

Banking and Financial Institution (Compulsory Liquidation) Regulations. GN No 98/2024

March 25, 2024

On 16th February 2024, the Tanzanian Parliament passed a new regulation known as the *Banking and Financial Institution (Compulsory Liquidation) Regulations, GN No 98/2024*, which introduce specific regulations to be followed during compulsory liquidation by any bank or financial institution in United Republic of Tanzania.

The regulation clarifies, supplements and unifies all significant rules of compulsory liquidation into a single legislation. The essential issues noted in the Regulations are as follows:

A detailed liquidation process has been provided in Part II as follows:

1. The Appointment of the Liquidator – Regulation 4

The Bank of Tanzania (BOT) is mandated to appoint a liquidator be it an individual or entity after it determines the resolution plan of a bank or financial institution which prefers liquidation. Furthermore, upon the appointment, the Bank will notify the liquidator and cause General Notice of the appointment to be published in Government gazette in at least one newspaper of wide circulation in Tanzania.

It should be noted that before publication of these Regulations the BOT preferred appointment of the Insurance Deposit Board (IDB) to be liquidator of banks and financial institutions based on Section 41 of the Banking and Finance Act No. 5 of 2006. IDB as liquidator has to date liquidate a total of nine (9) banks such as FBME Bank Limited and EFATHA Bank Ltd.

2. Powers of the Liquidator – Regulation 5

The law talks about capacity given to liquidator in doing number of activities for ensuring the wellbeing of the intended liquidation such as institute or defend any action or other legal proceedings, appoint professionals or agents to assist in performance of the duties as may be required; realize assets and pay creditors; negotiate, compromise, and settle any claim, debt, liability, or obligation; review the existing contracts and determine their continuity; raise on derivatives for any amount of money requisite; set off mutual credits, debts or mutual dealings which existed prior to its liquidation; invest funds in the liquidation account which are not immediately required in financing day to day liquidation operations in Government securities; execute all deeds, receipts and other documents for the purpose of facilitating liquidation; and perform any other action as may be necessary for liquidation of a bank or financial institution.

If you have any question concerning this memorandum, please reach out to your regular firm contact or the following authors:

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3. Duties of the Liquidator – Regulation 6

The liquidator is mandated to ensure that the liquidator files a notice of his appointment in a format prescribed under the Companies Act to the Registrar of Companies within fourteen days. The liquidator will then be required to within thirty days, publish in at least two newspapers of wide circulation in the United Republic of his appointment to enable him commence his duties.

4. Liquidation Plan – Regulation 7

The liquidator will then be required to prepare a detailed plan as to the status of the bank or financial institution within 30 days of appointment.

5. Proof of Debt – Regulation 8

The law introduces the specific form in the schedule, to be filled by creditors for the proof of their debts to the intended the bank of financial institution to be liquidated.

6. Payment to creditors and ranking of claims - Regulation 11

The law provides a rank as which creditor will be paid where a priority is on administrative expenses, followed by any deposit liability, then any general or senior liability followed by any obligation subordinated to depositors or general creditors; and finally, any obligation to shareholders.

7. Closure of the liquidation process by liquidator - Regulation 12

For the completion of the liquidation process to be done, a liquidator must prepare a comprehensive report detailing all assets realized and payment against claims, in addition they must show if any assets remained unsold and their value and any unclaimed valuables if any which will be surrendered to the Bank of Tanzania.

The liquidator will then prepare audited statement to be submitted to the Bank within 30days and thereafter publish liquidation completion detail in two newspapers.

After satisfaction, the Bank will issue the certificate of release to the liquidator in which upon receive it, the liquidator will be required to forward the certificate to the registrar of companies so as to strike the name of the bank or financial institution from the register of companies.