

BANKING LAW



BANK OF TANZANIA PUTS **BANK M** UNDER SUPERVISION, THE DETAILED PROCEDURE AND THE LEGAL IMPLICATIONS

A. Introduction

On Thursday of August 2, 2018 the Governor of the Central Bank of Tanzania/Bank of Tanzania (“BOT”) declared that BOT had resolved to put Bank M Tanzania Plc (“Bank M”) under statutory management following its liquidity inadequacy leading to its failure to meet its obligations including paying maturing obligations. The BOT’s intervention is meant to protect depositors

This update is meant to provide the highlights on the legal implication on the said supervision of Bank M by the Bank of Tanzania as well as detailed guidance relating to such procedure as well as aftermath to the depositors and/or creditors to the Bank.

B. The Legal Basis for the BOT’s intervention.

- i). BOT intervened and consequently took possession of Bank M effective from August 2, 2018 in exercise of the powers conferred on BOT by section 56 (1) (g) (iii) of the Banking and Financial Institutions Act, No. 5 of 2006 (“the Act”). According the said section, BOT may take possession of a bank or financial institution if, in the opinion of BOT, such a bank or financial institution is conducting its business in violation of any law or regulation, or is engaging in any unsafe or unsound practice that is likely to cause insolvency or substantial dissipation of assets or serious prejudice to the interests of depositors or the Deposit Insurance Fund.
- ii). Failure to meet its obligations including paying maturing obligations spurred the BOT’s move to intervene in efforts to protect depositors whose interests could have been or were likely to be prejudiced. More so, according to section 4 of the Act, BOT is vested with powers relating to licensing, regulation and supervision of all banks and financial institutions in the United Republic of Tanzania. The primary objectives of regulation and supervision of banks and financial institutions by BOT,



KEY ISSUES:

- BOT’s intervention is carried out to maintaining the stability, safety and soundness of the financial system and reducing the risk of loss to depositors.
- BOT puts a bank or financial institution for ninety (90) days within which it is obliged to decide whether to restructure, reorganize or liquidate the bank or financial institution.
- It is incumbent on BOT to determine the mode of operation of the business of a relevant bank or financial institution regard being to principles of sound banking and protection of the interests of the bank or financial institution, its depositors and other creditors.

as per provisions of section 5, are to maintain the stability, safety and soundness of the financial system and to reduce the risk of loss to depositors

C. Other Circumstances in which BOT can Intervene and Take Possession of a Bank

There are many other circumstances in which BOT, as regulator and supervisor of banks and financial institutions, can invoke its powers of seizing a bank or financial institutions with a view to maintaining the stability, safety and soundness of the financial system and or reducing the risk of loss to depositors, these includes:-

- i). Where BOT determines that the assets of a bank or financial institution which is under voluntary liquidation may not be sufficient for the full discharge of its obligations (sub-section 1 of section 51). This is where a bank or financial institution has resolved to dissolve voluntarily;
- ii). Where BOT determines that completion of liquidation (Voluntary liquidation for that purpose) of the operations of a bank or financial institution is unduly delayed (sub-section 2 of section 51);
- iii). Where the bank or financial institution refuses to comply with an order or directive of BOT (section 56 (1) (a));
- iv). Where the bank or financial institution refuses to submit to or otherwise obstruct any inspection by BOT (section 56 (1) (b));
- v). Where the licence of the bank or financial institution has been revoked (section 56 (1) (c));
- vi). Where the bank or financial institution ceases to be an insured institution by the Deposit Insurance Board (DIB) (section 56 (1) (d));
- vii). Where the bank or financial institution has been adjudicated guilty of an offence under the Proceeds of Crime Act, or Prevention of Terrorism Act, 2002 (section 56 (1) (e));
- viii). Where BOT has not approved voluntary liquidation (section 56 (1) (f)); or
- ix). Where in the opinion of the BOT (section 56 (1) (g));
 - a) the capital of the bank or financial institution has fallen below the minimum as required; or
 - b) the bank or financial institution is insolvent;
- x). Where a bank or financial institution is undercapitalized and, in the opinion of BOT, the bank or financial institution:-
 - a) has no reasonable prospect of becoming adequately capitalized;
 - b) has failed to become adequately capitalized when required to do so by the BOT;
 - c) has failed to submit a capital restoration plan acceptable to BOT when required pursuant to section 34; or
 - d) has failed to materially implement a capital restoration plan accepted by BOT.



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D. The Legal Consequences of BOT's Takeover of a bank or Financial Institution

The consequences of this procedure are provided for by the Act under section 57, whereby:-

- i). Any term, whether statutory, contractual or otherwise, on the expiration of which a claim or right of the bank or financial institution under BOT's administration would expire or be extinguished, shall be extended by six months from the date of seizure / take over;
- ii). No attachment or lien, except a lien created by BOT in carrying out its (BOT's) authority under the Act or the Bank of Tanzania Act, 2006 shall attach to any property or assets of the bank or financial institution concerned so long as possession by BOT continues;
- iii). No action or proceeding may be commenced by creditors of the bank or financial institution under the provisions of the Companies Act, relating to impending or actual insolvency or under any other law regarding insolvency or bankruptcy;
- iv). Any transfer of asset of the bank or financial institution made after or in contemplation of its insolvency or the seizure / takeover with intent to effect a preference shall be voidable by BOT; and
- v). Any attachment or lien except for a lien existing six months prior to the seizure / takeover of the relevant bank or financial institution may be vacated by BOT.

E. Powers that BOT can exercise upon taking over a bank or financial institution

The Act, under section 58, confers wide powers on BOT upon taking administration over a bank or financial institution. The powers include:-

- i). BOT shall be vested with the full and exclusive power of management and control of the affairs of the relevant bank or financial institution including all rights, titles, powers, and privileges of the bank or financial institution, and of any shareholder, account holder, depositor, officer or director of such bank or financial institution with respect to that bank or financial institution and the assets of that bank or financial institution;
- ii). BOT shall have title to the books, records, and assets of a bank or financial institution and their affiliates held by any previous statutory manager or other legal custodian of such bank or financial institution;
- iii). BOT may continue or discontinue operations as a bank or financial institution including to stop or limit payments;
- iv). BOT may employ or discontinue employment of any staff of a bank or financial institution;
- v). BOT may initiate, defend and conduct in its name any action or proceeding to which the bank or financial institution may be a party;
- vi). BOT may merge the bank or financial institution with another bank or financial institution;
- vii). BOT may transfer any asset or liability of the bank or financial institution, without any approval, assignment or consent with respect to such transfer; and
- viii). BOT may reorganize or liquidate the bank or financial institution in accordance with the provisions of the Act.



F. Management of a bank or financial institution by BOT

The gist of BOT entering into supervision of a bank or financial institution is taking charge of and managing the affairs and business of the bank or financial institution with a view to

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ensuring sound banking and protecting the interests of the bank or financial institution, its depositors and other creditors. Consequently, under its management, BOT is required by section 59 of the Act to do the following:-

- i). tracing and preserving all the property and assets of the bank or financial institution;
- ii). recovering all debts and other sums of money due to and owing to the bank or financial institution;
- iii). obtaining from any officers or employees of the bank or financial institution any documents, record, accounts, statements or information relating to its business.
- iv). making an inventory of the assets and liabilities of the bank or financial institution and making such a copy of such inventory available for examination by all interested parties; and
- v). evaluating the capital structure and management of the bank or financial institution and determine whether all or any part of the operations of the bank or financial institution are viable and may continue, either in the bank or financial institution or through transfer to another bank or financial institution.



In carrying out its responsibilities under this section, section 59(9) allows BOT to utilize the services of private persons if it (BOT) determines that doing so is the most practicable, efficient and cost effective. The private person so utilized is commonly referred to as a statutory manager.

G. The Period of Administration and Management

- i). According to section 59(4), BOT has to put the relevant bank or financial institution under its administration for ninety (90) days, during which time the board of Directors of the bank or financial institution shall remain suspended pending the decision of BOT whether to restructure, reorganize or liquidate the bank. Section 59 (4) requires BOT, within ninety (90) days after taking over a bank or financial institution, to determine whether to restructure, reorganize or liquidate the bank or financial institution and establish a plan of resolution.
- ii). The resolution plan must reflect the least costly method by ensuring that: (a) it maximizes the net present value return from the sale or disposition of any assets; (b) it minimizes the amount of any loss realized in the resolution; and (c) the total cost of expenditures and obligations by BOT and the Deposit Insurance Fund do not exceed the cost of liquidating the bank or financial institution and paying off all depositors to the extent provided for under the Act.

H. Establishment of a Bridge Bank or Financial Institution

Section 60 of the Act allows BOT to establish and own temporarily, a new bank or financial institution which may acquire part or all of the assets and liabilities of a bank or financial institution on the basis of the resolution plan.

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