

Tanzania

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Tanzania's new banking law

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With a view to meeting the demands of modern business practice and catering for the needs of the local and international banking sector, the Tanzanian government repealed the Banking and Financial Institution Act 1991 (the BFIA 91) and replaced it with the Banking and Financial Institutions Act 2006 (the BFIA 06). The bill was presented to the National Assembly by the minister for finance on March 28 2006, and was passed by the National Assembly on March 3 2006. The date this new law comes into force will be notified through the National Gazette. However, even though this new law is not yet in force, it is quite likely that its effective date will be backdated to the date it was passed by the parliament, failing which it will be the date it receives presidential assent. Notwithstanding this legislative process, it is sensible to assume that the Bank of Tanzania (the BoT) and the financial institutions affected by this new law are most likely already conducting themselves with its existence in mind.

The primary objective of the BFIA 06 is to establish a framework for the comprehensive regulation and supervision of banks and financial institutions in Tanzania, and to ensure the stability, safety and soundness of the financial system with the aim of reducing the risk of loss to depositors.

Being a fairly wide-ranging Act, there are a number of elements of the BFIA 06 which will be of interest to those investing in Tanzania, the principal ones of which are listed below.

Licensing, regulation and supervision

The BFIA 06 vests a greater independence in the BoT than its predecessor, by granting to the BoT certain powers relating to the licensing, regulating and supervising of banks and financial institutions in Tanzania. For instance, the power to ensure banks maintain a prescribed minimum core capital, to ensure that a bank's total capital does not fall below 12% of its total risk, to prescribe and enforce a liquid assets ratio, to enforce financial reporting to the BoT, and so on.

Grant, suspension and revocation of licences

Like its predecessor, the BFIA 06 is the legislation from which the BoT derives its power and authority to grant, suspend and revoke licences to banking and financial institutions engaged in banking business in Tanzania. The BoT can allow a bank or financial institution licensed by it to conduct business outside Tanzania, subject to

terms and conditions set by the BoT to ensure effective supervision and compliance with the BFIA 06 and the law in the other country.

In respect of the granting of a licence, while retaining most of the elements found in the BFIA 91, the BFIA 06 goes on to impose additional requirements on the BoT when determining whether or not to grant a licence to an applicant institution in Tanzania. Under the BFIA 06, in respect of any applicant the BoT must now consider and take into account: (i) the extent to which the policies, procedures and internal controls of the applicant are designed to promote the sound financing of economic activities in underserved communities; (ii) the extent to which the intended training and employment programmes of the applicant are aimed at promoting professionalism in the financial sector; and (iii) such other matters as the BoT may deem necessary and appropriate for carrying out the objectives of the BFIA 06. While the first two are quite clear, there is clearly some subjectivity to be exercised by the BoT on the third element, and firms should be prepared to answer wide-ranging queries from the BoT on any application made.

The BFIA 06 also introduced the new concept of suspension of licence. The BoT has the authority to suspend a licence where: (i) it determines that a bank or financial institution has failed to meet any one of the capital requirements; or (ii) the BoT is of the opinion that the affairs of the bank or financial institution are being conducted in a manner that is detrimental to the interests of its depositors. Interestingly, although the first test is clear-cut (either one does or does not meet the capital maintenance requirements), we once again (as is the case regarding the issuing of a licence in the first place) see a level of subjective interpretation vested in the BoT, to the extent that it has the power to determine whether there are circumstances justifying the revocation of a licence.

The BFIA 06 had granted the BoT the power to revoke a licence where there is: (i) a voluntary request; (ii) a failure of commencement of business within the prescribed time; (iii) a failure of compliance with the prudential requirement; (iv) provision of false information during a licence application; (v) a failure to comply with the terms and conditions of a licence; (vi) engagement in unsafe or unsound practices that threatens the bank or financial institution's financial condition, or is detrimental to the interests of the depositors; (vii) a refusal to permit inspection or provide information required by the BoT; (viii) a cessation of business; or (ix) an insolvency and failure to pay assessment.

Capital reserves and accounts

Under the BFIA 91 an investor was required to raise a minimum of TZS1 billion (\$790,500) to form a bank. The BFIA 06 raises this

amount substantially – applicants for banking licences now need to have and maintain at all times a minimum core capital of not less than TZS5 billion.

The BFIA 06 has introduced additional requirements relating to capital reserves. For example, every bank will be required to maintain, at all times: (i) core capital of not less than 10% of its total risk-weighted assets and off-balance sheet exposure; (ii) total capital of not less than 12% of the same risk; and (iii) an unimpaired capital at least equal to the minimum cash requirement.

The BFIA 06 also empowers the BoT of Tanzania to establish categories of financial institutions, and prescribes additional specific capital requirements to encourage the provision of banking services to specific communities.

Activities and investments

The BFIA 06 lists the activities that banks and financial institutions can engage in, such as acceptance of deposits, lending, financial leasing, transmission of money, issuing (credit cards, travelers' cheques, banker's drafts, etc) and financial advisory services. Activities attributed to banks and financial institutions cannot be performed by a person or institution not holding a banking licence.

New provisions aimed at reducing the level of risks banks and financial institutions incur, restricting credit exposure to customers and, connected lending have also been introduced through the BFIA 06. Banks and financial institutions are prohibited from lending to a single person in excess of amounts equaling 5% or more of the core capital of the bank or financial institution, or 3% per cent of the core capital for a micro-finance institution. Exceptions may be available if the lending is: (i) guaranteed by the government of Tanzania; (ii) secured against cash or near cash items; (iii) guaranteed by a first-class international bank; or (iv) against securities issued by the government of Tanzania or the BoT.

The BFIA 06 also empowers the BoT to set limits on the amount of lending that can be provided to connected parties.

Supervision, coordination and control

To improve the supervision of banks and financial institutions, the BFIA 06 vested with the BoT the power to supervise, coordinate, control and conduct the examination of banks and financial institution. A key element of this has been the introduction of provisions allowing for the sharing of supervisory information with other appropriate supervisory authorities (who might be either in Tanzania or abroad) – the only caveat being that the sharing of relevant information must be on a reciprocal basis with any such supervisory authority.

The new BFIA 06 is not simply a token step towards reform but a genuine development in Tanzania towards providing an improved, transparent and robust regulatory framework, in compliance with the country's directives and bringing the country in line with international standards.

Corporate and commercial

Recommended firms

Tier 1

Mkono & Co

Tier 2

FK Law Chambers

Ishengoma Masha Mujulizi & Magai Advocates

Rex Attorneys

Ringo & Associates

Mkono & Co Advocates

In terms of size and turnover, many market observers regard Mkono & Co as “the number one firm in Tanzania”. The firm's capabilities are certainly enhanced by its association with international heavyweight Denton Wilde Sapte, and the firm can also draw upon an exclusive team of specialized international lawyers, including Stephen De Backer, who has brought excellent capital markets and privatization experience to Mkono since his arrival from Freshfields Bruckhaus Deringer's Brussels office and who, in the words of one peer, is “very good ... he is able to straddle Africa and Europe with his knowledge.”

The firm has recently acquired more new personnel, with two associates joining since May 2005 – Gilbert Nyatanyi, who joined from Euroclear, and Celeste Kabwa. This brings the overall number of lawyers at the firm to six partners and 14 associates.

Name partner Nimrod Mkono – “the godfather of Tanzanian law”, according to one peer – is the head of the corporate and commercial department; peers recognise that he is “very powerful politically”, and “as a very important man in Tanzania he gets a lot of governmental work”. Recent deals have included providing legal advisory services to Tanzania's Presidential Parastatal Reform Commission on the privatization of the National Insurance Corporation, and to the Unit Trust of Tanzania in relation to the establishment of the Umoja Fund, the first collective investment scheme ever in Tanzania. The firm has also advised the government of Tanzania in relation to the reorganization of the shareholding structure of Celtel Tanzania and the Tanzania Telecommunication Company, and acted for the Gulf Petroleum Corporation on a \$75 million syndicated loan facility.

Some of the firm's other deals during the last year include performing a due diligence on an energy concern in Tanzania in light of an initial public offering on a European stock market, advising the Tanzanian government in arbitration proceedings in relation to a road construction contract, and acting for the Kingdom Hotel Investment Group on its acquisition of Tanruss, a company owning and operating a large hotel in Tanzania.

Leading lawyers

Steven De Backer

Wilbert Kapinga

Nimrod Mkono

Key contact partners

Steven De Backer

Wilbert Kapinga

Nimrod Mkono

FK Law Chambers

FK Law Chambers is one of the top providers of legal services in Tanzania and is held in high regard by clients, one of which commented that the firm “is excellent strategically”. The firm's capability has been added to by the recent appointment of Krista Van Winklehof from Linklaters in London. She is qualified in corporate, commercial and capital markets work and brings a “new

energy and experience to the Tanzanian market". Kibuta Ongwamuhana heads the tax practice at the firm and is described as "incredibly progressive and probably the best tax lawyer in Tanzania". Indeed, FK Law Chambers' good progress in the Tanzanian market has been noted by rivals, one competitor remarking that "although they may not yet be a tier one firm, this may change."

Over the past year FK Law Chambers has acted for the UK-incorporated water engineering company Biwater on its \$140 million takeover of the operations of the then state-owned water supply and sewage treatment facilities for the Dar es Salaam Water and Sewerage Authority. The firm has also advised on arrangements between the Canadian firm Artumus and the Tanzanian government in relation to the development, extraction and processing of gas from the Mnazi Bay field.

Among other recent highlights, the firm acted for Dimon International on takeover implications relating to its Tanzanian subsidiary, Dimon Morogoro Tobacco Processors, acted on the disposal by two Philippine companies (ICTSI International Holding Corporation and International Container Terminal Services) of their interests in the Tanzania International Container Terminal Services to Hutchison International Port Holdings by way of a share transfer, and in June advised the purchaser (Malaysia's Premium Holding and the seller (Hellafric) on the \$3.5 million acquisition of shares in Kagera Fish, a Tanzanian company active in Lake Victoria. The firm, under Van Winklehof, has also just completed a deal advising the CDC Group, through its advisor, Actis Capital, on its 100% shareholding in the Tanganyika Wattle Company.

Leading lawyers

Florens Luoga
Kibuta Ongwamuhana
Krista Van Winklehof

Key contact partners

Deusedith Duncan
Kibuta Ongwamuhana
Krista Van Winklehof

Rex Attorneys

Rex Attorneys was founded on February 1 2006 following the merger between two well-regarded Tanzanian firms, Maajar Rwechungura Kameja & Nguluma and Epitome Advocates. Rex consists of six partners, four associates and five legal officers, and is organized into four groups: banking, financial law and capital markets headed by the "friendly and organized" Charles Rwechengura and Hawa Sinare; commercial litigation and taxation, headed by Alex Nguluma and Lugano Mwandambo; mining, energy and natural resources, headed by Mwanaidi Maajar and Alex Nguluma; and intellectual property and labour law. From among the team, partner and mining specialist, Mwanaidi Maajar is well thought of by clients and competitors alike; "she is very good at what she does," says one peer.

Despite a peer perception that Rex is stronger in mining and capital markets than in transactional work, the firm's banking and finance client roster is still impressive, and contains a strong spread of domestic and international banks such as Standard Bank, Barclays Capital, ABSA of South Africa and Standard Chartered Bank Tanzania.

Among the year's capital markets highlights, the firm served as Tanzanian counsel to three London Alternative Investment Market-listed mining and petroleum corporations with a business presence in Tanzania.

Leading lawyers

Mwanaidi Maajar
Charles Rwechungura
Hawa Sinare

Key contact partners

Mwanaidi Maajar
Charles Rwechungura

Ringo & Associates

Ringo & Associates, "a small firm [that is] seen quite often in deals" appears for the first time in the rankings. The firm is a member of the Africa Legal Network, an association of three law firms from each of the three East African countries (Kenya, Uganda and Tanzania). This membership means it attracts work from other members of the network, a point that has not gone unnoticed by the market: "Ringo & Associates is coming on in leaps and bounds with their membership of the African Legal Network", one peer commented.

Ringo & Associates has three partners and four associates, and provides specialist advice in banking, commercial property, tax and capital markets law. Despite only being in existence since 2003, the firm has grown significantly, mainly as a result of its specialist focus and its reputation for providing timely and effective legal advice. Mustafa Tharoo, the head of the corporate and commercial department, is highly regarded by peers and clients, being described variously as "very well thought of", "extremely capable and experienced," and "is doing extremely well ... a very bright star in terms of M&A work." Clients also point to the firm's ability to "manage expectations extremely well" and refer to name partner, Fred Ringo, as being "a very articulate and true professional who keeps promises."

Ringo & Associates has recently advised Barclays Bank Tanzania in connection with a TZS30 billion (\$30 million) medium-note programme listed on the Dar es Salaam Stock Exchange and acted for Barclays Bank Tanzania in connection with its \$10 million facility from La Société de Promotion et de Participation pour la Coopération Économique (Proparco), a deal on which the firm negotiated the loan agreement, liaised with the Bank of Tanzania and drafted the legal opinions and ancillary documents.

Other clients include Rabobank Nederland, for whom the firm acted in connection with the acquisition of a 49% share in National Microfinance Bank from the Tanzanian government valued at \$5 million.

Leading lawyers

Frederick Ringo
Mustafa Tharoo

Key contact partners

Atiq Anjarwalla
Frederick Ringo
Mustafa Tharoo