

**THE FINANCIAL LAWS (MISCELLANEOUS AMENDMENTS)
ACT, 2003**

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THE UNITED REPUBLIC OF TANZANIA



No. 6 OF 2003

I ASSENT,

Benjamin W. Mkapa

President

05.04.03.

An Act to amend certain financial laws with the intention to promote the development of a sound and sustainable supply of financial services for households, small holder farmers, small and micro enterprises in urban and rural areas by providing them with safe and accessible savings and payments services thereby providing them opportunity to improve their businesses and their livelihoods by gaining access to adequate and timely credit services.

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

1. This Act may be cited as the Financial Laws (Miscellaneous Amendments) Act, 2003. Short title

Comme-
ncement

2. The provisions of the various parts of the Act shall each come into operation on the date of publication of this Act in the *Gazette*.

PART II

AMENDMENT OF THE BANKING AND FINANCIAL INSTITUTIONS ACT, 1991

Constru-
ction
Act No. 12
of 1991

3. This part shall be read as one with the Banking and Financial Institutions Act, 1991 hereinafter referred to as the "principal Act".

Amend-
ment of
section 2

4. Section 2 of the principal Act is amended by repealing sub-sections (4) and (5) and replacing them with the following:

"(4) In exercising the power under subsection (3), the Bank shall regulate and supervise the activities of all savings and credit societies or schemes whose deposits have surpassed an amount equivalent to the minimum core capital for a micro-finance company.

(5) The savings and credit societies or schemes shall be regulated by the Bank in accordance with the rules relating to micro-finance companies.

(6) Any change in by-laws or in any other significant governance matters shall require the approval of the Bank and be subject to the directive of the Bank for mandatory dissolution in case of repeated or prolonged non-compliance with or transgression of regulations made under this Act.

(7) For purposes of compliance with subsection (4), the Bank may fund a public or private mechanism for the expeditious identification of societies or schemes".

Amend-
ment of
section 3

5. Section 3 of the principal Act is amended by -

(a) substituting for the definitions of the terms hereunder with the following definitions:

"housing finance company" means a bank or financial institution incorporated as a company limited by shares, to primarily undertake mortgage finance business with households in rural and urban areas of Mainland Tanzania and Tanzania Zanzibar;

“micro-finance company” means a bank or financial institution incorporated as a company limited by shares, to undertake banking business primarily with households, small holder farmers and micro-enterprises in rural or urban areas of Mainland Tanzania and Tanzania Zanzibar;

- (b) inserting the following definitions in their appropriate alphabetical arrangement:

“effective interest rate” means the true cost of funds for a borrower from a bank or financial institution which may be higher, equal to or lower than the nominal interest rate depending on the method used to calculate the amount of interest due or accrued;

“indexed interest rate” means a rate that is not fixed but varies in line with changes in the interest rate;

“reference rate” means an average interest rate that is indicative of overall market conditions or that is appropriate to a particular line of business, calculated and published by the Bank on a periodic basis;

“micro-enterprises” means small personal and family business that operate in the informal sector with no formal accounting or financial records and whose real assets, if any, can hardly be pledged, or reasonably accepted as collateral;

“small holder farmers” means farmers who undertake small scale farming or without definite capital and whose real assets are non-traditionally acceptable as collateral.”

6. Section 7 of the principal Act is amended -

Amendment of section 7

- (a) in subsection (1), by renumbering paragraph (f) as paragraph (g) and by inserting the following paragraph between paragraphs (e) and (g):

“(f) the information that may be prescribed by the Bank for purposes of assessing solvency and trustworthiness of all significant shareholders”.

- (b) in subsection (3), by deleting the expression “the intended lending policies of the applicant are designed to promote the financing of economic activities in the rural section” which

appears in paragraph (b) and substituting for them with the expression “the intended lending policies, procedures and internal controls of the applicant are designed to promote sound financing of economic and activities in rural and urban sectors”

- (c) by repealing subsection (5) and replacing it with the following:

“(5) The Bank may, in any case where it grants a licence, impose such terms and conditions as it may deem appropriate, including temporary or permanent restriction regarding any individual total amount of credit accommodations or the engagement in any number of activities or operations”.

Repeal of section 11

7. The Principal Act is amended by repealing the whole of section 11;

Amendment of section 12

8. The principal Act is amended in section 12 by deleting the definition of the term “core capital” appearing in subsection (2), and substituting for it the following new definition-

“core capital” or “tier 1 capital” means permanent shareholders’ equity in the form of issued and fully paid in shares of common stock, non-redeemable and non-cumulative preferred stock, capital grants plus all disclosed reserves less goodwill or any other intangible assets”.

Repeal of section 13

9. The principal Act is amended by repealing the whole of section 13 and substituting for it the following-

“Minimum capital

- 13.—(1) Every bank shall -

- (a) commence operations with a minimum core capital of not less than 5,000,000,000 (five billion) shillings or such higher amount as the Minister may, by order published in the *Gazette*, prescribe, and shall maintain this minimum amount at all times:

Provided that, no such bank shall establish a branch or any banking unit in a region if its core capital is less than the minimum core capital required to be maintained by banks.

- (b) at all times maintain core capital at not less than 8% (eight percentum) of its total risk weighted assets and off balance sheet exposure; and
- (c) at all times maintain total capital at not less than 10% (ten percentum) of its total risk weighted assets and off balance sheet exposure.

(2) The Bank shall prescribe -

- (a) the minimum core capital of financial institutions; and
- (b) the minimum core capital and operational aspects of regional banks, unit banks and community banks.

(3) Every existing bank which has a core capital of less than the amount prescribed in this section shall be given five (5) years to increase its core capital to the minimum legal requirement.

(4) Where the bank is unable to comply with the requirement of subsection (1), the Bank may:

- (a) prescribe the period of not more than two (2) years upon which the bank shall comply with the prescribed requirement;
- (b) down grade the bank to financial institution as it may determine.

(5) Notwithstanding subsections (1) and (2), no individual person shall, whether alone or in association with another person, own directly or indirectly a beneficial interest of more than 20 percentum of the share capital of any bank or financial institution, unless the Bank grants approval in

writing to permit a body corporate with sufficient financial resources and proven track records in the lending to households, small holder farmers or small or micro-enterprise of the urban or rural sector to own up to 66 percentum of the share capital of a micro-finance or housing finance companies.

(6) There shall be three types of financial institutions, subject to any conditions and regulations which the Bank may prescribe:

(a) the micro-finance companies, whose primary activities shall be to furnish secured and unsecured credit facilities to households, small holder farmers and small and micro-enterprises both in rural and urban areas;

(b) the housing finance companies, whose primary activity shall be to furnish secured loans to household for the purposes of acquisition construction, improvement, development, alteration or adaptation of land in Mainland Tanzania or Tanzania Zanzibar for the purposes of housing;

(c) the financial institutions other than those prescribed in paragraph (a) and (b).

(7) Micro-finance companies and housing finance companies shall utilise the acronyms M.F.C and H.F.C after their commercial names before the term "Limited".

(8) Banks may make use of acronyms M.F.C and H.F.C provided that their by laws provide these activities as primary and the bank is subject to the credit limits for financial institutions prescribed in section 37(2) (a).

(9) If, as a result of a review of capital adequacy following inspections conducted in accordance with the provisions of section 48 of the Bank of Tanzania Act, 1995, the Bank determines that in reviewing risk in both on and off the balance sheet, a bank or financial institution has insufficient capital necessary to shield such risks, it may direct such a bank or financial institution to increase its capital above the

requirements of subsections (1) (b) and (c) of this section for banks and subsection (2) for financial institutions regional banks, unit banks and community banks to such a level as the Bank may determine.

(10) For the purposes of subsection (5), the term “individual” means and includes any member of the family and the term “person” shall be deemed to include a parent, spouse, brother, sister, child, uncle, aunt, nephew, niece, stepfather, stepmother, stepchild and adopted child of the individual concerned and in case of any adopted child, his adopter”.

10. Section 15 of the principal Act is amended by-

Amend-
ment of
section
15

- (a) re-designating section 15 as subsection (1) of that section; and
- (b) adding the following subsection immediately after subsection (1):

“(2) In order to establish an adequate accounting and financial reporting system the bank shall, in consultation with the National Board of Accountants and Auditors, issue an accounting manual for mandatory use by all banks and financial institutions including a chart of account, accounting principles and procedures as well as standards for financial reporting and publishing in line with generally accepted accounting standards in Tanzania or internationally accepted accounting standards, but which shall not be restricted by either of them in pursuit of accounting prudence”.

11. The principal Act is amended by adding immediately after section 16 the following section:

Addition
of section
16A

Internal
controls
and audits

“16A.—(1) The Board of Directors of every bank and financial institution shall approve proper lending, financial and administrative policies and procedures for each line of business and market served by any such bank or financial institution and establish adequate internal control systems.

(2) The Board shall also verify that management effectively implements these policies, procedures and internal controls.

(3) Every bank or financial institution shall have an internal auditor appointed by the Board who shall be responsible for verifying, among other duties which may be prescribed by the Board or the Bank, the correct and effective implementation of the internal control system and the timely identification and management of credit, financial, operations, legal and any other risk affecting or likely to affect any of such bank or financial institution.

(4) The Bank shall prescribe general loan loss provisions in case where a bank or financial institution contravenes or fails to comply with any of the obligations under this section without regard to any personal convictions of directors or officers for any breach or default fines that may be imposed under section 50.”

Amend-
ment of
section
24

12. The principal Act is amended in section 24—

(a) by adding immediately after subsection (2) the following new subsection—

“(3) A member appointed by the Minister shall hold office, unless he sooner dies or resigns or vacates or is removed from his office, for a term of three years, and shall be eligible for re-appointment:

Provided that, no member shall hold office for more than three terms.”;

(b) by renumbering subsections (3) and (4) as subsections (4) and (5) respectively;

Amend-
ment of
section 36

13. Section 36 of the principal Act is amended in subsection (3) by substituting for a proviso thereto with the following proviso:

“Provided that, nothing in this section shall prevent the Bank or a licensed credit reference bureau from providing to any person upon a legitimate business request, a credit report and a copy may be given to the customer concerned in accordance with regulation issued by the Bank”.

14. Section 37 of the principal Act is amended by deleting paragraph (a) of subsection (2) and substituting for it the following paragraph: Amendment of section 37

(a) subject to paragraph (b), no bank or financial institution shall, directly or indirectly, grant to any person any accommodation so that the total value of such accommodation to or on behalf of such person:

(i) if less than fully secured in accordance with paragraph (ii) is at any time more than 10 per centum of the core capital of such bank or 1 per centum of the core capital of such financial institution; or

(ii) if granted against security, the type and value of such security having been ascertained to be acceptable to the Bank and the value of which is at least 25 per centum more than the obligations secured thereby, is at any time more than 25 per centum of the core capital of the bank or 3 per centum of the core capital of such financial institution.”

15. The principal Act is amended by inserting immediately after section 37 the following new section: Addition of section 37A

“Fair lending and collection practices

37A.—(1) A borrower of banks and financial institutions shall be permitted to make partial or total pre-payments on their loans or advances.

(2) Penalties for prepayment, if any, shall be incorporated in the contract.

(3) Any term stipulated in a contract purporting to grant to any bank or any financial institution authority to introduce unilateral modifications to interest rates or other loan conditions shall be null and void.

(4) A loan contract may establish an indexed interest rate, designed to vary in line with a reference rate, published by the Bank.

Addition
of section
50A

16. The principal Act is amended by adding immediately after section 50 the following new section-

“Powers of
Governor
on waivers

50A. The Governor may, where he considers it necessary waive compliance or penalties for non-compliance of the provisions of this Act or regulations made thereunder.”

PART III

AMENDMENT OF THE BANK OF TANZANIA ACT, 1995

Constru-
ction
Act No. 1
of 1995

17. This Part shall be read as one with the Bank of Tanzania Act, 1995 hereinafter referred to as the “principal Act”.

Amend-
ment of
section 3

18. Section 3 of the principal Act is amended by inserting the following definitions in their appropriate alphabetical order:

“abusive collection practice” means a collection practice established by a bank or financial institution that, in the opinion of the Bank, is unduly violent or offensive for the borrower;

“credit reference bureau” means a private entity specialized in the collection and sale of credit performance information for individuals and companies;

“credit reference databank” means a computerized mechanism created by the Bank to receive and supply information to banks, financial institutions, credit reference bureaus and other institutions authorized by the Bank, regarding the credit transactions of customers, including their off-balance sheet operations;

“clearing system” means a set of procedures whereby banks or financial institutions present and exchange data or documents relating to funds or securities transfers to other financial institutions at a clearing house and includes a mechanism for the calculation of participants’ bilateral or multilateral net positions with a view to facilitating the settlement of their obligations on a net or gross basis;

“payment system” means a system consisting of a set of instruments banking procedures and typically, inter-bank funds transfer systems that ensure the circulation of money;

“settlement system” means a system used to facilitate the settlement of transfers of funds or financial instruments.”

19. The principal Act is amended by adding immediately after section 5 the following new section-

“Addition of section 5A

Power of the Bank over payment, clearing, and settlement systems

5A.—(1) The Bank shall:

- (a) regulate, monitor, and supervise the payment, clearing and settlement system including all product and services thereof;
- (b) conduct oversight functions on the payment, clearing and settlement systems in any bank, or financial institution, or infrastructure service provider or company;

(2) The Bank may:

- (a) participate in any such payment, clearing and settlement systems;
- (b) establish and operate any system for the payment, or clearing or settlement purposes; and
- (c) perform the functions assigned by or under any law for the regulation of such payment, clearing and settlement systems.”

20. The principal Act is amended in section 19 by deleting the words “ten percentum” and “five percentum” appearing in paragraph (a) of subsection (2) and substituting for them the words “twenty percentum” and “ten percentum” respectively.

Amendment of section 19

21. Section 43 of the principal Act is amended by deleting paragraph (d), and substituting for it the following new paragraph-

Amendment of section 43

“(d) other credit instruments or securities prescribed by the Bank;”

Amend-
ment of
section 45

22. Section 45 of the principal Act is amended by repealing subsection (4) and substituting for it the following:

“(4) The Bank shall impose on any bank or financial institution that fails to maintain the minimum balances required under this section, a daily penalty charge on the amount of the deficiency, of the greater than of 0.2 percentum or three times the average yearly lending rate of such bank or such financial institution divided by 360, and such charge may be recovered by deduction from any balance of, or moneys owing to, the bank or financial institution concerned or as a civil debt.”

Amend-
ment of
section 47

23. Section 47 of the principal Act is amended in subsection (3) by deleting the phrase “balance sheet” and substituting for it the phrase “financial statements and any other information to be prescribed by the Bank”

Addition
of section
48A

24. The principal Act is amended by adding immediately after section 48 the following new section:

“Credit
reference
system

48A.—(1) The Bank shall create a credit reference system designed to collect and provide information on the payment record of the clients of all banks and financial institutions in the United Republic of Tanzania as well as those of savings and credit schemes and other entities engaged in a regular basis in the extension of credit.

(2) The credit reference system shall consist of a credit reference databank administered by the Bank and private credit reference bureaus operating under the conditions prescribed by the Bank.

(3) All banks and financial institutions shall report to the credit reference databank detailed information about all credit facilities extended to each client, in the format and with the frequency which the Bank may prescribe.

(4) The Bank shall have the authority to mandate a standardized method or technology for the assignment of a unique identification number to each client by all banks and financial institutions.

(5) The information received from banks and financial institutions shall be consolidated by the Bank to determine, at a minimum, the total indebtedness and payment performance of each client which may then be provided to each reporting institution for internal control and monitoring purposes.

(6) The Bank may require that banks and financial institutions report to the credit reference databank other information relevant to their clients' operations including information on cheques that are returned or refused due to lack of funds or fraud, and any other information required on electronic payment instruments.

(7) The Bank may require any savings and credit institution or scheme and any other entity engaged in the extension of credit to report the information required by the credit reference databank.

(8) The Bank shall licence and regulate operations of private credit reference bureaux that access information from the credit reference databank.

(9) Where any private credit reference bureau is found involved in gross or repeated transgression of consumer protection regulations or fails to furnish correct information that may be required by the credit reference databank, the Bank may impose on the private credit reference bureau a penalty charge of not less than five hundred thousand shillings for every day during which the non-compliance continues and/or withdraw its license.

(10) The Bank may use the credit reference databank to monitor the credit activities of any individual institution and the credit market for purposes of publication of periodical information.

(11) The bank and financial institutions shall request information from the credit reference databank or a credit information bureau regarding payment record of all prospective clients, and in relation therewith banks and financial

institutions shall observe that all written loan applications are being signed by every prospective client and filed for review by the a Bank in the course of periodic examinations.”

Amend-
ment of
section 56

25. The Principal Act is amended—

- (a) by re-designating section 56 as subsection (1) of that section;
- (b) by adding the following subsection immediately after the re-designated subsection (1):

(2) Any foreign currency reserves held on deposit or managed by the Bank pursuant to subsection (1), shall be immune from any enforcement proceedings, and no execution, attachment or any other similar process shall issue out of any court for enforcing payment by the Bank in relating to such foreign currency reserves.

Addition
of section
65A

26. The principal Act is amended by adding immediately after section 65 the following new section-

Restricti-
on on
execution
against
property
and assets
of the
Bank

65A Notwithstanding anything to the contrary contained in any written law, where any judgment or order has been obtained against the Bank, no execution or attachment, or process in the nature thereof, shall be issued against the Bank or against any property or asset of the Bank, but the Bank shall cause to be paid such amounts as may, by judgment or order, be awarded against the Bank to the person entitled thereto.

Immuni-
zation of
assets of
the Gover-
nment
held by
the Bank

65B.—(1) All assets of the Government held by the Bank including any local or foreign currency held on deposit or managed by the Bank, shall be immune from any enforcement proceedings, and no execution, attachment or any other similar process shall issue out of any court for enforcing payment by the Bank in relation to any asset held on account of the Government and no person shall be individually liable under any order for payment by the Bank or any officer of the Bank in relation to such asset held on account of the Government.

Act No.
16 of
1967

(2) Where, in relation to any asset of the Government held by the Bank, proceedings have been instituted in any court for enforcement or procuring execution by attachment or any other similar process, the provisions of the Government Proceedings Act, 1967 shall apply *mutatis mutandis* in relation to such proceedings against the Bank or any officer of the Bank

27. The principal Act is amended by adding immediately after section 66 the following new sections-

Addition of
sections
66A and
66B

“Powers of
Governor
on waivers

66A. The Governor may, where he considers it necessary, waive compliance or penalties for non-compliance of the provisions of this Act or regulations made thereunder.

Power to
make
regulations

66B.—(1) The Governor may make regulations necessary or desirable to give effect to the provisions of this Act.

(2) Regulations made under this Act shall be published in the *Gazette*”.

PART IV

AMENDMENT OF THE CO-OPERATIVE SOCIETIES ACT, 1991

28. This Part shall be read as one with the Cooperative Societies Act, 1991 hereinafter referred to as the “principal Act”.

Construction
Act No. 15
of 1991

29. Section 45 of the principal Act is amended-

Amendment of
section 45

(a) by adding immediately after subsection (3), the following new subsection -

“(4) Matters which the by laws may prescribe under this section shall be consistent with the regulations pertaining to micro-finance companies”;

(b) by renumbering subsection (4) as subsection (5);

Amend-
ment of
section
123

30. Section 123 of the principal Act is amended by adding immediately after subsection (3) the following subsection-

“(4) The rules made by the Minister, as well as the regulations made by the Registrar in accordance with section 124, for savings and credit societies and banks incorporated under section 21(b), shall as much as possible be similar to regulations pertaining to micro-finance companies.”

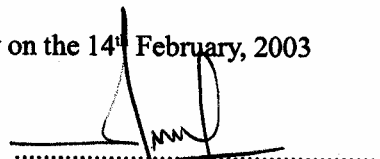
Amend-
ment of
section
139

31. Section 139 of the principal Act is amended -

- (a) by re-designating that section as subsection (1) of that section; and
- (b) by adding immediately after subsection (1) the following subsection:

“(2) The Registrar of Cooperatives shall cancel the registration of any savings and credit societies that fail to comply with the requirement to present audited accounts as required by section 48 unless sufficient evidence is given to the effect that any such savings and credit society have established a technical and financial assistance linkage with a professionally managed financial services institution or program.”

Passed in the National Assembly on the 14th February, 2003


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Clerk of the National Assembly