

Supplement No 13

29th April, 2011

SUBSIDIARY LEGISLATION

to the Gazette of the United Republic of Tanzania No. 17 Vol 92 dated 29th April, 2011
Printed by the Government Printer, Dar es Salaam by Order of Government

GOVERNMENT NOTICE NO. 149 published on 29/4/2011

THE BANKING AND FINANCIAL INSTITUTIONS ACT
(CAP 342)

REGULATIONS

(Made under section 71)

THE BANKING AND FINANCIAL INSTITUTIONS (TANZANIA
MORTGAGE REFINANCE COMPANY) REGULATIONS, 2011

ARRANGEMENT OF REGULATIONS

PART I

PRELIMINARY PROVISIONS

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

PART II

POWERS AND DUTIES OF BANK OF TANZANIA

5. Powers and duties of the Bank.

PART III

LICENSING

6. Pre-filing meeting.
7. Application fee.
8. Financial capacity.
9. Character and experience.
10. Disclosure of intended products and services.
11. Feasibility studies.

12. Significant policies and their contents.

PART IV

CREDIT EXTENSION AND QUALIFIED COLLATERAL

13. Credit extensions.
14. Qualified collateral.

PART V

CAPITAL ADEQUACY REQUIREMENTS AND
PERMISSIBLE
INVESTMENTS AND RESTRICTIONS

15. Minimum risk-based capital requirement.
16. Permissible investments.

PART VI

LIQUIDITY REQUIREMENTS

17. Liquidity management policies.
18. Adequacy of liquidity.

PART VII

CORPORATE GOVERNANCE REQUIREMENTS

19. Composition of the Board of Directors.
20. Board of Directors.
21. Duties of Directors.
22. Establishment of Board Audit Committee.
23. Senior Management.

PART VIII

EXAMINATION, REPORTING REQUIREMENTS
AND OFFSITE MONITORING

24. Inspection of books and records.
25. Reporting requirements and Off-Site Monitoring.

PART IX

ADMINISTRATIVE SANCTIONS

26. Sanctions.

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SCHEDULE
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PART I

PRELIMINARY PROVISIONS

- Citation 1. These Regulations may be cited as the Banking and Financial Institutions (Tanzania Mortgage Refinance Company) Regulations, 2011.
- Application 2. These Regulations shall apply to Tanzania Mortgage Refinance Company Limited (TMRC).
- Interpretation 3. In these Regulations unless the context requires otherwise:
Cap.342 “Act” means the Banking and Financial Institutions Act;
 “Bank” means the Bank of Tanzania;
 “borrower” means a bank or financial institution eligible to borrow funds from TMRC;
 “core capital” has the meaning ascribed to it in the Act;
 “TMRC” means Tanzania Mortgage Refinance Company Limited;
 “total capital” has the meaning ascribed to it under the Act.
- Objectives 4.-(1) The objectives of these Regulations are to ensure safety and soundness of TMRC’s operations.
 (2) These Regulations aim at creating conditions for:
 (a) a solid capital base that adequately reflects TMRC’s risks and sufficient to absorb unanticipated losses; and
 (b) good corporate governance, including an informed and involved Board of Directors, an effective system of internal controls, disclosure, and transparency.

PART II

POWERS AND DUTIES OF BANK OF TANZANIA

- Powers and duties of the Bank 5. The powers and duties of the Bank shall be to-
 (a) license TMRC; and

- (b) regulate and supervise TMRC business operations, which include-
 - (i) prescribing rules and conditions upon which TMRC may extend credit to its borrowers, borrow funds or issue debt obligations and issue, redeem, or transfer stock;
 - (ii) prescribing liquidity requirements and permissible investments;
 - (iii) reviewing TMRC's business and operational policies, including its Memorandum and Articles of Association, By-laws, Business Plan, Capital Plan, Credit Policy, Assets and Liabilities Management Policy; Financial Management Policy, and Code of Ethics and Business Conduct;
 - (iv) collecting regular data from TMRC's operations relating to its lending and the collateral assigned in its favour;
 - (v) conducting on-site inspections and off-site monitoring of TMRC operations; and
- (c) set capital adequacy standards for TMRC.

PART III LICENSING

Pre-filing
meeting

6. A pre-filing meeting between TMRC and the Bank shall be held prior to formal submission of the application.

Application fee

7. The TMRC shall, on application submit a banker's cheque of three million shillings as non-refundable fee.

Financial
capacity

8.-(1) The Bank shall before granting a licence, investigate and scrutinize the financial capacity of the TMRC and its shareholders.

(2) The financial capacity of the TMRC and its shareholders shall be measured on-

- (a) levels of capital as shown on balance sheets;
- (b) the potential financial support that may be made available where TMRC require capital injection for whatsoever reason, including losses in its operations.

(3) The Bank shall assess the ability of TMRC and its shareholders to pay the current obligations from the income, reasonability of valuation they assign to their assets and their net-worth in relation to other liabilities.

Character and
experience

9.-(1) The Bank shall make an assessment, of the character and experience of the proposed members of the Board of Directors and Senior Management in accordance with the criteria set out in the Schedule to these Regulations.

(2) The criteria referred to under sub-regulation (1) shall indicate whether the proposed members of the Board of Directors and Senior Management of TMRC are fit and proper persons.

Disclosure of
intended
products and
services

10. The TMRC shall disclose any intended products and services it proposes to provide and how such products and services shall be of benefit to Tanzania.

Feasibility
studies

11.-(1) The TMRC shall provide detailed feasibility studies, business plans and projected balance sheets, income statements and cash-flow statements for four years.

(2) At minimum TMRC shall provide the following:

- (a) draft policies and procedural manuals detailing how the institution shall operate in a manner consistent with the principles prescribed in Risk Management Guidelines issued by the Bank;

- (b) description of accounting system, information and communication technology to be used in the operations of the institution and proposed future investment;
- (c) number of employees, job descriptions of senior management positions and an organization chart;
- (d) description of internal control procedures that the institution shall implement;
- (e) description of shareholders, Board and senior management and strategy for the successful operation of the institution;
- (f) shareholders agreement governing the relationships between shareholders and ensuring that ownership is accessible for banks and financial institutions meeting the requirements and standards specified in the agreement or in TMRC's Memorandum and Articles of Association; and
- (g) Master Servicing and Refinancing Agreement governing the lending operations between TMRC and the participating banks.

(3) The Business Plan under sub-regulation (2)(a) shall, at a minimum, include TMRC's mission and vision, governance, major business activities, organization and management, planned sources and uses of capital and other funds, and risk controls and risk mitigation strategies. The Business Plan shall also include market analyses and business projections under various scenarios and assumptions.

Significant
policies and
their contents

12. The TMRC shall prepare and submit to the Bank for review, the following significant policies:

- (a) Credit Policy which shall describe credit products that TMRC offers to its borrowers, including the terms and conditions for issuing advances, and shall set forth the standards that TMRC shall use to manage

- credit risk in these products. The Credit Policy shall, at a minimum:
- (i) specify the underwriting criteria to be applied in evaluating applications for advances;
 - (ii) specify the levels of collateralization, valuation of collateral, and the discounts that are to be applied to collateral values securing advances;
 - (iii) specify the standards and criteria for, and timing of, periodic assessments of the creditworthiness of borrowers, obligors, or other counterparties and for the establishment of credit limits;
 - (iv) specify the fees to be charged for obtaining, or pre-paying, advances including any schedules or formulas pertaining to such fees; and
 - (v) describe the standards and criteria for pricing products, including differential pricing of advances.
- (b) the ALM Policy which shall describe TMRC's permissible assets and liabilities, set standards for managing its interest rate risk and liquidity risk and delineate the composition, duties, and operational procedures of the Assets/Liabilities Management Committee.
- (c) the Financial Management Policy which shall describe TMRC's financial management policies and procedures and its system of internal controls. The Policy shall include, at a minimum: Accounting policies and principles, Roles and responsibilities of the Chief Financial officer and other officials responsible for financial management; Treasury operations, including cash management, vouchers,

- payroll and procurement; Financial record-keeping and reporting and Auditing and periodic internal control testing;
- (d) the Code of Ethics and Business Conduct shall specify high standards for honesty, integrity and impartiality for TMRC employees, officers, and directors and provide guidance about avoiding conflicts of interest, self-dealing and other types of impropriety.

PART IV

CREDIT EXTENSION AND QUALIFIED COLLATERAL

Credit
Extensions

- 13.-(1) The TMRC shall, in discharging its duties extend credit to its good standing borrowers.
- (2) The TMRC shall deem a borrower not to be in good standing if that borrower-
- (a) is delinquent on payment obligations at any time;
 - (b) receives a qualified opinion on its most recent audited financial statement;
 - (c) is unprofitable for four consecutive quarters;
 - (d) fails to meet its capital adequacy requirements as prescribed by the Bank; or
 - (e) in respect of whom TMRC receives a written notice from the Bank, expressing material concerns about the borrower's financial condition or business operations resulting from the borrower's most recent supervisory inspection.
- (3) The TMRC credit extensions shall -
- (a) be fully secured by qualified collateral; or
 - (b) for the purpose of the provision of paragraph (a), a credit extension shall be deemed fully secured credit when the qualified collateral covers at least one hundred twenty five percent of the credit amount.

(4) The TMRC shall not extend credit to any borrower equal to more than twenty times of the borrower's paid up capital in TMRC.

(5) The TMRC advances shall be made on non-preferential terms and conditions and shall provide clear disclosures of the terms and conditions of the advances to its borrowers.

Qualified collateral

14.-(1) The qualified collateral shall be limited to the following assets-

- (a) a first lien mortgage on owner-occupied properties which are fully insured and have not had any arrears over the past six months;
- (b) securities issued, insured or guaranteed by the Government of the United Republic of Tanzania; or
- (c) Bank fixed deposits.

(2) The TMRC shall assess the book value of the collateral intended to secure the advances being considered and at least every six months thereafter for all outstanding advances.

(3) The TMRC shall require borrowers to provide additional qualified collateral to compensate for any diminution in the market value or book value of the pledged collateral securing their outstanding advances.

(4) The TMRC shall require borrowers to provide substitute qualified collateral if any security or residential mortgage securing an outstanding advance matures, prepays, defaults, or becomes more than ninety days delinquent.

(5) The TMRC's outstanding advances to a borrower shall become due and payable if that borrower is unable to provide sufficient qualified collateral to support its outstanding advances.

PART V
CAPITAL ADEQUACY REQUIREMENTS AND PERMISSIBLE
INVESTMENTS AND RESTRICTIONS

Minimum risk-
based capital
requirement

15.-(1) The TMRC shall commence operations and maintain at all times a minimum core capital of not less than six billion shillings or such higher amount as the Bank may determine.

(2) The TMRC shall maintain at all times a minimum ratio of core capital to the value of its risk-weighted assets and off balance sheet exposures of not less than ten percent.

(3) The TMRC shall maintain at all times a minimum ratio of total capital to the value of its risk-weighted assets and off balance sheet exposures of not less than twelve percent.

(4) The risk weighted assets and off balance sheet exposures shall be computed in line with procedures as defined by the Bank.

Permissible
investments

16.-(1) The TMRC shall not invest more than forty percent of its financial resources in the following investments-

(a) treasury bonds or equivalent instruments issued by the Government of the United Republic of Tanzania; or

(b) fixed deposits in banks and financial institutions licensed by the Bank.

(2) At no time shall TMRC engage in activities that may lead it to incur foreign exchange, commodity or equity risks, or use financial derivatives except as hedging instruments.

(3) The limit of forty percent referred to under sub-regulation (1) shall not apply in the first year of operations of TMRC.

(4) The limit referred to under sub-regulation (3) shall be reviewed periodically by the Bank after considering the liquidity needs of TMRC.

PART VI
LIQUIDITY REQUIREMENTS

Liquidity
management
policies

17.-(1) The TMRC shall adopt sound and prudent liquidity management and funding policies consistent with the principles set out in the Risk Management Guidelines issued by the Bank.

(2) The policies under sub-regulation (1) shall at least include-

- (a) delegation of responsibility for management of overall liquidity;
- (b) establishment and implementation of effective techniques and procedures to identify, measure, monitor and manage liquidity risk both in individual currencies and overall;
- (c) analysis of net funding requirements under alternative scenarios; and
- (d) contingent liquidity planning.

(3) The liquidity management and funding policies under sub-regulation (1) shall be reviewed annually, or more frequently as may be necessary to ensure that it remains appropriate and prudent.

Adequacy of
liquidity

18. The TMRC shall maintain sufficient liquid assets for meeting its maturing obligations and liabilities.

PART VII
CORPORATE GOVERNANCE REQUIREMENTS

Composition of
the Board of
Directors

19.-(1) The Board of Directors of TMRC shall have a membership of not less than five, two of whom shall have mortgage finance or related experience and majority of whom shall be non-executive.

(2) The chairperson of the TMRC shall be a non-executive member of the Board.

(3) The TMRC shall not appoint any person to hold a post of senior management or Board of Directors, without obtaining prior approval of the Bank.

Board of
Directors

20.-(1) The ultimate responsibility for the TMRC operations shall be vested to the Board of Directors.

Duties of
Directors

21. The duties of directors under these Regulations shall be to -

- (a) act in good faith, in a manner believed to be in TMRC's best interests, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances;
- (b) administer TMRC affairs fairly and impartially and without discrimination in favor of or against any shareholder;
- (c) review annually, and amend as appropriate, the following TMRC plans and policies:
 - Business plan, capital plan, credit policy, Assets and Liabilities Management Policy, Financial Management Policy and Code of Ethics and Business Conduct;
- (d) prepare and publish TMRC's annual report, including financial statements;
- (e) approve annual budgets, financial projections and proposed payout of dividends.

(2) The Board of Directors shall ensure that TMRC establishes and maintains an effective internal control system.

(3) The Board of Directors shall establish, document and communicate an organizational structure for TMRC that clearly shows the lines of authority, provides for effective communication and ensures that there are no gaps in the lines of authority.

(4) The Board of Directors shall review all delegations of authority to specific personnel or committees and require that such delegations state the extent of the authority and responsibilities delegated.

(5) The Board of Directors shall establish reporting requirements for senior management, including specifying the nature and frequency of the management reports it receives.

Establishment
of Board audit
committee

22.-(1). The Board of Directors shall establish an audit committee.

(2) The audit committee shall be comprised of at least three directors, one of whom shall have extensive accounting or related financial management experience.

(3) The Board of Directors shall adopt a written charter for the audit committee that specifies the scope of the committee's powers and responsibilities and its structure, processes and membership requirements.

Senior
Management

23.-(1). The TMRC senior management shall be responsible for carrying out the directives of the Board of Directors.

(2) The TMRC senior management shall, conduct day-to-day operations of TMRC in a safe and sound manner, including the establishment, implementation and maintenance of the internal control system required by these Regulations.

(3) Without prejudice to the generality of subsection (2), the TMRC senior management shall, in conducting its day to day operation -

- (a) ensure that TMRC employees fully understand and comply with all policies, procedures and legal requirements applicable to their positions and responsibilities, including adherence to approved risk tolerances and mitigation strategies;
- (b) ensure that there is appropriate segregation of duties among employees and those employees are not assigned conflicting responsibilities;
- (c) ensure that employees receive necessary and appropriate information and training;
- (d) develop and implement operating procedures that translate the major business objectives, strategies and policies established by the Board of Directors into effective operating standards;
- (e) ensure adherence to the lines of authority and responsibility established by the Board of Directors;

- (f) oversee implementation and maintenance of management information and other operating systems;
- (g) establish and implement an effective system to track internal control weaknesses and the action taken to correct them; and
- (h) monitor and report periodically to the Board of Directors and audit committee about the achievement of TMRC's business objectives and the effectiveness of the internal control system.

(2) The senior management shall perform, annually, a risk assessment that identifies and evaluates material risks, including quantitative and qualitative risks that may adversely affect the achievement of TMRC's business and performance objectives and compliance requirements.

(3) The risk assessment performance referred to in sub-regulation (2) shall be in written form and shall be reviewed by the Board of Directors promptly upon its completion.

PART VIII

EXAMINATION, REPORTING REQUIREMENTS AND OFFSITE MONITORING

Inspection of
books and
records

24. The TMRC shall make its books and records readily available for inspection and other supervisory purposes within a reasonable period upon request by the Bank.

Reporting
Requirements
and Off-Site
Monitoring

25.-(1) The TMRC shall be subject to the Bank's off-site monitoring and shall make periodic reports in accordance with the form, instructions and schedules specified by the Bank including-

- (a) monthly call reports including balance sheet, statement of comprehensive income and capital compliance and leverage;
- (b) quarterly call reports including statements of cash flow, capital, investments, outstanding

- advances and commitments, outstanding liabilities and member shareholdings; and
- (c) yearly updated projections on its business volume and on its balance sheet and profit and loss account.

(2) The reports referred to under sub-regulation (1) shall be submitted no later than the 15th day after the end of each reporting period.

PART IX

ADMINISTRATIVE SANCTIONS

Sanctions

26. Without prejudice to any other penalty or sanction prescribed by the Act, the Bank may impose one or more of the following penalty or sanction, where any of the provisions of these Regulations are contravened-

- (a) penalty on the TMRC, its directors, officers or employees responsible for non-compliance in such amounts as may be determined by the Bank;
- (b) prohibition from declaring or paying dividends;
- (c) suspension of access to credit facilities of the Bank;
- (d) suspension of lending and investment operations;
- (e) suspension of capital expenditure;
- (f) suspension of the privilege to issue debt instruments;
- (g) suspension from office of the defaulting director, officer or employee;
- (h) disqualification from holding any position or office in any licensed or financial institution in Tanzania; and
- (i) revocation of the license.

SCHEDULE

(Made under Regulation 9)

CRITERIA FOR DETERMINING THE CHARACTER AND EXPERIENCE REQUIRED FOR A MEMBER OF THE
BOARD OF DIRECTORS AND SENIOR MANAGEMENT OF TMRC

1. For the purpose of these Regulations, the character and moral suitability of persons proposed to be members of the Board or senior management, the Bank shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned-

- (a) adequate education background;
- (b) general character;
- (c) professional skills, competence and soundness of judgment for the fulfilment of the responsibilities of the office in question; and
- (d) diligence with which the person concerned is likely to fulfil those responsibilities.

2. For the purpose of and without prejudice to the generality of the provisions of paragraph (1), the Bank may have regard to the previous conduct and activities of the person concerned in the business or financial matters and, in particular to evidence that such person-

- (a) has committed any act of bankruptcy;
- (b) was a director or in a senior management position of a bank or financial institution that has been liquidated or is under liquidation or statutory management;
- (c) has committed or been convicted of the offence of fraud or any other offence of which dishonesty is an element; and
- (d) has contravened the provision of any law designated for the protection of members of the public against financial loss due to the dishonesty or incompetence of, or malpractices by, persons engaged in the provision of banking, insurance, investment or other financial services.

3. Any other criteria, which the Bank may prescribe from time to time.

4. The following documents shall be submitted to the Bank with respect to each proposed director and senior management team member, together with other documents the Bank may require-

- (a) detailed curriculum vitae;
- (b) certified copies of academic and professional certificates;
- (c) photocopy of the pages of the passport which contain personal

information including photograph, nationality, date and place of birth and issuer of the passport;

- (d) two certified passport size photographs; and
- (e) references from two persons who are not relatives, vouching for good moral character, integrity and performance.

Dar es Salaam
..... 2011

BENNO J. NDULU,
Governor