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LEGAL NEWS

5 March 2024



Banking and Financial Institutions (Compulsory Liquidation) Regulations Issued

In terms of section 61(1) of the Banking and Financial Institutions Act, Act No. 5 of 2006 (the Act), where the resolution plan calls for liquidation of the bank or financial institution, the liquidation proceeds in terms of the provisions of section 41 and such Regulations as the Governor may make. While the provisions of section 41 provide for powers of the Bank of Tanzania (the Bank) to appoint the Deposit Insurance Board as a liquidator of an insolvent bank, the Regulations governing such compulsory liquidation were not in place.

In a bid to provide guidance regarding compulsory liquidation of banks and financial institutions, pursuant to section 71 of the Act, on 16 February 2024, the Governor of the Bank issued the Banking and Financial Institutions (Compulsory Liquidation) Regulations, 2024, GN. No. 98 of 2024 (the Liquidation Regulations).

It is noteworthy that where a resolution plan calls for liquidation of a bank or financial institution as determined by the Bank, the Bank appoints a liquidator. The Bank is allowed to appoint Deposit Insurance Board (DIB) as a liquidator whenever a bank or financial institution becomes insolvent. The appointment of the liquidator has the same effect as the appointment of any other liquidator done by the Court. Upon appointment, the Bank, in writing, informs the appointed liquidator of such appointment and responsibilities. The Bank also causes General Notice of appointment of a liquidator to be published in the Gazette and in at least one newspaper of wide circulation in Tanzania.

Liquidator's Duties and Proof of Debts

The Liquidation Regulations enlist the duties of the liquidator. These include taking into custody or keep under control all the properties and affairs of a bank or financial institution under liquidation; filing a notice of his appointment in a format prescribed under the Companies Act to the Registrar of Companies within fourteen days; publishing, within 30 days, in at least two newspapers of wide circulation in Tanzania, a notice to: (i) inform creditors and debtors of his appointment; (ii) require creditors to submit claims within 30 days from the date of the notice; (iii) require debtors to repay their debts and surrender any property of a bank or financial institution under liquidation in their possession within 30 days from the date of the notice; and (iv) require customers who have valuables in the safe custody of a bank or financial institution to confirm and collect their valuables.

Further, other duties of the liquidator include preparing a list of all assets of a bank or financial institution under liquidation; preparing a statement of affairs of a bank or financial institution under liquidation which are subject to external audit; preparing a register of creditors of a bank or financial institution under liquidation showing their personal particulars, nature and extent of liability; filing semi-annual returns on liquidator's statement of receipts and payments with the Registrar of Companies in the form prescribed under the Companies Act; and discharging any other duties as may be required for liquidation of a bank or financial institution.

The claims submitted by creditors to the liquidator within 30 days should be in the form set out in the Schedule. However, the liquidator may extend the 30 day period, not exceeding another 30 days, where, to his satisfaction, a creditor has good reasons for failure to submit his claim within the prescribed time.

The liquidator may request any document or other evidence to be produced by the creditor where necessary for the purposes of substantiating the whole or part of the claim. Under the Liquidation Regulations, a claim may be admitted for payment of liquidation proceeds

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info@ecraattorneys.co.tz

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ECRA Attorneys Address

10th Floor-Left Wing, Mwanga Tower,
Komanya Street, Kijitonyama,
Dar es Salaam, Tanzania
T: +255 743 024 396 | +255 714 949 604
E: info@ecraattorneys.co.tz
W: www.ecraattorneys.co.tz

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or rejected for the whole or part of the amount claimed by the creditor. In the case where the liquidator rejects a claim in whole or in part, he should within seven days from the date of submission of the claim, communicate his decision to the creditor in writing stating the reasons thereof. Should the creditor be dissatisfied with the liquidator's decision, he may within 21 days of receiving the decision, apply to the Court of competent jurisdiction for necessary orders. It should be noted that a creditor or an authorised representative is allowed to inspect the credit register and may, upon inspection, request the liquidator to amend the information contained therein.

Liquidation Plan

Under these Liquidation Regulations, within 30 days from the date of appointment, the liquidator prepares a liquidation plan for liquidation of a bank or financial institution. The liquidation plan contains the following particulars:

- i. detailed background information of a bank or financial institution under liquidation;
- ii. detailed description of the assets and liabilities;
- iii. projected income and expenditure;
- iv. detailed description as to the classification of claims and priority order of payment;
- v. details of assets, projected sale of assets and projected loan recoveries for the next 90 days from the date of the plan;
- vi. details of liabilities and projected payment to depositors and creditors in the next 90 days from the date of commencement of the plan;
- vii. liquidation costs and expenses;
- viii. list of existing contracts to be continued or terminated;
- ix. details of existing and potential litigations and related costs; and
- x. any other information as the liquidator may deem necessary.

The Liquidation Regulations require the liquidation plan to be reviewed on quarterly basis. It is important to note that the liquidator is required to notify correspondent banks and organisations which provide cards and wire transfer settlements that, any operations of correspondent accounts should not be carried out without his written approval. The liquidator is required to instruct correspondent banks to transfer available balances maintained in a bank or financial institution's correspondent accounts to the liquidation account at the Bank.

The Liquidation Regulations allow the liquidator, at any time, to convene a meeting of creditors in a manner that is deemed appropriate to discuss the progress of liquidation. In the case where a meeting is convened, the creditors should appoint at least five representatives among the creditors to form the Creditors Committee who should contact and assist the liquidator where necessary.

Payment to Creditors and Closure of Liquidation

Upon realization of the amounts under liquidation, the liquidator is required to utilise such amounts to pay claims, other than secured claims, to the extent of any security, in the following order:

- i. administrative expenses;
- ii. any deposit liability of a bank or financial institution under liquidation in excess of the protected deposits paid by the Deposit Insurance Fund (the Fund);
- iii. any general or senior liability of a bank or financial institution under liquidation;
- iv. any obligation subordinated to depositors or general creditors; and
- v. any obligation to shareholders.

Payment to Creditors vis-à-vis Depositors' Rights

It is important to note that the Act establishes the Fund which is managed by DIB. DIB is established and operates under the Act. The Bank provides the DIB with such facilities and services that are necessary for proper and efficient exercise of its functions. The Bank may appoint the DIB as a liquidator of insolvent banks and other financial institutions. The

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liquidation process should be carried out in accordance with the Liquidation Regulations. The appointment of the DIB, as a liquidator, has the same effect as the appointment of any other liquidator by the Court.

A noteworthy aspect is that every deposit making institution, that is, all banks and financial institutions licensed to carry out banking business in Tanzania are required to make annual contributions to the Fund. The contributions are meant to protect/insure the banks' customers (depositors) against insolvency risk. As such, where a bank becomes insolvent and it is undergoing liquidation, the customers are paid by the DIB from the Fund to the tune of TZS 7.5M in accordance with Rule 2 of the Banking and Financial Institutions (Maximum Deposit Insurance Coverage) (Amendment) Order, 2010 (as amended in 2023). DIB's management of the Fund entails investing such contributions in a way that guarantees security and liquidity, so that when the bank fails, its customers can be paid. Thus, TZS 7.5M is not paid out of the bank's money, but the Fund's.

Upon payment of TZS 7.5M, depositors become creditors like any other creditor, and their remaining amount exceeding TZS. 7.5M is paid by the DIB as a liquidator, not out of the Fund. This will depend on the amount collected by the liquidator which should be paid in accordance with Liquidation Regulations. Under the Liquidation Regulations, claims with the same priority rank equally and abate in equal proportions.

The liquidation process is deemed to be complete where: (i) payment is made against all claims of a bank or financial institution under liquidation; or (ii) a bank or financial institution under liquidation has pending claims but has no assets to settle pending claims. A bank or financial institution under liquidation is considered to have no assets where: (i) all assets have been sold; (ii) the market value of unsold assets is zero; and (iii) loans and other assets cannot be recovered.

Upon completion of the liquidation, the liquidator is required to prepare a liquidation report which includes: (i) information regarding all assets realised by the liquidator since commencement of the liquidation; (ii) information regarding payment against claims of depositors and other creditors; (iii) valuer's opinion on the liquidator's conclusion that the market price of unrealised assets is zero; (iv) details on outcome of recovery measures, if any; and (v) information regarding unclaimed valuables under a bank or financial institution's safe custody.

Besides, the liquidator is required, upon completion of the liquidation, to surrender to the Bank unclaimed valuables under a bank or financial institution's safe custody, if any; prepare an audited statement of income and expenses, sources and uses of funds in respect of a bank or financial institution under liquidation; and publish information mentioned above in English and Kiswahili in at least two newspapers of wide circulation in Tanzania. Moreover, the liquidator is required to submit to the Bank a liquidation report and audited statement of income and expenses, sources and uses of funds during the period of liquidation within 30 days upon completion of the liquidation process.

In the case where the Bank is satisfied that the liquidation report and audited statement presents a correct state of affairs of the liquidation, the Bank is required to release the liquidator and issue a certificate of release. Upon its satisfaction with the information submitted to it, the Bank is enjoined to withhold the certificate of release and request the liquidator to submit additional information or take any other as it may deem necessary.

Copy of this Legal News can be accessed by [click here](#)

A copy of the Banking and Financial Institutions (Compulsory Liquidation) Regulations, 2024, GN. No. 98 of 2024 can be accessed by [click here](#)

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