

---

# THE BANKING REGULATION REVIEW

---

FOURTH EDITION

EDITOR  
JAN PUTNIS

LAW BUSINESS RESEARCH

# THE BANKING REGULATION REVIEW

---

Reproduced with permission from Law Business Research Ltd.

This article was first published in The Banking Regulation Review, 4th edition  
(published in April 2013 – editor Jan Putnis).

For further information please email  
[Adam.Sargent@lbresearch.com](mailto:Adam.Sargent@lbresearch.com)

# THE BANKING REGULATION REVIEW

---

Fourth Edition

Editor  
JAN PUTNIS

LAW BUSINESS RESEARCH LTD

# THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW  
THE RESTRUCTURING REVIEW  
THE PRIVATE COMPETITION ENFORCEMENT REVIEW  
THE DISPUTE RESOLUTION REVIEW  
THE EMPLOYMENT LAW REVIEW  
THE PUBLIC COMPETITION ENFORCEMENT REVIEW  
THE BANKING REGULATION REVIEW  
THE INTERNATIONAL ARBITRATION REVIEW  
THE MERGER CONTROL REVIEW  
THE TECHNOLOGY, MEDIA AND  
TELECOMMUNICATIONS REVIEW  
THE INWARD INVESTMENT AND  
INTERNATIONAL TAXATION REVIEW  
THE CORPORATE GOVERNANCE REVIEW  
THE CORPORATE IMMIGRATION REVIEW  
THE INTERNATIONAL INVESTIGATIONS REVIEW  
THE PROJECTS AND CONSTRUCTION REVIEW  
THE INTERNATIONAL CAPITAL MARKETS REVIEW  
THE REAL ESTATE LAW REVIEW  
THE PRIVATE EQUITY REVIEW  
THE ENERGY REGULATION AND MARKETS REVIEW  
THE INTELLECTUAL PROPERTY REVIEW  
THE ASSET MANAGEMENT REVIEW  
THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW  
THE MINING LAW REVIEW  
THE EXECUTIVE REMUNERATION REVIEW  
THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW  
THE CARTELS AND LENIENCY REVIEW  
THE TAX DISPUTES AND LITIGATION REVIEW

[www.TheLawReviews.co.uk](http://www.TheLawReviews.co.uk)

PUBLISHER  
Gideon Roberton

BUSINESS DEVELOPMENT MANAGERS  
Adam Sargent, Nick Barette

MARKETING MANAGERS  
Katherine Jablonowska, Thomas Lee, James Spearing

PUBLISHING ASSISTANT  
Lucy Brewer

PRODUCTION COORDINATOR  
Lydia Gerges

HEAD OF EDITORIAL PRODUCTION  
Adam Myers

CHIEF SUBEDITOR  
Jonathan Allen

SUBEDITORS  
Caroline Rawson, Anna Andreoli

EDITOR-IN-CHIEF  
Callum Campbell

MANAGING DIRECTOR  
Richard Davey

Published in the United Kingdom  
by Law Business Research Ltd, London  
87 Lancaster Road, London, W11 1QQ, UK  
© 2013 Law Business Research Ltd  
[www.TheLawReviews.co.uk](http://www.TheLawReviews.co.uk)

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. The publishers and the editor accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of March 2013, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – [gideon.roberton@lbresearch.com](mailto:gideon.roberton@lbresearch.com)

ISBN 978-1-907606-59-5

Printed in Great Britain by  
Encompass Print Solutions, Derbyshire  
Tel: 0844 2480 112

# ACKNOWLEDGEMENTS

---

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADVOKATFIRMAET BA-HR DA

AFRIDI & ANGELL

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

ANDERSON MŌRI & TOMOTSUNE

ARTHUR COX

BONELLI EREDE PAPPALARDO

BREDIN PRAT

BUN & ASSOCIATES

CHANCERY CHAMBERS

CLAYTON UTZ

CONSORTIUM – TABOADA & ASOCIADOS

CONSORTIUM CENTRO AMÉRICA ABOGADOS

DAVID GRISCTI & ASSOCIATES

DAVIES WARD PHILLIPS & VINEBERG LLP

DAVIS POLK & WARDWELL LLP

DE BRAUW BLACKSTONE WESTBROEK

DLA PIPER WEISS-TESSBACH RECHTSANWÄLTE GMBH

ELVINGER, HOSS & PRUSSEN

F.O. AKINRELE & CO

FERRERE ABOGADOS

GERNANDT & DANIELSSON

GIDE LOYRETTE NOUEL AARPI

HANNES SNELLMAN

HENGELER MUELLER

KADIR, ANDRI & PARTNERS

KBH KAAUUUN

KIM & CHANG

LENZ & STAEHELIN

LS HORIZON LIMITED

MATTOS FILHO ADVOGADOS

MAYORA & MAYORA, SC

MIRANDA CORREIA AMENDOEIRA & ASSOCIADOS

MKONO & CO ADVOCATES

MORATIS PASSAS LAW FIRM

MOURANT OZANNES

MULLA & MULLA & CRAIGIE BLUNT & CAROE

NAGY ÉS TRÓCSÁNYI ÜGYVÉDI IRODA

NAUTADUTILH

PAKSOY

PELIFILIP SCA

PIMENTA DIONISIO E ASSOCIADOS

RUSSELL McVEAGH

SHALAKANY LAW OFFICE

SKUDRA & UDRIS

SLAUGHTER AND MAY

SYCIP SALAZAR HERNANDEZ & GATMAITAN

T STUDNICKI, K PŁESZKA, Z ĆWIAKALSKI, J GÓRSKI SPK

URÍA MENÉNDEZ

VASIL KISIL & PARTNERS

VIEIRA DE ALMEIDA & ASSOCIADOS

WASELIUS & WIST

WEBBER WENTZEL

ZHONG LUN LAW FIRM



---

# CONTENTS

---

<b>Editor's Preface</b>	.....xi
	<i>Jan Putnis</i>
<b>Chapter 1</b>	INTERNATIONAL INITIATIVES ..... 1
	<i>Jan Putnis and Tolek Petch</i>
<b>Chapter 2</b>	ANGOLA ..... 34
	<i>Mafalda Oliveira Monteiro and Bruno Sampaio Santos</i>
<b>Chapter 3</b>	AUSTRALIA..... 45
	<i>Louise McCoach and David Landy</i>
<b>Chapter 4</b>	AUSTRIA ..... 85
	<i>Wolfgang Freund</i>
<b>Chapter 5</b>	BARBADOS ..... 95
	<i>Trevor A Carmichael QC</i>
<b>Chapter 6</b>	BELGIUM..... 104
	<i>Anne Fontaine</i>
<b>Chapter 7</b>	BOLIVIA..... 115
	<i>Carlos Pinto-Meyer and Cristian Bustos</i>
<b>Chapter 8</b>	BRAZIL ..... 123
	<i>José Eduardo Carneiro Queiroz</i>
<b>Chapter 9</b>	CAMBODIA ..... 129
	<i>Bun Youdy</i>
<b>Chapter 10</b>	CANADA ..... 145
	<i>Scott Hyman, Carol Pennycook, Derek Vesey and Nicholas Williams</i>
<b>Chapter 11</b>	CAYMAN ISLANDS..... 161
	<i>Richard de Basto</i>

<b>Chapter 12</b>	CHINA.....	172
	<i>Wantao Yang and Borong Liu</i>	
<b>Chapter 13</b>	DENMARK.....	193
	<i>Mikkel Fritsch and Tanja Lind Melskens</i>	
<b>Chapter 14</b>	EGYPT .....	205
	<i>Aly El Shalakany</i>	
<b>Chapter 15</b>	EL SALVADOR.....	215
	<i>Oscar Samour and Aquiles Delgado</i>	
<b>Chapter 16</b>	EUROPEAN UNION.....	226
	<i>Jan Putnis and Michael Sholem</i>	
<b>Chapter 17</b>	FINLAND .....	250
	<i>Tarja Wist and Jussi Salo</i>	
<b>Chapter 18</b>	FRANCE .....	262
	<i>Olivier Saba, Samuel Pariente, Jennifer Downing, Jessica Chartier and Hubert Yu Zhang</i>	
<b>Chapter 19</b>	GERMANY .....	295
	<i>Thomas Paul and Sven H Schneider</i>	
<b>Chapter 20</b>	GREECE .....	309
	<i>Dimitris Passas and Vassilis Saliaris</i>	
<b>Chapter 21</b>	GUATEMALA.....	332
	<i>María Fernanda Morales Pellecer</i>	
<b>Chapter 22</b>	GUERNSEY .....	346
	<i>John Lewis and Helen Wyatt</i>	
<b>Chapter 23</b>	HONG KONG .....	358
	<i>Laurence Rudge and Peter Lake</i>	
<b>Chapter 24</b>	HUNGARY .....	376
	<i>Zoltán Varga and Tamás Pásztor</i>	
<b>Chapter 25</b>	INDIA .....	389
	<i>Shardul Thacker</i>	

<b>Chapter 26</b>	INDONESIA.....	403
	<i>Ferry P Madian and Yanny Meuthia S</i>	
<b>Chapter 27</b>	IRELAND.....	426
	<i>William Johnston, Robert Cain, Eoin O'Connor and Niall Esler</i>	
<b>Chapter 28</b>	ITALY .....	440
	<i>Giuseppe Rumi and Andrea Savigliano</i>	
<b>Chapter 29</b>	JAPAN .....	452
	<i>Hirohito Akagami and Wataru Ishii</i>	
<b>Chapter 30</b>	JERSEY .....	464
	<i>Simon Gould and Sarah Huelin</i>	
<b>Chapter 31</b>	KOREA.....	476
	<i>Sang Hwan Lee, Chan Moon Park and Hoin Lee</i>	
<b>Chapter 32</b>	KUWAIT .....	489
	<i>Haifa Khunji and Basem Al Muthafer</i>	
<b>Chapter 33</b>	LATVIA .....	503
	<i>Armands Skudra</i>	
<b>Chapter 34</b>	LUXEMBOURG .....	514
	<i>Franz Fayot</i>	
<b>Chapter 35</b>	MALAYSIA .....	534
	<i>Andri Aidham bin Dato' Ahmad Badri, Julian Mahmud Hashim and Tan Kong Yam</i>	
<b>Chapter 36</b>	MALTA .....	544
	<i>David Griscti and Clint Bennetti</i>	
<b>Chapter 37</b>	MOZAMBIQUE.....	555
	<i>Paulo Pimenta and João Leite</i>	
<b>Chapter 38</b>	NETHERLANDS .....	565
	<i>Joost Schutte, Annick Houben and Mariken van Loopik</i>	
<b>Chapter 39</b>	NEW ZEALAND .....	579
	<i>Guy Lethbridge and Debbie Booth</i>	

<b>Chapter 40</b>	NICARAGUA .....	592
	<i>Rodrigo Taboada R</i>	
<b>Chapter 41</b>	NIGERIA.....	605
	<i>Adamu M Usman and Jumoke Onigbogi</i>	
<b>Chapter 42</b>	NORWAY .....	620
	<i>Terje Sommer, Richard Sjøqvist and Markus Nilssen</i>	
<b>Chapter 43</b>	PHILIPPINES .....	632
	<i>Rafael A Morales</i>	
<b>Chapter 44</b>	POLAND .....	648
	<i>Tomasz Gizbert-Studnicki, Tomasz Spyra and Michał Bobrzyński</i>	
<b>Chapter 45</b>	PORTUGAL.....	662
	<i>Pedro Cassiano Santos</i>	
<b>Chapter 46</b>	ROMANIA .....	679
	<i>Alexandru Birsan, Carmen Peli and Alexandra Manciualea</i>	
<b>Chapter 47</b>	SOUTH AFRICA.....	692
	<i>Johan de Lange and Matthew Gibson</i>	
<b>Chapter 48</b>	SPAIN .....	704
	<i>Juan Carlos Machuca</i>	
<b>Chapter 49</b>	SWEDEN .....	732
	<i>Niclas Rockborn and Nils Unckel</i>	
<b>Chapter 50</b>	SWITZERLAND .....	750
	<i>Shelby R du Pasquier, Patrick Hünerwadel, Marcel Tranchet and Valérie Menoud</i>	
<b>Chapter 51</b>	TANZANIA.....	773
	<i>Wilbert B Kapinga, Rehema A Khalid and Kamanga W Kapinga</i>	
<b>Chapter 52</b>	THAILAND .....	783
	<i>Montien Bunjarnondha and Rahat Alikhan</i>	
<b>Chapter 53</b>	TURKEY .....	798
	<i>Serdar Paksoy and Nazlı Bezirci</i>	

<b>Chapter 54</b>	UKRAINE .....	810
	<i>Denis Lysenko and Yulia Kyrpa</i>	
<b>Chapter 55</b>	UNITED ARAB EMIRATES.....	822
	<i>Amjad Ali Khan and Stuart Walker</i>	
<b>Chapter 56</b>	UNITED KINGDOM.....	830
	<i>Jan Putnis, Benjamin Hammond and Nick Bonsall</i>	
<b>Chapter 57</b>	UNITED STATES .....	868
	<i>Luigi L De Ghenghi and Reena Agrawal Sahni</i>	
<b>Chapter 58</b>	VIETNAM .....	948
	<i>Samantha Campbell, Pham Bach Duong and Nguyen Thi Tinh Tam</i>	
<b>Appendix 1</b>	ABOUT THE AUTHORS.....	969
<b>Appendix 2</b>	CONTRIBUTING LAW FIRMS' CONTACT DETAILS..	1007

# EDITOR'S PREFACE

---

2012 may be remembered as the year when practical reality caught up with those who thought that the financial crisis that emerged in Western economies in 2007 would result in more effective cooperation between financial regulators across the world. By one measure – the number of new initiatives and proposals for reform – the amount of cross-border financial regulatory activism has never been higher. But by more useful measures – moves towards solutions to the ‘too big to fail’ problem through the development of effective cross-border resolution mechanisms for banking groups and international cooperation on reform of OTC derivatives regulation – the optimism of the past has faded a little.

Questions are increasingly asked about whether the obstacles to truly productive cross-border regulatory cooperation – political imperatives, different incentives and straightforward differences of view – will ever be surmounted in ways that make international banking groups fundamentally safer. Media speculation in January 2013 that US regulators might not allow banks to assume cross-border regulatory cooperation in the resolution plans that they prepare in 2013 would, if substantiated, highlight this trend.

These apparently negative developments have not made the period since the publication of the last edition of this book in April 2012 any less interesting. It is also worth noting that most of the challenges that we have seen – new law and regulation that creates difficult questions of cross-border consistency and extraterritoriality, differing regulatory philosophies between major financial jurisdictions and the sheer slowness and unpredictability of developments – have rational, if depressing, explanations. For example, fundamental differences between the insolvency law of major jurisdictions, coupled with cross-border recognition issues and disagreements over how to pay for resolution, are nothing if not formidable barriers to the development of workable group-wide resolution plans for banking groups.

However, the past 12 months have not been a period of complete failure of regulatory reform either. Progress has been made, for example, in the enactment of legislation regarding OTC derivatives, most notably the European Market Infrastructure

Regulation (EMIR) in the European Union. But, as noted above, cross-border cooperation in this area remains an issue: it seems that hardly a month goes by without the discovery of a previously unremarked-upon anomaly between the rules in this area in different countries.

Bank liquidity regulation has continued to be the subject of intense debate in 2012, culminating in the Basel Committee's announcement in January 2013 of its decision to relax and to recommend the gradual phasing in of the liquidity coverage ratio ('LCR') for banks. Taking into account the fundamental influence that the LCR will have on many banks' business models, this was a welcome sign of pragmatism and also a sign of the Basel Committee's willingness to move the debate on liquidity forward.

Despite the challenges that have arisen in bank resolution initiatives, legislation and rules are developing in this area in multiple jurisdictions, with, for example, the publication of the draft European Union Recovery and Resolution Directive ('the RRD') in June 2012.

The European Union is, at the time of writing, enjoying a period of respite from the problems that it faced from the eurozone crisis in 2012, but it would be very optimistic to say that those problems have been brought under control. The European Commission is placing much emphasis on finalising the legislation implementing Basel III (CRD IV) and the RRD as soon as possible in 2013, notwithstanding that each of these initiatives may ultimately be affected profoundly by the parallel 'banking union' proposals for the eurozone.

In the United States, the main rules implementing Basel III are also expected to be substantially finalised in 2013. The significance of the restructuring of the financial regulatory regime in the United States, principally under the rules that are emerging from the framework established by the Dodd-Frank Act, continues to unfold and looks set to dominate the careers of a generation of regulators, bankers and their advisers.

The realisation dawned on many banks in 2012 that regulatory reform will be a longer and more drawn-out process than had been anticipated. For this reason, 2012 may also be remembered as the year when the banking sector in Europe, the United States and some other parts of the world began to think seriously about structural change in the long term, accepting that restructuring will have to take place against a backdrop of continuing regulatory reform. We have begun to see more group reorganisations, disposals, and the severe downsizing or closure of some businesses in banking groups, as well as opportunistic acquisitions. Four principal factors have contributed to these developments:

- a* A little more certainty, or at least the perception of a little more certainty, about rule-making (or, at least, the direction of rule-making) when compared to the past.
- b* The continuing urgent need that many banking groups have for capital and liquidity, and the related need to ensure that capital is deployed in the most efficient and profitable ways.
- c* Some specific legal and regulatory initiatives driving structural change, such as the US Volcker Rule (although this rule has not yet been fully defined at the time of writing) and some emerging (though not yet in force) 'ring-fencing' proposals in parts of Europe (so far principally in the United Kingdom and France).

- d* Continuing regulatory attacks on complexity and actual or perceived barriers to resolution of banking groups.

Accordingly, many banks are refocusing their businesses (or are currently planning how to do so) on what they consider to be the areas that will yield the highest returns relative to cost in regulatory capital and liquidity terms. Consistent with that objective, we are seeing intense competition for capital allocation between different businesses within banking groups and a more widespread appreciation of the relative capital cost (or capital efficiency) of different activities.

2012 was of course also marked by further recrimination about past practices in parts of the banking sector. Allegations that LIBOR and other benchmarks have been manipulated (or subject to attempted manipulation), continuing losses from mis-selling and other past misconduct continue to affect the sector. Attention has turned more recently to the ways in which banking groups quantify and present these problems in their financial statements.

An increasingly orthodox view among senior management of banking groups in Europe and the United States is to conclude that the only way through these difficulties is to adopt a 'whiter than white' approach to compliance. This involves banks taking the initiative to present a new way forward on compliance matters and breaking away from the more reactive stance that some of them held in the past. Some commentators have asked where this will lead. Will it result in banking groups that are so hobbled and diminished by internal policies and rules that innovation, efficiency and, ultimately, service to the 'real' economy, is put at risk? Observation would suggest that this is a concern unless banks keep in mind four critical objectives when developing their compliance strategy and relationships with financial regulators:

### *Compliance*

The first and most obvious objective is to ensure that banking groups are and remain compliant with their legal and regulatory obligations. In many countries this involves developing a good understanding of the purpose and spirit of those obligations in addition to (or, in some cases, instead of) their literal meaning.

### *Predictability*

It is desirable to maximise the predictability of relationships with financial regulators. Good and constructive relationships with regulators generally make it more likely that banks will see what is coming around the corner sooner and will be better able to find positive ways to plan ahead.

### *Influence*

Constructive influence of regulatory policy development in areas affecting banks is also desirable, even if a bank achieves no more than a small proportion of the change that it would like to see. For this purpose I would include within the meaning of 'influence' the conveying of cogent arguments even where regulators do not act in response to them. This is simply because the route to influence for a bank includes convincing regulators that it has thoughtful and coherent ideas, even where political or other imperatives have the result that the regulator does not address the bank's concerns.



*Flexibility and pragmatism*

Flexibility and pragmatism in the relationships between banks and their regulators is critical. Inflexibility can lead to inappropriate or overly formulaic regulatory approaches to unexpected developments. Flexibility is often difficult to achieve but is worth pursuing in the interests of both banks and regulators, through regular informal contacts and exchanges of views with senior staff at regulators in addition to formal interactions.

Obvious-looking these objectives may be, but serious problems in relationships between banks and their regulators can usually be traced back to a failure to achieve at least one of them.

This updated edition contains submissions by authors provided for the most part between mid-January and mid-February 2013, covering 56 countries (in addition to the chapters on International Initiatives and the European Union). As ever, comments on this book from banks, regulators and governments are welcome.

My thanks go to the contributors to this book, who have once again taken time out from advising on important matters affecting the banking sector to update their chapters – ‘update’ meaning a fundamental revision in many cases.

Thanks are also due to Adam Myers, Lydia Gerges and Gideon Robertson at Law Business Research Ltd, for their continuing support in the preparation of this book.

Finally, the list of credits would not be complete without mention of the partners and staff of Slaughter and May, in particular Ruth Fox, Ben Kingsley, Peter Lake, Laurence Rudge, Nick Bonsall, Ben Hammond, Tolek Petch and Michael Sholem. Once again, they helped not only to make this book possible but also to keep it as painless a project as is currently possible in the field of banking regulation.

**Jan Putnis**

Slaughter and May

London

March 2013

## Chapter 51

---

# TANZANIA

*Wilbert B Kapinga, Rehema A Khalid and Kamanga W Kapinga<sup>1</sup>*

### I INTRODUCTION

Tanzania has made reforms in its financial sector by dismantling the state-dominated banking sector and allowing foreign entry into the banking industry. This has resulted in the mobilisation of significant financial resources and competition in the financial services market. The reforms have also enhanced the quality and efficiency of credit allocation. By 2000 the dynamism in the reforms led to expanded branch network, scope of operations and an increased number of banking and financial institutions.

During 2011 the banking industry's total paid-up share capital increased by 116 billion Tanzanian shillings (20 per cent) with 50 per cent of this increase coming from new entrants into the banking sector. The new entrants added 57.7 billion Tanzanian shillings to the industry's paid-up share capital representing 8.3 per cent of the industry's total paid-up share capital. The number of reporting banks increased from 41 in 2010 to 45 in 2011.

There are four categories of banks oriented towards different markets and clientele operating in Tanzania: local private banks, regional banks, international banks and multinational banks. The five largest banks of Tanzania include National Microfinance Bank ('NMB'), National Bank of Commerce ('NBC'), Cooperative and Rural Development Bank ('CRDB'), EXIM Bank (Tanzania) Limited, and Standard Chartered Bank Tanzania Limited. The Tanzanian banking sector boasts of high levels of concentration with the top three banks accounting for more than half of total market share in terms of assets, loans and deposits. The banking sector reforms drew on the need to restructure and modernise the banking industry in order to foster competition and

---

<sup>1</sup> Wilbert B Kapinga is a senior partner and Rehema A Khalid and Kamanga W Kapinga are associates at Mkono & Co Advocates.

enhance financial development necessary for sustaining broader macroeconomic stability and long-term economic growth.

## II THE REGULATORY REGIME APPLICABLE TO BANKS

The laws that regulate banking and financial institution services business in Tanzania are the Bank of Tanzania Act 2006 (‘the BOT Act’) and the Banking and Financial Institutions Act 2006 (‘BAFIA’) and the Companies Act 2002. The regulatory and licensing authority for banks and financial institutions in Tanzania is the Bank of Tanzania (‘BOT’). Prior to being licensed by the BOT, banks and financial institutions must first be incorporated as limited liability companies under the Companies Act.

There are several Regulations made under the BAFIA such as the Risk Management Guidelines for Banks and Financial Institutions, 2008, the Outsourcing Guidelines for Banks and Financial Institutions, 2008; the Banking and Financial Institutions (Liquidity Management) Regulations, 2008; the Banking and Financial Institutions (Capital Adequacy) Regulations, 2008; the Banking and Financial Institutions (Microfinance Companies and Micro Credit Activities) Regulations, 2005; and the Banking and Financial Institutions (Licensing) Regulations, 2008.

The Foreign Exchange Act No. 1 of 1992 together with the Foreign Exchange Regulations of 1998, the Foreign Exchange (Bureaux de Change) Regulations of 1999 and the Bank of Tanzania Foreign Exchange Circular No. 6000/DEM/EX.REG/58 of 1998 regulate transactions involving foreign currencies, gold, securities, exports and imports and transfers.

It is clear from the above regime that Tanzania’s system of banking regulation aims at:

- a* allowing only those institutions that are financially viable to operate in the market;
- b* controlling excessive risk-taking by management of banks;
- c* allowing the BOT to establish appropriate controls and monitoring mechanisms over banks’ affairs;
- d* giving the BOT interventionist and enforcement powers over troubled banks;
- e* protecting only small depositors in cases of bank failures; and
- f* establishing appropriate rescue and exit means under the mandate of the BOT.

All of these provisions are provided for in the licensing procedures, the rules on capital adequacy, management efficiency, liquidity management, accounting and reporting, added roles of bank auditors, controls on excessive risk-taking, enhanced supervisory powers, and on the prevention of the use of banks for criminal purposes such as money laundering. The above principles are generally based on the standards set by the Basel Committee on Banking Regulations and Supervisory Practices, a multilateral body based in Basle, Switzerland that recommends from time to time acceptable banking regulation and supervision standards.

### III PRUDENTIAL REGULATION

#### i Relationship with the prudential regulator

The BOT Act and the BAFIA also mandate the BOT to take the responsibility of a macro-prudential authority over the financial system. The BOT provides prudential oversight to the national payment and settlement systems and financial markets operations. For purposes of compilation and publication of the balance of payments statistics meeting international standards, the BOT gathers information from public offices and from banks and financial institutions and, to the extent necessary, from private enterprises, organisations and bodies.<sup>2</sup> Where any bank or financial institution fails to comply with any statutory requirement from the BOT, the BOT may impose on the relevant bank or financial institution a penalty not exceeding 500,000 Tanzanian shillings for every day during which non-compliance continues and such charge may be recovered by deduction from any balance of, or monies owing to the bank or financial institution concerned or by institution of a suit.

The BOT may require banks and financial institutions to maintain minimum cash balances with the BOT as reserves against the deposit and other liabilities of the banks and financial institutions and may, in that respect, prescribe the currency or currencies in which such balances shall be held.<sup>3</sup> The BOT may prescribe different ratios for different kinds of deposits and other liabilities and may prescribe the methods of computing the amount of the reserves that ratios and methods shall apply uniformly to all banks and financial institutions and may exclude certain liabilities from the computation.

Prudential regulations relating specifically to microfinance companies ('MFCs') include conditions related to minimum core capital and other licensing provisions, lending limits, capital adequacy, asset quality, and reporting requirements. Prudential regulations related to microcredit activities are applicable to all banks and financial institutions engaged in microfinance (including MFCs). For supervisory purposes, all such institutions are required to report to the BOT on their micro-loan portfolios. In addition, the regulations on microcredit activities require all institutions engaged in microcredit to adopt the methodology that will be prescribed by the BOT to assign unique identification numbers to their clients and to report to a credit databank their loan portfolio information in the format prescribed by the BOT.

#### ii Management of banks

The bank of Tanzania has a legitimate interest in ensuring that banks and financial institutions operate in a safe and sound manner. This goal can be largely attained if boards of directors of banks and financial institutions effectively discharge their oversight roles.<sup>4</sup> The objectives are to promote and maintain public confidence in banking institutions; to establish standards for corporate governance processes and structures; and to provide guidance to directors for proper discharge of their fiduciary responsibilities. This applies

---

2 Section 57 of the Bank of Tanzania Act 2006.

3 Section 44 of the Bank of Tanzania Act 2006.

4 Section 71 of the Banking and Financial Institution Act 2006 (Guidelines for boards of directors).

to all directors of all banking institutions in Tanzania. Directors' responsibilities in this respect are to establish policies and monitor operations to ensure their banking institution complies with the laws and regulations.

To fulfil this responsibility, directors of banks and financial institutions must have a clear understanding of the legal and regulatory framework under which their organisations operate. They are obliged to exercise a duty of care to ensure that banking and other applicable laws and regulations are not violated and take remedial measures when violations occur.

When a bank or financial institution changes its composition of the board of directors or its committee, including a change resulting from a resignation, dismissal or death of a director, a report should be submitted to the BOT. The board of directors should put in place a policy setting out the appointment, remuneration and retirement terms of the board of members of the bank or financial institution.

With regard to management of risk, the board of directors is required to ensure that there is in place an appropriate executable policy framework for making credit and investment decisions and a system for measuring and monitoring internal risk rating.

### **iii Regulatory capital and liquidity**

The regulations require that a bank would only commence operations with and maintain at all times a minimum core capital of not less than 15 billion Tanzanian shillings or such higher amount as the BOT may determine.<sup>5</sup> A licensed institution with a core capital of not less than 50 billion Tanzanian shillings may be authorised by the BOT to establish a branch or a subsidiary abroad.

A financial institution other than a community bank, microfinance company or financial cooperative may only commence operations with a core capital of not less than 2 billion Tanzanian shillings or such higher amount as the BOT may determine. A financial institution may not accept deposits payable upon demand or subject to withdrawal by cheques unless it has a minimum core capital of 5 billion Tanzanian shillings and has received the prior approval of the BOT.

The board of directors of a bank or financial institution is required to adopt sound and prudent liquidity management and funding policies consistent with the policies set out in the Risk Management Guidelines 2005. The policies should include delegation of responsibility for management of overall liquidity of the bank or financial institution to a specifically identifiable group, which may be known as the Asset and Liability Management Committee; establishment and implementation of effective techniques and procedures to identify, measure, monitor and manage liquidity risk both in individual currencies and overall; analysis of net funding requirements under alternative scenarios; and contingent liquidity planning.

Banks and financial institutions are required to maintain at all times a minimum core capital and total capital equivalent to 10 and 12 per cent respectively of its total risk-weighted assets and off-balance sheet exposures. The BOT may prescribe additional capital requirements based on the risk profile of a bank or financial institution. A bank or

---

5 Capital adequacy requirement under Regulation 6-7 of the Capital Adequacy Regulations 2008.

financial institution authorised to carry out the function of a trustee to establish a branch or subsidiary abroad or to perform additional activities is required to satisfy additional capital requirements prescribed by BOT.

With regard to consolidated group supervision, the BOT has signed memoranda of understanding ('MoUs') with the regulatory authorities for banks and financial institutions where either Tanzanian banks or their branches have cross-border operations. These were signed with the Central Banks of the East African Community Member States (Kenya, Uganda, Rwanda and Burundi), the Central Bank of the Comoros, the Reserve Bank of Zimbabwe, and the Central Bank of Cyprus. Basically, the parties to the MoUs agree on how to supervise banks that have cross-border operations in one or more of the countries in question. By December 2009 the Directorate of Banking Supervision of the BOT was working on MoUs with the Reserve Bank of South Africa and the Bank of Zambia.

#### **iv Recovery and resolution**

The Deposit Insurance Board ('DIB') is an institution wholly-owned by the government of Tanzania. The DIB protects deposits of both Tanzania Mainland and Zanzibar and the key responsibility is to manage and control the Deposit Insurance Fund. The DIB is managed by a board of directors under the chairmanship of the Governor of the BOT. Other members of the DIB are permanent secretaries and three persons appointed by the Minister for Finance.

Tanzania has had four bank failures so far: two in 1995, one in 1999 and one in 2003. Power to seize a bank or financial institution and determination of appropriate failure resolution is vested in the BOT. After taking possession of a bank or financial institution, the BOT makes an inventory of assets and liabilities, evaluates the capital structure and management, determines whether to restructure, reorganise or liquidate the bank, and establishes a plan of resolution based upon any combination of restructuring, reorganisation or liquidation of the bank or financial institution that provides for expeditious resolution. Where the resolution plan calls for liquidation of the institution, then BOT may appoint DIB to be a liquidator.

The first bank failure was state-owned Tanzania Housing Bank ('THB') in 1995. THB applied short-term deposits to finance long-term housing loans, which led to liquidity problems. It was closed in 1995 and placed under voluntary liquidation. The DIB was not involved and the government paid all the depositors.

The second bank failure was that of Meridian Biao Bank (Tanzania) Limited ('MBBTL'). The bank started operations in Tanzania in 1993. It was owned by Meridian Biao Group based in Hamburg. The group suffered huge losses in 1994 that caused a market reaction through withdrawal of credit lines and enforcement of collateral. The group tried to contain this through drawing on foreign exchange from subsidiaries. As a result, this led to the solvency problems of many African Meridian banks including MBBTL. The BOT had to place MBBTL under statutory management and the bank was finally taken over by the Standard Bank of South Africa. It now operates in Tanzania as Stanbic Bank (Tanzania) Limited. Again, the DIB was not involved as a liquidator.

Greenland Bank (Tanzania) Limited ('GBTL') was the third bank failure in Tanzania. GBTL was licensed to operate in Tanzania in 1995. It was a subsidiary of

Greenland Bank (Uganda) Limited. GBTL was placed under statutory management in April 1999 following the closure of the parent bank. GBTL was later audited by independent auditors and was found to be insolvent. It was placed under compulsory liquidation and the DIB was appointed as a liquidator.

The fourth bank failure was that of Delphis Bank (Tanzania) Limited ('DBTL'). DBTL originated from Trust Bank (Tanzania) Limited, which was a subsidiary of Trust Bank of Kenya. The transition started in 2000 when Trust Bank (T) Ltd was purchased by a group of shareholders from Mauritius who changed the name of the bank to DBTL. In 2002, DBTL ran into problems. The BOT played its role and at the end the bank was placed under compulsory liquidation and the DIB was appointed as a liquidator in 2003. The DIB in its capacity as a liquidator sold most of the assets to the Federal Bank of Middle East Limited.

The government of Tanzania had requested technical assistance from the IMF that would assist with improvements to the deposit insurance and bank resolution regime in Tanzania. The IMF carried out a study and made recommendations that are now under consideration by the relevant authorities. Among the recommendations is the need to have in place a special resolution regime and early involvement of the DIB in the bank resolution framework process.

## **IV CONDUCT OF BUSINESS**

### **i Banking licence**

A body corporate engaged in the banking business or otherwise accepting deposits from the general public is required to have a banking licence issued by the BOT. Conducting banking business without a banking licence is an offence and on conviction one is liable to a fine not exceeding 20 million Tanzanian shillings or to imprisonment for a term not exceeding five years, or to both a fine and imprisonment. Once issued, the banking licence remains in force unless it is suspended or revoked by the BOT.

### **ii Non-disclosure of information**

Banks and financial institutions are prohibited from disclosing to any third parties information acquired in the course of business or employment or discharge of their duties relating to their customers or to their affairs, unless the disclosure of such information is subject to law or the bank or financial institution's board decision or practices and usages customary among bankers.<sup>6</sup> Every director and every member of any committee, auditor, adviser, manager, officer, and employee of a bank or financial institution shall, before assuming his or her duties, make a written declaration of fidelity and secrecy, which shall be witnessed by the chief executive officer or the secretary of the bank or financial institution concerned.<sup>7</sup> The BAFIA levies a penalty where one contravenes

---

6 Section 16 of BOT Act and 48(1) of the BAFIA.

7 Section 48(2) of the BAFIA.

the aforementioned provision, which is payment of 20 million Tanzanian shillings or imprisonment for a term not exceeding three years, or both.<sup>8</sup>

**iii The Anti-Money Laundering Act 2006**

The law prohibits money laundering and requires that the reporting person (such as a bank) report to the appropriate authority in cases of suspicious transactions of funds or property that may be proceeds of crime or are related or linked to or are to be used for commission of crime. The Act also levies a penalty where the reporting person has deliberately omitted to report the suspicious transaction.<sup>9</sup>

**iv Confidentiality**

Banks have a duty to act diligently, competently and confidentially towards the affairs of their customers, they should not disclose information of their customers, and they should perform due diligence before advising their customers.

**V FUNDING**

In Tanzania, banks typically fund their activities through the use of retail and transactional banking, loans, listings on the stock exchange, government support and finally injections of capital by parent banks and equity funds. For instance, the NMB, CRDB and the Dar Es Salaam Community Bank have in the past raised funds through the Dar Es Salaam Stock Exchange; Accion Investments in 2002 made an investment of US\$2.5 million in Akiba Commercial Bank; the IFC/Proparco have had long-term credit lines to Exim Bank Tanzania Limited; and the government of the United Republic of Tanzania has in the past directed funds to support the creation and financing of the activities of Tanzania Women's Bank and the Tanzania Investment Bank.

**VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS**

**i Control regime**

The management of the BOT and direction of its business as well as its affairs is vested in the Governor of the BOT. The Governor is required in the exercise of such functions and direction to conform with the policy and other decisions made by the BOT board of directors.

The structure of shareholding or proposed shareholding in banks is provided for under Section 15(1) of the BAFIA. The section restricts the ownership or control of banks and financial institutions in direct or indirect beneficial interest per person of not more than 20 per cent of the voting shares of the bank or financial institution. But a holding company of a bank or financial institution may acquire, directly or indirectly,

---

8 Section 48(6) of the BAFIA.

9 Sections 17(1) and 4(a) and (b) of the Anti-Money Laundering Act.



a beneficial interest in shares of another bank or financial institution, or may establish its own bank or financial institution, without regard to the limit imposed under Section 15(1) of the BAFIA.<sup>10</sup>

**ii Transfer of banking business**

In relation to banking acquisitions, in addition to the BOT oversight, the Fair Competition Act 2003 ('the FCC Act') enacts the framework for promotion and protection of effective competition in trade and commerce in order to protect consumers from unfair and misleading market conduct. Under the FCC Act, notifiable mergers or acquisitions must be filed with the Fair Competition Commission ('FCC') at least 14 days before the implementation of the proposed merger or acquisition. Upon receipt of the notification, the FCC determines whether or not the proposed merger or acquisition should be examined. If the FCC determines that the proposed merger or acquisition should be examined, such merger or acquisition will not be allowed to take place for a period of 90 days to allow the FCC to complete the examination. The FCC may extend the examination period for a period not exceeding 30 days if the examination process is not completed within 90 days. After completing the examination, the FCC must decide whether or not the proposed merger or acquisition will create or strengthen a dominant position in the market. If the parties delay to supply the information required by the FCC, the duration for review process may be extended for a further period as the FCC considers that the review process has been delayed by lack of the requested information.

To implement a bank merger or acquisition in Tanzania, the bank may, after consultation with the Minister of Finance, give to the board of directors of that bank directions of a general or specific character as to the exercise and performance by the board of its functions and in relation to matters appearing to the bank to affect their operations or national interest, and the board is required to give effect to those directions.<sup>11</sup> In addition, the concerned bank must first obtain the relevant supervisory approvals from the BOT and the FCC.

**VII THE YEAR IN REVIEW**

In 2011 there were four new banks that started operations in Tanzania: Advans Bank, Amana Bank, First National Bank and Njombe Community Bank, which raised the number of banks to 45. The total bank assets in Tanzania expanded by 2.6 trillion Tanzanian shillings from 15.3 trillion to 17.9 trillion Tanzanian shillings between 2010 and 2011, representing growth of 17 per cent. The deposit base also grew by 2.2 trillion Tanzanian shillings (17 per cent) from 12.4 trillion to 14.6 trillion Tanzanian shillings during 2011.

Lending by the 45 reporting banks expanded by 1.7 trillion Tanzanian shillings (28 per cent) from 5.9 trillion to 7.6 trillion Tanzanian shillings during 2011, with most of the growth coming from existing banks. New entrants added 4 billion Tanzanian

---

10 Section 15(4) of the Banking and Financial Institutions Act 2006.

11 Section 21 of Banking and Financial Act 2006

shillings to the total by the end of the year. During the year, banks' investments in government securities fell by 340 billion Tanzanian shillings (14 per cent) from 2.37 trillion to 2 trillion Tanzanian shillings. Banks resorted to giving out more loans, reducing their appetite for government securities. The industry's total revenues grew by 22 per cent to 1.46 trillion Tanzanian shillings from 1.2 trillion Tanzanian shillings and net profits increased by 31 per cent from 230 billion to 302 billion Tanzanian shillings.<sup>12</sup>

The FBME, CRDB and NMB maintained their position as the three largest banks by assets, with 48 per cent of total industry assets, the same as in 2010. The next seven-largest banks had 33 per cent of the industry's assets, while the remaining 35 banks held the other 19 per cent of the total assets. The three largest banks by assets also had more than half of the industry's deposits and government securities in 2011.

Tanzania's banking sector performed better in 2011 compared with 2010. Profit margins increased by two percentage points from 19 per cent to 21 per cent as a result of the increase in interest income. Banks did more lending in 2011 as shown by the loan-to-deposit ratio increasing from 47 per cent to 52 per cent. Conversely, the share of deposits invested in government securities fell from 19 per cent to 14 per cent.

The ratio of total shareholder funds to assets remained the same at 11 per cent because both grew by 17 per cent during the year. Even as lending expanded, the industry overall seems to have done a better job with credit risk management. The bad debt provisions as a percentage of total lending fell from 0.9 per cent on 31 December 2010 to 0.4 per cent on 31 December 2011.

In 2012 Tanzania saw the creation of Tanzania's first Credit Reference Bureau to be based at the BOT. This has been received with many positive reviews as it will increase lending, increase competition in the banking industry and lead to the eventual lowering of interest rates to customers.

In 2012 the Tanzania Mortgage Refinancing Company Limited ('TMRC'). TMRC is a financial institution owned by the banks with the sole purpose of supporting banks to do mortgage lending by refinancing banks' mortgage portfolios. TMRC's mission is to source funds in the Tanzanian financial market as efficiently as possible and channel the same to member banks at a competitive rate. This will facilitate affordable access to housing finance for the Tanzanian population, while contributing to the development of capital markets.

Between 2010 and 2012 there has been a lot of activity and interest from international banks in conducting over-the-counter trading with Tanzanian-based counterparties. This is an area that still lacks the appropriate regulation but it is a hot topic as there has been an increase in foreign direct investment in the commodities, mining and oil and gas industries. There has been much discussion in parliament to accommodate such transactions through the amendment of the Finance and Capital Markets and Securities Regulation. Through our experience most queries from international banks tend to focus on the insolvency clauses and the set-off clauses of the ISDA agreements between parties.

---

12 Tanzania Banking Survey 2011 by Serengeti Advisers.

## **VIII OUTLOOK AND CONCLUSIONS**

Overall, the outlook for the banking industry in Tanzania is very positive and there are appealing opportunities for newcomers to the sector. Currently, there is a positive trend in lending to SMEs that is producing greater confidence in their growth potential among financial institutions and, more generally, in the economy as well, which is generating a positive spiral. In addition, the government is also introducing new laws that are expected to enhance lending activities.

## Appendix 1

---

# ABOUT THE AUTHORS

### **WILBERT B KAPINGA**

*Mkono & Co Advocates*

Dr Wilbert Kapinga is specialised in corporate law, finance law, banking, privatisation, telecommunications and competition law and has over 10 years of experience of transactions and projects in these areas. He is ranked Top Band (4 stars) specialising in mergers and acquisitions in the *Chambers and Partners: the World's Leading Lawyers 2000–2001* and in *Chambers and Partners: The World's Leading Lawyers 2001–2002*. Since the 2002–2003 Chambers & Partners publication, he has been in Band 1 and still occupies the number 1 position as a leading individual in corporate law. He has been at the centre of advising several local and international banks on loan facilities, bond issuances and other type of securitisations. He has also been involved in a wide range of regulatory matters for petroleum and electric utilities and other facilities built through private finance initiatives.

### **REHEMA A KHALID**

*Mkono & Co Advocates*

Rehema specialises in intellectual property rights, corporate law, human rights, administrative law, contract law, interpretation of statutes and criminal law. Ms Khalid has knowledge in Hindu customary law and law of succession and has done extensive research on the role of intellectual property in Tanzania.

### **KAMANGA W KAPINGA**

*Mkono & Co Advocates*

Kamanga specialises in telecommunications and information communication technology law. He also regularly advises clients on banking and finance transactions, labour law, mergers and acquisitions. He has wide expertise in advising international and national clients on setting up businesses in Tanzania, legal advisory services to international clients

on regulatory compliance specifically in the banking industry, the telecoms industry, the oil and gas industry and the mining industry.

**MKONO & CO ADVOCATES**

8th floor, Exim Tower

Ghana Avenue

PO Box 4369

Dar Es Salaam

Tanzania

Tel: +255 22 211 8789-91 / 219 4200 / 211 4664

Fax: +255 22 211 3247 / 211 6635

[info@mkono.com](mailto:info@mkono.com)

[www.mkono.com](http://www.mkono.com)