.

(2) The limit referred to under sub-regulation (1) shall apply to a person who has ceased to be an insider unless two years have elapsed from the date when such person ceased to be an insider.

Restriction on unsecured credit accommodation

41. A bank or financial institution shall not grant any unsecured credit accommodation to insiders except as set out under regulation 42.

Loans to employees

42.-(1) A bank or financial institution shall not grant salary advance to any of its officers or employees which exceed the annual remuneration of the borrowing officer or employee.

(2) For the purpose of sub-regulation (1), annual remuneration of an officer or employee shall be the basic salary plus fixed allowances paid in cash to the officer or employee on a regular and periodic basis as part of his compensation for services rendered to the bank or financial institution.

(3) The provisions of sub-regulation (2) shall not apply to benefit or entitlement which depends on a contingency such as medical benefits or allowances for attending seminars, meetings or other non-cash benefits.

(4) Loans and advances to officers and employees of bank or financial

institution granted as incentives shall be managed in accordance with a policy regarding administration of incentives.

(5) Commercial loans and advances to officers and employees of a bank or financial institution shall be in the regular course of business and on terms not more favourable than would be available to other borrowers.

**PART VI
RESPONSIBILITIES OF SENIOR MANAGEMENT**

Experience,
competency
and integrity

43. A member of senior management of a bank or financial institution shall-

- (a) have necessary experience, competency and integrity to manage the business and people under his supervision; and
- (b) be selected through promotion or recruitment process which takes into account the qualifications required for the position in question.

Oversight and
risk
management

44.-In the performance of its function as overseer and risk manager, a member of senior management of a bank or financial institution shall-

- (a) provide adequate oversight of those they manage;
- (b) ensure that the activities of a bank or financial institution are consistent with the business strategy, risk appetite and the policies approved by the Board;
- (c) implement, consistent with the direction given by the Board, risk management systems, processes and controls for managing the risks to which the bank or financial institution is exposed and for complying with laws, regulations and internal policies including-
 - (i) putting in place comprehensive and independent risk management, compliance and audit functions, as well as an effective overall system of internal controls; and
 - (ii) recognizing and respecting the independent duties of the risk management, compliance and internal audit functions and shall not interfere in the execution of such duties.

Reporting to
the Board

45.-(1) For the purpose of ensuring effective performance of functions of the Board under these Regulations, senior management shall report to the Board on:

- (a) changes in business strategy, risk strategy or risk appetite;
- (b) bank performance and condition;
- (c) breaches of risk limits or compliance rules;
- (d) internal control failures; and
- (e) legal or regulatory concerns.

PARTVII

GOVERNANCEOFGROUP STRUCTURES

Awareness of risks

46. The Board of a bank or financial institution that owns a subsidiary bank or financial institution shall set a mechanism that will enable it to be aware of the risks and issues that might affect the bank or financial institution and its subsidiaries.

Exercise of oversight

47. Board of the parent company shall, without prejudice to the independent legal and governance responsibilities of the Board of the subsidiaries, exercise adequate oversight over subsidiaries.

Responsibilities of Board of parent company

48. The Board of the parent company shall be responsible for-

- (a) establishing a structure and a governance framework with clearly defined roles and responsibilities, including those at the parent company level and at the subsidiary level;
- (b) defining an appropriate subsidiary Board and management structure which takes into account different risks to which the group, its businesses and its subsidiaries are exposed;
- (c) assessing whether the group's corporate governance framework includes adequate policies, processes and controls and addresses risks across the business and legal entity structures;
- (d) ensuring the group's corporate governance framework includes appropriate processes and controls to identify and address potential intragroup conflicts of interest, such as those arising from intragroup transactions;
- (e) approving policies and clear strategies for establishing new structures and legal entities, and ensuring that they are consistent with the, policies and interests of the group;
- (f) assessing whether there are effective systems in place to facilitate exchange of information among the entities within the group; and
- (g) ensuring the group has sufficient resources to monitor compliance of subsidiaries with all applicable legal, regulatory and governance requirements.

Complex or
opaque
structures

49. The Board and senior management shall take the following actions to avoid or mitigate challenges posed by complex or opaque structures:

Compensation

- (a) avoiding setting up unnecessarily complicated structures or excessive number of entities;
- (b) maintaining and reviewing policies, procedures and processes governing the approval and maintenance of those structures or activities;
- (c) maintaining a centralized process for approving the creation of new entities based on established criteria;
- (d) establishing adequate procedures and processes to identify and manage all risks arising from complex or opaque structures; and
- (e) ensuring that the activities and structures are subject to regular internal and external audit reviews.

PART VIII COMPENSATION

Compensation

50.-(1) The Board shall approve the compensation of senior management and shall oversee development and operation of compensation policies, systems and related control processes by the management.

(2) The compensation structure shall-

- (a) be consistent with the long term performance and in line with the business and risk strategy, objectives, values and long term interests of the bank or financial institution and incorporate measures to prevent conflicts of interests; and
- (b) facilitate adherence to risk appetite, promote appropriate risk taking behaviour and encourage employees to act in the interest of the bank or financial institution.

Evaluation of
compensation

51. The Board shall ensure that practices by which compensation is paid for potential future revenues whose timing and likelihood remain uncertain is evaluated by means of both qualitative and quantitative key indicators.

PART IX GENERAL PROVISIONS

Shareholding
and
management

52. For the purpose of ensuring proper management of banks and financial institutions, an individual shareholder -

- (a) with five per centum or more shareholding in a bank or financial institution shall not form part of management of the bank or financial institution;
- (b) with ten per centum or more shareholding in a bank or financial institution shall not be appointed as chairperson or deputy chairperson of the Board; and
- (c) who had a significant interest in a failed bank or financial institution shall not have a significant interest in a bank or financial institution.

Sanctions

53.-(1) Without prejudice to penalties and actions prescribed in 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;
- (b) prohibition from declaring or paying dividends;
- (c) suspension of the privilege to issue letters of credit or guarantee;
- (d) suspension of access to credit facilities of the Bank;
- (e) suspension of lending and investment operations;
- (f) suspension of capital expenditure;
- (g) suspension of the privilege to accept new deposits; (h) revocation of banking licence;
- (i) suspension from office of the defaulting director, officer or employee; and
- (j) disqualification from holding any position or office in any bank or financial institution under supervision of the Bank.

(2) The penalty referred to in paragraph (a) of sub-regulation (1) may apply to directors, officers or employees of the bank or financial institution.

Dar es Salaam,
17th September, 2021

FLORENS J. LUOGA,
Governor