Policy, Regulatory and Supervisory Environment for Microfinance in Tanzania

G.C. RUBAMBEY
BANK OF TANZANIA

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ABOUT THE AUTHOR

Ms. Grace Rubambey is the Director of Microfinance at the Bank of Tanzania (the Central Bank) where she has worked for more than 25 years, having held managerial positions since 1981. She headed the team that formulated the National Microfinance Policy for Tanzania and the National Task Force that reviewed and developed the legal, regulatory and supervisory framework for microfinance in the country.

ABOUT THE SERIES

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CONTACT IRIS

IRIS Center
University of Maryland
Department of Economics
2105 Morrill Hall
College Park, MD 20742
USA

E-mail: info@iris.econ.umd.edu
Phone: +1.301.405.3110
Fax: +1.301.405.3020
Web: www.iris.umd.edu
**Background**

*The Challenge*

**TANZANIA** is a large and sparsely populated country with under-developed physical and financial infrastructure. It has a population of about 36.0 million people, 75 percent of whom live in the rural areas and are largely dependent on smallholder farming. Typical of a third world country, Tanzania has a large and growing informal sector that supports more than 60 percent of the population, the majority of whom earn less than one US dollar a day.

A major challenge facing the Tanzanian government, therefore, is how to effectively mitigate abject poverty among the majority of its people in both rural and urban areas. As such, the Government has placed poverty reduction at the center of its development agenda. Furthermore, the provision of sustainable, all inclusive financial services is identified as one of the critical ingredients for achieving the stated goal of poverty alleviation.

**Financial Sector Reforms**

Tanzania, originally a centrally planned economy, initiated economic reform measures in 1986. As part of the economic reform program, implementation of the financial sector reforms started in 1991 and aimed to develop a sustainable, efficient and effective financial system. Specifically, the reforms have included liberalization of interest rates, elimination of administrative credit allocation, strengthening of the Bank of Tanzania's regulatory and supervisory role, restructuring state-owned financial institutions and allowing entry of privately owned financial institutions.

The reforms brought about efficiency and competition in the banking sector, but unfortunately, they also resulted in a further widening of the institutional gap in the provision of financial services to the lower income segment. Access to basic financial services by the majority of Tanzanians has, therefore, not increased proportionately. This situation prompted the Government to initiate a process for mainstreaming microfinance services. The process was aimed at ensuring the development of a broader based financial system comprised of a variety of sustainable institutions, with wide outreach and diverse financial products.

In 1996, the Government, through the Bank of Tanzania, initiated public awareness initiatives with respect to microfinance. This resulted in some of the banks and non-banks financial institutions reaching the lower end of the market, widening the range of service provider institutions to include both regulated and non-regulated institutions, such as: banks and non-bank financial institutions, NGOs, Savings and Credit Cooperatives Societies (SACCOS), etc.
In 1997 the Bank of Tanzania was appointed to act as the government focal point for microfinance in order to enhance and coordinate the government's support towards mainstreaming microfinance into the financial system. As the Government's focal point and agency with oversight on the banking system, the Bank of Tanzania, on behalf of the Government, led the process for the formulation of the microfinance policy and the review of the legal, regulatory and supervisory framework.

The Policy Framework

THE NATIONAL MICROFINANCE POLICY (NMP) received approval of the Cabinet of Ministers in May 2000. It was officially launched in February 2001. The Policy is intended to provide a framework for harnessing microfinance stakeholder interventions in the development of the industry. The policy formulation process, therefore, had to be undertaken in a very participatory manner in order to involve the stakeholders. The process started by conducting a nation-wide participatory demand survey for financial services in order to capture the views of stakeholders at the grassroots. It also involved public awareness campaigns, stakeholder workshops, seminars and meetings. A select group of practitioners, policy makers and members of parliament participated in study tours to Bolivia and Indonesia in order to observe best practices in the field. Involvement of stakeholders, and the general public, was meant to ensure that internationally accepted microfinance best practice principles were well understood.

The underlying principles of the NMP are based on sustainability and best practices. In order to achieve sustainability and to ensure best practices in the industry, the NMP outlines three tools for its implementation, namely: regulation and supervision, development and application of standards, and capacity building.

The salient features of the National Microfinance Policy relevant to the regulatory and supervisory framework include the following:

- Microfinance will increasingly be an integral part of the financial system, hence the need to adopt a financial systems approach;

- Microfinance is part of the country’s financial markets whose behavior is governed by market forces;

- Microfinance is a line of business that can be undertaken by diverse institutions (including commercial banks) applying a variety of service delivery methodologies;
• Microfinance service providers should be at the center of the implementation of the policy; and

• The government’s role is creation of an enabling environment, not provision of financial services.

Legal, Regulatory and Supervisory Review

THE MICROFINANCE SECTOR in Tanzania is highly segmented. Providers of microfinance services include banks and a variety of non-bank financial institutions, NGOs, SACCOs etc. Since all these institutions operate in the same market, best practices principles need to be observed by all, otherwise competition could result in risky, unfair and even “predatory” practices in the business of micro-credit.

The National Microfinance Policy establishes a best practices framework for all microfinance service providers to extend their services under reasonably similar conditions with respect to quality and sustainability. The legal, regulatory and supervisory frameworks contribute towards this policy objective.

The Earlier Approach (Bureaucratic)

In 1997, attempts to put in place a legal, regulatory and supervisory framework were made. At that time the formulation of the NMP was in progress. The decision to prepare regulations for microfinance was in response to a request by one of the large NGOs that, at the time, was considering transformation into a financial institution. The Bank of Tanzania responded quickly by preparing draft regulations. However, the process had to be discontinued for a number of reasons, including:

• An internal pre-transformation assessment revealed that the NGO that wanted to transform had not attained the necessary financial and technical capacity to become a regulated institution;

• None of the regulated institutions were providing microfinance services so there was no need to rush the process;

• Internal discussions of the draft regulations at the Bank of Tanzania revealed that more knowledge and exposure to practical issues in microfinance were required in order to formulate a regulatory framework that would be supportive as well as deal with the potential risks of microfinance;

• A number of policy related concerns that were raised during the internal discussions within the Bank of Tanzania with
respect to the regulations could not be adequately responded to because the relevant policy was still under preparation;

- A comprehensive review of the legal framework that was required to provide legal basis for the regulatory framework had not been carried out; and

- Practitioners and other key stakeholders had not been involved in the drafting process.

The above situation provided the Bank of Tanzania with useful lessons for the process that followed, including:

- It is crucial for the regulatory and supervisory authority to have sufficient knowledge of microfinance in order to formulate an appropriate regulatory framework;

- The existence of an overall government policy on microfinance prior to the development of the regulatory framework is crucial;

- A comprehensive review of the financial laws (including other relevant legislation) should be part of the development of the regulatory framework;

- Involvement of key stakeholders (particularly practitioners) from the initial stages of the process is important for players to understand their respective roles and those of the other parties, as well as to ensure stakeholder buy-in;

- Practitioners need to be exposed to the rigors of the regulatory regimes of selected countries to enable them to appreciate the institutional requirements under prudential regulations; and

- While stakeholder involvement is critical, it is equally important for the process to reside in the relevant government authority.

The Systematic Approach (Participatory)

The NMP assigns responsibility to the Bank of Tanzania to ensure that a supportive regulatory and supervisory framework consistent with financial prudence is developed. However, in order to ensure stakeholder participation from the start, a national Task Force for the Review of the Legal, Regulatory and Supervisory Framework was established in 2000, subsequent to the approval of the NMP. The Task Force, chaired by the Director of Microfinance at the Bank of Tanzania, was composed of representatives of key stakeholders, including the Tanzania Association of Microfinance Institutions (TAMFI) and the Tanzania Bankers’ Association. A Steering Committee, chaired by the Central Bank Governor and comprised of senior policy makers, was also formed to oversee the work of the Task Force. The Task Force was assisted by an international firm of consultants to carry out the review.
In order to expose the Task Force and Steering Committee members to practical issues and to enable them to learn from international experiences, members of both groups were exposed to microfinance best practices through conferences, workshops, study visits, and seminars inside and outside the country. This exposure, as well as the continuous dialogue with other stakeholders, helped in building a common understanding amongst the members and strengthened their confidence in the expected outcome from the process.

Taking into account the diversity of the microfinance services providers, the process involved a review of existing financial laws and other related legislation as well as the existing regulations for the banking sector. The focus was on:

- Microfinance as a line of business that can be provided by a variety of institutions, including regulated institutions such as: commercial banks, NBFI s, community banks, etc;
- Institutions specializing in the provision of microfinance;
- Member-based microfinance organizations and particularly those involved in massive deposit taking activities; and
- Micro-lending organizations, mainly NGOs.

**Legal Framework**

The financial laws, namely; the Banking and Financial Institutions Act, 1991 (BAFIA, 1991), Bank of Tanzania Act, 1995 (BOT Act 1995), Cooperative Societies Act, 1991 and the Public Finance Act were reviewed. An analysis of the financial laws and related legislation revealed that there was no need for a special legislation for microfinance as the existing legal framework did not contain serious impediments to microfinance operations. Furthermore, it was felt that incorporating microfinance into the existing legal framework for the banking system would facilitate integration of microfinance into the broader financial sector, encourage innovation and competition, enable proper harmonization of the regulatory changes with the existing regulatory framework, as well as minimize possibilities of regulatory arbitrage. Nevertheless, it was found necessary to introduce amendments to selected aspects of the legal framework, including introduction of client identification and credit reference, contractual transparency, creation of specialized microfinance institutions, minimum capital and diversification of risk in order to foster the safe growth of credit and other financial services to households and micro enterprises in rural and urban areas. The following paragraphs address these amendments.

* Licensing of Institutions Specializing in the Provision of Microfinance Services

The amendments provide for a licensing framework for Microfinance Companies (MFCs) as financial institutions whose
core business is microfinance. One key factor in the licensing framework of MFCs is the recognition of the fact that private investors might be difficult to attract. Therefore, the framework provides an option for NGOs with a track record, in association with strategic partners, to become majority shareholders of up to 66 percent of the shares in the MFC compared to the 20 percent limit applicable for banks and other financial institutions. However, some of the practitioners had argued for NGOs with a track record to own up to 100 percent of the shares in an MFC.

**Introduction of Specialized Supervision of SACCOS and Other Member-based Schemes**

The amendments introduced a category of SACCOS to be called Financial Cooperative Societies (FICOS). FICOS represent SACCOS and schemes that would have recorded deposits equal to or above the minimum capital requirement for MFCs. They will be licensed and supervised by the Bank of Tanzania.

**Introduction of Client Identification and Credit Reference System**

The amendments require the Bank of Tanzania to put in place a credit reference system for banks and financial institutions (including microfinance institutions). The credit reference system will consist of privately owned credit reference bureaus regulated by the Bank of Tanzania and a database administered by the Bank. The Bank is also required to mandate a standardized method or technology for the assignment of a unique client identification number system. The objective of this provision is to reduce risks to the microfinance institutions and to ensure reliability in client information for decision-making as well as safeguard clients from unintended over-indebtedness.

**Amendments Related to Accounting Standards**

The provisions related to accounting standards require the Bank of Tanzania to issue an accounting manual to be adopted by all banks and financial institutions. Similar accounting and auditing standards would also be applied to SACCOS. This provision is aimed at enhancing transparency and creating a level playing field.

**Fair Lending and Collection Practices**

There is no specific regulation on fair lending practices with respect to Banks and Financial Institutions. However, it was found necessary to include such a provision in the regulations for microfinance institutions. This was aimed at protecting the small borrowers who may not be able to assess the impact of commissions or surcharges on the real cost of borrowing. In this regard the legal framework provides for:

- Transparency in disclosing the real costs to clients;
- Consumer protection in case of modification of contracts or loan conditions; and
• Authority for BOT to stop abusive loan collection practices

Provision for Correspondent Contracts
In order to facilitate expansion of financial services, particularly in the rural areas, the amendments provide for banks and financial institutions to engage in correspondent contracts with non-regulated institutions involved in microcredit, such as: NGOs, savings and credit associations (SACAs), etc.

Requirements for Publication of Financial Information
Another area that the amendments focused on was the publication of financial information aimed at enhancing transparency and disclosure.

Regulatory Framework
The NMP provides the following guidelines for regulation and supervision of microfinance:

• Application of the same fundamental principles for protecting depositors and the financial system through application of similar prudential financial norms that have been applied to other parts of the financial system;

• Adjustments to be made to the regulations in order to accommodate special features of microfinance operations;

• Only institutions licensed to take deposits from the public and other financial institutions will be regulated;

• For member-based organizations, supervision of organizations above a minimum size should be determined by the relevant supervisory authority;

• Regulation to focus on overall portfolio risk and quality of management systems for maintaining portfolio quality rather than legal security;

• Minimum capital and entry requirements to be determined by the supervisory authority after assessing the relevant requirements and issues.

The regulatory framework has introduced two categories of regulatory instruments:

a) Regulations that focus on best practices in microfinance among all practitioners as provided for in the National Microfinance Policy. They include the following:

• Microfinance Companies and Microcredit Activities Regulations 2005;

• Financial Cooperatives Societies Regulations 2005;
• Savings and Credit Cooperative Societies (SACCOS) Regulations 2005; and

• Amendments to existing regulations to address Non-Governmental Organizations.

b) The second category consists of regulatory instruments related to independent audit and internal control and audit. It includes the following regulations:

• Amendments to the Independent Auditors Regulations 2000;

• Internal Control and Internal Audit Regulations 2005.

The microfinance regulations focus on specific risks related to the business of microfinance. Therefore, much attention is focused on credit services since credit risk is one of the major risks for financial institutions, particularly for microfinance institutions whose portfolio consists of numerous, small and unsecured loans. Also, microfinance clients, in most cases, cannot provide information on their businesses. In some aspects, therefore, the regulations are stricter than the corresponding regulations for mainstream banking institutions. Also, given the immaturity of the microfinance industry in the country, the regulatory framework contains provisions specifically aimed at facilitating growth in outreach and depth of pro-poor financial services as well as entrance of a variety of institutions.

The Microfinance Companies and Micro-credit Activities Regulations 2005

Prudential regulations relating specifically to MFCs include conditions related to minimum core capital and other licensing provisions, lending limits, capital adequacy, asset quality, and reporting requirements.

Minimum core capital for MFCs has been set at TZS 800.0 million (about US $800,000) in case of MFCs with a nation-wide branch network and TZS 200.0 million (about US$200,000) in case of MFCs which do not have multiple branches (unit MFCs). The prescribed minimum capital is intended to ensure that MFCs have the financial capacity to acquire the necessary infrastructure and technology, as well as to attract qualified personnel. However, taking note of the fact that in the initial period, it is likely that MFCs will be established out of existing NGOs, provisions related to minimum capital requirements have been included to facilitate the transformation process. Among such provisions is one that provides for transfer of assets and clientele from the NGO to the MFC. It allows for 50% of the minimum capital to be paid in cash within one year of the date of licensing with funds arising from repayment of loans from the NGO’s portfolio. Another allows an institution with a proven record in microfinance to own up to 66% of the share capital of the MFC (instead of the normal 20%), as long as the institution phases out its lending operations and transfers its management
team, credit officers and key personnel and infrastructure to the MFC.

Prudential regulations related to micro-credit activities are applicable to all banks and financial institutions engaged in microfinance (including MFCs). For supervisory purposes, all such institutions will be required to report on their micro-loan portfolios. In order to facilitate segmented reporting and to avoid regulatory arbitrage, the definition of what constitutes “micro-credit” is provided in the regulations. The regulations also provide for classification and provisioning schedules. The classification and provisioning of microloans are stricter than that for commercial loans because of the importance of taking immediate action in case of delinquency on unsecured loans.

Moreover, the regulations on microcredit activities require all institutions engaged in microcredit to adopt the methodology that will be prescribed by the Bank of Tanzania 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 Bank of Tanzania.

Since microcredit operations are normally highly decentralized, the regulations also require the lending technology of the institutions to include explicit internal control policies and procedures in order to minimize possibilities of fraudulent actions. They also require internal auditors to have proven experience in microcredit operations.

For purposes of consumer protection, the regulations also include requirements related to fair lending practices.

Financial Cooperative Societies (FICOS) Regulations 2005
FICOS regulations establish a minimum level of deposits of TZS.800.0 million (about US $800,000) for a SACCO to be under the Bank of Tanzania's supervision. The justification of placing FICOS under Bank of Tanzania's supervision is that, as member-based organizations grow, the willingness and capacity of the majority of members to exercise their statutory role in governance and control declines, which can lead to a loss of accountability and transparency.

The objectives of these regulations, therefore, are to:

- Establish circumstances under which SACCOS become subject to regulation and supervision applicable to large-scale financial intermediation, taking into account the special rules that must be observed due to their establishment as member-based institutions.

- Promote the participation of members in the governance of the institution and establish clear lines of responsibility between committee members, managers, and internal auditors;
• Reinforce transparency in accounting and reporting, not only as a means of properly informing members and other stakeholders, but also for discouraging the adoption of less than best practices in their administration;

• Allow for more independence in increasing the funding base in order to compete fairly with other financial intermediaries in providing financial services to households and small and micro entrepreneurs of the urban and rural sector; and

• Establish mechanisms that will make them more commercially oriented in their administration practice.

The Regulations for FICOS provide the licensing framework for qualifying SACCOS. The minimum capital requirements for FICOS are similar to MFCs (TZS.800.0 million) and they are required to comply with similar adequacy ratios. FICOS are also required to adopt accounting and prudential guidelines established in the Bank of Tanzania regulations for MFCs and other regulations applicable to institutions engaged in financial intermediation. Like MFCs, FICOS are allowed to open branches, as long as they comply with the relevant regulations established for all financial intermediaries and show reasonable evidence of maintaining harmony with the cooperative principle of a common bond among members.

**SACCOS Regulations 2005**

SACCOS will continue to be registered by the Registrar of Cooperatives under the Cooperative Societies Act 2003 and will also be subjected to the Cooperative Rules as issued by the Ministry of Cooperatives and Marketing. However, in accordance with the legal framework, the Registrar of Cooperatives will also apply similar prudential regulations on SACCOS as those applied on MFCs. But, although the SACCOS regulations are similar to those applied to MFCs, the former take into account the fact that SACCOS are cooperatives and need to conform to cooperative principles.

**Amendments to Existing Regulations to Address NGOs**

Both regulated and unregulated microfinance service providers operate in the same markets targeting the same clientele. Therefore, in order to ensure a level playing field and to avoid regulatory arbitrage, the NMP stipulates that all MFIs be subjected to a best practice (non prudential) regulatory framework. In the case of micro-lending NGOs, this will be done through application of regulations on accounting and auditing standards issued by the National Board of Accountants and Auditors (NBAA) to ensure transparent disclosure. For NGOs that receive funding from donors and/or the domestic Government, standards compliance monitoring will be done through the relevant regulatory measures issued under the Public Finance Law. Since most NGOs fall under this category, it is believed that most of the NGOs operating in the country will be covered. However, the NGOs vary in size, level of operation, and accounting sophistication. Therefore, they will be grouped
according to their level of operations and smaller institutions will be required to produce simple financial returns.

In order to accommodate microfinance operations in the regulations that are issued by NBAA, amendments were made to the Tanzanian Financial Accounting Standard No. 8, “Disclosure in the Financial Statements of Banks and Similar Financial Institution”. Furthermore, the Public Finance Regulations were amended in order to enforce compliance by micro-lending NGOs that receive donor and/or government funding. The NGOs will also be required to report the status of their loan portfolio to a credit reference databank as required by law. The microlending institutions that so wish may apply for accreditation from the Ministry of Finance. The accredited institutions will be referred to as Micro-credit Institutions (MCI), thus receiving formal government recognition and enhancing their credibility. Accreditation of NGOs is not mandatory.

Internal Control and Internal Audit Regulations 2005
These regulations apply to banks, financial institutions, and FICOS. The objective of the regulations is to ensure that institutions put in place effective internal control systems and that respective management takes appropriate corrective action in response to weaknesses identified in internal policies and/or procedures.

The regulations are also intended to promote the quality and independence of the internal control and internal audit functions in banks and financial institutions (including MFCs, FICOS and SACCOS) without impeding the development of new financial products and services.

The regulations on internal control and internal audit, therefore, address the following issues:

- Components of the internal control systems;
- Responsibilities of the directors and senior managers with respect to internal controls;
- The internal auditor and internal audit functions; and
- Sanctions and risks control measures.

Amendments to the Independent Auditors Regulations 2000
The Independent Auditors Regulations 2000, which apply to all banks and financial institutions (including MFCs), stipulate that independent auditors may be required to undertake other duties in addition to carrying out the regular audit and annual statements of accounts. However, during the review, the provision was found to be too general. It was, therefore, amended to be more specific regarding the concerned activities. The amendments specify the scope of the specialized audit work and special reports to be prepared, including:
• Evaluation of the accuracy, security and effectiveness of the computerized information system;

• Evaluation of the implementation of the internal controls;

• Evaluation of credit classification and provisioning; and

• Evaluation of compliance with laws and regulations related to money laundering.

The amendments also revised the definition of “Conflict of interest” in order to include any aspects that may interfere with the objectivity and due care of the independent auditor’s work.

Supervisory Framework

A tiered approach for the supervision of microfinance institutions, as outlined below, has been adopted.

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<th>Supervisory Instruments and strategies relevant to microfinance</th>
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<td>Commercial Banks</td>
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<td></td>
<td>Financial Institutions (including MFCs)</td>
<td>License FICOS</td>
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<td></td>
<td>FICOS</td>
<td>Review microfinance operations of commercial banks and other financial institutions (whose core business is not microfinance) through segmented financial reporting</td>
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<td></td>
<td></td>
<td>Conduct on-site and off-site examinations</td>
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<td>Review external audit reports and conduct random attestation of audit firms.</td>
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<td>2. Registrar of Cooperatives (Ministry of Cooperatives and Marketing)</td>
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<td>Register SACCOS</td>
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<td>Grant accreditation to NGOs as “Micro-credit Institutions-MCIs”</td>
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<td>In coordination with NBAA, review external audit reports and conduct random attestation of audit firms auditing the respective NGOs</td>
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The Way Forward and Challenges Ahead

IN 2003 a joint IMF/World Bank Mission on Financial Sector Assessment Program (FSAP) carried out an assessment of the country's financial sector. In its report, while acknowledging the achievements attained under the financial sector reforms that the Government has been implementing since 1991, the Mission also identified a number of areas that needed further attention. Among other things, the Mission observed the need to enhance accessibility of financial services by the low-income population who form the majority in the country. Microfinance was also recognized as one of the tools for pushing the frontiers of financial services.

The Government adopted the report and is developing strategies that will form the basis for "second generation" financial sector reforms. Operationalization of microfinance regulations corresponding to the new regulatory framework will be implemented within the "second generation" reforms.

The microfinance regulations were gazetted in March 2005. Plans are underway to disseminate them among microfinance institutions and other stakeholders who will be involved in the supervision of microfinance. The process will involve setting up a microfinance supervisory function at the Bank of Tanzania, the Ministry of Cooperatives and Marketing as well as at the Ministry of Finance. It will also involve capacity building of the regulatory authorities, the various microfinance service providers and all other related agencies. Despite the positive donor response and their commitment to extend assistance, the funding requirements of the above process pose a major challenge. Furthermore, the experience of the three NGOs that have initiated processes for their transformation has demonstrated that attracting private capital into the proposed MFCs is a big challenge.

Prudential regulation and supervision are part of the financial infrastructure and are expected to contribute towards the healthy growth of the financial sector. The challenge, therefore, is to ensure that the regulatory and supervisory framework that is put in place does not undermine the efficiency of the market. The fact that there is a variety of institutions, both regulated and unregulated, that are providing microfinance services, is a challenge to the regulator in ensuring a level playing field without unnecessarily constraining the small unregulated institutions.

Conclusion

THE PROCESSES of formulating the National Microfinance Policy and the microfinance legal, regulatory and supervisory frameworks took a total of almost nine years. Significant amounts of both financial and human resources were utilized
during the process. The period spent on the process may appear long. However, experience gained during both the exercises has demonstrated that the process is as important as the end product itself. The long participatory approach ensured local ownership and stakeholder buy-in. It also enabled stakeholders to better understand the issues involved and their respective roles during the implementation, in particular in cases where experience in microfinance was limited. It also helped to build trust among the different stakeholders. In formulating the regulatory and supervisory framework, those involved in the process were exposed to international experiences. One of the notable lessons from the exposure to a variety of regulatory regimes was the realization that there is no single regulatory or supervisory model for replication. The model to be adopted depends very much on the level of maturity of the financial system, the type of institutions involved in microfinance and the existing legal system of the country. During the review of the legal framework, it also became apparent that it is not always necessary to have a special legislation on microfinance, although prudential regulations specific to microfinance are necessary.

The microfinance industry in Tanzania is nascent and still evolving. There is, therefore, a need for constant review of the framework in order to keep pace with new developments in the sector and to facilitate the sector’s growth.

The Bank of Tanzania has been very pro-active in supporting the microfinance industry and in acquiring the necessary exposure and training. The Bank is, therefore, committed to ensuring that effective supervision of the business of microfinance is achieved. This entails serious efforts in mobilizing the required financial resources and training the relevant staff to undertake the challenging work ahead.