THE NATIONAL MICROFINANCE BANK INCORPORATION ACT, 1997

ARRANGEMENT OF SECTIONS

THE UNITED REPUBLIC OF TANZANIA

No. 22 of 1997

I ASSENT,

Benjamin W. Mkapa,

President

5TH September, 1997.

An Act to facilitate the incorporation of the National Microfinance Bank (Limited, and its establishment as a commercial bank promoting microfinancing, to provide for issuance of its shares to the public and for other relevant matters.

[....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

1.—(1) This Act may be cited as the National Microfinance Bank Limited Incorporation Act, 1997. Short title and commencement

(2) Subject to section 4(1), this Act shall come into operation on the 1st day of October, 1997.

2.—(1) This Act shall apply to Tanzania Zanzibar as well as to Mainland Tanzania. Application

(2) Upon attainment of the privatization of the Bank and upon the Government becoming a minority shareholder, or no longer a shareholder, the provisions of this Act, other than the provisions of Sections 1, 2, 3, 4 and 5, shall cease to apply to the Bank.

3. In this Act unless the context requires otherwise— Interpretation

"assets" means property, real and personal of every kind including—

(a) rights under contract and agreement;

(b) money, books, books of accounts, records and goodwill;

(c) all other rights, interest and claims in or to, property, real or personal whether liquidated or unliquidated, certain or contingent, accrued or accruing;

"Bank" means the National Microfinance Bank which is required by Section 4 to be established;

Act No. 12 of 1991

"the banking law" means the Banking and Financial Institutions Act, 1991;

"Board" means the Board of Directors of the Bank established pursuant to section 11;

Act No. 2 of 1992

"Commission" means the Parastatal Sector Reform Commission established by the Public Corporations Act, 1992;

"Committee" means the Transition Management Committee established by the National Bank of Commerce (Reorganization and Vesting of Assets and Liabilities) Act, 1997;

"Company" means the National Bank of Commerce (1997), Limited which is required by section 3 of the NBC (1997) Ltd. Incorporation Act, 1997 to be established;

Act No. I of 1967

"Corporation" means the NBC Holding Corporation established by the National Bank of Commerce (Re-organisation and Vesting of Assets and Liabilities) Act, 1997.

"effective date" means the lst day of October, 1997;

"former bank" means the bank established by the National Bank of Commerce (Establishment and Vesting of Assets and Liabilities) Act, 1967;

"Instrument" includes a contract, a guarantee, an agreement including a mortgage, charge, bill of exchange, promissory note, bank draft, bank cheque, letter of credit or any other security;

"liabilities" means debts, charges, duties and all obligations of every description under contract or agreement including savings and deposits of all kinds, whether present or future, actual or contingent, and whether payable, to be observed or performed in the United Republic or elsewhere; but does not include any liability in respect of taxation under any law in force in the United Republic;

"Minister" means the Minister for the time being responsible for finance;

"rights" means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

"securities" includes-

(a) debentures, stock, shares, bonds or notes issued or proposed to be issued by the Bank and any right, warrant or option in respect of it;

(b) treasury bonds or other loan instrument of the Government;

"specified branches" means the branches of the former bank specified in the Schedule to this Act which are to constitute the Bank;

(c) rights or interests, whether described as units or otherwise under any unit trust;

(d) such other instruments as the Minister may, by notice published in the *Gazette,* prescribe;

"transition period" means the transition period prescribed by the National Bank of Commerce (Reorganisation and Vesting of Assets and Liabilities) Act, 1997;

"vesting date" means the date on which assets, and liabilities in respect of banking business, to which the former bank was entitled or subject to, are transferred to and vested in the successor Bank.

PART II

THE NATIONAL MICROFINANCE BANK

Requirement to establish Company and have it licensed as a bank

4.-(1) This section shall come into operation on the date on which the President assents to this Act.

(2) The Minister shall not later than the 25th day of September, 1997, cause to be incorporated, subject to this Act, a company to be known as the National Microfinance Bank Limited or by the acronym "NMB".

(3) The Minister shall, not later than the 30th day of September, 1997, procure the Bank to be licensed as a bank under the banking law.

(4) The assets, rights and liabilities in respect of the banking business of the specified branches to which the former bank was entitled or subject to, immediately before the vesting date shall be vested into the Bank in accordance with the provisions of the National Bank of Commerce (Reorganisation and Vesting of Assets and Liabilities) Act, 1997.

(5) The Bank shall, with effect from the effective date, subject to this Act, take over the assets, and the banking business of the former bank in the specified branches.

(6) The Minister may, upon advice by the Committee and at any time not later than the end of the transitional period, by order published in the *Gazette,* add to, amend, vary or alter the disposition of the contents of the Schedule to this Act, including whether or not a specified branch shall be part of the Bank.

Objects and functions of the Bank

5.-(1) Notwithstanding the provisions of any other law, as from the effective date the objects and functions of the Bank shall include the duty to-

(a) mobilize local savings and to promote the savings habit in the population and especially among low income earners, small scale farmers, small scale business enterprises and households of modest means;

(b) set up machinery, products and procedures for the provision of loans subsequent upon savings which are designed-

(i) to help lower income people to build their creditworthiness and also to self-finance business expansion, education, housing and other key requirements of livelihood;

(ii) to promote equity by helping the working poor to lift themselves out of poverty and continuing to finance their economic activities as they continue to grow;

(c) provide in accordance with the conditions appropriate in the normal and proper conduct of banking business, adequate and proper commercial banking services and facilities throughout the United Republic;

(d) conduct its business without discrimination except on such grounds as are appropriate in the normal and proper conduct of banking business;

(e) adhere to the rule of not divulging any information relating to, or to the affairs of, a customer of the Bank, except in circumstances in which it is, in accordance with any written law or the practices and usages customary among bankers, necessary or proper for the Bank to divulge that information;

(f) provide adequate and efficient financial intermediation services such as is necessary for the requirements of the rural and urban population.

(2) In particular and without prejudice to the generality of paragraph (a) of subsection (1), the Bank may within the United Republic and elsewhere-

(a) accept deposits from or on behalf of customers, and operate savings accounts as required by the customers;

(b) carry on the business of commercial banking in all its branches and departments, including borrowing, raising or taking up money, leading or dealing in bills of exchange, promissory notes, coupons, drafts, bills of lending, warrants, debentures, certificates, scrip and other instruments and securities, whether transferable or regotiable or not, granting and issuing letters of credit and circular notes; buying, selling and dealing in bullion and specie; acquiring, holding and issuing on commission, underwriting and dealing with stocks, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds, the negotiating of loans and advances; receiving money and valuables on deposit, or for safe custody, or otherwise collecting and transmitting money and securities; managing property, and transacting all kinds of agency business commonly transacted by bankers;

(c) undertake and execute any trusts the undertaking of which may seem desirable, and also to undertake the office of executor, administrator, receiver, treasurer, registrar or auditor, and to keep for any company, Government authority or other body, any register relating to any stocks, funds shares or securities, or to undertake any duties in relation to the registration of transfers and the issue of certificates;.

(d) where the Government is the sole or mojority shareholder, receive loans subject to the prior approval of the Minister;

(e) take or concur in taking all such steps and proceedings as may seem best calculated to uphold and support the credit of the Bank, and to obtain and justify public confidence, and to avert or minimize financial disturbances which might affect the Bank.

(3) The discharge of the duties and the performance of the functions of the Bank as specified in this Act or in its memorandum and articles of association shall at all times, subject to this Act, be governed by the provisions of the banking law and those of any law relating to microfinance institutions.

Authorized capital

6.-(1) The initial authorised capital stock of the Bank to be established shall be five billion shilings divided into five hundred thousand shares, each having a par value of ten thousand shillings.

(2) The Bank shall have power in general meeting to increase the level of the authorised capital, subject to the prior approval of the Minister, save that no such prior approval shall be necessary if the Bank ceases to be wholly or majority-owned by the Government.

issued capital

7.-(1) As a consequence of the vesting in the Bank of the assets and liabilities of the former bank relating to its banking business in the specified branches, the Bank shall issue such shares and other securities as shall be decided by the Bank in general meeting and after prior approval of the Minister; save that no such approval shall be necessary if the Bank ceases to be wholly or majority owned be Government.

(2) The issued share capital as determined under subsection (1) shall be allotted to-

(a) the Treasury Registrar; or

(b) any person entitled to require the issue of shares following their initial allotment to the Treasury Registrar,

in the proportions and on the terms determined by the Minister from time to time; and shall be divested to the other shareholders as such times and in such manner as shall be determined by the Minister upon recommendation by the Bank; save that at no time after such divestiture shall the shares held by the Treasury Registrar be less than such percentum of the issued sharecapital. as may be determined by the Minister.

(3) Shares issued in pursuance of this section shall be issued or allotted as fully paid and treated for the purposes of the Companies Ordinance as paid up by virture of payment to the Bank of their nominal value in cash.

(4) The Minister shall in exercising any power conferred on him by this section, or disposing of any securities issued or of any rights to shares initially allotted to the Treasury Registrar in pursuance of this section, holding prior consultations with the Commission.

(5) Any dividends or other sums received by the Treasury Registrar in right of or on the disposal of any securities or right, acquired by virtue of this section shall be paid into the Consolidated Fund.

PART III

ADMINISTRATION OF THE COMPANY

Annual General Meetings

8.-(1) The Bank shall in each year hold an Annual General Meeting in addition to any other meetings in that year, in the manner and within specified times as shall be set out in the Articles of Association.

(2) The Articles of Association shall provide for the role, the procedure and other matters with respect to the Annual General Meeting.

Board of Directors

9.-(1) There shall be a Board of Directors which shall, subject to the provisions of this Act be responsible for the carrying out of the functions and management of the affairs and business of the Bank.

(2) All directors of the Bank shall be natural persons and shall be not less than two and not more than such number as shall be determined by the Bank in general meeting and, if the Government is still the majority shareholder, after obtaining prior approval of the Treasury Registrar.

(3) The Directors shall initially be appointed by the Minister after consultation with the Treasury Registrar and after shares are allotted to other shareholders, by the shareholders in such proportion of their respective shareholdings as shall be provided by the Articles of Association of the Bank.

(4) There shall be a Chairman of the Board who shall be appointed-

(a) if the Government is the majority shareholder, by the President;
(b) in any other case, in such manner as shall be decided by the Bank in general meeting.

Employee

10--(1) Subject to the provisions of this Act and to those of its Articles of Association, the management of the Bank and the direction of its business and affairs shall be vested in the Managing Director who shall, in the exercise of such functions of management and direction, conform with the policy determined by the Board.

(2) The Managing Director shall be appointed-

(a) if the Government is the majority shareholder, by the President;

(b) in any other case, in the manner provided by the Articles of Association of the Bank,

on such terms and conditions as may be contained in the instrument of his appointment.

(3) The Bank shall have such other employees as-

(a) become employees of the Bank in pursuance of the provisions of the National Bank of Commerce (Reorganisation and Vesting of Assets and Liabilities) Act, *1997*, on the vesting date;

(b) may be employed by the Bank after the vesting date.

(4) The terms and conditions of employment of, and other matters in relation to the service of employees of the Bank shall, subject to any other relevant written law, be governed by the provisions of the Articles of Association of the Bank.

Dividends,

11. The Bank shall, where the Government is the majority shareholder, declare dividends only after prior approval of the Treasury Registrar and the consent in writing of the Minister.

Bank to operate on certain principles

12. In pursuance of its objects, the Bank shall-

(a) conduct its business according to commercial principles;

(b) conduct its business without under discrimination;

(c) not divulge any information which relates to the affairs of any customer of the Bank without his written consents;

(d) ensure that the total indebtedness of the Bank including savings and deposits, shall not at any time exceed ten times the authorized capital;

(e) finance only economically feasible projects;

(f) satisfy itself of the expected ability of the borrower to repay the loan without undue hardship;

(g) make adequate provisions for the risks involved in any outstand ing loan;

(h) in making and guaranteeing loans, offer such rate of interest or other charges as to cover the expenses of the Bank including the costs of its funds and to allow the Bank to build up adequate reserves.

PART IV

MISCELLANEOUS PROVISIONS

Capitalisation of profits

13.-(1) The Bank in general meeting and on the recommendation of the directors may resolve that it is desirable to capitalise any sum for the time being standing to the credit of any reserve account or profit and loss account or otherwise available for distribution to members, and that that sum be applied in any of the ways that the profits of the Bank may be properly applied.

(2) The ways in which any sum may be applied for the benefit of the members under subsection (1) are-

(a) in paying up any amounts unpaid on shares held by members; or

(b) in paying up in full unissued shares or debentures to be issued to members as fully paid.

Duty to promote microfinance portfolio

14. It shall be the duty of the Bank, in addition to providing banking facilities to the rural and urban areas of Tanzania, to cooperate with all authorities and institutions to promote the micro-finance portfolio in the country and shall, for that purpose endeavour to design products which are profitable, flexible, simple, convenient, outreaching and adaptable to specific market needs.

Privatization outlook

15.-(1) It shall be the duty of the Minister to work towards the early privatization of the Bank.

(2) All actions by all persons in relation to the Bank and in furtherance of its privatization shall comply with the relevant provisions of the Public Corporations Act, 1992.

Accounts and audit

16.-(1) The directors shall ensure that the Bank maintains such accounting records as are required to comply with the requirements of the Companies Ordinance and of this Act.

(2) The Bank in general meeting shall appoint the Auditor, fix his remuneration and regulate his duties in accordance with the Companies Ordinance.

Winding-up

17. If the Bank is wound up, the liquidator may divide amongst the members or class of members any part of the assets of the Company according to the value that the liquidator sets for those assets.

SCHEDULE-Sections 3 and 4(4)

Branches of the former bank which constitute the National Microfinance Bank

Region	*Serial No.*	*Branch*
Arusha	1.	Babati
	2.	Karatu
	3.	Katesh
	4.	Kibaya
	5.	Loliondo
	6.	Mbulu
	7.	Monduli
	8.	Mt. Meru
Coast	9.	Kibaha
	10.	Mafia
	11.	Bagamoyo
	12.	Chalinze
	13.	Kibiti
	14.	Kisarawe

SCHEDULE-Sections *3* and *4(4)-(contd.)*

Branches of the former bank which constitute the National Microfinance Bank

Region	*Serial No.*	*Branch*
Dodoma	15	Kondoa
	16.	Kongwa
	17.	Mpwapwa
	18.	Mtendeni.
Iringa	19.	Ludewa
	20.	Mafinga
	21.	Makete
	22.	Makambako
	23.	Mkwawa
Kagera	24.	Biharamulo
	25.	Bukoba
	26.	Kanyigo
	27.	Kayanga
	28.	Muleba
	29.	Ngara
Kigoma	30.	Kasulu
	31.	Kibondo
Kilimanjaro	32.	Hai
	33.	Mawenzi
	34.	Rombo
	35.	Same
	36.	Tarakea
	37.	Mwanga
Lindi	38.	Kilwa Masoko
	39.	Lindi
	40.	Liwale
	41.	Nachingwea
Mara	42.	Bunda
	43.	Mugumu
	44.	Tarime
Mbeya	45.	Chunya
	46.	Reje
	47.	Kyela
	48.	Mbarali
	49.	Mbozi
	50.	Mwanjelwa
	51.	Tunduma
Metro Dar	52.	Bank House
	53.	Kariakoo
	54.	Ilala
	55.	Magomeni
	56.	Temeke
Pemba South	57.	Chake Chake
Morogoro	58.	Ifakara
	59.	Kilombero
	60.	Kilosa
	61.	Mahenge
	62.	Turiani
	63.	Wami

SCHEDULE—Sections 3 and 4(4)—*(contd.)*

Branches of the former bank which constitute the National Microfinance Bank

Region	*Serial No.*	*Branch*
Mtwara	64.	Masasi
	65.	Mtwara
	66.	Newala
	67.	Ndanda
Mwanza	68.	Geita
	69.	Magu
	70.	Misungwi
	71.	Kenyatta Road
	72.	Nansio
	73.	Ngudu
	74.	Sengerema
Rukwa	75.	Mpanda
	76.	Nkasi
Ruvuma	77.	Litembo
	78.	Mbinga
	79.	Tunduru
Shinyanga	80.	Bariadi
	81.	Kahama
	82.	Maswa
	83.	Mwanhuzi
	84.	Pamba Road
Singida	85.	Kiomboi
	86.	Manyoni
Tabora	87.	Isunga
	88.	Nzega
	89.	Sikonge
	90.	Urambo
Tanga	91.	Handeni
	92.	Lushoto
	93.	Muheza
	94.	Korogwe
	95.	Mombo
	96.	Ngamiani
	97.	Pangani

Passed by the National Assembly on the 21st August, 1997.

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Clerk of the National Assembly

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