

The Malawi Gazette Supplement, dated 27th April, 2018, containing
Regulations, Rules, etc. (No. 10A)

GOVERNMENT NOTICE No. 19

FINANCIAL SERVICES ACT

(CAP 44: 05)

FINANCIAL SERVICES (CAPITAL ADEQUACY FOR BANKS) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVES

3. Objectives

PART III—CAPITAL REQUIREMENTS

4. Board responsibilities
5. Capital adequacy requirements
6. Compliance on a solo and consolidated basis
7. Restrictions
8. Record keeping
9. Submission of Capital Adequacy Schedule

PART IV—ENFORCEMENT

10. Administrative penalties
11. Monetary penalties
12. Revocation

IN EXERCISE of the powers conferred by section 34 (2) (c) of the Financial Services Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, make the following Directive—

PART I—PRELIMINARY

1. This Directive may be cited as Financial Services (Capital Adequacy for Banks) Directive, 2018. Citation
2. In this Directive, unless the context otherwise requires— Interpretation
 - “bank” has the meaning ascribed to that term in the Banking Act; Cap. 44:01
 - “banking business” has the meaning ascribed to that term in the Banking Act; Cap. 44:01
 - “bank holding company” means a body corporate that owns or controls at least two financial institutions one of which is a bank, whether

the financial institution is a subsidiary or significant minority investment or interest of the body corporate;

“capital adequacy” means the maintaining of sufficient capital in line with regulatory requirements as prescribed in this Directive;

“capital deficiency” means failure to meet the capital requirements prescribed in this Directive;

“capital requirement basis” means the total risk converted assets and risk converted contingent claims upon which core and supplementary capital is measured, to determine the capital requirement calculation for capital adequacy of a bank;

“contingent claims” or “off balance sheet items” means—

(a) direct credit substitutes, such as guarantees, acceptances, and endorsements;

(b) transaction related items, such as performance bonds;

(c) self-liquidating letters of credit, such as documentary credits; and

(d) formal commitments, such as stand-by facilities and credit lines;

“core or Tier 1 capital” means the sum of the following—

(a) share capital, paid-up;

(b) share premium;

(c) retained profits (prior years);

(d) 60% of after tax profit (current year) and in case of a loss, 100%; and

(e) other eligible core or Tier 1 capital elements which have been prescribed or approved by the Registrar;

less: investment in unconsolidated financial institutions as set out in paragraph 5 (6) of this Directive;

“general provisions” means loan loss reserves held against future, unidentified losses and are thus freely available to meet losses which subsequently materialise;

“impaired capital” means a capital deficiency to the extent of potential insolvency or endangering the funds of depositors and other creditors;

“revaluation reserve” means the increase in book value of a fixed asset or other tangible asset based on a professional appraisal as to the market value of the asset;

“significant minority investments or interest” means any ownership interest of less than fifty percent (50) of the voting rights or capital held by the holding company in the relevant entity;

“specific provisions” means loan loss reserves held against presently identified losses or potential losses and are thus not available to meet losses that subsequently materialize;

“subordinated debt” means a debt with original fixed term maturity of not less than 5 years and satisfying the Basel Committee’s conditions for supplementary or tier 2 capital;

“supplementary capital (tier 2)” means the sum of the following—

- (a) revaluation reserves;
- (b) subordinated debt; and
- (c) general provisions.

PART II—OBJECTIVES

3. The objectives of this Directive are to—

Objectives

- (a) ensure that banks have an adequate cushion of capital to absorb losses;
- (b) protect the interests of depositors, creditors and the general public;
- (c) ensure that banks maintain internationally recognized prudent capital requirements; and
- (d) promote self-discipline in the management of banks.

PART III—CAPITAL REQUIREMENTS

4. The board of directors shall—

Board
responsi-
bilities

- (a) ensure that a bank is well capitalized and meets the regulatory requirements prescribed in this Directive at all times;
- (b) adopt a capital plan that outlines, among other things, the bank’s dividend policy, bonus and incentives policy, sources of capital augmentation, capital allocation and expansion strategy; and
- (c) develop a comprehensive Internal Capital Adequacy Assessment Process commensurate with the risk profile of the bank.

5.—(1) A bank shall maintain a minimum core capital of Malawi Kwacha equivalent of five million United States Dollars (USD5,000,000.00) or such higher amount as the Registrar may determine.

Capital
adequacy
requirements

(2) A leasing company or a discount house shall maintain a minimum core capital of Malawi Kwacha equivalent of one million five hundred thousand United States Dollars (USD1,500,000.00) or such higher amount as the Registrar may determine.

(3) For purposes of capital computation in subparagraphs (1) and (2), the applicable exchange rate shall be the Reserve Bank of Malawi ruling middle exchange rate on the commencement date of the Directive or an exchange rate as the Registrar may prescribe in writing to a bank.

(4) The minimum core capital in subparagraphs (1) and (2) shall after conversion as prescribed in subparagraph (3), remain the same until reviewed by the Registrar.

(5) A bank shall maintain a minimum core capital ratio of ten percent (10%) of the capital requirement basis.

(6) A bank shall maintain a minimum total capital of fifteen percent (15 %) of the capital requirement basis.

(7) Deductions in unconsolidated financial institutions shall be fifty percent (50%) from core capital (tier 1) and fifty percent (50%) from supplementary capital (tier 2).

(8) Where a bank is required to make deductions from tier 2 capital but it does not have sufficient tier 2 capital to make that deduction, the bank shall deduct the shortfall from tier 1 capital.

(9) The amount of supplementary capital (tier 2) shall not exceed hundred percent (100%) of the bank's core (tier 1) capital.

(10) The aggregate amount of subordinated debt that may be eligible and recognized by the Registrar as supplementary or tier 2 capital shall be limited to fifty (50) percent of core capital, provided that such subordinated debt shall—

(a) be discounted by cumulative factor of twenty (20) percent per year during the last five years to maturity;

(b) be unsecured, uninsured and not be a deposit;

(c) have an original maturity of not less than five years;

(d) be subordinated to claims of all depositors and general creditors of the bank;

(e) not be redeemable at the option of the holder prior to maturity, except with prior approval of the Registrar; and

(f) not require payment of principal or interest unless the bank is solvent and shall remain solvent immediately thereafter.

(11) For a bank to have met the capital requirements of this paragraph, it must be in compliance with all the requirements of the Financial Services (Financial Asset Classification of Banks) Directive.

(12) The Registrar shall require a bank to hold capital against credit, market and operational risks, the basis of which shall be prescribed in respective guidelines.

(13) The Registrar may raise capital requirements for a specific bank where the supervisory review process reveals existing risks in the bank warranting the increase.

(14) The Registrar shall prescribe higher capital requirements for domestic systemically important banks.

(15) The criteria for determining systemically important banks shall be prescribed by the Registrar through a Directive.

6. A bank or a bank holding company shall comply with the capital requirements set out in paragraph 5 on an individual and consolidated basis. Compliance on a solo and consolidated basis
- 7.—(1) A bank shall not invest in or hold publicly traded equity shares of another bank. Restrictions
- (2) The amount of shares held by the public in a bank shall not exceed ten (10) percent of the bank's paid up capital at all times.
- (3) A bank shall not own or hold shares in any non-financial institution the aggregate value of which exceeds ten percent (10%) of the bank's core capital.
8. A bank shall maintain adequate records, including daily balance sheets and periodic statements of income and expense to enable proper computation of capital adequacy. Record keeping
- 9.—(1) A bank shall on a monthly basis submit to the Registrar a Capital Adequacy Schedule in the format prescribed in the Financial Services (Submission of Information by Banks) Directive. Submission of Capital Adequacy Schedule
- (2) The Registrar shall require adjustments to capital calculations with respect to increased provisions or interest accrual if a bank is found not to be in compliance with this Directive or other capital adequacy guidelines.

PART I—ENFORCEMENT

- 10.—(1) Where the capital ratios of a bank fall below the ones prescribed in this Directive, shareholders shall inject additional capital in the amount prescribed by the Registrar within the prescribed timeframe. Administrative penalties
- (2) A bank that fails to comply with the capital requirements prescribed in this Directive shall be subjected to directions, administrative penalties and enforcement action as provided for under the Prompt Corrective Action Directive, the Banking Act and the Act. Cap. 44:01
- 11.—(1) Notwithstanding paragraph 10 above, the Registrar shall impose the following monetary penalties for violation of this Directive— Monetary penalties
- (a) for banks, up to fifty million Kwacha (K50, 000,000); and
- (b) for natural persons who are members of the board of directors, or senior management up to ten million Kwacha (K10,000,000).
- (2) With respect to banks, the Registrar shall—
- (a) debit the penalty in subparagraph (1) (a) from the main account of the bank maintained at the Reserve Bank; and
- (b) notify the bank in writing prior to debiting the account.
- (3) With respect to natural persons or where the bank does not maintain an account with the Reserve Bank of Malawi, the natural person or the bank shall pay the penalty through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within ten (10) working days after being notified by the Registrar.

Revocation of 12. The Directive on Financial Services (Capital Adequacy for Banks),
G. N. 38/2014 2014 is hereby revoked.

Made this 3rd day of April, 2018.

(FILE NO. FIN/PFSPD/03/04)

D. KABAMBE, PhD
Registrar of Financial Institutions

GOVERNMENT NOTICE NO. 20

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (ANNUAL AUDITS OF BANKS) DIRECTIVE, 2018

ARRANGEMENT OF PRAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVES

3. Objectives

PART III—REQUIREMENTS ON ANNUAL AUDITS

4. Responsibilities of the Board
5. Appointment of external auditors
6. Approval process
7. Evaluation process
8. Board Audit Committee
9. Functions of the Board Audit Committee
10. Submission of audit report and management letter
11. Communication between Registrar and external auditors

PART IV—ENFORCEMENT

12. Monetary penalties
13. Administrative penalties
14. Revocation

IN EXERCISE of the powers conferred by section 34 (2) (I) of the Financial Services Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, make the following Directive—

PART I—PRELIMINARY

Citation

1. This Directive may be cited as the Financial Services (Annual Audits of Banks) Directive, 2018.

2. In this Directive, unless the context otherwise requires—

Interpretation

“banking business” has the meaning ascribed to that term in the Banking Act;

Cap. 44:01

“Board of Directors” means the highest body of authority in a bank responsible for strategically guiding the bank, effectively monitoring management and properly accounting to shareholders;

“external auditor” means registered audit firm whose partners are registered by the Malawi Accountants Board and are approved by the Registrar;

“home country supervisor” means the competent authority that supervises banking activities in the country where the head office of a bank’s foreign parent bank is located; and

“International Financial Reporting Standards” means standards and interpretations issued by the International Accounting Standards Board.

PART II—OBJECTIVES

3. The objectives of this Directive are to—

Objectives

(a) promote discipline in the management of banks by enhancing modern corporate governance principles and risk management systems;

(b) ensure that external auditors of banks discharge their functions more effectively; and

(c) ensure that every bank maintains a level of transparency adequate to enable depositors and the general public to make informed decisions.

PART III—REQUIREMENTS ON ANNUAL AUDITS

4. The Board of Directors shall—

Responsibilities of the Board

(a) ensure that the shareholders of a bank appoint an external auditor annually in accordance with the requirements of the Act and this Directive;

(b) advise the external auditor to use this Directive in conjunction with provisions contained in sections 57, 58 and 59 of the Act and section 17 of the Banking Act;

Cap. 44:01

(c) ensure that the financial statements of a bank are prepared in accordance with International Financial Reporting Standards;

(d) ensure change of the external auditor every five years; and

(e) ensure that where there is a change in the external auditor before the expiration of the five years, the Registrar is informed of the change within thirty days after the change takes effect.

5. A bank shall appoint an external auditor to fulfill the requirements of section 56 of the Act annually during the annual general meeting of the bank.

Appointment of external auditors

Approval
process

6.—(1) The appointment of an external auditor referred to in paragraph 5 shall not take effect unless the bank obtains written approval from the Registrar in accordance with section 56 (1) of the Act.

(2) An application for approval of an external auditor to the Registrar shall contain the following information—

- (a) name of the external auditor;
- (b) physical and postal address of the local office of the external auditor ;
- (c) names, qualifications and experience of each partner;
- (d) details of the partner-in-charge of the audit of the bank;
- (e) name, qualifications and experience of the manager to be engaged in the audit of the bank;
- (f) details of the experience of the external auditor in other financial institutions or banks;
- (g) quality review report of the previous audit by an independent review team;
- (h) details of any existing business relationship between the bank and the partner- in-charge of the audit and between the bank and the audit firm;
- (i) confirmation that neither the external auditor nor the partners or staff involved in the audit are holding past due or non-performing loans in the bank;
- (j) copy of practicing certificates of each of the partners in the audit firm; and
- (k) any other information considered by the bank as necessary in support of the application.

Evaluation
process

7.—(1) In assessing the application for approval of an external auditor, the Registrar shall among other things be satisfied that—

- (a) the external auditor is licensed or registered by an appropriate body or authority in Malawi;
- (b) the partners and lead audit manager have relevant professional experience and competence in banking audit;
- (c) the external auditor or its partners do not have any business association with shareholders or directors of the bank;
- (d) if the external auditor, its partners or staff have been subject to disciplinary action by any professional body, written clearance has been obtained from that body;
- (e) there has been no element of misconduct in the performance of the duties of the external auditor in other entities, banking or non banking;
- (f) the external auditor has arrangements to source personnel to audit specialized areas of the operations of the bank including Anti-Money Laundering and Combating Financing of Terrorism,

Information and Communication Technology (ICT) audit, e-banking, Basel II; and

(g) the partners, lead audit manager and supervisor are members of the Institute of Chartered Accountants in Malawi (ICAM).

(2) The Registrar may verify any information submitted by the bank or seek additional information on the external auditor before granting approval.

8.—(1) A bank shall have a Board Audit Committee consisting of at least three (3) members appointed by the board of directors. Board Audit Committee

(2) Membership to the Board Audit Committee shall be restricted to non-executive directors with knowledge in accounting, audit, finance, economics, law, ICT or risk management.

(3) The chairperson of the board of directors and senior management officials shall not be members of the Board Audit Committee.

(4) A member of the Board Audit Committee shall not serve as a member of another committee of the Board.

9. The functions of the Board Audit Committee shall include—

Functions of
the Board
Audit
Committee

(a) establishing and ensuring compliance with accounting standards and internal controls of the bank;

(b) assisting the board of directors in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems, and auditing processes of the bank;

(c) facilitating and promoting communication regarding the bank's internal control systems, accounting practices, information systems, auditing processes, risk management, or any other related matters between the board of directors, senior management officials, internal auditor and external auditors;

(d) approving the appointment and dismissal of internal auditors;

(e) recommending appointment and dismissal of external auditors;

(f) providing oversight of the internal and external auditors and taking measures to enhance their independence by ensuring among other things that the auditors report directly to the board of directors or to the Board Audit Committee;

(g) reviewing and approving the internal audit plans, scope and frequency;

(h) receiving and reviewing internal and external audit reports including management letters;

(i) ensuring that senior management officials take appropriate and timely action to correct weaknesses in internal control, non-compliance with policies, laws, regulations and directions, and other problems disclosed by both external and internal auditors;

(j) introducing necessary measures to enhance the credibility and objectivity of financial statements and reports of the bank; and

(k) delivering opinions on any matters submitted to it by the board of directors or that it wishes to address.

Submission of
audit report and
management
letter

10.—(1) A bank shall submit to the Registrar a copy of its audited financial statements and management letter within three (3) months after close of its financial year.

(2) A bank shall publish audited financial statements containing at a minimum a copy of its statement of financial position, statement of comprehensive income, and cash flow statement in at least two (2) newspapers in line with the requirements of the Directive on Disclosure of Information by Banking Institutions.

(3) A bank shall present a copy of its audited annual report to all shareholders at their annual general meeting.

Communication
between
Registrar and
external
auditors

11.—(1) The Registrar may hold meetings with external auditors of a bank to share notes and discuss specific issues pertaining to the bank.

(2) The Registrar may appoint any external auditor to carry out specific assignments relating to a bank.

(3) The bank shall bear the costs of the assignments in sub paragraph (2).

(4) The Registrar shall communicate the reason for the assignments to the bank in advance.

(5) The Registrar may hold tripartite meetings with the bank and external auditors.

Cap. 44: 01

(6) The external auditor shall report any or all of the issues stipulated under section 17 (1) (f) of the Banking Act, to the Registrar.

PART V—ENFORCEMENT

Monetary
penalties

12.—(1) The Registrar shall impose the following monetary penalties for violations of this Directive—

(a) for banks, up to fifty million Kwacha (K50, 000,000); and

(b) for natural persons who are members of the Board of Directors or senior management, up to ten million Kwacha (K10,000,000).

(2) With respect to banks, the Registrar shall—

(a) debit the penalty in subparagraph (1) (a) from the main account of the bank maintained at the Reserve Bank of Malawi; and

(b) notify the bank in writing prior to debiting the account.

(3) With respect to natural persons or where the bank does not maintain an account with the Reserve Bank of Malawi, the natural person or the bank shall pay the penalty through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within ten working days after being notified by the Registrar.

Administrative
penalties

13. In addition to monetary penalties in paragraph 12, the Registrar shall disqualify and withdraw his approval of an external auditor, if the

external auditor fails to comply with the requirements of this Directive, financial services law or international standards of auditing.

Revocation of 14. The Financial Services (Annual Audits for Banks) Directive, 2012
G. N. 32/2012 is hereby revoked.

Made this 3rd day of April, 2018.

(FILE NO. FIN/PFSPD/03/04)

D. KABAMBE, PhD
Registrar of Financial Institutions

GOVERNMENT NOTICE NO. 21

FINANCIAL SERVICES ACT

(CAP.44:05)

FINANCIAL SERVICES (FIT AND PROPER REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND SENIOR MANAGEMENT OFFICIALS OF BANKS AND BANK HOLDING COMPANIES) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVES

3. Setting standards for investors and managers of banks and bank holding companies

PART III—FIT AND PROPER TEST STANDARDS FOR SHAREHOLDERS

4. Approval of shareholders
5. Due diligence

PART IV—FIT AND PROPER TEST REQUIREMENTS FOR DIRECTORS AND SENIOR MANAGEMENT OFFICIALS

6. Approval of directors and senior management officials
7. Board responsibility
8. Restrictions on directors
9. Qualifications for accounting, finance and audit functions requirements
10. Qualifications for compliance officer
11. Verification of educational qualifications
12. Notification of exits of directors or executive officers

PARAGRAPH

PART V—PRESCRIBED CRITERIA FOR FIT AND PROPER TEST

PART V—PRESCRIBED CRITERIA FOR FIT AND PROPER TEST

13. Eligibility

14. On-going assessment

PART VI—ENFORCEMENT

15. Monetary penalties

16. Administrative penalties

17. Revocation

Schedule

IN EXERCISE of the powers conferred by section 34 (2) (a) of the Financial Services Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, make the following Directive—

PART I—PRELIMINARY

Citation

1. This Directive may be cited as the Financial Services (Fit and Proper Requirements for Shareholders, Directors and Senior Management Officials of Banks and Bank Holding Companies) Directive, 2018.

Interpretation

2. In this Directive, unless the context otherwise requires—

“audit committee” means a permanent committee of the board of directors of a bank or bank holding company consisting of at least three (3) members, all or the majority of which, shall be non executive directors of the bank or bank holding company;

Cap. 44:05

“bank” has the meaning ascribed to that term in the Banking Act;

“banking group” means a group of two or more companies one of which is a bank domiciled in Malawi where the holding company is either a bank or financial institution or a non-financial company;

“bank holding company” means a body corporate that owns or controls at least two financial institutions one of which is a bank, whether the financial institution is a subsidiary or significant minority investment(s) or interest(s) of the body corporate;

Cap: 44:01

“credit facility” has the meaning ascribed to that term in the Banking Act;

“home country supervisor” means the competent regulatory authority that supervises institutions engaged in banking business in the country where the head office of a foreign bank is located;

“managerial functions” means duties or assignments performed or undertaken by a senior management official;

Act No. 14
of 2017

“politically exposed person” has the meaning as ascribed to that term in the Financial Crimes Act;

“senior management official” includes—

(a) an executive officer;

(b) head of department or function;

(c) an official who reports either directly to the board of directors, to a committee of the board of directors or to an executive officer; or

(d) branch managers of a bank that the Registrar declares as senior management officials; or

(e) an officer the Registrar declares as a senior management official; and

“significant minority investment(s) or interest(s)” means any ownership interest of less than fifty percent of the voting rights or capital held by the reporting holding company in the relevant entity.

PART II—OBJECTIVES

3. The objectives of this Directive are to ensure that—

(a) only fit and proper shareholders are allowed to establish and invest in banks and bank holding companies in Malawi; and

(b) banks and bank holding companies are managed by competent personnel at board and senior management levels.

Setting
standards for
investors and
managers of
banks and
bank holding
companies

PART III—FIT AND PROPER TEST STANDARDS FOR SHAREHOLDERS

4.—(1) A bank or bank holding company that is not a public company shall seek the approval of the Registrar in respect of—

(a) a new shareholder;

(b) a shareholder who may become a controlling party; or

(c) a change in shareholding structure.

Approval of
shareholders

(2) A bank or bank holding company that is a public company shall seek the approval of the Registrar in respect of—

(a) a new shareholder who may become a controlling party in the bank or bank holding company;

(b) an acquisition that increases the existing shareholding so that the shareholder may become a controlling party as a result of the acquisition; and

(c) a change in shareholding structure that results in one or more shareholders ceasing to become a controlling party.

(3) A shareholder referred to in this paragraph shall satisfy the fit and proper test requirements provided for in Part V of this Directive.

(4) The board of directors shall ensure that shareholders of the bank or bank holding company referred to in this paragraph provide the information prescribed in the Schedule to the Registrar and meet all the requirements of this Directive.

(5) In the course of carrying out his supervisory responsibilities, the Registrar may direct a proposed or existing shareholder to—

(a) submit additional information; or

(b) appear before the Registrar.

(6) The Registrar shall review the fitness and propriety of a shareholder or controlling party shareholder referred to in this paragraph on a continuous basis.

Due diligence

5. The Registrar shall conduct a due diligence of a prospective controlling party shareholder as part of the fit and proper test requirement.

PART IV—FIT AND PROPER TEST REQUIREMENTS FOR DIRECTORS AND SENIOR MANAGEMENT OFFICIALS

Approval of directors and senior management officials

6.—(1) A person shall not serve as a director or senior management official of a bank or bank holding company without prior approval of the Registrar.

(2) A bank or bank holding company shall submit to the Registrar a request for the approval in paragraph (1) in the format prescribed in the Schedule to this Directive.

(3) The number of foreign nationals appointed as senior management officials in a bank shall not exceed five, unless prior written approval of the Registrar has been granted to exceed the limit.

(4) The Registrar shall not grant the approval in subparagraph (3) unless the bank has demonstrated that it has not been able to identify the same skills for that position from the local market.

(5) The Registrar's approval to appoint a foreign national as a senior management official in terms of this Directive shall not preclude the bank from obtaining the necessary approvals from the Immigration Authority or complying with other applicable laws.

(6) A director or senior management official shall be considered to be fit and proper if he meets the Registrar's standards outlined in Part V of this Directive.

(7) The Registrar may require a person appointed as a director or senior management official of a bank to appear in person before him as part of the fitness and propriety test.

Board responsibility

7. The board of directors shall ensure that a bank or bank holding company has—

(a) an officer designated as second in command at a level of executive officer; and

(b) an independent risk management and compliance function headed by a senior management official.

Restrictions on directors

8.—(1) The Chairperson of the board of directors of a bank or a bank holding company shall be a non executive director.

(2) A director of a bank or bank holding company shall not serve as a director of another bank except where the other bank is a subsidiary of the banking group or the bank holding company.

(3) A director, executive officer or senior management official of a bank shall not serve on a board of a Credit Reference Bureau and vice versa.

(4) A director, executive officer or senior management official of a bank shall not own shares directly or indirectly in a Credit Reference Bureau and vice versa.

(5) A salaried employee of the Government shall not serve as a director of a bank or as an *ex-officio* except where the Government has direct shareholding interests in the bank.

(6) A salaried employee of the Government shall not serve as a chairperson of the Board of the bank.

(7) Except where specified by a relevant law or approved by the Registrar, directors referred to in subparagraph (5) shall not serve on the Board of any other bank.

(8) An individual who sits on the board of an institution that is a shareholder of a bank shall not serve as a director on the Board of any other bank.

(9) A person who served as Registrar shall not serve as a director or senior management official of a bank or bank holding company until the expiry of six (6) months cooling off period from the date of cessation as Registrar.

9.—(1) A person shall not be appointed as head of the accounting or finance functions of a bank unless he is an accredited member of a professional body in Malawi.

Qualifications
for
accounting,
finance and
audit
functions
requirements

(2) A head of the internal audit function of a bank shall be a registered member of an audit professional body in Malawi.

(3) The Registrar shall not approve a head of the accounting or finance functions of a bank, or a head of the internal audit function of a bank unless the bank provides written attestation from the respective professional body satisfying requirements of subparagraphs (1) and (2).

10.—(1) A compliance officer shall be a senior management official, who reports to a Board committee responsible for risk management.

Qualifications
for
compliance
officer

(2) An internal auditor or chief executive of a bank shall not qualify as a compliance officer.

(3) A compliance officer shall have relevant qualifications and experience to enable him sufficiently discharge his responsibilities.

11. The Registrar shall verify the credentials and authenticity of academic and professional qualifications of a director, executive officer or senior management official.

Verifications
of educational
qualifications

12. A bank shall notify the Registrar within ten (10) working days after the exit of its director or senior management official citing reasons behind the decision and the timeline regarding the director's or senior management official replacement.

Notification
of exists of
directors or
executive
officers

PART V—PRESCRIBED CRITERIA FOR FIT AND PROPER TEST

Eligibility

13.—(1) The following persons shall not be eligible for appointment or shall not continue to serve as shareholders, directors, or senior management officials of a bank or bank holding company—

(a) a person who has been adjudged bankrupt or declared insolvent and has not been discharged from bankruptcy or insolvency;

(b) a person who has been convicted of an offence involving dishonesty or fraud, forgery, perjury, money laundering, or any other material breach of a financial service law;

(c) a person who has been removed as a director, senior management official, shareholder or trustee by the Registrar or a regulator of financial institutions in any country;

(d) a person who has been removed as a shareholder, director or senior management official by a court of competent jurisdiction or any other enforcement agency;

(e) a person who has been directed to disinvest or had his investment wound up or closed up by a supervisory authority;

(f) a person who has been disqualified or suspended from practicing any profession by a regulatory body;

(g) a person who is employed directly or indirectly by another bank, unless he relinquishes that position before the appointment;

(h) a director, officer or employee of the Reserve Bank of Malawi or the Financial Intelligence Authority;

(i) a politically exposed person;

(j) a child or a person under legal disability;

(k) a person who has been proven to be responsible for a loss suffered by a licensed institution in Malawi or elsewhere;

(l) a person who does not enjoy a good professional reputation and has a background that does not demonstrate integrity;

(m) a person whose education, technical knowledge and professional experience is not directly relevant to banking business;

(n) a person who has been a controlling party, shareholder, director, executive officer or senior management official of a bank or other financial institution that is or was subject to formal remedial measures for operating in an unlawful or unsound manner or for which a management advisor, conservator or liquidator has been appointed or that has had its licence revoked or which has been wound-up;

(o) a director whose attendance of board meetings is unsatisfactory or who misses three (3) consecutive board meetings without valid reasons;

(p) a person who has a non performing credit facility or whose related party has a non performing credit facility;

(q) in the case of senior management official, a person who is not resident in Malawi, unless specifically exempted in writing by the Registrar;

(r) a shareholder who lacks or has demonstrated lack of financial capacity;

(s) with respect to a financial institution in Malawi or elsewhere, a person who has—

(i) failed to take all reasonable steps to secure compliance by the financial institution with Malawi's financial services laws, Financial Crimes Act or home country banking laws;

Act No. 14 of
2017

(ii) failed to take all reasonable steps to ensure the accuracy and completeness of information submitted to the Registrar or home country supervisory authority;

(iii) failed or delayed to supply information to the Registrar; or

(iv) obstructed or endeavored to obstruct, an inspection by an officer or other appointed person of the Registrar or any other financial regulator whether inside or outside Malawi;

(t) a person who has not disclosed with the bank all material interests in credits and other transactions;

(u) a person who directly or indirectly, alone or acting in concert with others has credit from the bank that exceed the limitations of the Directive on Financial Services (Transactions with Related Parties) Directive;

(v) a person who has supplied false or misleading information to the Registrar;

(w) a person who was dismissed from another bank or licensed institution; or

(x) any other person that may be prescribed as such by the Registrar based on the Registrar's assessment or other relevant information.

(2) On the commencement of this Directive, all banks and bank holding companies shall meet the requirements of this Directive.

(3) The Registrar may, upon application by a bank or bank holding company, allow a transition period to facilitate compliance with the requirements of this Directive.

14. A bank shall on a continuous basis, assess the fitness and probity of its directors and senior management officials as provided for under this Part. On-going assessment

PART VI—ENFORCEMENT

Monetary
penalties

15.—(1) The Registrar shall impose the following monetary penalties for violations of this Directive—

(a) for banks, up to fifty million Kwacha (K50,000,000); and

(b) for natural persons who are members of the board of directors or senior management, up to ten million Kwacha (K10,000,000).

(2) With respect to banks, the Registrar shall—

(a) debit the penalty in subparagraph (1) (a) from the main account of the bank maintained at the Reserve Bank of Malawi; and

(b) notify the bank in writing prior to debiting the account.

(3) With respect to natural persons or where the bank does not maintain an account with the Reserve Bank of Malawi, the natural person or the bank shall pay the penalty through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within ten (10) working days after being notified by the Registrar.

Administrative
penalties
Cap. 44:01

16. In addition to the monetary penalty imposed in paragraph 15 (1), the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act and the Banking Act.

Revocation of
G. N. 5/2014

17. The Financial Services (Fit and Proper Requirements for Shareholders, Directors and Senior Management Officials of Banks) Directive, 2014 is hereby revoked.

SCHEDULE

APPLICATION FORM FOR APPROVAL AS A FIT
AND PROPER PERSON*Form of Request*

The following information should be presented in the order of request. Copies of documents should be appropriately labeled.

Information Requirements

The following information is required of all persons proposed to be shareholders, directors and senior management officials of banks or bank holding companies.

(1) If a person already serves as a senior management official of a bank or bank holding company and is now proposed to become a director or senior management official, the bank shall provide to the Registrar—

(a) a written confirmation by the person affirming that there have been no material changes to the information that had been submitted by the bank when the person first received the Registrar's approval to serve in that capacity; or

(b) all material changes to the information that had earlier been submitted by the bank in support of the application that the Registrar approved. The above provisions shall also apply to a person serving as a director and being proposed to become Chairman of the board of directors.

(2) Name and address of the bank or bank holding company.

(3) Name of contact person for the request; address and telephone number in Malawi.

(4) Country identification or passport number and data.

(5) Date and place of birth.

(6) Amount, type and percentage of shareholding, if any, in the bank.

(7) Proposed position with the bank or bank holding company: director, executive officer or senior management official. Specify title and provide a position description. If senior management official, then provide functional responsibilities.

(8) Education, technical knowledge and professional experience and employment history submitted in a detailed curriculum vitae. (Please attach copies of certificates duly certified).

(9)—(a) History of ownership of ten percent (10%) or more of the stock of a bank or financial institution; or

(b) History of holding a position as a director or senior management official in any bank or other financial institution located anywhere in the world.

(10) Where paragraph (9) of the Schedule applies, state whether during such time period, the bank or financial institution—

(a) was subject to formal remedial measures for operating in an unlawful or unsound manner;

(b) was threatened with insolvency or experienced illiquidity which resulted in request for additional capital, emergency liquidity assistance or some other form of financing or regulatory action;

(c) had appointed a management advisor, conservator, liquidator, or similar official;

(d) had its license revoked; or

(e) was wound-up.

(11) Membership in companies, partnerships, professional or trade associations and groups of persons acting in concert, whether or not organized or registered as a formal business concern: Name, address, type of entity, and description of activities.

(12) A list of all "Related Parties" who will be so designated, pursuant to the Financial Services (Transactions of Banks with Related Parties) Directive, if the person becomes a director or senior management official of the bank.

(13) A list of all credit facilities and other transactions with the bank, direct and indirect, alone or acting in concert with others, and where possible, a latest credit report from a licensed Credit Reference Bureau.

(14) Provide complete details of all of the following legal proceedings with which the proposed director, executive officer, or senior management official has been a party, including date, location and disposition.

Litigation. Is the person engaged or expecting to be imminently engaged in litigation, in Malawi or elsewhere, which may have a material impact on the person's financial condition?

Discipline. Has the person ever been censured, prosecuted, warned as to conduct, disciplined, disqualified or suspended from practicing a profession, removed from office, publicly criticized, or made subject to a court order at the instigation of any governmental body appointed under any enactment, by a professional organization, or the substantial equivalent thereof in Malawi or elsewhere?

Conviction. Has the person ever been convicted of an offence, or been served a petition for an administrative order, or the substantial equivalent thereof, in Malawi or elsewhere?

Investigation. Is the person, or has the person ever been, subject to an investigation in Malawi or elsewhere by, or at the instigation of, any governmental department or agency, professional association, or other regulatory body?

Judgment. Has the person ever failed to satisfy within one (1) year a judgment of debt under a court order in Malawi or elsewhere?

Fraud. Has the person ever been adjudged by a court, in Malawi or elsewhere, to be civilly liable for actions which could have resulted in an indictment for a felony offence, as well as fraud, malfeasance, forgery, perjury, money laundering, or any other misconduct?

Bankruptcy. Has the person ever been adjudged bankrupt by a court in Malawi or elsewhere? Has a bankruptcy petition ever been served on the person? Has the person made any compromise arrangement or otherwise failed to satisfy creditors in full?

Receivership. Has a receiver or an administrator been appointed for any of the person's property, or has the substantial equivalent of any such receiver been appointed in any other jurisdiction? If so, provide details including whether the receiver or equivalent thereof is still acting under the appointment.

Winding-up. Has any body corporate, partnership, or unincorporated institution with which the person was associated as a controlling party shareholder, director, executive officer or senior management officer, in Malawi or elsewhere, been wound-up, made subject to an administration order, otherwise made any compromise or arrangement with its creditors, or ceased trading either while the person was associated with it or within one year after the person ceased to be associated with it or has anything analogous to any of these events occurred under the laws of any other jurisdiction?

(15) An official resolution of the board of directors authorizing the submission of the subject request to the Registrar.

For directors in addition to the information referred above:

(16) Proposed membership of committees of board of directors.

(17) A certified copy of the resolution taken by the general meeting of shareholders or directors of the bank on the appointment of the person to the board of directors which specifically states that the appointment is subject to the written approval of the Registrar and the person will not act in said capacity until the Registrar's written approval of the request has been issued.

For executive officers and senior management officials in addition to items 1-17 above:

(18) Copies of any employment contracts.

(19) A certified copy of the minutes of the meeting of the board of directors demonstrating that the board of directors has evaluated the proposed executive officer or senior management official according to the "fit and proper" standards prescribed in this directive and has determined that the person is "fit and proper" for the position as an executive officer or senior management officer of the bank.

Made this 3rd day of April, 2018.

GOVERNMENT NOTICE NO. 22

FINANCIAL SERVICES ACT

(CAP. 44: 05)

FINANCIAL SERVICES (LICENSING OF BANKS) DIRECTIVE, 2018
ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretations

PART II—OBJECTIVES

3. Objectives

PART III—APPLICATION PROCESS

4. Application procedures
5. Eligibility
6. Application fee
7. Start-up capital
8. Foreign investors
9. Other prudential requirements

APPROVAL PROCESS

10. Approval criteria
11. Due diligence
12. Communication of the Registrar's decision

PART V—POST APPROVAL PROCESS

13. Commencement of business
 14. Agreements
 15. Prohibition on equity investments
 16. Monetary penalties
 17. Transitional arrangements
 18. Revocation
- Schedules

IN EXERCISE of the powers conferred by Section 21 (5) of the Financial Services Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions make the following Directive—

PART I—PRELIMINARY

1. This Directive may be cited as the Financial Services (Licensing of Banks) Directive, 2018. Citation

2. In this Directive, unless the context otherwise requires—

Interpretation

“application fee” means banking license processing fee payable in Malawi Kwacha equivalent to the Registrar;

“applicant” means shareholders of a proposed bank for which an application for banking licence has been submitted;

“bank” has the same meaning as ascribed to that term in the Banking Act;

Cap. 44:01

“banking business” has the same meaning as ascribed to that term in the Banking Act;

Cap. 44:01

“home supervisory authority” means the competent regulatory authority that supervises institutions engaged in banking business in the country where the head office of a foreign bank is located;

“senior management official” means—

(a) an executive officer;

(b) head of department or function;

(c) an official who reports either directly to the board of directors, to a committee of the board of directors, or to an executive officer;

(d) branch managers of a bank that the Registrar declares as senior management officials; and

“shell company” means a company that has no physical presence and does not trade or operate.

PART II—OBJECTIVES

3. The objectives of this Directive are to—

Objectives

(a) establish licensing requirements for banks;

(b) specify information required by the Registrar in assessing licensing applications for banks; and

(c) ensure that banking licence applications are objectively and consistently evaluated in a timely manner.

PART III—APPLICATION PROCESS

4.—(1) A person wishing to conduct banking business shall apply to the Registrar for a banking licence through a written letter signed by a representative of the shareholders. Application procedures

(2) The applicant of a banking licence shall complete the application form set out in the First Schedule hereto and provide in the application all the information outlined in the Second Schedule hereto.

(3) Where the information submitted is not adequate, the Registrar may in writing request the applicant of a banking licence to submit additional information.

Eligibility

5.—(1) Only body corporates and subsidiaries incorporated in Malawi, shall be eligible to apply for a banking licence.

(2) The Registrar shall not grant approval for a banking licence if the shareholders or one of the shareholders of the proposed bank is a shell company.

Application fee

6.—(1) An application shall be accompanied by an application fee in form of a bank certified cheque of Malawi Kwacha equivalent of five thousand United States Dollars (\$5,000) payable to the Reserve Bank of Malawi.

(2) The application fee shall not be refundable.

Start-up capital

7.—(1) The minimum start-up capital for a bank shall be Malawi Kwacha equivalent of five million United States Dollars (\$5,000,000).

(2) The minimum start-up capital of a discount house and leasing company shall be Malawi Kwacha equivalent of one million five hundred thousand United States Dollars (\$1,500,000).

(3) Where borrowed funds are used as start-up capital, the amount shall not exceed ten percent (10%) of the bank's total start-up capital.

Foreign investors

8.—(1) Where an applicant of a banking licence is a foreign investor, the applicant shall register the capital with the Exchange Control Department of the Reserve Bank.

(2) Where the foreign investor is a regulated financial institution, the applicant shall submit to the Registrar—

(a) a letter from the home supervisory authority, authorizing the applicant to establish a subsidiary in Malawi;

(b) a letter from the home supervisory authority, confirming that the foreign investor is not a shell company; and

(c) a letter from the home supervisory authority agreeing to exchange information with the Registrar.

Other prudential requirements

9.—(1) The number of board members for a bank shall not be less than five (5).

(2) The majority of board members for a bank shall be resident in Malawi.

(3) All directors, executive officers and senior management officials of a bank shall not assume their respective roles without prior approval of the Registrar.

PART IV—APPROVAL PROCESS

10.—(1) In considering an application for a banking licence, the Registrar shall take into account the following—

Approval
criteria

(a) whether the applicant has submitted all the required information, including additional information if need be;

(b) whether the applicant has fulfilled all the licensing requirements as stipulated in the Act, the Banking Act, and the various prudential Directives;

(c) whether the application is in respect of banking business and its proposed activities, services and products are permissible under the existing laws;

(d) the applicant's business plan;

(e) the legal structure of the proposed bank, its affiliates and parent company or shareholders;

(f) the applicant's financial capacity to support the bank;

(g) the applicant's demonstrated commitment to good corporate governance practices; and

(h) the risk management systems to be adopted.

11. The Registrar shall carry out a due diligence of an applicant as part of the licensing process.

Due diligence

12.—(1) The Registrar shall communicate to the applicant the outcome of the application within ninety (90) days of receipt of a complete set of accurate information.

Communica-
tion of the
Registrar's
decision

(2) Where approval for a banking licence has been granted the Registrar shall issue a banking licence to the applicant in the form set out in the Third Schedule hereto.

(3) Where approval for a banking licence has not been granted—

(a) The Registrar shall communicate in writing to the applicant, the reason for the decision; and

(b) the applicant may appeal in line with the provisions of the Act.

PART V—POST APPROVAL PROCESS

13.—(1) A licensed bank shall commence banking business within twelve (12) months from the date of the issuance of its banking licence.

Commence-
ment of
business

(2) The Registrar shall revoke the licence of a bank that does not commence banking business as stipulated in subparagraph (1).

(3) Prior to the proposed bank opening to the public, the Registrar shall inspect the premises of the proposed bank to ascertain their suitability, in accordance with the Banking (Premises Inspection for Banks) Directive.

14. All management or technical assistance agreements involving a bank shall be subject to the approval of the Registrar.

Agreements

Prohibition
on equity
investments

15. A bank shall not be allowed to invest in or hold publicly traded equity shares in another bank.

Monetary
penalties

16.—(1) The Registrar shall impose the following monetary penalties for violations of this Directive—

(a) for banks up to fifty million Kwacha (K50, 000,000); and

(b) for natural persons who are members of the board of directors, or senior management up to ten million Kwacha (K10,000,000).

(2) With respect to banks, the Registrar shall—

(a) debit the penalty in subparagraph 1(a) from the main account of the bank maintained at the Reserve Bank of Malawi; and

(b) notify the bank in writing prior to debiting the account.

(3) With respect to natural persons or where the bank does not maintain an account with the Reserve Bank of Malawi, the natural person or the bank shall pay the penalty through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within ten (10) working days after being notified by the Registrar

Transitional
arrangements

17. If at the coming into force of this Directive, a bank is not in compliance with paragraph 15, the bank shall be given twelve (12) months to comply with the requirement.

Revocation of
G. N. 42/2012

18. The Financial Services (Licensing for Banks) Directive, 2012 is hereby revoked.

FIRST SCHEDULE

(para. 4 (2))

APPLICATION FORM

SECTION I—PROPOSED BANK

This section requests information about the proposed bank. A complete Section I must be filled out and submitted.

1. Name. Please state name of the proposed bank:.....
2. Legal form. Indicate the legal form of the institution (e.g. private limited company, public, etc):
3. Incorporation. Date and place of incorporation:
4. Head Office. Proposed place of Head Office in Malawi:
5. Business Place-(Proposed places of business in Malawi branches, agencies etc):

6. Directors and Executive Officers. State the names, addresses and occupation of the individuals who will be directors of the proposed bank. (According to the Malawi Companies Act, 2013, the minimum number of directors for a public company is three). The Registrar's requires a minimum of five directors for a new bank:
-
7. Executive Officers. State the names and occupation of two (2) executive officers identified for the proposed bank:.....
-
8. Capital Structure. Indicate the capital structure of the proposed bank:
- (a) authorized capital K.....
- (b) paid up capital K.....
- (c) total authorized shares K.....
- (d) total issued shares K.....
- (e) par value per share K.....
-
9. Shareholder List. (Provide a complete list of the initial shareholders of the proposed bank. Indicate the name of the shareholder, address and physical location, nationality, number of shares and percentage to be owned):
-
10. Acquisition Debt. To what extent will borrowed or encumbered funds be used by the initial shareholders, either directly or indirectly, to purchase their shares? Provide full details on the amounts, sources, collateral, and repayment terms for any such borrowed funds:
-
11. Banking Activities. What type of banking activities does the proposed bank plan to engage in? Attach list of proposed products and services to be offered by the new bank.
- Commercial/retail banking
- Merchant/wholesale banking
- Savings/thrift banking
- Mortgage banking
- Investment/development banking
- Export-import/trade financing
- Leasing/financing company
- Discount house
- Other (specify)
-
12. Premises. Describe the premises and equipment to be utilized by the proposed bank indicating whether owned or leased, costs of acquisition or lease payments, from whom purchased or leased, and how such premises and equipment were determined to be adequate:.....

13. **Business Plan.** Please provide a business/strategic plan for the proposed bank covering a minimum of three years including the sources, nature and scale of business envisaged, balance sheet and profit and loss projections for each year and details of staffing and management. Assumptions used in preparing the plan and the financial projections should be realistic and based on actual comparative data for the market to be served and the current economic environment. (see suggested format attached):
.....
14. **Memorandum and Articles of Association.** (Please provide copies of the Memorandum and Articles of Association of the proposed bank and if applicable its by-laws):
.....
15. **Additional Information.** (Please provide any other information regarding the proposed bank which may assist the Registrar in reaching a decision on the application):
.....

BUSINESS PLAN

Introduction

An applicant should submit a Business Plan in the format set out below. The format is only a minimum guide. Alternative formats may be used provided all pertinent information is included. The plan, at a minimum, should identify the proposed market(s) to be served, products and services to be offered, projected profitability, capital adequacy, and managerial resources and capabilities. The plan should include at least three years' operating projections and should contain sufficient information to demonstrate a reasonable likelihood of success.

Suggested Format

- I. **Identifying Information—**
 - (a) name and location: state the name and physical location of the proposed bank including location(s) of any branches;
 - (b) corporate structure: describe and provide a diagram of the proposed bank's corporate structure including any parent company, subsidiaries, or affiliated entities; and
 - (c) origin and basis: briefly discuss how the organizing group came together and the reasons for wanting to start a bank.
- II. **Market Analysis—**
 - (a) market: identify the market(s) to be served by the proposed bank; and
 - (b) economy: describe the economic characteristics of the target market(s). Include any anticipated changes in the market, factors influencing such changes, and possible effect(s) on the proposed bank
- III. **Business Strategy and Objectives—**
 - (a) services: briefly describe the services to be offered by the proposed bank. State and list all the envisaged products and services including fiduciary services if any;
 - (b) assumptions: list major assumptions upon which projections are based. Include,

at a minimum market growth rates, competition, interest rates, cost of funds, overhead, asset-liability mix, returns on assets and equity, dividends, and capital ratios (both leverage and risk based ratios);

- (c) pro forma statements: provide pro forma balance sheets and income (profit and loss) statements for three years. Show expected asset-liability mixes, volume of each type of service to be offered, fixed asset investment, and compensation to be given to management and staff; and
- (d) external audits: indicate the provisions made for an annual external audit as is required by the Financial Services Act.

IV. Leadership and Management—

- (a) officers and compensation: provide a list of officers showing the fees, salaries, and other forms of compensation or benefits to be given to each individual; and
- (b) insider agreements: describe any agreements the institution intends to enter into with any of its directors, executive officers, or principal shareholders, or with any organization or affiliate controlled by a director, executive officer, or principal shareholder. Provide copies of any such agreements including specific details of rates and terms and comparative market data upon which the rates and terms are based.

V. Capitalization and Additional Sources—

- (a) capital plan: describe plans for financing growth, internally or externally, over the first three (3) years of operation; and
- (b) additional capital sources: describe what sources of additional capital are available should the need arise.

SECTION II—INDIVIDUAL SHAREHOLDERS, DIRECTORS AND EXECUTIVE OFFICERS

This section requests biographical and financial information on individuals who are proposing to become principal shareholders, directors and executive officers of the proposed bank. A complete Section II must be filled out and submitted by each principal shareholder, director or executive officer.

1. Name and Address. State your full name and address:
2. Position. State the position and/or title you will hold in the proposed bank:
.....
3. Nationality. State your nationality and passport number—
 - (a) nationality.....
 - (b) passport number.....
4. Birth-Date. State the date and place of birth—
 - (a) place of birth.....
 - (b) date of birth.....
5. Role, Responsibility, and Reporting. What role will you have in organizing and managing the affairs of the proposed bank? Indicate to whom you will report and/or from whom you will receive directions or instructions. If you will be an executive officer, describe the specific duties and responsibilities for the position(s) to be held. If

you will be a director and will also have executive officer responsibilities within the proposed bank, indicate the nature and extent of such responsibilities:

.....

6. Qualifications. Provide your professional and educational qualifications, listing in reverse chronological order, i.e. most recent first—

Degree or Certificate.....

Issued By:.....

Date Received:.....

7. Employment History. Provide the following information, in reverse chronological order, regarding your employment history and professional experience during the past ten (10) years—

(a) name and address of employer;

(b) nature or type of business;

(c) title and duties or responsibilities;

(d) date employed; and

(e) date and reason for leaving.

8. Affiliations. State the name of *any other bank or financial institution* with which you are now or will be affiliated as a director or executive officer. Indicate your title or official capacity, duties or responsibilities in the other bank, and describe any relationship which now exists or will exist between the other institution and the proposed bank.
-

9. Shareholding. If you are now or ever have been a principal shareholder (owning 10% or more of equity or voting stock) of *any other bank or financial institution*, provide details thereof including any relationship which now exists or will exist between the other institution and the proposed bank:.....
-

10. Professional Membership. If you are now or will be a member of any professional or trade association concerned with banking or financial activities, in Malawi or elsewhere, provide details including whether such membership has ever been refused or terminated:
-

11. Discipline. Have you ever been censured, prosecuted, warned as to conduct, disciplined, or publicly criticized by or made subject to a court order at the instigation of any governmental department or agency, professional association, or other regulatory body appointed under any Malawi enactment or the substantial equivalent thereof elsewhere? If yes provide details:
-

12. Convictions. Have you ever been convicted of any offence, or has a petition for an administrative order or the substantial equivalent thereof been served on you, in Malawi or elsewhere, within the last seven (7) years? If yes, provide details.

13. Investigations. Have you ever been or are you now subject to an investigation in Malawi or elsewhere, by or at the instigation of any governmental department or agency, professional association, or other regulatory body? If yes, provide details:
-
14. Judgement. Have you within the last seven years, failed to satisfy within one (1) year a judgement of debt under a court order in Malawi or elsewhere? If yes, provide details:
-
15. Fraud. Have you ever been adjudged by a court, in Malawi or elsewhere, to be civilly liable for fraud, malfeasance, or any other misconduct? If yes, provide details:
-
16. Bankruptcy. Have you been adjudged bankrupt by a court, in Malawi or elsewhere, or has a bankruptcy petition ever been served on you within the last seven (7) years, have made any compromise arrangement or otherwise failed to satisfy your creditors in full within the last ten (10) years? If yes, provide details:
-
17. Receivership. Has a receiver or an administrator of any of your property been appointed within the last seven (7) years in Malawi, or has the substantial equivalent of any such receiver been appointed in any other jurisdiction? If yes, provide details including whether the receiver or equivalent thereof is still acting under the appointment:
-
18. Winding-Up. Has any body corporate, partnership or unincorporated institution with which you were associated as a shareholder, director, or manager, in Malawi or elsewhere, been wound up, made subject to an administration order, otherwise made any compromise or arrangement with its creditors or ceased trading either while you were associated with it or within one year after you ceased to be associated with it or has anything analogous to any of these events occurred under the laws of any other jurisdiction. If yes, give particulars:
-
19. How many shares of stock in the proposed bank are or will be registered in your name or in the name of a related party? State the name(s) in which the shares will be registered and the class of shares if other than common shares.
20. Beneficial Interest. How many shares of stock in the proposed bank, which are not registered in your name or in the name of a related party, will you have a beneficial interest in? State the name(s) in which the shares will be registered and the nature of the beneficial interest:
-
-

21. Trustee or Nominee. Will you or any party related to you hold shares in the proposed bank as a trustee or nominee? If yes, provide details:
-
-
22. Assignments or Pledges. Are, or will any of the shares described in response to Questions 19-21 be equitably or legally assigned or pledged to any other party? If yes, provide details:
-
-
23. Voting Authority. What proportion of the voting power at any general meeting of the proposed bank, or of any other organization of which the proposed bank is a subsidiary, will you be entitled to vote or exercise control over? Provide details of such voting authority or control:
-
-
24. Indirect Authority. If the exercise of voting power at any general meeting of the proposed bank, or of any other organization of which the proposed bank is a subsidiary, is or may be controlled or influenced by someone other than yourself, provide the identity of that person and the proportion of voting power so controlled or influenced:
-
-
25. Financial Data. Provide all such financial data that will reflect your assets and liabilities including bank accounts and information on other business run or owned by you:
-
-
26. Additional Information. Provide a latest credit report from a Licensed Credit Reference Bureau (where possible) and any other information regarding yourself which may assist the Registrar in evaluating your acceptability as a shareholder, director or executive officer of the proposed bank.

INDIVIDUAL FINANCIAL STATEMENTS

To be completed by each person who will be a controlling shareholder:

(Name and address of proposed bank)

.....

(Name and title of individual)

.....

As of date for Financial Statement:

STATEMENT OF POSITION

*Liabilities & Net Worth**Assets*

Accounts payable	K_____	Cash & bank balances	K_____
Notes payable	K_____	Marketable securities	K_____
Real estate mortgage	K_____	Other securities	K_____
Payable		Accounts and notes	K_____
Interest due and unpaid	K_____	Receivable - good	
		Interest due and unpaid	
Taxes due and unpaid	K_____	Accounts and notes receivable	K_____
Judgements- doubtful			
Other liabilities (list)	K_____	Inventories	K_____
		Farm products	K_____
		Equipment	K_____
Total liabilities	K_____	Life insurance	K_____
		Real estate	K_____
	_____	Business interests	K_____
		Other assets (list)	K_____
Net worth	K_____	TOTAL ASSETS	K_____

I hereby certify that the information shown in this financial statement, including supplemental schedules, is true and correct to the best of my knowledge and that there are no misrepresentations or omissions of material facts.

Signature:.....

Date :.....

SECTION III—INSTITUTIONAL CONTROLLING SHAREHOLDERS

This section requests background and financial information on institutional shareholders (IS) of the proposed bank. A complete Section III must be filled out and submitted for each institutional shareholder.

1. Name and Address. State the name and address of the institution which is or will be an institutional shareholder of the proposed bank. If applicable, indicate any other corporate, business, or trade name used by the institutional shareholder:

.....

2. Control. State the manner in which the IS will exercise control or otherwise exert influence over the affairs of the proposed bank:
.....
3. Legal Form. State the legal form of the IS (eg private limited company, partnership etc).
.....
4. Incorporation. Date of incorporation or formation of IS:.....
.....
5. Officers and Principal Shareholders. Provide the following information for each director, executive officer, or principal shareholder of the IS.

Name:.....

Address:.....
.....

Title/Position:.....

% of IS in IS:.....

shares owned:
.....
.....
.....

6. Address. State the registered address of the IS's headquarters and the principal place of business, if different from that shown in Question 1 above:
.....
7. Auditors and Bankers. State the names and addresses of the IS's auditors and primary bankers during the past five (5) years:
.....
8. Affiliates. State the name, address, and type of business for any organization which is or will be in any way affiliated with the IS:
.....
9. Shareholding. If the IS is now or ever has been a principal shareholder (owning 10% or more equity or voting stock) of any other bank or financial institution, provide details thereof including any relationship which now exists or will exist between the other institution and the proposed bank:
.....
10. Professional Membership. If the IS is now or will be a member of any professional or trade association concerned with banking or financial activities, in Malawi or elsewhere, provide details including whether such membership has ever been refused or terminated:
.....
11. Discipline. Has the IS ever been censured, prosecuted, warned as to conduct, disciplined, or publicly criticized by, or made subject to a court order at the instigation of any governmental department or agency, professional association, or other

regulatory body appointed under any Malawi enactment or the substantial equivalent thereof elsewhere? If yes, provide details:

.....

12. Convictions. Has the IS ever been convicted of any offence, or has a petition for an administrative order or the substantial equivalent thereof been served on the IS, in Malawi or elsewhere, within the last seven (7) years? If yes, provide details:
-

13. Investigations. Has the IS ever been or is it now subject to an investigation, in Malawi or elsewhere, by or at the instigation of any governmental department or agency, professional association, or other regulatory body? If yes, provide details:
-

14. Litigation. Is the IS engaged or expecting to be engaged in litigation, in Malawi or elsewhere, which may have a material effect on its resources or ability to financially support the proposed banking institution? If yes, provide details:
-

15. Judgements. Has the IS, within the last seven (7) years, failed to satisfy within one year a judgement of debt under a court order in Malawi or elsewhere? If yes, provide details:
-

16. Fraud. Has the IS ever been adjudged by a court, in Malawi or elsewhere, to be civilly liable for fraud, or any other misconduct? If yes, provide details:
-

17. Bankruptcy. Has the IS been adjudged bankrupt by a court, in Malawi or elsewhere, or has a bankruptcy petition ever been served on the IS within the last seven (7) years, or has the IS made any compromise or otherwise failed to satisfy its creditors in full within the last seven (7) years? If yes, provide details:
-

18. Receivership. Has a receiver or an administrator of any property of the IS been appointed within the last seven (7) years in Malawi, or has the substantial equivalent of any such receiver been appointed in any other jurisdiction? If yes, provide details including whether the receiver or equivalent thereof is still acting under appointment:
-

19. Liquidation—

(a) voluntary: Has a notice for the voluntary liquidation of the IS been issued within the last seven (7) years in Malawi, or has the substantial equivalent thereof been issued in any other jurisdiction? If yes, provide details including whether the liquidation has been fully resolved—

.....

(b) compulsory: Has a petition for the compulsory liquidation of the IS been issued within the last seven (7) years in Malawi, or has the substantial equivalent thereof been issued in any other jurisdiction? If yes, provide details including whether the petition or its equivalent is still unresolved—

20. Winding-Up. Has any organization with which the IS is or has been affiliated, in Malawi or elsewhere, ever been wound up or ceased trading while the IS was associated with the organization one (1) year after the IS ceased being associated with the organization? If yes, provide details:
-
21. Shares. How many shares of stock in the proposed bank are or will be registered in the name of the IS or in the name of a related party? State the name(s) in which the shares will be registered and the class of shares if other than common shares:
-
22. Beneficial Interest. How many shares of stock in the proposed bank which are not registered in the name of the IS or in the name of a related party, will the IS have a beneficial interest in? State the name(s) in which shares will be registered and the nature of the beneficial interest:
-
23. Trustee and Nominee. Does or will the IS or any party related to it hold shares in the proposed bank as a trustee or nominee? If yes, provide details:
-
24. Assignments and Pledges. Are or will any of the shares described in response to Questions 21-23 be equitably or legally assigned or pledged to any other party? If yes, provide details:
-
25. Voting Authority. What proportion of the voting power at any general meeting of the proposed bank, or of any other organization of which the proposed bank will be a subsidiary, is or will the IS be entitled to vote or exercise control over? Provide details of such voting authority or control:
-
26. Indirect Control. If the exercise of voting at any general meeting of the proposed bank, or any other organization of which the proposed bank is a subsidiary, is or may be controlled or influenced by someone other than the IS, provide the identity of such other person and the proportion of voting power so controlled or influenced:
-
27. Audited Accounts. Provide audited accounts for the past three (3) years:
-
28. Acquisition Debt. If borrowed funds will be used to purchase shares of stocks in the proposed bank, provide a statement showing the amount, source, collateral and repayment terms of the borrowed funds:
-
29. Additional Information. Provide a latest credit report from a Licensed Credit Reference Bureau (where possible) and any other information regarding the Institutional Shareholder which may assist the Registrar in evaluating its acceptability as an institutional shareholder.

DECLARATION
with regard to
APPLICATION FOR BANKING LICENCE

We/I, the undersigned, do hereby certify that—

- (a) all the information given in response to and in support of the questions in this application is true and correct to the best of our knowledge and belief; and
- (b) this application is made in good faith with the purpose and intent that affairs and business of the proposed bank will at all times be honestly conducted in accordance with good and sound business principles and in full compliance with all applicable laws and directives.

We further certify that to the best of our knowledge and belief there are no other facts or information relevant to this application of which the Registrar should be aware, and we pledge to promptly inform the Registrar of any material change to this application which may arise while it is being considered by the Registrar.

Name	Signature	Title/Position
.....
.....
.....
.....
.....
.....
.....
.....

Date:.....

SECOND SCHEDULE

(para. 4 (2))

INFORMATION REQUIREMENTS FOR APPLICANTS FOR BANKING LICENCES

Applications for a banking licence submitted to the Registrar should contain complete information on all requirements as listed below—

1. Application information should be accompanied by supporting documents as required.
2. Applications which are incomplete will not be processed.
3. Do not leave any requirements blank or unanswered. If the response to a requirement is "no" "none," "not applicable," or "not known," then state so and provide an explanation.
4. Submitting inaccurate or incomplete information will delay the processing of the application.

5. The application must be signed by a duly authorized officer of the Applicant and submitted to the following address—

The Registrar of Financial Institutions
Reserve Bank of Malawi
P.O. Box 30063
Capital City, Lilongwe 3
Malawi

6. Inquiries concerning the preparation, submission, and status of an application should be addressed to:

The Director
Bank Supervision Department
Reserve Bank of Malawi
P.O. Box 565
Blantyre
Malawi

e-mail: BASU@rbm.mw

1. *Legal Structure*

- 1.1. The corporate name to be used by the proposed bank for the purpose of carrying on banking business.
- 1.2. Location of the proposed bank's head office in Malawi.
- 1.3. Location of all other offices (branches, agencies, representative offices) planned for the new bank during the first three years of its operation.
- 1.4. Legal form (private or public limited company) of proposed bank.
- 1.5. Copy of the certificate of incorporation of the proposed bank.
- 1.6. Copies of the Memorandum of Association and a copy of the Articles of Association.
- 1.7. Certified minutes or resolution of the meeting of proposed shareholders authorizing the establishment of a bank.
- 1.8. Valid TAX Compliance certificate
- 1.9. The capital structure of the proposed bank showing the proposed amount of paid-in capital including the amount previously been paid-in or subscribed to; provided, however, that no capital may be contributed in-kind. Identify the type, number and par value of each class of shares proposed to be issued.
- 1.10. A complete list of the initial shareholders of the proposed new bank (the "applicants"), including name, address, nationality, and whether the shareholder is an individual person or a legal entity. If a legal entity, specify type. State the number and class of shares to be held, and as a percentage of the total shares. Indicate the purchase price per share, and the total purchase price.
- 1.11. Provide copies of any agreements between the applicants regarding the proposed bank.

- 1.12. If any applicant is a legal entity, then provide an official copy of the Board resolution and minutes of the meeting of its Board of Directors authorizing the submission of the application for banking licence.
- 1.13. If the proposed new bank will be part of a group—
 - (a) a diagram or chart of the group structure showing the proposed bank's position within the group, relationships within the group and percentage holdings, and the lines of authority and reporting from the bank to the parent;
 - (b) complete information on all entities within the group, including name, address, type of entity, principal shareholders, directors, and senior management officials;
 - (c) business or other activities of all entities within the group; and
 - (d) an indication of which, if any, entities within the group have no significant activities or operations other than holding stock (including that of the proposed bank) and other similar investments (i.e., a shell company).
- 1.12. State whether any applicant already owns or controls at least ten percent (10%) of the stock of one or more other banks in any other jurisdiction that will not be connected through a corporate link to the proposed new bank (i.e., a parallel bank).

2. Ownership Structure

Provide the following information on all beneficial owners of the initial stock of the bank.

- 2.1. Name (all names used, including trade names).
- 2.2. Address.
- 2.3. Nationality and country identification number.
- 2.4. For individuals—
 - 2.4.1. Passport number and date.
 - 2.4.2. Date and place of birth.
- 2.5. For legal entities—
 - 2.5.1. Legal form; date of incorporation or formation.
 - 2.5.2. Annual reports for the past three (3) consecutive years.
 - 2.5.3. Identification of external auditors and bankers during the past ten (10) years.
 - 2.5.4. Identification of principal shareholders, directors, and senior management officials—
 - (a) name;
 - (b) address;
 - (c) position with applicant: principal shareholder, member of the board of directors, and/or senior management official; and
 - (d) amount and percentage of shareholding in applicant, if any.
 - 2.5.5. Credit rating assigned by an internationally recognized rating agency.

- 2.6. Number and type of shares to be held in the proposed bank, par value, price per share, total price, and resulting percentage ownership.
- 2.7. History of the applicant including professional and business interests.
 - 2.7.1. Knowledge or experience in the oversight or management of banks or other financial institutions.
 - 2.7.2. History of ownership of 10% or more of the stock in any bank or other financial institution located anywhere in the world. State whether, during that time, the bank or financial institution—
 - (a) was subject to formal remedial measures for operating in an unlawful or unsound manner;
 - (b) was threatened with insolvency or illiquidity;
 - (c) had appointed a management advisor, receiver, conservator, liquidator, or similar official; or
 - (d) had its licence revoked or was otherwise wound-up.
- 2.8. Signed financial statements (statement of position, statement of comprehensive income and cash flow) for the three (3) years immediately preceding the date of application, including the current period if available, and audited if available. If proposed bank is a new incorporated entity, provide similar information for its shareholders.
- 2.9. Complete information on the source of funds to be used to purchase the shares of stock in the proposed bank, including the amount of funds required and the specific sources of those funds.
 - 2.9.1. If assets were (or will be) sold: Complete information on the sale, including copies of all pertinent documents.
 - 2.9.2. If funds were (or will be) borrowed—
 - (a) complete information on the loan including identification of the lender(s), amount to be borrowed, amount of the loan as a percentage of the total purchase price, collateral to be pledged, and all terms of the transaction;
 - (b) specific information on how the loan will be repaid; and
 - (c) complete details if dividends, salary, fees, or any other payments from the bank are anticipated to be used to service the debt.
- 2.10. Identification of all persons who would be “related parties” of the proposed bank as a result of the applicant’s stock ownership in the bank.
- 2.11. Information on all memberships in companies, partnerships, professional or trade associations, and with groups of persons acting in concert whether or not organized or registered as a formal business concern. Provide: name, address, type of entity, and description of activities.
- 2.12. Information on legal entities and other business concerns in which the applicant has an interest as a principal shareholder, director, partner, proprietor, senior management official, or guarantor. Provide the following—
 - (a) name;

- (b) address;
 - (c) type of interest: principal shareholder, director, partner, proprietor, senior management official or guarantor;
 - (d) amount and percentage of shareholding, if any;
 - (e) credit rating or report;
 - (f) statement of Position and Statement of Comprehensive Income for the three (3) years preceding the date of the application, audited if available.
- 2.13. Provide complete details of all of the following legal proceedings with which the proposed director, executive officer, or senior management official has been a party, including date, location and disposition—
- Provide complete details of all of the following legal proceedings with which the applicant is, or has been, a party including date, location and disposition:
-
- 2.13.1. Litigation. Is the applicant engaged or expecting to be engaged in litigation, in Malawi or elsewhere, which may have a material impact on the person's financial condition?
- 2.13.2. Discipline. Has the applicant ever been censured, prosecuted, warned as to conduct, disciplined, disqualified or suspended from practising a profession, removed from office, publicly criticized or made subject to a court order at the instigation of any governmental body appointed under any enactment, by a professional organization, or the substantial equivalent thereof in Malawi or elsewhere?
- 2.13.3. Conviction. Has the applicant ever been convicted of an offense, or been served a petition for an administrative order or the substantial equivalent thereof in Malawi or elsewhere?
- 2.13.4. Investigation. Is the person, or has the person ever been, subject to an investigation in Malawi or elsewhere, by or at the instigation of any governmental department or agency, professional association, or other regulatory body?
- 2.13.5. Judgment. Has the applicant ever failed to satisfy within one (1) year a judgment of debt under a court order in Malawi or elsewhere?
- 2.13.6. Fraud. Has the applicant ever been adjudged by a court, in Malawi or elsewhere, to be civilly liable for actions which could have resulted in an indictment for a felony offense, as well as fraud, malfeasance, forgery, perjury, money laundering, or any other misconduct?
- 2.13.7. Bankruptcy. Has the applicant ever been adjudged bankrupt by a court, in Malawi or elsewhere? Has a bankruptcy petition ever been served on the applicant? Has the applicant made any compromise arrangement or otherwise failed to satisfy creditors in full?
- 2.13.8. Receivership. Has a receiver or an administrator been appointed for any of the applicant's property, or has the substantial equivalent of any such receiver been appointed in any other jurisdiction? If yes, provide details including whether the receiver or equivalent thereof is still acting under the appointment.

- 2.13.9. Liquidation. Has a notice for voluntary liquidation, or a petition for compulsory liquidation, been issued to the applicant or to any of the applicant's business interests? If yes, state whether the petition or its equivalent remains unresolved.
- 2.13.10. Winding-up. Has anybody corporate, partnership, or unincorporated institution with which the applicant was associated as a principal party shareholder, director, executive officer or senior management official in Malaŵi or elsewhere, been wound up, made subject to an administration order, otherwise made any compromise or arrangement with its creditors or ceased trading either while the person was associated with it or within one (1) year after the applicant ceased to be associated with it or has anything analogous to any of these events occurred under the laws of any other jurisdiction?
- 2.14. Please provide the following information as to how the stock in the proposed bank will be held by the applicant.
- 2.14.1. Shares. How many shares in the proposed new bank are or will be registered in the applicant's name or in the name of a "related person"? State the names in which the shares will be registered and the class of shares if other than common shares.....
- 2.14.2. Beneficial Interest. In how many shares of the proposed bank which are not registered in the applicant's name or in the name of a "related person," will the applicant have a beneficial interest? State the names in which the shares will be registered and the nature of the beneficial interest.....
- 2.14.3. Trustee or nominee. Will the applicant or any "related person" hold shares in the proposed bank as a trustee or nominee? Is yes, provide details.....
- 2.14.4. Assignments or pledges. Are, or will, any of the shares described in response to other questions be equitably or legally assigned or pledged to another party? If yes, provide details.....
- 2.14.5. Voting authority. What proportion of the voting power at any general meeting of the proposed bank, or of any other organization of which the proposed bank is a subsidiary, will the applicant be entitled to vote or exercise control over? Provide details.....
- 2.14.6. Indirect Authority. If the exercise of voting power at any general meeting of the proposed bank, or of any other organization of which the proposed bank is a subsidiary, is or may be controlled or influenced by someone other than the applicant, provide the identity of such other person and the proportion of voting power so controlled or influenced.....
- 2.15. For foreign applicants:
- 2.15.1. An official letter addressed to the Registrar must be received directly from the home country supervisor that affirms the following:
- 2.15.1.1. The applicant foreign bank is a bank "in good standing" with the home country supervisor—

- (a) the home country supervisor is satisfied with the prudential and overall financial management of the applicant foreign bank;
 - (b) the applicant foreign bank is fully meeting all capital requirements; and
 - (c) no formal supervisory measures are currently in force or pending against the applicant foreign bank.
- 2.15.1.2. The home country supervisor has given written consent or a statement of "no objection" for the applicant foreign bank to establish a subsidiary bank in Malaŵi subject to the receipt of licence to conduct banking business by the Registrar.
- 2.15.1.3. The applicant foreign bank (including its subsidiary banking institution in Malaŵi) is, and will be, supervised on a consolidated basis by both, the Registrar and the home country supervisor.
- 2.15.1.4. The home country supervisor agrees to—
- (a) keep the Registrar informed of any significant developments adversely affecting the applicant foreign bank's financial soundness or reputation, and
 - (b) promptly provide the Registrar with copies of the applicant foreign bank's reports of on-site examination and published financial statements.
- 2.15.2. The most recent report of the "full-scope" on-site examination of the applicant foreign bank.
- 2.15.3. The most recent audit report (including management letter).
- 2.15.4. An organization chart of the applicant foreign bank showing lines of authority and reporting from the subsidiary bank in Malaŵi to the parent foreign bank, and specifically identifying the parties within the applicant foreign bank who are responsible for the sound operation and financial condition of the proposed subsidiary bank in Malaŵi.

3. Management Structure

List all proposed members of the Board of Directors, members of the audit committee, and senior management officials. The following information must be provided for each person listed. If any proposed director, audit committee member, or senior management official is also an initial shareholder, then only submit information on the items not previously addressed in Section 2, "Ownership Structure."

- 3.1. Name.....
- 3.1. Address
- 3.3. Country identification or passport number.....
- 3.4. Date and place of birth.....
- 3.5. Amount, type, and percentage of shareholding in the proposed bank, if any.....
- 3.6. Position with the proposed bank: executive officer, director, audit committee member, or senior management official (specify title and provide a position description).....

- 3.7. Education, qualifications, professional experience, and employment history included in a detailed curriculum vitae.....
- 3.8. Signed financial statements (statement of position, statement of comprehensive income and cash flow for the three years immediately preceding the date of application, including the interim period if available.
- 3.9. History of ownership of 10% or more of the stock or holding a position as a director or senior management official in any bank located anywhere in the world. State whether, during such time period, the bank or financial institution—
 - (a) was subject to formal remedial measures for operating in an unlawful or unsound manner;
 - (b) was threatened with insolvency or illiquidity;
 - (c) had appointed a management advisor, receiver, conservator, liquidator, or similar official; or
 - (d) had its licence revoked or was otherwise wound-up.
- 3.10. Membership in companies, partnerships, professional or trade associations, and groups of persons acting in concert whether or not organized or registered as a formal business concern: Name, address, type of entity, and description of | activities.
- 3.11. Provide complete details of all of the following legal proceedings with which the proposed director, audit committee member, or senior management official has been a party, including date, location, and disposition.
 - 3.11.1.Litigation. Is the person engaged or expecting to be engaged in litigation, in Malaŵi or elsewhere, which may have a material impact on the person's financial condition?
 - 3.11.2.Discipline. Has the person ever been censured, prosecuted, warned as to conduct, disciplined, disqualified or suspended from practising a profession, removed from office, publicly criticized, or made subject to a court order at the instigation of any governmental body, appointed under any enactment, by a professional organization, or the substantial equivalent thereof in Malawi or | elsewhere?
 - 3.11.3.Conviction. Has the person ever been convicted of any offence, or been served a petition for an administrative order or the substantial equivalent thereof in Malaŵi or elsewhere?
 - 3.11.4.Investigation. Is the person, or has the person ever been, subject to an investigation in Malaŵi or elsewhere, by or at the instigation of any governmental department or agency, professional association, or other regulatory body?
 - 3.11.5.Judgment. Has the person ever failed to satisfy within one (1) year a judgment of debt under a court order in Malaŵi or elsewhere?
 - 3.11.6.Fraud. Has the person ever been adjudged by a court, in Malaŵi or elsewhere, to be civilly liable for actions which could have resulted in an indictment for a felony offence, as well as fraud, malfeasance, forgery, perjury, money laundering or any other misconduct?

3.11.7. Bankruptcy. Has the person ever been adjudged bankrupt by a court, in Malawi or elsewhere? Has a bankruptcy petition ever been served on the person? Has the person made any compromise arrangement or otherwise failed to satisfy creditors in full?

3.11.8. Receivership. Has a receiver or an administrator been appointed for any of the person's property, or has the substantial equivalent of any such receiver been appointed in any other jurisdiction? If yes, provide details including whether the receiver or equivalent thereof is still acting under the appointment.

3.11.9. Winding-Up. Has any body corporate, partnership, or unincorporated institution with which the person was associated as a controlling party shareholder, director, executive officer or senior management official in Malawi or elsewhere, been wound up, made subject to an administration order, otherwise made any compromise or arrangement with its creditors or ceased trading either while the person was associated with it or within one (1) year after the person ceased to be associated with it or has anything analogous to any of these events occurred under the laws of any other jurisdiction?

3.12. Copies of all existing or proposed employment contracts.

4. Business Plan

Please submit a business plan covering the first three (3) years of operation of the new bank in the following prescribed format. The purpose of the business plan is to provide an overview of the intentions of the applicants and management and show how their established objectives will be achieved. The business plan will be used to assess the likelihood of success of the proposed bank and to monitor the bank's business and condition during its first three years of operation. The business plan should consist of two parts—

- (a) a narrative; and
- (b) financial projections.

4.1. Narrative

The business plan should contain a narrative in which the following essential elements are thoroughly addressed.

4.1.1. Identifying Information

State the name and location of the bank including the location(s) of any branches or other offices. Describe and provide a diagram of the bank's corporate structure and include all entities within the structure (parents, subsidiaries, companies under common control, and other affiliates), if the bank will be part of a group. Briefly discuss how the organizing group (the applicants) came together and the reasons for wanting to start a bank.

Identify the key strategic goals of the proposed bank. Provide a basic statement on the nature and scale of the proposed banking business, and arrangements for its management.

4.1.2. Market Analysis

Identify the markets to be served by the proposed bank and specifically address how the needs and convenience of the communities or sectors identified as the bank's

target market will be served. Describe the geographical areas, economic characteristics, and clientele in the target market and the types of products and services to be offered. Address any anticipated changes in the market, factors influencing such changes, and possible effects on the proposed bank.

Describe how the bank intends to ensure that the interests of depositors and creditors of the new bank, the national economy, and the general public will be served and not threatened by the new banks conduct in the banking business proposed in the business plan.

A copy of the feasibility study of the banking and financial sectors upon which the decision was made to commence banking business in Malaŵi should be submitted as part of the application.

4.1.3. Assumptions

List and discuss all assumptions used in the preparation of the business plan and upon which the financial projections are based. Include, at a minimum: economic conditions in Malaŵi, expectations of market changes, level of competition, growth forecasts, and interest rates on earning assets and interest-bearing liabilities. Provide support for the business plan's financial projections, specifically for asset and liability mix and growth, profitability, maintenance of an adequate capital base and capital ratios, and proposed dividends.

4.1.4. Corporate Governance

Describe the structure of the organization and management of the proposed bank. Show the relationships between the Board of Directors, audit and other permanent committees, senior management officials, and operational and administrative divisions and their sub-divisions and functions. Indicate lines of authority and reporting relationships.

Provide a list of showing all members of the Board of Directors, the audit committee, and any other permanent committee of the Board. The list should include name, position, term, authority, responsibilities, and remuneration.

Provide a list of all senior management officials that shows each person's name, title, salary, incentive compensation, fees, benefits and other remuneration. Submit names of two executive officers who will effectively manage the new bank.

Provide copies of all proposed agreements for management, technical services, software maintenance, and other services. If any agreement for lease or service is anticipated to be entered into with any "insider" or "related person," then provide a written description of such transaction and include—

- (a) identification of the "insider" or "related party;"
- (b) rates and terms;
- (c) comparative market data to evidence that the transaction will be on an arm's-length basis; and
- (d) a justification as to why the transaction with an "insider" or "related person" is in the best interest of the bank and its depositors as opposed to a similar transaction with a person or entity not an "insider" or "related party."

Describe the operating systems of the bank including—

- (a) corporate policies and procedures;
- (b) accounting standards;
- (c) books of account and record-keeping;
- (d) reporting (including to management, Board of Directors, shareholders, and the Reserve Bank);
- (e) information technology;
- (f) internal controls; and
- (g) internal and external audit.

Confirm that information systems will be capable of producing all required reports to the Registrar in an accurate and timely manner.

Identify the independent external auditor who will be engaged for the annual audit of the bank.

Address staff projections, including recruitment and training.

4.1.5. Banking Business

Discuss the types and scale of deposit-taking, granting of credits, and other banking business envisaged. This presentation should be supported by information which clearly shows the proposed new bank's capability to undertake those activities in terms of board oversight, management, expertise, systems support, organization and staff. Specifically address—

- (a) the types of loans to be offered, targeted economic sectors, and plans for diversification;
- (b) planned deposit and borrowing activity;
- (c) method for pricing loans and deposits;
- (d) proposed off-balance sheet activities; and
- (e) correspondent and agency arrangements.

4.1.6. Capital

Describe plans for financing growth, internally and externally, over the first three years of operation. Describe all additional sources of capital that are available should the need arise in the future ensuring that the proposed bank is adequately capitalized at all times. The current minimum start up capital for a bank is the Malawi Kwacha equivalent of five million United States Dollars (US\$5,000,000) and US\$10 million by 1st January 2020 and Malawi Kwacha equivalent of one million five hundred thousand United States Dollars (US\$ 1,500,000) and US\$ 3 million by 1st January 2020 for a discount house and a leasing company.

4.1.7. Risk Management

Describe the analysis conducted of the risks associated with the sectors to be served by the proposed bank. Specifically describe the risk management processes (risk identification, measurement, monitoring and control) for the following risks—

- (a) strategic risk;

- (b) credit risk;
- (c) liquidity risk;
- (d) interest rate risk
- (e) foreign exchange rate risk;
- (f) price risk;
- (g) operational risk;
- (h) compliance risk;
- (i) reputational risk;
- (j) money laundering and terror financing risk;
- (k) country and transfer risk; and
- (l) all other risks to which the proposed bank will be exposed when engaged in the activities envisaged by this business plan.

With regard to credit risk, specifically address and include—

- (a) credit policies (which must include limitations on loans to “related persons”);
- (b) plans to minimize concentration risk through diversification and limitations on exposures to individuals and groups of related borrowers; and
- (c) asset quality considerations such as credit-granting standards, classification, and provisioning for loan losses. With regards to money laundering, specifically address and include.

Risk assessments for products, customers, delivery channels and geographical location.

4.1.8. Premises

Describe the premises and equipment to be utilized by the proposed bank. Indicate whether facilities and equipment will be leased or purchased. Describe the basis for the decision to lease or purchase and how such premises and equipment were determined to be adequate. Provide information on the cost of acquisition or lease payments and terms, and the counter-party to the purchase or lease agreement. Address plans for future expansion, including branches. For information purposes, a bank is prohibited from establishing its offices (head office, branch or agency) in a building in which the upper or lower floors are used for residential purposes.

4.1.9. Business Plan Monitoring

Discuss the methods that the Board of Directors will use to regularly monitor the bank’s performance under the business plan and management’s adherence to the plan for the first three years of operation.

4.2. Financial Projections

Based upon the preceding narrative, submit a Pro-forma Statement of Position and Statement of Consolidated Income (and any necessary supporting schedules) for each of the first three (3) years of operations using the following prescribed format.

4.2.1. Balance Sheet-pro forma

ASSETS	Year 1	Year 2	Year 3
1. Cash and Due from Banks			
2. Balances with Reserve Bank of Malawi			
3. Balances with banks abroad			
4. Gross Loans and Leases (List by business line, major categories of counterparties, and geographic areas)			
5. Provisioning for loan and lease losses			
6. Net Loans and Leases			
7. Total Securities (7a + 7b)			
7a. Malawi Government Securities			
7b. Other securities			
8. Accrued interest receivable			
9. Other assets (list)			
10. Premises and Equipment			
11. TOTAL ASSETS (Sum of lines 1 through 10)			
LIABILITIES			
12. Total deposits (12a + 12b + 12c + 12d)			
12a. Demand deposits			
12b. Savings deposits			
12c. Time deposits			
12d. FCDA's			
13. Liabilities to Reserve Bank of Malawi			
14. Liabilities to other banks			

ASSETS	Year 1	Year 2	Year 3
15. Borrowed funds			
16. Accrued interest payable			
17. Other liabilities			
18. TOTAL LIABILITIES (Sum of lines 12 through 17)			
CAPITAL ACCOUNTS			
18. Common stock			
19. Share premium			
20. Retained earnings			
21. Revaluation reserves			
22. TOTAL CAPITAL ACCOUNTS (Sum of lines 18 through 21)			
23. TOTAL LIABILITIES AND CAPITAL ACCOUNTS (Sum of lines 18 and 22)			
24. OFF-BALANCE SHEET ITEMS (Acceptances, endorsements, guarantees, etc.)			
4.2.2. Income Statement— pro-forma			
1. Total Interest Income (1a + 1b + 1c + 1d)			
1a. Loans and leases			
1b. Securities and investments			
1c. Deposit balances			
1d. Other interest income			
2. Total Interest Expense (2a + 2b)			
2a. Interest on deposits			
2b. Interest on borrowings and other interest expense			
3. Net Interest Income (1 – 2)			
4. Provision for loan and lease losses			

ASSETS	Year 1	Year 2	Year 3
5. Net Interest Income after provisioning (3 - 4)			
6. Total Non-interest Income (6a + 6b + 6c + 6d)			
6a. Fees, commissions, and service charges			
6b. Foreign exchange gains (losses)			
6c. Realized gains (losses) on securities			
6d. Other non-interest income			
7. Total Non-interest Expense (7a + 7b + 7c + 7d)			
7a. Salaries and employee benefits			
7b. Premises and equipment			
7c. Depreciation			
7d. Administrative and other expenses			
8. Net Non-Interest Income (6 - 7)			
9. Net income before extraordinary items, taxes, and dividends (5 + 8)			
10. Taxation			
11. Net income (Loss) after taxation but before extraordinary items (9 - 10)			
12. Extraordinary items (net of taxation)			
13. Net Income (Loss) (11 +/- 12)			
14. Dividends			
15. Retained Earnings (13 - 14)			

4.3. Submit any other information not listed above that could support your application.

THIRD SCHEDULE

(para. 12 (2))

RESERVE BANK OF MALAWI

FINANCIAL SERVICES ACT

LICENCE TO CONDUCT BANKING BUSINESS

A LICENCE is hereby granted to—

.....
(name of bank)

At.....

.....
(address of head office)

And authorizes the said bank to conduct and carry on banking business in Malawi. This licence is issued subject to the provisions of the Financial Services Act.

Dated this.....day of....., 20.....

LICENCE NO.

Made this 3rd day of April, 2018.

(FILE NO. FIN/PFSPD/03/04)

D. KABAMBE, PhD
Registrar of Financial Institutions

GOVERNMENT NOTICE NO. 23

FINANCIAL SERVICES ACT

(CAP. 44: 05)

FINANCIAL SERVICES (TRANSACTIONS OF BANKS WITH RELATED
PARTIES) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVES

3. Objectives

PART III—REGULATORY REQUIREMENTS

4. Restrictions on insider lending and related parties
5. Board responsibilities
6. Disclosures
7. Record keeping

PART IV—ENFORCEMENT

8. Monetary Penalties

PARAGRAPH

9. Administrative Penalties
10. Revocation

Schedule

IN EXERCISE of the powers conferred by section 34 (2) (z) of the Financial Services Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, make the following Directive—

PART I—PRELIMINARY

1. This Directive may be cited as the Financial Services (Transactions of Banks with Related Parties) Directive, 2018. Citation

2. In this Directive unless the context otherwise requires— Interpretation

“arms” length basis” means where a transaction between related parties is conducted upon terms no more favourable than those which would be offered under prevailing conditions to persons other than related parties;

“bank” has the same meaning as ascribed to under the Banking Act; Cap. 44:01

“banking business” has the same meaning ascribed to that term under the Banking Act; Cap. 44:01

“banking group” means a group of two or more companies at least one of which is a bank domiciled in Malawi where the holding company is a bank or a non-financial company domiciled in Malawi;

“core or Tier 1 capital” means the sum of the following—

- (a) share capital, paid-up;
- (b) share premium;
- (c) retained profits (prior years);
- (d) sixty percent (60%) of after tax profit (current year-to-date) and in case of a loss, hundred percent (100%); and
- (e) other eligible core or Tier 1 capital elements which have been prescribed or approved by the Registrar—

less: investment in unconsolidated financial institutions as set out in paragraph 5 (6) of this Directive;

“credit facility” has the meaning ascribed to that term in the Banking Act; Cap. 44:01

“eligible guarantee” means a guarantee that is issued by:—

(a) the Government of Malawi in compliance with section 63 of the Public Finance Management Act; Cap. 37:02

(b) any sovereign country with a sovereign rating approved by the Registrar;

(c) an international bank with an external credit assessment of AAA to AA- issued by an external credit assessment institution acceptable to the Registrar; or

(d) a multilateral development bank or institution; or

(e) a third party entity that—

(i) represents a direct claim on the guarantor;

(ii) is denominated in the same domestic currency as the exposure or strong convertible currency;

(iii) clearly and incontrovertibly defines the extent of the guarantee's cover of a specific exposure;

(iv) is irrevocable and non-cancelable by the guarantor, except for non-payment of the credit protection contract;

(v) has no clause in the contract that would allow the guarantor to unilaterally cancel the guarantee, increase the effective cost of the guarantee, or delay payment under the guarantee for any reason including the need to be funded in the budget;

(vi) has as the only condition for its enforcement the obligor's failure to meet an obligation to the bank; and

(vii) is executed so that neither the guarantor nor any other person is in a position to challenge the legal rights of the bank in calling the guarantee;

"exposure to an insider or related party" means the amount of the insider's or related party's obligation to a bank calculated as the sum of the following—

(a) credit facilities;

(b) equity securities;

(c) debt securities;

(d) securitized assets and other transactions with recourse; and

(e) contingent liabilities, such as commitments to extend credit;

"group of related parties" means two or more persons holding exposures from a bank, whether on a joint or separate basis, which are mutually associated and meet any of the following criteria—

(a) the parties are a "group of related debtors" as defined in the Banking Act;

(b) the persons have common management or common directors;

(c) cross guarantees exist; or

(d) a direct or indirect financial interdependency exists between the persons which cannot be substituted in the short term;

"insider" has the same meaning ascribed to that term under the Banking Act;

“related party” has the same meaning ascribed to that term under the Banking Act;

Cap. 44:01

“senior management official” means—

- (a) an executive officer;
- (b) head of department or function;
- (c) an official who reports either directly to the board of directors, to a committee of the board of directors or to an executive officer;
- (d) a branch manager of a bank that the Registrar declares as a senior management official; and

“subsidiary” has the meaning ascribed to that term in the Companies Act. Act No. 15 of 2013

PART II—REGULATORY REQUIREMENTS

3. The objectives of this Directive are to—

Objectives

- (a) promote sound practices with regard to the granting of credit to related parties;
- (b) ensure that all transactions between a bank and its insiders and related parties are done on an arm's-length basis; and
- (c) promote public confidence in banks by ensuring that no undue favouritism is extended to insiders or related parties of banks.

PART III—REGULATORY REQUIREMENTS

4.—(1) A credit facility to an insider or to a related party shall be on arm's length basis.

Restrictions on insider lending and related parties

(2) A bank's exposure to an insider or to a related party shall not exceed ten percent (10%) of its core capital.

(3) The aggregate of a bank's exposures to insiders and related parties shall not exceed twenty five percent (25%) of the bank's core capital. unless with written permission of the Registrar.

(4) A credit facility to an insider or to a related party shall be secured by collateral which is enforceable.

(5) Sub-paragraph (1) and (4) shall not apply to a credit facility that a bank may grant to its employees as part of their terms and conditions of employment that equally apply to all officers and employees.

(6) A bank shall not grant any credit facility to an insider or to a related party while another credit facility to that person is non-performing.

(7) A bank shall not purchase a non-performing credit facility or other low quality asset from an insider or a related party.

(8) Placements of a bank to any of its affiliated entities in Malawi shall be considered insider transactions and shall be subject to the provisions of this Directive.

(9) An exposure to an insider or related party that exceeds the limitations of this Directive or was made in violation of the requirements of this Directive shall be deducted from the bank's core capital for purposes of determining capital adequacy.

Board responsibilities

5. The board of directors of a bank shall—

(a) adopt and ensure implementation of a written policy on transactions with insiders and related parties that includes the provisions set out in the Schedule hereto;

(b) approve all transactions, including credit facilities, between a bank and its insiders and related parties, provided that a director who has an interest in the transaction shall not participate in the board's consideration and decision process; and

(c) ensure that a credit facility or a transaction with an insider or a related party is monitored independent of the insider or related party.

Disclosure

6.—(1) A director or senior management official of a bank who is a party to or has an interest in an existing or prospective credit facility or other transaction with the bank shall—

(a) disclose in writing to the board of directors at the earliest opportunity the nature and extent of the interest;

(b) leave any meeting at which the credit facility or other transaction is discussed; and

(c) refrain from voting on any matter related to the credit facility or other transaction, provided that such interest, if so disclosed, shall not disqualify a director from constituting a quorum.

(2) A bank shall disclose all its credit facilities to insiders and related parties in line with the requirements of the Financial Services (Disclosure of Information by Banks) Directive.

Record keeping

7. A bank shall at all times maintain adequate records with regard to all credit facilities to insiders and related parties.

PART IV—ENFORCEMENT

Monetary penalties

8.—(1) The Registrar shall impose the following monetary penalties for violations of this Directive—

(a) for banks up to fifty million Kwacha (K50, 000,000); and

(b) for natural persons who are members of the board of directors, or senior management up to ten million Kwacha (K10,000,000).

(2) With respect to banks, the Registrar shall—

(a) debit the penalty in subparagraph 1 (a) from the main account of the bank maintained at the Reserve Bank of Malawi; and

(b) notify the bank in writing prior to debiting the account.

(3) With respect to natural persons or where the bank does not maintain an account with the Reserve Bank of Malawi, the natural person or the bank shall pay the penalty through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within ten working days after being notified by the Registrar.

9. In addition to the monetary penalty imposed in paragraph 8 (1), the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act and the Banking Act. Administra-
tive penalties

10. The Financial Services (Transactions with Related Parties of Banks) Directive, 2012 is hereby revoked. Revocation of
G N. 40/2012

SCHEDULE

(par. 5 (a))

POLICY ON TRANSACTIONS WITH INSIDERS AND RELATED PARTIES

This policy on transactions with insiders and related parties shall---

1. Require that all transactions with insiders and related parties are handled on an arm's-length basis. Prohibited preferential treatment includes---

(a) altering credit-granting standards, collateral requirements, collection efforts or any other policies of a bank ;

(b) providing preferential rates, terms or conditions on deposits or credits;

(c) providing products or services that are not available to the general public;

(d) approving credit facilities without the board of directors approval;

(e) covering trading losses; and

(f) waiving fees.

2. Impose strict and binding limits on exposures to insiders and related parties which do not exceed the limitations of this Directive.

3. Prohibit insiders and related parties who have an interest in a credit facility or other transaction with the bank from being involved in the administration, assessment, or decision-making process involved with the transaction.

4. Require that transactions with insiders and related parties, and any deviations from the board-approved policy on insiders and related parties, are reported to the board of directors on a regular basis.

Made this 3rd day of April, 2018.

(FILE NO. FIN/PFSPD/03/04)

D. KABAMBE, PhD
Registrar of Financial Institutions

GOVERNMENT NOTICE NO. 24

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (DISCLOSURE REQUIREMENTS FOR CREDIT
PRODUCTS) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVES

3. Objectives

PART III—BOARD AND MANAGEMENT

4. Board and management responsibilities

PART IV—DISCLOSURE REQUIREMENTS

5. Disclosure content
6. Information about financial institution
7. Minimum disclosures
8. State reasons

PART V—FORM AND TIME OF DISCLOSURE

9. Disclosure form
10. Guarantor
11. Statement of loan accounts
12. Liability for damages

PART VI—ENFORCEMENT

13. Monetary penalties
14. Administrative penalties

Schedules

IN EXERCISE of powers conferred by section 34 (2) (m) and (dd) of the Financial Services Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, issue this Directive—

PART I—PRELIMINARY

1. This Directive may be cited as the Financial Services (Disclosure Requirements for Credit Products) Directive, 2018. Citation

2.—(1) In this Directive, unless the context otherwise requires—

Interpretation

“Act” means the Financial Services Act;

Cap. 44:05

“Board” means the highest body of authority in a financial institution responsible for strategically guiding the institution, effectively monitoring management and properly accounting to shareholders;

“lending institution” means any financial institution authorized to grant loans or credit according to the law in force;

“financial consumer” means a natural person, acting alone, within a group or representing a group, that purchases or uses financial product or service or may be intending to use, a financial service for personal, domestic or household purposes; or in connection with a business of a micro, small and medium enterprises as may be specified by the Registrar from time to time by way of directives;

“durable medium” means any instrument which enables a financial consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the stored information;

“financial intermediary” means any third person, natural or legal entity, engaged in marketing, offering, or selling of a financial product or service provided by a financial institution, and in preparation, conclusion and administration of agreements and contractual rights related to that product or service; and

“a cooling off period” means a right of a consumer to withdraw from a credit contract, without any penalty within ten (10) working days after signing a credit contract provided that the financial consumer shall not access the funds during the cooling off period.

(2) Any term used in this Directive, and which has been defined in the Act, has the meaning ascribed to that term under the Act.

PART II—OBJECTIVES

3. The objectives of this Directive are to—

Objectives

(a) prescribe minimum disclosure requirements for credit products and services;

(b) ensure fair treatment of financial consumers; and

(c) enhance the ability of financial consumers to compare financial products and services for purposes of making informed decisions.

PART III—BOARD AND MANAGEMENT

Board and
management
responsibilities

4.—(1) The Board of Directors and management of each lending financial institution shall be responsible for adherence and compliance with the requirements of this Directive.

(2) A lending institution shall have a formal written disclosure policy on credit products and services approved by the Board.

(3) The disclosure policy shall address the institution's approach for determining what disclosures to make and internal controls over the disclosure process.

(4) The Board shall ensure at all times that—

(a) its management is implementing the disclosure policy; and

(b) there is full, timely and accurate disclosure of all relevant information on credit.

(5) Management of a lending institution shall ensure that—

(a) the disclosure policy is readily available to all employees responsible for marketing and distribution of a credit product; and

(b) employees engaged in advising customers possess relevant qualifications, knowledge and experience required for the position.

PART IV—MINIMUM DISCLOSURE CONTENT

Disclosure
content

5.—(1) A lending financial institution shall disclose to a financial consumer all the credit related information necessary for the financial consumer to make an informed decision.

(2) A lending financial institution, before entering into a contract with a financial consumer shall—

(a) fully explain to the consumer the important aspects of the financial service; and

(b) explain, in detail, the important aspects of the contract, including the associated transaction costs, possible gains and risks.

(3) A financial consumer has a right to obtain from a financial institution, information relating to his contractual relationship with the financial institution in a manner and within the terms specified by the contract.

(4) The information in subparagraph (3) above may be in writing or other durable medium and shall be free of charge.

(5) Upon substantial amendment or renewal thereof of a prior contract, a lending institution shall provide the financial consumer with all relevant and related information necessary to make an informed decision.

(6) A financial institution shall disclose to a financial consumer that credit referencing is part of the credit approval process.

6.—(1) A lending financial institution shall—

Information
about
financial
institution

(a) disclose its official trade name, address of its principal office and other office or branch, if applicable, to the financial consumer prior to granting a credit product; and

(b) in all of its advertising disclose its regulated status and, where required, contact details of the Registrar.

(2) A financial institution shall disclose its regulatory status in all its financial consumer agreements.

7.—(1) A lending financial institution shall, at a minimum, disclose to a customer the following information prior to signing a contract—

Minimum
disclosure

(a) simple, accurate and complete contractual terms and conditions;

(b) type of credit;

(c) the total value of credit;

(d) the conditions for use and disbursement of the credit;

(e) the duration of the contract and maturity date;

(f) minimum and maximum repayment periods, available and implications to the financial consumer;

(g) the effective interest rate at the approval stage of a loan;

(h) the nominal interest rate, whether variable or fixed, as well as the periods, conditions and procedures of its change;

(i) method for calculating interest on the credit;

(j) the repayment schedule and total amount to be repaid at the end of the contract;

(k) if applicable, the cost of using a card or other payment means for the use of credit and payments, and other costs associated with payment transactions;

(l) any additional cost that is obligatory to obtain the credit;

(m) if a guarantee or collateral is required, information on collateral charging, discharging and repossession process;

(n) discharge shall be at the cost of the institution;

(o) a list of pre-qualified insurers and associated costs from which the financial consumer must choose his preferred insurer or other ancillary service if required, provided that the provider is duly licensed by the Registrar;

(p) the right of a financial consumer to withdraw from the contract, without any penalty within ten (10) working days after signing a credit contract provided that—

(i) the financial consumer shall not access the funds during the cooling off period; and

(ii) where a consumer account is credited, the account may accrue interest but no other penalty in the event that the consumer decides to cancel the contract after the cooling off period;

(q) the right to repay the credit ahead of schedule (early credit repayment) without any penalty charge;

(r) penalty conditions and penalty interest in case of late payments, and penalties in case of non-compliance with other contract terms;

(s) period of validity of the pre-contract information for the financial consumer;

(t) the right to obtain a draft credit contract free of charge;

(u) the method and time of informing the financial consumer in case of changes in the conditions, such as interest rates of the contract;

(v) notice requirements in relation to enforcement of a credit contract;

(w) complaints handling procedure; and

(x) any other information which the Registrar may determine from time to time.

(2) For purposes of this Directive, effective interest rate at the approval stage means—

$$\frac{\text{Total interest \& Other Charges} \times \text{Periods in a year}}{\text{Loan amount} \times \text{Periods in Loan Terms}}$$

State reasons

8. Where a lending financial institution refuses a credit application, the financial institution shall communicate in writing to the customer the basis for the refusal.

PART V—FORM AND TIME OF DISCLOSURE

Disclosure form

9.—(1) A lending financial institution shall ensure that the disclosures made under this Directive are in—

(a) plain language, comprehensible to the financial consumer with minimum use of technical words or terms of art;

(b) a written form with a minimum font size of 12, on paper or any other durable medium available and accessible to the financial consumer if requested; and

(c) the official language of Malawi, where possible and mandatory information shall be disclosed in a financial consumer's preferred language.

(2) The disclosure made under this Directive shall be—

(a) concise, legible and conspicuously displayed; and

(b) in the format set out in the First Schedule.

(3) A financial consumer and a lending financial institution shall sign the Key Facts Statement at the credit approval stage.

(4) When provided in an electronic form, the Key Facts Statement may be signed electronically or the lending institution and the financial consumer may sign a protocol to confirm that the Key Facts Statement was provided to the consumer.

10.—(1) Where applicable, a financial institution shall also disclose information in paragraph 8 (1) above to a guarantor of a loan. Guarantor

(2) Prior to a person acting as a guarantor, a financial institution shall in writing—

(a) advise the person of the quantum and nature of his potential liabilities; and

(b) advise the person to seek independent legal advice before acting as a personal guarantor at his cost.

11.—(1) A financial institution shall provide, at no cost, to the financial consumer with statements of loan account, including balance changes, payments, disbursements and costs. Statement of loan accounts

(2) For purposes of subparagraph (1), the financial consumer and the lending financial institution shall agree on the frequency and the mode of communicating to the consumer the loan account statement.

12. A financial institution, which by breaching any provision under this Directive causes harm to a financial consumer, shall bear liability for the damages. Liability for damages

13.—(1) The Registrar shall impose the following monetary penalties for violations of this Directive— Monetary penalties

(a) for financial institutions, up to fifty million Kwacha (K50,000,000); and

(b) for natural persons who are members of the board of directors or management, up to ten million Kwacha (K10,000,000).

(2) In addition, a penalty of fifty thousand Kwacha (K50,000) may be imposed on the institution for each subsequent day for which the violation continues after being notified as stipulated.

(3) With respect to a bank, the penalty in 13(1) (a) and (c) above shall be debited from the concerned bank's main account maintained at the Reserve Bank of Malawi and the bank shall be notified in writing prior to debiting the account.

(4) Where a person does not maintain an account with the Reserve Bank of Malawi, such person will be required to make good of the penalty through a bank certified cheque payable to the Reserve Bank of Malawi within ten working days after being notified by the Registrar.

14. In addition to the monetary penalty imposed in Paragraph 13 (1) hereof, the Registrar may impose directions, or administrative penalties as provided for under the Act and other financial services laws. Administrative penalties

FIRST SCHEDULE

KEY FACTS STATEMENT FOR FINANCIAL CONSUMER CREDIT
INSTRUCTIONS

Carefully review the Key Fact Statement before agreeing and signing a loan contract
You have the right to get a copy of the full loan agreement.

SECTION I—KEY TERMS

LOAN SUMMARY		COST OF CREDIT		REPAYMENT SCHEDULE	
1. Amount of Loan	MWK.....	4. Interest Rate <i>Interest you will be charged on the loan</i>	Rate	8. Date First Payment is Due	MWK...../...../.....
<i>Amount you are borrowing</i>			MWK.....	9. Number of Payments
2. Duration of Loan Agreement	5. Other Fees and Charges <i>See details in Section III</i>	MWK.....	10. Payment Frequency
3. Amount Received <i>Amount you actually receive from the lender</i>	MWK.....	6. Effective Interest Rate <i>Total Cost of Credit as a comparable annual percentage</i>	7. Total Cost of Credit <i>All costs for the loan, including interest and fees</i>	11. Total Amount to be Repaid <i>Includes capital, interest, and recurring fees</i>	MWK.....
	 %	MWK.....		

1. Amount of Loan
Amount you are borrowing

7. Total Cost of Credit
All costs for the loan, including interest and fees

11. TOTAL AMOUNT
YOU WILL PAY
Total amount you pay after making all payments

MWK.....

MWK.....

MWK.....

SECTION II—RISKS TO YOU

- 1 Late or missing payments may be reported to a credit reference bureau and may severely affect your credit history and ability to re-borrow.
- 2 Your interest rate will change based on changes in the Reserve Bank of Malawi's Base Lending Rate. This change may affect the duration of your loan and your repayment amount. *

SECTION III—UPFRONT AND RECURRING FEES

UPFRONT FEES

UPFRONT FEES

RECURRING FEES

Arrangement fee	MWK_____	Collateral assessment and charging fees	MWK_____	Credit life insurance	MWK_____ per _____
Documentation fee	MWK_____	Drawdown fee	MWK_____	Management fee	MWK_____ per _____
Others (list all):	MWK_____				

TOTAL UPFRONT AND RECURRING
FEES AND CHARGES (EXCLUDING
INTEREST)

MWK_____

SECTION IV—IMPORTANT TERMS AND CONDITIONS TO KNOW

LATE PAYMENT PENALTIES

TERMS AND CONDITIONS

TERMS AND CONDITIONS

Late fees if payment more than [] days late:	MWK_____	Cash deposit/ mandatory savings:	MWK_____	Variable interest rate applies
---	----------	----------------------------------	----------	--------------------------------

Default interest if payment is more than [] days late% per	COLLATERAL: you are committing the following as collateral:	Other: _____
--	------------	---	--------------

REFUND PROCESS
BY FIS _____

Early/Prolonged deductions

Compensation rate%

Total to be refunded MWK_____

SECTION V—YOUR RIGHTS AND OBLIGATIONS

- 1 You have a right to a ten-days cooling off period after signing a loan agreement provided that you do not access the funds. During the cooling off-period, you can cancel the loan agreement at no cost.
- 2 You are required to make payments on your loan according to your loan agreement and to notify your credit provider of any important changes in your situation
- 3 Do you want to pay off your loan early? You can do so without any penalties or fees.
- 4 Any questions or complaints for your institution? Call [TELEPHONE], email [EMAIL ADDRESS], or write to [MAILING ADDRESS] to contact your financial institution regarding your question or complaint.
- 5 Unsatisfied with your institution's response to your question or complaint? Contact the Registrar of Financial Institutions for help at [+265(0) 1820299/444] or [], write to [ADDRESS], or visit [WEBSITE].

SECTION VI—REPAYMENT SCHEDULE

<i>Payment Number</i>	<i>Payment Due Date</i>	<i>Payment Amount</i>	<i>Principal</i>	<i>Interest and Other Fees and</i>	<i>Remaining Balance Charges</i>
1					
2					
3					
4					
5					
6					
7					

<i>Payment Number</i>	<i>Payment Due Date</i>	<i>Payment Amount</i>	<i>Principal</i>	<i>Interest and Other Fees and</i>	<i>Remaining Balance Charges</i>
8					
9					
10					
11					
12					
TOTAL					

** This information is not final until signed by all parties, and does not replace the loan agreement.**

CERTIFIED CORRECT:

I ACKNOWLEDGE RECEIPT OF
THIS STATEMENT PRIOR TO
SIGNING THE LOAN AGREEMENT:

I ACKNOWLEDGE RECEIPT
OF THIS STATEMENT PRIOR
TO SIGNING THE GUARANTEE:

Credit provider representative

Borrower

Guarantor (if applicable)

Name of Borrower:.....

Application No: Date prepared:.....

SECOND SCHEDULE

KEY FACTS STATEMENT FOR FINANCIAL CONSUMER OVERDRAFTS INSTRUCTIONS

Carefully review the Key Fact Statement before agreeing and signing an overdraft contract

You have the right to get a copy of the full Overdraft agreement.

SECTION I—KEY TERMS

OVERDRAFT SUMMARY		COST OF OVERDRAFT		REPAYMENT	
2. Maximum Amount for the Overdraft (OD's) facility	MWK.....	4. Interest Rate to be charged on draw down amount	Rate.....	9. Due Date for Drawdown Amount plus interest/....../....
(Maximum Drawdown Amount)		5. Overdraft Renewal Fees Fees to be Charged when renewing the Overdraft Facility	MWK.....	/....../....

OVERDRAFT SUMMARY		COST OF OVERDRAFT		REPAYMENT	
2. OD's Validity Period		6. Other Fees and	MWK..... Charges (if any)		

SECTION II—OTHER IMPORTANT TERMS AND CONDITIONS TO KNOW

1. Interest rate on drawdown amount will change based on changes in the Reserve Bank of Malawi's Base Lending Rate.
2. If you have a complaint, please contact your financial institution for a resolution.
3. Unsatisfied with your institution's response to your question or complaint? Contact the Reserve Bank of Malawi for help at [+265 (0) 1820 444/299] or [], write to [10 Hannover Avenue, PO Box 565, BLANTYRE], or visit [www.rbm.mw].
4. This information is not final until signed by all parties, and does not replace the loan agreement.

CERTIFIED CORRECT:

I ACKNOWLEDGE RECEIPT OF THIS
STATEMENT PRIOR TO SIGNING THE
OVERDRAFT AGREEMENT:.....
Credit provider representative.....
Borrower

Name of Institution:.....

Full Name of Account Holder:.....

Date prepared:.....

THIRD SCHEDULE

Asked to be a guarantor?

Read the following information carefully!

1. Risks—

- (a) as a guarantor you take on a serious risk that you may become responsible for somebody else's debts;
- (b) you must seek independent legal and financial advice before committing yourself as a guarantor;
- (c) if the borrower cannot (or does not) pay the debt for which you agreed to be a guarantor you will be responsible for paying the debt;
- (d) a guarantor does not give a mere character reference, a guarantor promises to pay for unpaid debts. Therefore, if the borrower defaults, the lender is entitled to come after the guarantor; and
- (e) as a guarantor, you may be flagged as such in a credit reference bureau, which may limit your chances to successfully apply for your own credit.

2. Considerations—

- (a) do not consent to be a guarantor if you cannot afford to pay the debt or if paying the debt would cause you some financial problems;
- (b) think whose debt you guarantee for and why you have been requested to become a guarantor (is the person credible, can he actually afford to take on a credit, is the credit suitable for that person, is the reason for taking the credit justifiable); and
- (c) what happens if you are asked to repay the debt? Would it affect your financial situation? To what extent? Would other aspects of your life be affected?

3. Prevention—

If you decide to be a guarantor, try to minimize risks—

- (a) limit your liability—you should not guarantee for all the debtor's obligations, limit the guarantee to a precisely defined amount of credit;
- (b) ask for relevant documentation—you should know details about the debt you guarantee for (ask for the credit agreement, key fact statements and all related documents, you may also ask the borrower to provide you with information about his financial situation); and
- (c) make sure that both the creditor and the borrower inform you in a timely manner whenever your interests may be concerned.

4. Power of Attorney

In the event that you wish to use a power of attorney and offer the borrower property to be used as collateral, ensure that—

- (a) you understand the meaning of the transaction;
- (b) the power of attorney is valid; and
- (c) you are certain that the borrower will not default on the loan, as defaulting may result in the lender possessing and selling your property to recover the loan.

Date:.....

Signature:.....

Made this 3rd day of April, 2018.

(FILE NO. FIN/PFSPD/03/04)

D. KABAMBE, PhD
Registrar of Financial Institutions

GOVERNMENT NOTICE NO. 25

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (REGULATION OF COMMODITIES EXCHANGES)
DIRECTIVE 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY PROVISIONS

1. Citation
2. Interpretation
3. Objectives

PART II—REGULATION AND SUPERVISION OF COMMODITIES EXCHANGES

4. Prohibition against operating commodities exchanges without a licence
5. The Registrar
6. Commodity Exchange Financial Institution

PART III—LICENCING OF COMMODITIES EXCHANGES

7. Applications for a licence
8. Licencing of commodity exchanges
9. Requirements applicable to applications

PART IV—FUNCTIONS OF COMMODITIES EXCHANGES

10. Safeguarding and administering assets
 11. Complaint Resolution Scheme
 12. Reporting to Registrar
 13. Attendance of meetings by and furnishing/forwarding of documents to Registrar
 14. Offences
 15. Improper trading practices
 16. Fraudulent transactions
 17. Prohibition of self-dealing
 18. Prohibition on execution of an order for purchase or sale
 19. Transition
 20. Commencement date
- Schedule

IN EXERCISE of the powers conferred by section 34 of the Financial Services Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, issue the following Directive—

PART I—PRELIMINARY PROVISIONS

Interpretation 1. This Directive may be cited as the Financial Services (Regulation of Commodities Exchange) Directive, 2018.

Interpretation 2. In this Directive, unless the context otherwise requires—

Definitions used the Financial Services Act, shall have the same meaning in this Directive—

Cap.44:05 “Act” means the Financial Services Act;

“authorized user” means a person authorized by a commodity exchange to perform one or more services in terms of the commodity exchange’s rules—

“commodity” means—

(a) agricultural, livestock, fishery, forestry, mining or energy goods, or any product that is manufactured or processed from any such goods; and

(b) an index, right or interest in any such commodity;

“commodity contract” includes a—

(a) spot commodity contract;

(b) commodity futures;

(c) commodity forward contractor; and

(d) commodity options on futures contracts;

“commodity exchange” for the purposes of this Directive shall mean and include any or all of the following—

(a) a trading platform;

(b) a clearing house; and

(c) a warehouse receipt system;

“commodity forward contract” means a contract the effect of which is that one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a specified price payable at the time of entering the contract in accordance with rules, but does not include a commodity futures contract;

“commodity futures contract” means a contract the effect of which is that—

(a) one party agrees to deliver to the other party a specified commodity, or a specified quantity of a specified commodity, at a specified future time and at a specified price payable at that future time, pursuant to the terms and conditions of the rules of the commodity exchange at which the contract is made; or

(b) the parties will discharge their obligations under the contract by settling the difference between the value a specified quantity of a specified commodity agreed at the time of the making of the contract and at

agreed at the time of the making of the contract and at a specified future time, such difference being in accordance with the rules of the commodity exchange at which the contract is made, provided that one of the parties is a commodity exchange;

“spot commodity contract” means a contract for the supply of a commodity which is traded on a commodity exchange for immediate settlement or delivery;

“trading platform” means an institution that matches buyers and sellers to transact in a commodity contracts in accordance with its rules.

“clearing house” in relation to a commodity exchange is a body corporate that constitutes, maintains and provides an infrastructure to clear transactions;

“warehouse receipt” means an official document issued by a designated warehouse operator as evidence that specified commodities of acceptable or agreed quality and quantity have been deposited; and

“warehouse receipt system” is a system of procedures that enables participants or players to deposit commodities in exchange for a warehouse receipt;

“rules” shall mean the business rules of a commodity exchange.

3. The objectives of this Directive are to—

Objectives

- (a) license and regulate commodity exchanges;
- (b) ensure that commodity exchanges comply with the provisions of the Act;
- (c) protect the interests of investors and other participants in commodity exchanges;
- (d) ensure the maintenance of professional standards in the management of commodity exchanges; and
- (e) promote public confidence and interest in the commodity exchanges.

PART II—REGULATION OF COMMODITIES AND SUPERVISION EXCHANGES

4.—(1) A person shall not operate a commodity exchange without a licence.

Prohibition
against
operating
commodity
exchanges
without a
licence

(2) Any person who violates subparagraph (1) shall be liable to enforcement action in paragraph 15.

5. The Registrar shall be the regulatory and supervising authority for all commodity exchanges.

The Registrar

6.—(1) It is hereby declared that a licensed commodity exchange is a financial institution and a securities market player for the purposes of the Act and the Securities Act.

Commoity
Exchange
Financial
Institutions
Cap. 46:06

(2) The Registrar shall not licence a commodity exchange unless it is a body corporate.

(3) An application for a commodity exchange licence shall—

(a) be made in the manner and contain the information prescribed by the Registrar;

(b) show that the applicant complies with the requirements listed in paragraph 8;

(c) be accompanied by—

(i) a copy of the founding documents of the applicant;

(ii) a copy of the proposed commodity exchange's rules;

(iii) such information in respect of the members of the controlling body of the applicant as may be prescribed by the Registrar; and

(iv) the application fee prescribed by the Registrar from time to time; and

(d) be supplemented by any additional information that the Registrar may reasonably require.

PART III—LICENSING OF COMMODITIES EXCHANGES

Application for
a licence

7.—(1) An application for a licence to carry on business as a commodity exchange shall be in Form No. 1 set out in the Schedule to this Directive.

(2) Subject to subparagraph (3), an applicant for a commodity exchange licence under subparagraph (1) shall have—

(a) assets and resources to the satisfaction of the Registrar, which resources include financial, management and human resources with appropriate experience to perform its functions as set out in this directive;

(b) a business plan which is satisfactory to the Registrar;

(c) rules which are satisfactory to the Registrar;

(d) governance arrangements which are clear and transparent, promote the safety and efficiency of the commodity exchange and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders;

(e) fit and proper systems and controls as required by the Registrar;

(f) made arrangements for the efficient and effective surveillance of all transactions effected through the commodity exchange and for the supervision of authorized users so as to identify possible market abuse and ensure compliance with the commodity exchange rules and this directive;

(g) made arrangements for the efficient and effective monitoring of compliance by authorized users with the rules established by the commodity exchange to the satisfaction of the Registrar;

(h) implemented arrangements to efficiently and effectively manage the material risks associated with the operation of the commodity exchange to the satisfaction of the Registrar;

(i) arrangements for efficient and effective security and back-up procedures to ensure the integrity of the records of transactions effected through the commodity exchange to the satisfaction of the Registrar; and

(j) implemented an effective and reliable infrastructure to facilitate transactions on the commodity exchange.

(3) The Registrar may—

(a) require an applicant to furnish such information, or require such information to be verified, as the Registrar may deem necessary to determine whether the applicant meets the requirements of subparagraph (2); and

(b) take into consideration any other information regarding the applicant, derived from whatever source, including any other supervisory authority.

8.—(1) The Registrar may, subject to any conditions which the Registrar may consider appropriate, grant a commodity exchange licence to perform the functions referred to in paragraph 10 if—

Licensing of
commodity
exchange

(a) the applicant complies with the relevant requirements of this Directive; and

(b) objectives of this Directive referred to in paragraph 4 will be furthered by the granting of the commodity exchange licence.

(2) A commodity exchange licence shall specify the terms and conditions of the licence, the categories of securities that may be transacted, the registered office of the commodity exchange in the Republic and places where the commodity exchange may be operated and stipulate that the commodity exchange may not be operated at any other place without the prior written approval of the Registrar.

(3) A commodity exchange may at any time apply to the Registrar for an amendment to the terms of the licence or the conditions subject to which the licence was granted.

(4) The granting of a commodity exchange licence shall by way of notice be published in the *Gazette*.

9.—(1) A commodity exchange shall conduct its business in a fair and transparent manner with due regard to the rights and obligations of authorized users and their clients.

Requirements
applicable to
applications

(2) A commodity exchange shall, to the satisfaction of the Registrar—

(a) establish and operate proper markets that are conducive to the economic good and objectives of this Directive and that do not cause or promote systemic instability;

(b) at all times ensure that its systems and controls are adequate and suitable for the performance of its functions and those of authorized users and appropriate to the size and nature of its respective operations;

(c) ensure (where applicable) that arrangements are made for—

(i) recording the activity and transactions effected on or through its facilities;

(ii) maintaining the activity and transactions records for at least seven (7) years; and

(iii) provide the Registrar with these records in a timely manner if required by the Registrar;

(d) supervise compliance with this Directive by its authorized users and report any non-compliance to the Registrar and assist the Registrar in enforcing this Directive;

(e) enforce its rules at all times;

(f) as soon as it becomes aware, inform the Registrar of any matter that may pose systemic risk to the financial markets; and

(g) do all other things that are necessary for, or incidental to the proper operation of the commodity exchange and that are not inconsistent with this Directive and the Act.

(3) The Registrar may assume responsibility for one or more of the regulatory or supervisory functions referred to in subparagraph (2) if the Registrar considers it necessary in order to achieve the objectives of this Directive and that are not inconsistent with the Act.

PART IV—GENERAL PROVISIONS APPLICABLE TO LICENSED COMMODITY EXCHANGES

Safeguarding
and
administering
assets

10.—(1) A commodity exchange shall ensure that where its facilities provide for the safeguarding and administration of commodities or other assets which belong to users of those facilities, satisfactory arrangements are made for that purpose and clear terms of agreement exist between the users of the facility and the commodity exchange.

(2) A commodity exchange shall have compliance procedures in place to ensure rules are enforced as against authorized users, complaints regarding persons granted access to its facilities are investigated, appeal procedures are in place and where appropriate, disciplinary action resulting in financial and other types of penalties is available.

Complaint
resolution
scheme

11.—(1) A commodity exchange shall have in place procedures to address complaints by market users and authorized users so as to ensure that due process is upheld on an ongoing basis, to the satisfaction of the Registrar, which shall include—

(a) effective arrangements for the investigation and resolution of complaints made against the commodity exchange and authorized users; and

(b) establishing and maintaining a register of complaints made against the exchange and authorized users and resolutions reached.

(2) A commodity exchange shall keep records of the complaints for a minimum of seven years.

12. Within three month after the financial year end of a commodity exchange, that commodity exchange shall submit to the Registrar an annual report containing the details prescribed by the Registrar and audited financial statements that fairly present the financial affairs and status of the commodity exchange.

Reporting to
Registrar

13.—(1) The Registrar or a person appointed by the Registrar may attend any meeting of the controlling body of a commodity exchange or a committee of the controlling body, but shall not vote.

Attendance
of meetings
by and
furnishing/
forwarding
of documents
to Registrar

(2) A commodity exchange shall furnish the Registrar with all notices, minutes and documents which are furnished to members of the controlling body of the commodity exchange or a committee of the controlling body, as if the Registrar were a member of that body or committee.

14.—(1) A person who operates a commodity exchange without a licence shall—

Offences

(a) in the case of a natural person be liable to a penalty of K50,000,000.00 in addition to any monetary penalty imposed by reference to gains made;

(b) in the case of a body corporate it shall be liable to a penalty of K100,000,000.00; and

(c) the Registrar may impose a further monetary penalty imposed by reference to gains made.

(2) In addition to the penalties imposed above, the Registrar may impose directions and any other enforcement action as provided for under the Act.

15.—(1) A person shall not, directly or indirectly, create or cause to be created or do anything with the intention of creating—

Improper
trading
practices

(a) a false or misleading appearance of the volume of trading on any commodity exchange; or

(b) a false or misleading appearance of the market for or the price for any commodities.

(2) A person shall not directly or indirectly, by means of a fraudulent or fictitious transaction or device maintain, inflate, depress or cause fluctuations in the market price for any commodities.

(3) The Registrar may impose the following monetary penalties for violations of this paragraph—

(a) for legal persons up to K100,000,000.00; and

(b) for natural persons up to K50,000,000.00.

(4) In addition to the monetary penalties imposed in subparagraph (4) above the Registrar may impose any directions, restrictions or enforcement action as provided for the by the Act.

Fraudulent transactions

16.—(1) A person shall not directly or indirectly, in connection with any transaction with any other person involving the purchase or sale of any commodities—

(a) employ any device, scheme or artifice to defraud the counterparty;

(b) engage in any fraudulent, deceptive or manipulative device to defraud the counterparty; and

(c) engage in any act, practice or course of business which operates as a fraud or deception or is likely to operate as a fraud or deception on the counterparty.

(2) The Registrar may impose the following monetary penalties for violations of this paragraph—

(a) for legal persons up to K50,000,000.00;

(b) for natural persons up to K5,000,000.00; and

(c) include recovery of benefit.

(3) In addition to the monetary penalties imposed by subparagraph (2) above the Registrar may impose any directions, restrictions or enforcement action as provided for the by the Act.

Prohibition of self dealing

17.—(1) A commodity exchange shall not, directly or indirectly, enter into any transaction on its own markets except in extenuating circumstances and with prior approval of the Registrar.

(2) The Registrar may impose the following monetary penalties for violations of this paragraph—

(a) for legal persons up to K100,000,000.00;

(b) for natural persons up to K50,000,000.00; and

(c) include recovery of benefit.

(3) In addition to the monetary penalties imposed by subparagraph (4) above the Registrar may impose any directions, restrictions or enforcement action as provided for the by the Act.

Prohibition on execution of an order for purchase or sale

18.—(1) A person shall not—

(a) knowingly execute, or hold himself out as having executed, an order for the purchase or sale of a commodity contract on a commodity exchange without having effected a *bona fide* purchase or sale of the commodity contract in accordance with the business rules and practices of the commodity exchange; and

(b) gain control of the supply of a particular commodity which is traded on the commodity exchange with the aim of manipulating the price of the said commodity.

(2) The Registrar may impose the following monetary penalties for violations of this paragraph—

- (a) for legal persons up to [K100,000,000.00]; and
- (b) for natural persons up to [K50,000,000.00].

(3) In addition to the monetary penalties imposed by subparagraph (4) above the Registrar may impose any directions, restrictions or enforcement action as provided for the by the Act.

19. The Registrar, in addition to any other powers under the Act, may collect any penalty imposed under this Directive as a civil debt owed to the Registrar. Transition

20. This Directive shall come into force twelve (12) months from the date of its publication in the *Gazette*. Commerce-
ment

SCHEDULE

(para 8(1))

Form

APPLICATION FOR A COMMODITIES EXCHANGE LICENCE

This section requests information about the proposed Commodity Exchange. Please fill in all spaces required.

1. Name (Please state name of the proposed commodity exchange):.....
.....
2. Legal Form: (Indicate the legal form of the institution e.g private limited company, public company etc:
3. Incorporation (Date and Place):.....
4. Head Office and Registered Address: (Proposed Head Office in Malawi):
.....
5. Business Place: (Proposed Place of Business in Malawi and Branches)
.....
6. Category (ies) of Commodity Exchange Licence applied for (Circle as appropriate)
(a) Trading platform; (b) Clearing house; and (c) Warehouse receipt system.
7. Details of Shareholders and Directors. State the names, addresses, occupation, educational and professional qualifications, employment history, business interests and company directorships of the Individuals that will be directors and shareholders of the proposed commodity exchange. The Registrar requires a minimum of five directors for a proposed financial institution.
.....

8. Details of Senior Management (Provide names, addresses, educational and professional qualifications, employment history, any business interests and company directorships; Details of any experience in commodity exchange business may be included) :

9. Give details of the Company Bankers and details of bank accounts.

10. Please include the following information—
 (a) organisation chart showing the designations and levels of authority of staff; and
 (b) a tree diagram showing a group structure if the applicant belongs to a group.
11. Has the applicant, a Director or Principal officer of the applicant—
 (a) been convicted of any offence or are there any proceedings now pending which may lead to a conviction for any offence involving fraud or dishonesty? If yes provide details :
 (b) has judgment involving findings of fraud or other dishonesty, misrepresentation, breach of contract, breach of fiduciary duty or professional negligence been given against it or are there any proceedings now pending that may lead to such judgment or finding? If yes provide details :
 (c) contravened any written law designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by a person concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of insolvents? If yes provide details :

 (d) have insolvency proceedings been commenced? If yes provide details

 (e) been subject to disciplinary proceedings or action by any professional or regulatory body? If yes provide details

12. Please attach the following documents—
 (a) certified copy of Certificate of Incorporation;
 (b) copy of the Memorandum and Articles of Association;
 (c) most recent audited financial statements; and
 (d) cheque for K10,000,000.00 being application fees.

We the undersigned do hereby certify that—

1. All the information given in response to and in support of the questions in this application is true and correct to the best of our information, knowledge and belief.

2. The application is made in good faith with the purpose and intent that the affairs of the company will at all times be honestly conducted with good and sound business principles and in full compliance with applicable laws and regulations.
3. To the best of our knowledge and belief there are no other facts or information relevant to this application of which the Registrar should be made aware of and we hereby pledge to promptly inform the Registrar of any material change to this application which may arise while it is being considered.

Dated this day of 20.....

Signature:

Name:

Director

Made this 3rd day of April, 2018.

(FILE NO. FIN/PFSPD/03/04)

D. KABAMBE, PhD
Registrar of Financial Institutions

GOVERNMENT NOTICE NO. 26

BANKING ACT

(CAP. 44:01)

BANKING (FOREIGN CURRENCY LENDING RATIO) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVES

3. Objectives

PART III—REGULATORY REQUIREMENTS

4. Responsibility of the Board and executive officer
5. Foreign currency lending restriction
6. Basis for computing the lending ratio requirement
7. Monthly submission of foreign currency lending information

PART IV—ENFORCEMENT

8. Monetary penalties
9. Administrative sanctions
10. Revocation

IN EXERCISE of the powers conferred by sections 11 and 38 of the Banking Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, make the following Directive—

Citation	1. This Directive may be cited as the Banking (Foreign Currency Lending Ratio) Directive, 2018.
Interpretation	2. In this Directive, unless the context otherwise requires—
Cap. 44:01	“Act” means the Banking Act;
Cap. 44:01	“bank” has the meaning ascribed to that term in the Banking Act;
	“Board of Directors” means the highest body of authority in a banking institution responsible for strategically guiding the banking institution, effectively monitoring management, and properly accounting to shareholders;
	“Executive Officer” means an officer at the most senior level of the management of a banking institution whether or not he or she is a director who effectively manages the institution;
	“Foreign Currency Deposit” means any deposit of a customer which is denominated in a currency other than the Malawi Kwacha; and
	“FCDA” means Foreign Currency Denominated Account.

PART II—OBJECTIVES

Objectives	3. The objective of this Directive is to provide a consistent and uniform mechanism whereby the Registrar may— (a) implement monetary policy objectives to protect the external value of national currency; and (b) ensure adherence to prudential liquidity standards by individual banks.
Responsibility of the Board and executive officer	4.—(1) The Board of Directors of a bank shall— (a) adopt and implement a lending policy covering foreign currency loans; and (b) ensure that the policy in subparagraph (1) (a) is reviewed annually or more frequently as and when necessary to ensure that the policy remains appropriate. (2) An executive officer of a bank shall— (a) ensure that the bank meets the prescribed ratio as specified in paragraph 5; and (b) be responsible for full, timely and accurate reporting of all foreign currency lending information.
Foreign Currency Lending restriction	5.—(1) A bank shall not lend in foreign currency except to customers engaged in foreign exchange generating activities or any other business of strategic national importance that the Registrar may approve. (2) A bank may lend in foreign currency up to ninety percent of its preceding monthly average FCDA balances. (3) The limitation in subparagraph (2) above may be varied by the Registrar from time to time.

(4) The limitation in subparagraph (2) shall not apply to foreign currency lending from lines of credit or other sources.

6.—(1) The basis for computing the required foreign currency lending ratio shall be the monthly average of daily balances of FCDA liabilities.

Basis for
computing
the Foreign
Currency
Lending Ratio

(2) The averages shall be computed using totals as at close of business for each working day of the month as per relevant schedules in the call report.

7.—A bank shall—

Monthly
submission
of foreign
currency
lending
information

(a) by the 10th day of every month, submit the foreign currency lending information of the previous month for determination of the foreign currency lending ratio in line with the Financial Services (Submission of Information by Banks) Directive and the Call Report Compilation Guidelines; and

(b) maintain records of all foreign currency loans at its head office to enable verification at any time by the Registrar.

8.—(1) The Registrar shall impose the following monetary penalties for violations of this Directive—

Monetary
penalties

(a) for banks, up to fifty million Kwacha (K50,000,000); and

(b) for natural persons who are members of the Board of Directors or senior management, up to ten million Kwacha (K10,000,000).

(2) With respect to banks, the Registrar shall—

(a) debit the penalty in subparagraph (1) (a) from the main account of the bank maintained at the Reserve Bank of Malawi; and

(b) notify the bank in writing prior to debiting the account.

(3) With respect to natural persons or where the bank does not maintain an account with the Reserve Bank of Malawi, the natural person or the bank, shall pay the penalty through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within ten (10) working days after being notified by the Registrar.

9. In addition to the monetary penalty imposed in paragraph 8 (1), the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act and the Financial Services Act.

Administra-
tive sanctions
Cap. 44:05

10. The Foreign Currency Lending Ratio Directive (No. D02-2010/FCLR) is hereby revoked.

Revocation of
G. N. 3/2011

Made this 3rd day of April, 2018.

(FILE NO. FIN/PFSPD/03/04)

D. KABAMBE, PhD
Registrar of Financial Institutions

GOVERNMENT NOTICE NO. 27

BANKING ACT
(CAP. 44:01)BANKING (PREMISES INSPECTION) DIRECTIVE, 2018
ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVES

3. Objectives

PART III—REQUIREMENTS

4. Recognized premises
5. Prior approval
6. Conditions for granting approval
7. Occupation of premises
8. Routine premises inspection
9. Premises inspection replacement fee

PART IV—ENFORCEMENT

10. Monetary penalties
11. Administrative penalties
12. Revocation

Schedule

IN EXERCISE of the powers conferred by Section 11 of the Banking Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions make the following Directive—

PART I—PRELIMINARY

Citation 1. This Directive may be cited as the Banking (Premises Inspection) Directive, 2018.

Interpretation 2. In this Directive unless the context otherwise requires—

“agency” means an outlet of a bank offering a limited range of banking services which reports to a branch;

“agent” means an entity that has been contracted by a bank to provide banking services on behalf of the bank;

“banking premises” means physical premises from which a bank conducts or intends to conduct banking business;

“branch” means a physical location where a bank offers full range of banking products and services without restrictions except as prescribed by the Registrar;

“kiosk” means a physical location that offers a limited range of banking services daily or on selected days and is smaller in size and infrastructural requirements than an agency and reports to a branch; and

“mobile van” means a bank’s motor vehicle that takes banking facilities to customers.

PART II—OBJECTIVES

3. The objectives of this Directive are to ensure that—

Objectives

(a) banks operate in safe premises with necessary security arrangements and operational infrastructure;

(b) banking premises are of acceptable standards to command the trust and confidence of the general public; and

(c) banking premises are maintained commensurate with the changing times and environment.

PART III—REQUIREMENTS

4.—(1) The Registrar shall only recognize branches, agencies, kiosks and mobile vans as acceptable banking premises.

Recognized premises

(2) Where a bank intends to employ agents to offer banking services, the bank shall comply with the Financial Services (Agent Banking) Regulations.

5.—(1) A bank shall seek prior written approval from the Registrar in respect of—

Prior approval

(a) acquisition, renovations or construction works of new premises;

(b) establishment of new banking premises;

(c) upgrading or merging of banking premises; and

(d) closure or downgrading of banking premises.

6.—(1) In granting approval for applications under paragraph 5 the Registrar shall consider among other things the following—

Conditions for granting

(a) proposed location;

(b) justification for the application;

(c) impact on the financial inclusion agenda;

(d) most recent financial performance and condition of the bank; and

(e) whether the bank is not under any administrative or remedial sanctions.

(2) The Registrar shall render his decision within ten (10) days of receiving a complete application.

Occupation
of premises

7.—(1) A bank shall apply to the Registrar for premises inspection at least two (2) weeks prior to occupying the premises. Such application shall include—

(a) a copy of a letter from the Registrar in which prior written approval was granted in terms of paragraph 5;

(b) specific date on which the premises are expected to open for business;

(c) preferable dates on which the Registrar could conduct an inspection of the premises;

(d) precise physical location of the premises; and

(e) details of the representatives of the bank who will accompany the Registrar's staff to the premises including their names, telephone numbers, or email addresses.

(2) The Registrar shall assess the suitability of the premises in line with the requirements set out in the Schedule hereto.

(3) Where banking premises do not satisfy the minimum requirements set out in this directive—

(a) the bank shall rectify the shortfalls;

(b) the Registrar shall re-inspect the premises before certification; and

(c) the bank shall bear all costs for the re-inspection.

(4) The Registrar shall issue a premises inspection certificate to the bank upon being satisfied with the suitability of the premises. In the case of a mobile van, the Registrar shall issue an approval letter instead of a certificate.

(5) A bank shall conspicuously display in the banking hall, the premises inspection certificate or approval letter and a copy of its banking licence.

Routine
premises
inspection

8.—(1) The Registrar may conduct routine premises inspection exercises to ensure that banks are maintaining their premises to the required standards.

(2) Where a bank fails a routine premises inspection—

(a) the Registrar shall impose a penalty as prescribed in paragraph 10 (1), and;

(b) the bank shall rectify the deficiency within the time period stipulated by the Registrar.

(3) If upon a re-inspection, or expiry of deadline provided in paragraph 8

(2) (b) the deficiencies remain uncorrected, the Registrar may—

(a) revoke the premises inspection certificate for that branch, agency or kiosk; or

(b) revoke the approval letter in the case of a mobile van.

9. The Registrar shall impose a fee of K5,000,000 for replacement of a premises inspection certificate.

Premises
inspection
replacement
fee

PART IV—ENFORCEMENT

- 10.—(1) The Registrar shall impose the following monetary penalties for violations of this Directive—

Monetary
penalties

(a) for banks, up to fifty million Kwacha (K50,000,000) and;

(b) for natural persons who are members of the board of directors or senior management, up to ten million Kwacha (K10,000,000).

(2) With respect to banks, the Registrar shall—

(a) debit the penalty in subparagraph (1) (a) from the main account of the bank maintained at Reserve Bank of Malawi; and

(b) notify the bank in writing prior to debiting the account.

(3) With respect to natural persons or where the bank does not maintain an account with the Reserve Bank of Malawi, the natural person or the bank shall pay the penalty through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within ten working days after being notified by the Registrar.

11. In addition to the monetary penalty imposed in paragraph 10 the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act.

Administra-
tive penalties

12. The Banking (Premises Inspection) Directive, 2012 is hereby revoked.

Revocation of
G. N. 44/2012

SCHEDULE

(para. 7(2))

MINIMUM REQUIREMENTS FOR BANKING PREMISES

- Below are the minimum features that a bank shall install in its business premises. Some are mandatory (designated M), while others are optional (O) depending on whether the premises are a bank head office (Head Office), bank branch (Branch), bank agency (Agency), bank kiosks (Kiosk) or bank mobile van (Mobile Van). Where a feature is not applicable, the designation (N/A) has been used.
- Many of the requirements are either optional or not applicable for all head offices of banks.
- A banks shall take all necessary measures to ensure that there is adequate security and operational infrastructure commensurate with all their head office operations in their head office premises.

CHARACTERISTICS	Head Office	Branch	Agency	Kiosk	Mobile Van
I. General Outside Surroundings—					
(a) ensure that the outer walls are of strong reinforcement materials	M	M	M	M	M
(b) windows must have blinds or tinted to obscure outsiders from observing transactions conducted in the banking hall	O	M	M	M	M
(c) windows must be reinforced	M	M	M	M	M
(d) the surrounding perimeter must have all the necessary security features to cater for the day and night. Such security features to include—	M	M	M	M	M
(i) alarm system that must be connected to bank management and security service provider or police for speedy communication					
(ii) security lights	M	M	M	M	M
(iii) a fence	O	M	M	O	M
(iv) security guards or commissionaires for day and night who should have access to alarm system and some sort of communication where possible; and	M	M	M	M	N/A
(v) signage post showing the name of the bank that must be conspicuously displayed	M	M	M	M	M
(e) in addition to the above, a mobile van must have—					
(i) satellite tracking system; or N/A	N/A	N/A	N/A	M	
(ii) some mode of communication with the controlling station which should include secret distress buttons	N/A	N/A	N/A	N/A	M
(iii) instructions on reaction to threat for both the crew and the controlling station	N/A	N/A	N/A	N/A	M
(iv) standby arrangements with some capable security force while the vans are mobile	N/A	N/A	N/A	N/A	M
(f) entrance/exit doors must be protected (e.g. with intruder alarm, strong steel trellis bars or burglar bars)	M	M	M	M	M
(g) the premises should at least have a customers' car park, and	M	M	O	O	N/A

CHARACTERISTICS	Head Office	Branch	Agency	Kiosk	Mobile Van
(h) the premises should have ample space at the back to allow vehicles that come with large sums of money	N/A	M	M	O	N/A
(i) availability of Auto Teller Machines (ATMS)	O	O	O		O
(i) ATMS if available should be located in a secure place to ensure ample privacy for customers	M	M	M	M	M
(ii) ATMs outside traditional banking premises must have security personnel on site who should have access to a hand held or fixed panic button	M	M	M		N/A
(iii) there should be Fixed CCTV cameras positioned in strategic areas at ATMS	M	M	M		N/A
(iv) warning about skimming including details of customer helpline to report incidents should be displayed on the ATM devices	M	M	M		N/A

CHARACTERISTIC

2. General Inside Surroundings					
(a) ensure that the banking hall is spacious and comfortable to customers and has provisions to cater for customers with physical disabilities. Commissionaire or a bank's designated member of staff should be at hand to assist such customers	M	M	M	O	N/A
(b) chairs should be provided in case of long waiting periods	M	M	M	M	N/A
(c) ensure counters are well elevated, and reasonably wide	N/A	M	M	M	M
(d) cashier counters must be protected with bullet proof glasses					
(e) cashier counters must be protected with shatter proof glasses	N/A	N/A	M	M	N/A
(f) all counters should be well labelled to guide customers	N/A	M	M	O	O
(g) there must be a special provision for large deposits, securely located	N/A	M	O	O	N/A
(h) the safes must be strong enough to ensure security	M	M	M	M	M
(i) availability of strong room or vault cash room	O	M	M	O	N/A

CHARACTERISTICS	Head Office	Branch	Agency	Kiosk	Mobile Van
(j) the strong room or vault cash room if available must be dual controlled, securely located, made of heavy iron, and preferably fire proof	M	M	M	M	N/A
(k) the teller's cubicle must have panic buttons that are connected to bank management and the Police or security service provider for rapid response	N/A	M	M	M	M
(l) time response when panic button is pressed must be quick enough to suppress any theft or burglary e.g. 5 to 10 minutes.	M	M	M	M	M
(m) the manager's position must have direct and speedy communication with the police or security service provider	M	M	M	M	M
(n) ensure that there are monitoring cameras (closed circuit television system) in all the strategic areas, e.g. entrance or exit doors, banking hall, corridors, and front and back yard	M	M	M	M	M
(o) all strategic areas must have					
(i) smoke detectors	M	M	M	M	M
(ii) fire extinguishers that must be annually tested for functionality	M	M	M	M	M
(iii) emergency exit doors (e.g. one way opening from inside) and an Emergency Evacuation Plan	M	M	M	O	O
(iv) a roof which is properly secured	O	O	O	O	O
(p) for speedy communication, ensure that					
(i) reliable telephone; and	M	M	M	M	M
(ii) telefax facilities are available	M	M	O	O	O
3. Other Features					
(a) utilities such as electricity, water, etc. must be available	M	M	M	M	N/A
(b) banking premises must to have a standby power generator or uninterruptible power supply (UPS) to cater for periods of power failures	M	M	M	O	N/A
(c) the premises must have an off-site back-up centre for their data and systems	M	M	M	M	M

Made this 3rd day of April, 2018.

D. KABAMBE, PhD

Registrar of Financial Institutions

GOVERNMENT NOTICE NO. 28

FINANCIAL SERVICES ACT

(CAP.44:05)

FINANCIAL SERVICES (PROMPT CORRECTIVE ACTION FOR BANKS)
DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation

PART II—OBJECTIVES

2. Objectives
3. Scope of application

PART III—PROMPT CORRECTIVE ACTIONS

4. Prompt Corrective Actions

PART IV—MISCELLANEOUS

5. Revocation
Schedules

IN EXERCISE of the powers conferred by section 34 (1) (a) and (2) (q) of the Financial Services Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, make the following Directive—

PART I—PRELIMINARY

1. This Directive may be cited as the Financial Services (Prompt Corrective Action for Banks) Directive, 2018. Citation

PART II—OBJECTIVES

2. The objectives of this Directive are to—

Objectives

(a) establish corrective actions that the Registrar may take or impose on banks (while the bank is still under the control of its owners) and the circumstances under which such actions may be taken; and

(b) prescribe the circumstances under which the Registrar or his agent may exercise powers under the existing legal framework to resolve banks (while suspending the rights of the owners and management) before a bank reaches actual insolvency.

3. The powers specified in this Directive are without prejudice to the general powers of the Registrar under the Financial Services Act, the Banking Act, relevant Regulations and other Directives.

Scope of
application
Cap: 44:05
Cap: 44:01

PART III—PROMPT CORRECTIVE ACTIONS

Prompt
corrective
actions

4. In addition to sanctions and supervisory actions as outlined in the Second Schedule of this Directive; the Registrar shall take prompt corrective action on a bank that falls in each of the categories as outlined in the First Schedule.

PART IV—MISCELLANEOUS

Revocation of
G. N. 18/2014

5. The Financial Services (Prompt Corrective Action for Banks) Directive, 2014 is hereby revoked.

FIRST SCHEDULE

SUMMARY OF PROMPT CORRECTIVE ACTIONS

CATEGORY	BANK CONDITION	MANDATORY SUPERVISORY ACTION
Capital Adequacy Ratio (CAR)	A. UNDERCAPITALISED R BANKS Core Capital Ratio of greater than 8% but less than the prescribed minimum of 10.0 in any one quarter, or banks who, given their financial developments (e.g. worsening asset quality) are expected to breach the minimum requirement on a short horizon.	<ul style="list-style-type: none"> (a) restrict investment in other subsidiaries, related companies, new branches; (b) restrict investment in fixed assets; (c) restrict dividend payment; (d) financial rehabilitation plan required; (e) conduct special examination; or (f) place the bank under the Registrar's Watch List for increased monitoring and inform bank of such status.
	B. SIGNIFICANTLY UNDER-CAPITALISED BANKS Core Capital Ratio of equal to or greater than 5% but less than 8%.	<p>A combination of the following may be used in addition to the continuation of measures above—</p> <ul style="list-style-type: none"> (a) restrict new lending to recoveries made (zero-based lending); (b) require the bank to replace management and new directors (without prejudice to the power of the Registrar to remove relevant persons that do not meet its fit and proper criteria);

CATEGORY	BANK CONDITION	MANDATORY SUPERVISORY ACTION
		<p>(c) restrict undertaking of any material transaction without Registrar's approval;</p> <p>(d) prohibiting changes in accounting methods except as directed by the Registrar;</p> <p>(e) direct immediate new recapitalization or capital restoration plan;</p> <p>(f) registrar to review Capital Plan within two weeks and communicate to the bank its acceptability or otherwise;</p> <p>(g) the Registrar should make the final capital call on the bank within 3 months from time of acceptance of the Capital Plan;</p> <p>(h) within a maximum of three months after the final capital call, the Registrar may take over management and control of the bank or hand over the bank to a Deposit Insurance agency if one is established;</p> <p>(i) registrar, his authorized agent or Deposit Insurance agency shall immediately after issuance of final capital call; start compiling all critical information in readiness for implementation of any resolution option as stipulated in C below; or</p> <p>(j) if Capital Plan is unacceptable or if shareholders fail to recapitalize within the period specified in (e) above, Registrar or Deposit Insurance agency shall implement either of the resolution options as stipulated in C below.</p>
	C. CRITICALLY UNDERCAPITALISED BANKS	Any one or a combination of the following in addition to supervisory actions under B above:

CATEGORY	BANK CONDITION	MANDATORY SUPERVISORY ACTION
LIQUIDITY	Banks with a Core Capital Ratio of more than 2% but less than 5%	Registrar takes over management of the bank immediately or appoints a statutory manager (or a Deposit Insurance agency if one is established) to consider exercising any or all of the resolution powers available under the Financial Services Act and Banking Act as may be from time to time amended.
	D. FAILED BANK A bank with Core Capital Ratio of less than or equal to 2%.	revoke banking license. The Registrar shall immediately initiate procedures for the liquidation of the institution in accordance with the provisions of the Financial Services Act, the Banking Act, as may from time to time be amended.
	A. BANKS WEAK LIQUIDITY POSITION A bank with Liquidity ratio of between 17.5% and 25%.	Any one or all of the following actions— (a) engage management for discussion on its plans to improve liquidity; (b) direct plan for restoring liquidity. Registrar to review plan within two weeks and communicate to the bank its acceptability or otherwise; and (c) administrative penalty.
	B. SIGNIFICANTLY ILLIQUID BANKS A bank that records a Liquidity ratio of between 10% and 17.5%.	In addition to the supervisory actions in (A). If they do not improve liquidity, the Registrar or his authorized agent shall— (a) conduct spot check to investigate the problem of the bank including compliance with its own contingency plan; (b) invite the bank's Board and management for discussion on efforts being pursued to address the problem; (c) direct the bank to realize assets that do not qualify for inclusion in liquidity ratio computation;

CATEGORY	BANK CONDITION	MANDATORY SUPERVISORY ACTION
	<p>C. CRITICALLY ILLIQUID BANKS</p> <p>A bank that records liquidity ratio of below 10%</p>	<p>(d) direct bank to embark on aggressive debt recovery; and</p> <p>(e) advise bank to divest its equity in subsidiaries or related companies.</p> <p>Any one or a combination of the following; in addition to (a) to (e), above—</p> <p>(a) change management or directors; and</p> <p>(b) place bank under statutory management if unable or unlikely to meet maturing obligations for 5 days.</p>

SECOND SCHEDULE

GENERAL ENFORCEMENT ACTIONS (IN ADDITION TO CAPITAL AND LIQUIDITY BREACHES)

TYPE OF VIOLATION OR CONDITION OR CONDUCT	SANCTIONS OR SUPERVISORY ACTION
Non-compliance with provisions of financial services law (e.g. Banking Act)	<p>(a) written warning, written directions, monetary penalty under s. 75(1) of the Act; or</p> <p>(b) court orders to enforce relevant law upon application of Registrar under s.76 of the Act.</p>
<ol style="list-style-type: none"> 1. Non-compliance with Financial Services Act or Banking Act provisions. 2. Unsafe or unsound practices. 3. Failure to submit to inspections. 4. Provision of false information. 	<p>(a) written directions to take action or refrain from taking action, require external audit, restrict directors or officers from taking part in management, appoint directors or officers, remove auditors, restrict borrowing and payment of dividends; and</p> <p>(b) impose cease and desist order temporarily or indefinitely under s.39 of the Banking Act.</p>
Non-compliance with registrar's directive (Financial Services Act s.34 (8)) or prudential requirements e.g. liquidity, reserves, and exposure limits under s.54 of the Banking Act	Administrative penalty
Non-compliance with any relevant statutory provision for which no other penalty exists under s.54 of the Banking Act.	Fine and imprisonment of 4 years

TYPE OF VIOLATION OR CONDITION OR CONDUCT	SANCTIONS OR SUPERVISORY ACTION
Failure to meet capital requirements	<p>(a) automatic restriction on dividend payment under s.12(3) of the Banking Act; or</p> <p>(b) prescribe higher capital requirements to address risks under s.10 of the Banking Act.</p>
Insolvency or likelihood thereof (Banking Act s.48)	<p>(a) remove director of bank;</p> <p>(b) suspend or remove entire board; or</p> <p>(c) remove shareholders or require specific shareholders to reduce their control of the bank.</p>
<p>(a) lack of integrity, prudence, professional skill or sound business principles in the conduct of business or in a manner detrimental to customers or the general public;</p>	<p>(a) vary the conditions of the licence;</p> <p>(b) impose additional conditions; or</p> <p>(c) restrict permitted activities, suspend or revoke license.</p>
(b) unsound financial position or likelihood;	
(c) causing or promoting instability in the financial system or likely to do so;	
(d) non-compliance with Financial Services Act or Banking Act, Registrar's directives, or licence conditions; or	
(e) liquidation, windin-gup, or dissolution. sections 26 and 27 of the Act.	
1. Unsafe or unsound practices.	(a) "cease and desist" orders; and
2. "Significant" undercapitalization.	<p>(b) order to take remedial action including restitution or reimbursement for losses, payment of a monetary penalty, or order requiring termination of a person's affiliation.</p>
Insolvency	<p>In the case of Significant undercapitalization—</p> <p>(a) take any or all of the actions outlined in the Financial Services (Capital Adequacy for Banks) Directive; and</p> <p>(b) enter into agreement with bank's board of directors requiring the bank to rectify its significant undercapitalization within 90 days and to restore capital adequacy within 180 days or within such shorter periods as the Registrar shall order under s.26 of the Banking Act.</p>

TYPE OF VIOLATION OR CONDITION OR CONDUCT	SANCTIONS OR SUPERVISORY ACTION
<ul style="list-style-type: none"> (a) unlikely to meet the demand of depositors or pay obligations in the normal course of business under s.27 of the Banking Act; (b) incurred or likely to incur losses that will deplete all or substantially all of its capital under s.27 of the Banking Act; (c) failure to remedy significant undercapitalization within specified time under s.26(7) of the Banking Act; (d) further deterioration in the financial position of the bank prior to expiry of the time specified for recapitalization under s.68 of the Banking Act; (e) non-compliance with any financial services law e.g. Banking Act, Financial Services Act s.68; (f) financial crimes, under s.68 of the Act; (g) failure to submit to inspection, under s.68; of the Act; (h) unsafe, or unsound practices; or (i) in the interest of depositors or financial system under s.68 of the Act. 	Place under statutory management
<ul style="list-style-type: none"> (a) unsafe or unsound practices; (b) failure to remedy significant undercapitalization within specified time; (c) insolvency; (d) further deterioration in the financial position of the bank prior to expiry of the time specified for recapitalization; or (e) statutory management for more than 120 days under s.71 (2) of the Act. 	Licence revocation and closure

Made this 3rd day of April, 2018.

(FILE NO. FIN/PFSPD/03/04)

D. KABAMBE, PhD
Registrar of Financial Institutions

GOVERNMENT NOTICE No. 29

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (PRUDENTIAL LIQUIDITY REQUIREMENTS FOR
BANKS) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPHS

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVES

3. Objectives

PART III—REGULATORY REQUIREMENTS

4. Responsibility of the board of a bank
5. Computation of minimum liquidity ratios
6. Minimum liquidity ratios
7. Liquidity reports

PART IV—ENFORCEMENT

8. Administrative penalties
9. Monetary penalties
10. Revocation

IN EXERCISE of the powers conferred by section 34 (2) (c) of the Financial Services Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, make the following Directive—

PART I—PRELIMINARY

Citation

1. This Directive may be cited as the Financial Services (Prudential Liquidity Requirements for Banks) Directive, 2018.

Interpretation

2. In this Directive unless the context otherwise requires—

Cap. 44:05

“Act” means the Financial Services Act;

Cap. 44:01

“bank” has the meaning ascribed to that term in the Banking Act;

Cap. 44:01

“banking business” has the meaning ascribed to that term in the Banking Act;

“liquid assets” means—

(a) notes and coins;

(b) cheques in the course of collection;

(c) balances with the Reserve Bank of Malawi and Malawi Government Treasury Bills;

(d) Reserve Bank Bills;

(e) Malawi Government Bonds;

(f) local registered stocks maturing within a year; and

(g) balances with banks in Malawi and balances with banks abroad:

Balances with banks abroad may be included in liquid assets provided that they are—

(i) withdrawable on demand or mature within seven (7) days; and

(ii) denominated in a currency which is freely convertible and transferrable in international exchange markets;

“short term liabilities” means liabilities maturing within one year; and

“total deposits” includes local and foreign currency denominated customers deposits.

PART II—OBJECTIVES

3. The objectives of this Directive are to ensure that banks—

Objectives

(a) effectively manage their liquidity positions to enable them meet all known obligations and commitments thereby promoting confidence in the banking sector;

(b) implement liquidity and funds management policies that conform to established international standards; and

(c) maintain an adequate level of unencumbered, high quality liquid assets that can be converted into cash to meet their on-going liquidity needs.

PART III—REGULATORY REQUIREMENTS

4.—(1) The Board of Directors of a bank shall—

Responsibility
of the Board
of a bank

(a) adopt and implement sound and prudent liquidity risk management and funding policies consistent with principles set out in the Risk Management Guidelines for Banks issued by the Registrar;

(b) ensure that the policies in subparagraph (1)(a) are reviewed annually or more frequently as and when necessary to ensure that they remain appropriate and prudent;

(c) ensure that management adopts a consistent method for measuring and assessing the liquidity of a bank;

(d) have a liquidity contingent plan for dealing with unforeseen liquidity squeezes that takes into account stressful conditions. The plan shall include procedures—

(i) to ensure availability of necessary information that enables senior management to make timely decisions;

(ii) to ensure availability of mechanisms that facilitate constant monitoring and reporting of liquidity indicators; and

(iii) for funding cash-flow shortfalls in crisis situations, expected sources of funds, assessment of the cost of alternative funding strategies and the impact on the capital of the bank;

(e) have an Asset and Liability Management Committee which shall be responsible for overall liquidity and funds management in the bank; and

(f) ensure that a robust management information system is in place for effective monitoring of liquidity positions.

Computation
of minimum
liquidity
ratios

5. For purposes of this Directive, liquidity ratios shall be computed as follows—

(1) Liquidity ratio: total liquid assets as defined in this Directive, less suspense account in foreign currency, divided by total deposits and short term liabilities.

(2) All encumbered liquid assets of a bank shall not be included in the computation of liquidity ratio.

(3) All funds held for liquidity reserve requirement purposes shall not be included in the computation of liquidity ratio.

Minimum
liquidity
ratios

6. A bank shall—

(a) maintain a minimum liquidity ratio of twenty five percent (25%);

(b) conduct stress tests and construct scenarios that could cause difficulties for their specific business activities; and

(c) share the assumptions and results of the stress tests with the Registrar either during on-site examinations or at any time as requested by the Registrar.

Liquidity
reports

7. A bank shall submit to the Registrar, a monthly liquidity report in the format specified in the Call Report Template as prescribed by the Registrar from time to time.

PART IV—ENFORCEMENT

Administrative
penalties

8.—(1) Where a bank reports liquidity ratios below the stipulated minimum for three consecutive months to the Registrar, the Registrar shall require a written undertaking from the Board of Directors of the bank stipulating specific measures that the bank will undertake to improve the liquidity position within the timeframe specified by the Registrar.

(2) If such an undertaking does not result in an improved liquidity position, the Registrar shall impose directions, administrative penalties and enforcement action as provided for under the Act and the Banking Act.

Cap. 44:01

Monetary
penalties

9.—(1) Notwithstanding paragraph 8 above, the Registrar may impose the following monetary penalties for violations of this Directive—

- (a) for banks, up to fifty million Kwacha (K50,000,000); and
- (b) for natural persons who are members of the Board of Directors, or senior management up to ten million Kwacha (K10,000,000).

(2) With respect to banks, the Registrar shall—

- (a) debit the penalty in subparagraph (1) (a) from the main account of the bank maintained at the Reserve Bank; and
- (b) notify the bank in writing prior to debiting the account.

(3) With respect to natural persons or where the bank does not maintain an account with the Reserve Bank of Malawi, the natural person or the bank shall pay the penalty through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within ten (10) working days after being notified by the Registrar.

10. The Financial Services (Prudential Liquidity Requirements for Banks) Directive, 2014 is hereby revoked. Revocation of
G. N. 41/2014

Made this 3rd day of April, 2018.

(FILE NO. FIN/PFSPD/03/04)

D. KABAMBE, PhD
Registrar of Financial Institutions

GOVERNMENT NOTICE No. 30

FINANCIAL SERVICES ACT (CAP. 44:05)

FINANCIAL SERVICES (INFORMATION MANAGEMENT REQUIREMENTS FOR BANKS) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVE

3. Objectives

PART III—RESPONSIBILITY OF THE BOARD AND SENIOR MANAGEMENT

4. Board and management responsibility

PART IV—OBLIGATIONS OF A BANK

5. Identification of information resources of business value
6. Protection of information resources of business value
7. Record keeping
8. Supporting methodologies
9. Back-up

PARAGRAPH

10. Inspection
11. Record keeping period
12. Disposal of information
13. Dormant accounts

PART IV—ENFORCEMENT

14. Monetary penalties
15. Administrative penalties
16. Revocation

IN EXERCISE of the powers conferred by Section 34 (2) (k) of the Financial Services Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, make the following Directive—

PART I—PRELIMINARY

- | | |
|----------------|--|
| Citation | 1. This Directive may be cited as the Financial Services (Information Management Requirements for Banks) Directive, 2018. |
| Interpretation | 2. In this Directive unless the context otherwise requires— |
| Cap. 44:05 | <p>“Act” means the Financial Services Act;</p> <p>“account” means any facility or arrangement by which a bank does any of the following—</p> <ol style="list-style-type: none"> (a) accepts deposits; (b) allows withdrawals of currency or transfers of currency into or out of the account; or (c) pays cheques or payment orders drawn on the banking institution by, or collects cheques or payment orders on behalf of a person other than the banking institution; (d) supplies a facility or an arrangement for a safe deposit box; |
| Cap. 44:01 | <p>“bank” has the same meaning ascribed that term in the Banking Act;</p> <p>“correspondent banking” means the provision of banking services by one bank (the “correspondent bank”) to another bank (the “respondent bank”);</p> <p>“customer” means any person or entity that maintains an account with the bank or those on whose behalf an account is maintained (i.e. beneficial owners); the beneficiaries of transactions conducted by professional intermediaries; and any person or entity connected with a financial transaction who can pose a significant reputational or other risk to the bank;</p> <p>“financial institution” has the same meaning ascribed to that term in the Act;</p> |

“information management” means a resource management function through which information resources of business value are created, acquired, captured, managed or stored in the bank and used as a strategic asset to support effective decision making and facilitate ongoing operations and delivery of products and services; and

“Registrar” means the Registrar of Financial Institutions appointed under the Act.

PART II—OBJECTIVE

3. The objectives of this Directive are to ensure—

Objectives

(a) implementation of effective information management practices that enable banks manage records in a manner that can be easily reconstructed; and

(b) the protection of information of business value.

PART III—RESPONSIBILITY OF THE BOARD AND SENIOR MANAGEMENT

4.—(1) The Board of Directors of a bank shall adopt and ensure implementation by management, of a written policy on information management.

Board and
management
responsibility

(2) The written policy shall at a minimum—

(a) take into account the requirements stipulated in this Directive; and

(b) be reviewed at least annually to ensure that the policy remains appropriate and prudent.

(3) Senior management of a bank shall ensure that record keeping is an integral part of the bank's overall information management program.

PART IV—OBLIGATIONS OF A BANK

5. A bank shall identify and protect its information resources of business value based on analysis of its departmental functions and activities.

Identification
of
information
resources of
business
value

6.—(1) A bank shall keep a record of—

(a) a customer's account;

(b) transactions carried out by a customer;

(c) correspondence relating to the transactions that enables a transaction to be readily reconstructed at any time by the Registrar; and

(d) any other transaction that a bank carries out in the course of its business.

Protection of
information
resources
of business
value

Record
keeping

7. The records shall be—

(a) sufficient to enable a transaction to be readily reconstructed at any time;

(b) stored electronically or otherwise; and

(c) maintained in a manner that will enable a bank to comply immediately with requests for information from the Registrar.

Supporting
methodology

8. A bank shall establish key methodologies, mechanisms and tools to support the bank's record keeping and these shall include—

(a) identifying, establishing, implementing and maintaining repositories in which information resources of business value are stored or preserved in electronic format; and

(b) establishing, using and maintaining classification structures to facilitate storage, search and retrieval of information resources of business value in all formats to comply with information requests from all stakeholders including the Registrar.

Back-up

9. A bank shall ensure that appropriate backup and recovery procedures are in place for all information of business value.

Inspection

10. The records referred to in paragraph 7 (1) shall be subject to inspection from time to time and without notice, by the Registrar.

Record keeping
period

11. A bank shall preserve the records and information required to be kept under this Directive for a period of at least seven (7) years.

Disposal of
information

12. A bank shall develop and implement a documented disposal process for all information resources and ensure that the disposal process is performed after the retention period.

Dormant
accounts

13.—(1) A bank account shall be classified as a dormant account where there has not been any transaction on the bank account for twelve (12) months after the last transaction.

(2) A bank shall, as soon as practicable, transfer a dormant account to a separate register of dormant accounts maintained in the books of the bank and a notice of the transfer shall be given to a depositor at his last known address or through a Notice published in a newspaper of wide circulation.

(3) A bank shall cease to charge service fees or any other form of fees or charges on the dormant account transferred in subparagraph (2) immediately from the date of the transfer.

PART IV—ENFORCEMENT

Monetary
penalties

14.—(1) The Registrar shall impose the following monetary penalties for violations of this Directive—

(a) for banks, up to fifty million Kwacha (K50,000,000); and

(b) for natural persons who are members of the Board of Directors or senior management, up to ten million Kwacha (K10,000,000).

(2) With respect to banks, the Registrar shall—

(a) debit the penalty in subparagraph (1) (a) from the main account of the bank maintained at the Reserve Bank of Malawi; and

(b) notify the bank in writing prior to debiting the account.

(3) With respect to natural persons or where the bank does not maintain an account with the Reserve Bank of Malawi, the natural person or the bank shall pay the penalty through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within ten (10) working days after being notified by the Registrar.

15. In addition to the monetary penalties imposed in paragraph 14 (1), the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act and the Banking Act. Administra-
tive penalties

16. The Financial Services (Record Keeping Requirements for Banks) Directive, 2012 is hereby revoked. Revocation of
G. N. 35/2012

Made this 3rd day of April, 2018.

(FILE NO. FIN/PFSPD/03/04)

D. KABAMBE, PhD
Registrar of Financial Institutions

GOVERNMENT NOTICE No. 31

FINANCIAL SERVICES ACT, 2010

(CAP.44:05)

FINANCIAL SERVICES (SUBMISSION OF INFORMATION BY BANKS) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVES

3. Objectives
4. Board and senior management responsibility

PART III—IMPLEMENTATION

5. Preparation of call reports
6. Submission of call reports
7. Deadline for submitting call reports
8. Submission of other information or data.

PARAGRAPH

PART IV—ENFORCEMENT

9. Monetary penalties
10. Administrative penalties
11. Revocation

IN EXERCISE of the powers conferred by section 34 of the Financial Services Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions make the following Directive—

PART I—PRELIMINARY

- | | |
|----------------|--|
| Citation | 1. This Directive may be cited as the Financial Services (Submission of Information by Banks) Directive, 2018. |
| Interpretation | 2. In this Directive unless the context otherwise requires— |
| Cap. 44:01 | “bank” has the meaning ascribed to that term under the Banking Act; |
| Cap. 44:01 | “banking business” has the meaning ascribed to that term under the Banking Act; and |
| | “call report” means a complete set of returns as outlined in this Directive that all banks must compile and submit to the Registrar. |

PART II—OBJECTIVES

- | | |
|--|--|
| Objectives | 3. The objectives of this Directive are to ensure that banks submit to the Registrar on a timely basis— |
| | (a) accurate electronic call reports and returns as prescribed by the Registrar from time to time; and |
| | (b) any other information and data as directed by the Registrar. |
| Board and senior management responsibility | 4.—(1) The board of directors and senior management of a bank shall be responsible for adherence and compliance with this Directive. |
| | (2) The board of directors and senior management of a bank shall ensure that the bank has a robust management information system that timely and accurately generates reports. |
| | (3) A Chief Executive Officer of a bank shall ensure the accuracy of the call reports, information or data submitted to the Registrar. |

PART III—IMPLEMENTATION

- | | |
|--------------------------------------|--|
| Preparation of call reports | 5. A bank shall compile call reports in accordance with the Instructions for Completion of Call Reports Manual. |
| Submission of call reports | 6. A bank shall submit a complete set of call reports to the Registrar. |
| Deadline for submitting call reports | 7.—(1) A bank shall submit monthly call reports to the Registrar within ten (10) days after the last day of every month. |

(2) A bank shall submit foreign exposure returns to the Registrar on the first day of the preceding week.

(3) Where the Registrar determines that reports submitted have errors and that corrected reports are not resubmitted within the stipulated deadlines, the bank concerned shall be deemed to be in violation of this Directive.

8.—(1) In addition to submission of call reports, a bank shall—

Submission
of other
information
or data

(a) provide any other information, reports or data within deadlines as directed by the Registrar; and

(b) submit information including any material changes on credit history of the bank's borrowers and customers to all licensed credit reference bureaus.

PART IV—ENFORCEMENT

9.—(1) The Registrar shall impose the following penalties for violations of this Directive—

Monetary
penalties

(a) for banks up to fifty million Kwacha (K50, 000,000); and

(b) for natural persons who are members of the board of directors or senior management, up to ten million Kwacha (K10,000,000).

(2) With respect to banks, the Registrar shall—

(a) debit the penalty in subparagraph (1) (a) from the main account of the bank maintained at the Reserve Bank of Malawi; and

(b) notify the bank in writing prior to debiting the account.

(3) With respect to natural persons or where the bank does not maintain an account with the Reserve Bank of Malawi, the natural person or the bank shall pay the penalty through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within (10) ten working days after being notified by the Registrar.

10. In addition to the monetary penalty imposed in paragraph 9 (1) the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act.

Administra-
tive penalties

11. The Financial Services (Submission of Information by Banks) Directive, 2012 is hereby revoked.

Revocation of
G. N. 29/2012

Made this 3rd day of April, 2018.

(FILE NO. FIN/PFSPD/03/04)

D. KABAMBE, PhD
Registrar of Financial Institutions

GOVERNMENT NOTICE No. 32

FINANCIAL SERVICES ACT,
(CAP.44:05)FINANCIAL SERVICES (CORPORATE GOVERNANCE REQUIREMENTS FOR
SECURITIES MARKET PLAYERS) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation
3. Application

PART II—OBJECTIVES

4. Objectives

PART III—BOARD AND MANAGEMENT OVERSIGHT

5. Board of directors
6. Board composition
7. Responsibilities of the board
8. Delegated responsibilities
9. Board committees
10. Management composition
11. Qualifications of management
12. Management appointments

PART IV—GENERAL REQUIREMENTS

13. Internal audit
14. External audit
15. Ethics
16. Performance of the board
17. Delegation of powers
18. Disclosure of confidential information

PART V—ENFORCEMENT

19. Monetary penalties
20. Administrative penalties

PART VI—TRANSITIONAL ARRANGEMENTS

21. Transitional arrangements
Schedules

IN EXERCISE of the powers conferred by section 34 (1) of the Financial Service Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, issue the following Directive—

PART I—PRELIMINARY

1. This Directive may be cited as the Financial Services (Corporate Governance Requirements for Securities Market Players) Directive, 2018. Citation
- 2.—(1) In this Directive, unless the context otherwise requires— Interpretation
 - “Act” means the Financial Services Act; Cap. 44:05
 - “board” refers to the board of directors of a securities market player;
 - “executive management or management” means a person employed by a securities market player and is responsible for decision making at operational level;
 - “insider” means any person as defined in the Securities Act; Cap. 44:06
 - “securities market intermediaries” has the meaning ascribed to that term in the Securities Act; Cap. 44:06
 - “securities market players” include stock exchanges, brokers and dealers, portfolio managers, transfer secretaries, investment advisers, operators of collective investment schemes, securities market intermediaries;
 - “senior management official” means—
 - (a) an executive officer;
 - (b) a head of a department or a function;
 - (c) an official who reports either directly to the board of directors, to a committee of the board of directors or to an executive officer of a securities market player; or
 - (d) a branch manager of a securities market player that the Registrar, declares as a senior management official by a notice published in a newspaper of wide circulation.
- (2) Any term used in this Directive, and which has been defined in the Act, has the meaning ascribed to that term under the Act.
3. This Directive shall apply to all securities market players licensed under the Act. Application

PART II—OBJECTIVES

4. The objectives of this Directive are to ensure that— Objectives
 - (a) securities market players are managed and overseen by competent personnel at board and management level;
 - (b) corporate self-discipline is promoted in the management of all securities market players; and

(c) the board and management make reasonable and impartial business judgements in the best interest of the shareholders.

PART III—BOARD AND MANAGEMENT OVERSIGHT

Board of
directors

5.—(1) A securities market player shall have a duly elected board of directors.

(2) The board shall be headed by a chairperson who shall not be a member of executive management.

(3) A securities market player shall ensure that only persons with relevant qualifications, competencies and character are nominated for election as board members.

(4) A securities market player shall prescribe minimum qualifications for a board member in its election policy.

(5) A securities market player shall seek the approval of the Registrar prior to electing any board member.

(6) A proposed board member shall—

(a) be subjected to a fit and proper test by the Registrar; and

(b) complete the fit and proper questionnaire set out in the Second Schedule and Third Schedule to this Directive.

Board
composition

6.—(1) The board shall have a minimum number of three directors.

(2) The majority of the board members of a securities market player shall be non-executive directors.

(3) A securities market player shall ensure that the election of board members and their terms of office comply with the provisions of the Act and the Securities Act.

Cap. 46:06

Responsibilities
of the board

7.—(1) The responsibilities of the board shall include the following—

(a) exercise appropriate oversight to ensure sound and prudent management of the securities market player;

(b) have overall responsibility for the securities market player, including approving and monitoring the overall business strategy while giving consideration to long-term financial impact, risk exposure, and ability to manage risks effectively;

(c) review and approve annual work plan and budget;

(d) approve and oversee overall risk strategy of a securities market player, including risk appetite and risk tolerance and limits, risk management and compliance policies, internal control systems, governance practices, and corporate values, including a code of conduct;

(e) provide an independent check on management;

(f) have a mechanism for an annual evaluation of the board's own performance;

(g) have a documented and well defined board charter setting out roles and responsibilities of the board;

(h) have a clear policy for setting remuneration packages for management, board of directors and board committees;

(i) ensure that proposed remuneration packages in (h) are approved;

(j) review and approve all requisite policies and procedures to guide management and staff in carrying out operations of the securities market player; and

(k) ensure that the securities market players' operating policies and procedures including the code of best practices are strictly enforced and adhered to.

(2) The board shall ensure that every director and senior manager has competent skills for effective and prudent operation of the securities market player.

(3) The board collectively and each director individually shall be accountable to the Registrar for appropriate oversight to ensure sound and prudent management of the securities market player.

(4) Where the Registrar requests to meet the board, chairperson of the board, a board member or senior management, they shall be available for such a meeting.

8.—(1) The board shall delegate authority to management to act on its behalf, as determined by the board.

Delegated
responsi-
bilities

(2) Such delegated authority shall be duly documented and approved by the board.

(3) The board shall not abrogate responsibility for delegated authority and shall—

(a) monitor that senior management's actions are consistent with the strategy and policies approved by the board, including the risk appetite and risk tolerance;

(b) meet regularly with senior management;

(c) question and review critical explanations and information provided by senior management;

(d) set and monitor performance standards for senior management consistent with the long- term objectives, strategy and financial soundness of the securities market player; and

(e) ensure that senior management's knowledge and expertise remain appropriate given the business and risk conditions affecting the securities market player.

9.—(1) A securities market player shall have board committees including or at a minimum an audit committee as may be required to perform specific tasks from time to time.

Board
committees

(2) The audit committee in paragraph (1) shall comprise at least three (3) members, all or the majority of which shall be non-executive directors.

(3) The board shall establish terms of reference for each board committee.

Management
composition

10. The board shall ensure that, at a minimum, management of a securities market player comprise of—

- (a) principal officer;
- (b) finance officer; and
- (c) operations officer.

Qualification of
management

11. The board shall ensure that management of a securities market player possess minimum qualifications and experience as set out in the First Schedule to this Directive.

Management
appointment

12.—(1) A securities market player shall ensure that only persons with relevant competencies and character are appointed as management.

(2) A securities market player shall seek the approval of the Registrar prior to appointing a member of senior management.

(3) A proposed member of senior management shall—

- (a) be subjected to a fit and proper test by the Registrar; and
- (b) complete the fit and proper questionnaire set out in the Second Schedule and Third Schedule to this Directive.

PART IV—GENERAL REQUIREMENTS

Internal audit

13.—(1) A securities market player shall have an independent and adequately resourced internal audit function.

(2) The objective of the internal audit function is to evaluate the adequacy and effectiveness of the financial and internal risk management framework of the securities market player.

(3) To fulfill its functions, the internal auditor shall have unfettered access to the business lines and support functions of the securities market player.

(4) The internal auditor shall not have other operational responsibilities or duties.

(5) The internal auditor shall report to, and have unfettered access to the audit committee.

(6) Where a securities market player is not in a position to have a dedicated internal audit function, the Registrar may approve alternative arrangements.

External audit

14.—(1) The board shall recommend the appointment of a suitable external auditor.

(2) The board shall ensure that there is no conflict of interest that could compromise or be seen to compromise the independence of the external auditor.

(3) As part of the process of assessing the suitability and independence of the external auditor, a securities market player shall ensure that it conforms to requirements stipulated in the Act.

15. A securities market player board and management shall—

Ethics

(a) conduct their business on the principle of utmost good faith and in accordance with internationally accepted corporate governance principles;

(b) demonstrate commitment to organizational integrity by determining best standards of ethical behaviour and establishing a board approved code of best practice;

(c) on the request of the Registrar avail a copy of the code of best practice or and any amendments to the Directive;

(d) disallow any unacceptable behaviour that could result in the securities market player engaging in illegal activities such as money laundering, fraud, market manipulation, bribery or corruption;

(e) ensure that the code of best practice binds all directors, management, employees and agents of the securities market player;

(f) ensure that the securities market player complies with relevant laws, directives and regulations by the Registrar;

(g) create systems and procedures to oversee compliance to the code of best practice;

(h) assess the integrity of appointees in selection and promotion procedures;

(i) exercise due care in delegating authority;

(j) communicate with and train all employees regarding organizational values, standards and compliance procedures;

(k) provide, monitor and audit secure systems for reporting unethical or risky behaviours;

(l) enforce appropriate discipline with consistency;

(m) respond to offences and prevent re-occurrence; and

(n) reporting to the Registrar any incident of unethical behaviour.

(2) A securities market player shall disclose adherence to the code of ethics against set criteria in the annual report.

(3) The board of directors shall ensure that senior management implements policies that prohibit or appropriately limit activities and relationships that diminish the quality of corporate governance including—

(a) lending to directors and employees at non arms length;

(b) providing preferential treatment to insiders;

(c) improper use of securities market players' property or information;

(d) unfair dealing with clients, employees, suppliers, competitors and other stakeholders;

(e) allowing a director to become delinquent in their loan repayment; avoiding activities that could create conflicts of interest or the appearance of conflicts of interest; and

(f) permitting a director with interest in a transaction to take part in the decision making including voting on those transactions.

Performance
of the Board

16.—(1) The board shall have procedures for assessing at least annually the performance of the board, board committees and individual directors.

(2) A securities market player shall ensure that it inducts and train the directors on various aspects of the securities market player business operations.

(3) Directors shall attend at least seventy five percent (75%) of all board meetings in a year.

(4) Where attendance is less than seventy five percent, a securities market player shall inform the Registrar not later than January 31 of the following year, providing reasons for lack of attendance and why such director should be allowed to continue serving on securities market player board.

(5) The board shall meet at least four times a year and shall keep minutes of all proceedings.

Delegation
of powers

17.—(1) A securities market player shall have a policy on delegation of powers.

(2) The delegation policy shall identify an officer to perform the role of the chief executive officer in his or her absence.

(3) A securities market player shall inform the Registrar of the identity of the delegate in writing.

Disclosure of
confidential
information

18.—(1) A prospective, current, or former officer or employee of a securities market player shall not be constrained by confidentiality clauses or otherwise from—

(a) disclosing information to the Registrar;

(b) discussing issues of relevance to the management and supervision of the securities market player with the Registrar;

(c) providing documents under the control of the employee to the Registrar; and

(d) providing information to auditors, and other persons who have statutory responsibilities in relation to the securities market player.

(2) A securities market player shall ensure that internal policies and contractual arrangements do not explicitly or implicitly restrict or discourage auditors or other parties from communicating with the Registrar.

PART V—ENFORCEMENT

19.—(1) The Registrar shall impose the following monetary penalties for violations of this Directive—

Monetary
penalties

(a) for securities market players up to five million Kwacha (K5,000,000); and

(b) for natural persons who are members of the board of directors, or senior management up to two million Kwacha (K2,000,000).

(2) The penalty in 20 (1) above shall be made through a bank certified cheque payable to the Reserve Bank of Malawi within ten (10) working days after being notified by the Registrar.

20. In addition to the monetary penalty imposed in paragraph 20 (1) above, the Registrar may impose directions, administrative penalties and enforcement action as provided under the Act and the Securities Act.

Administrative
penalties
Cap. 46:06

PART VI—TRANSITIONAL ARRANGEMENTS

21. Any registered or licensed securities market player operating at the date of commencement of this Directive that does not meet its requirements shall, within twelve (12) months from the date of commencement comply with this Directive.

Transitional
arrangements

FIRST SCHEDULE

(para. 11)

MINIMUM QUALIFICATIONS FOR MANAGEMENT

	Qualifications
Principal Officer	Degree in Administration, Accountancy, Finance, Economics with 3 years relevant experience in a financial institution.
	Diploma in Administration, Accountancy, Finance and any other necessary qualifications as may be approved by the Registrar with 6 years relevant experience in a financial institution.
Finance Officer	ACCA, Degree in Accountancy or Finance, ICAM Qualification (CA(M)) with 2 years experience in the accounting profession.
	PAEC, Diploma in Accountancy or Finance with 5 years experience in the accounting profession.
Operations Officer	Relevant Degree with 2 years relevant experience.
	Relevant Diploma with 3 years relevant experience.

SECOND SCHEDULE

(para. 5)

FIT AND PROPER QUESTIONNAIRE FOR A BOARD MEMBER

(Where space provided is not enough, please provide the extra information on additional sheets).

1. Full Name of Nominee:
2. Postal Address:
.....
Telephone Number:
Email address:.....
3. Physical Address:.....
4. Date joined the securities market player.....
5. Minimum Academic Qualification:
.....
6. Highest Academic/Professional Qualification:
.....
7. Other Qualifications:
.....
.....
8. Work Experiences:
.....
Other Directorship:.....
Date of Appointment:.....
9. Has the Nominee:
 - (a) been convicted of any offence, or are there any proceedings now pending which may lead to a conviction for any offence involving fraud or dishonesty?
.....
(If so, please provide details)
 - (b) had judgment involving findings of fraud or other dishonesty, or violence, misrepresentation, breach of contract, breach of fiduciary duty or professional negligence given against it, in any civil proceedings, or are there any proceedings now pending that may lead to such a judgment or finding?
.....
(If so, please provide details)
 - (c) contravened any written law designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against

financial loss due to the conduct of discharged or undischarged bankrupts?

.....
(If so, please provide details)

THIRD SCHEDULE

FIT AND PROPER QUESTIONNAIRE FOR A MANAGER

1. Full Name of Nominee:.....
2. Position applied for:.....
3. Postal Address:
-
- Telephone Number:
- Email Address:.....
- Physical Address:.....
-
4. Minimum Academic Qualification:.....
5. Highest Academic/Professional Qualification.....
6. Other relevant qualifications:.....
-
-
7. Previous work experiences:
-
8. Has the Nominee:
 - (a) been convicted of any offence, or are there any proceedings now pending which may lead to a conviction for any offence involving fraud or dishonesty?
.....
(If so, please provide details)
 - (b) had judgment involving findings of fraud or other dishonesty, or violence, misrepresentation, breach of contract, breach of fiduciary duty or professional negligence given against it, in any civil proceedings, or are there any proceedings now pending that may lead to such a judgment or finding?
.....
(if so, please provide details)
 - (c) contravened any written law designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts?
.....
(if so, please provide details)

Made this 3rd day of April, 2018.

(FILE NO. FIN/PFSPD/03/04)

D. KABAMBE, PhD
Registrar of Financial Institutions

GOVERNMENT NOTICE No. 33

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (AGENT BANKING) REGULATIONS, 2018

ARRANGEMENT OF REGULATIONS

PART I—PRELIMINARY

1. Citation
2. Application
3. Interpretation

PART II—OBJECTIVES

4. Objectives

PART III—APPLICATION FOR AGENT BANKING BUSINESS

5. Registrar's approval
6. Eligibility for appointment as an agent
7. Vetting of agents
8. Completion of application form
9. Submission of business strategy
10. Notification to the Registrar

PART IV—APPROVAL PROCESS OF AGENTS

11. Approval period
12. Approval letter
13. Refusal of application
14. Resubmission of application

PART V—AGENCY CONTRACT

15. Agency contract
16. Outlet of an entity to be part of entity
17. Termination of agency contract

REGULATION

PART VI—PERMISSIBLE AND PROHIBITED ACTIVITIES

18. Services to be performed by agents
19. Prohibited activities
20. Other prohibited activities

PART VII—OBLIGATIONS OF BANKS

21. Policies, procedures and guidelines
22. Monitoring and supervision of agents
23. Compliance with Anti-Money Laundering Laws
24. Training of agents

PART VIII—AGENT OPERATIONS

25. Non-exclusivity of agency contract
26. Information on transactions

PART IX—SETTLEMENT OF TRANSACTIONS BY AGENTS

27. Transactions to be real time
28. Transactions to be carried out with effective devices
29. Contract with third party service providers

PART X—CONSUMER PROTECTION

30. Consumer protection systems
31. Minimum consumer protection requirements

PART XI—REPORTING REQUIREMENTS

32. Submission of agent data and information

PART XII—ENFORCEMENT

33. Registrar's powers
 34. Monetary penalties
 35. Revocation
- Schedule

IN EXERCISE of the powers conferred by Section 116 (1) of the Financial Services Act, I, GOODAL EDWARD GONDWE, Minister of Finance, Economic Planning and Development, make the following Regulations—

PART I—PRELIMINARY

1. These Regulations may be cited as Financial Services (Agent Citation Banking) Regulations, 2018.

“Act” means the Financial Services Act

Cap. 44:05

2. These Regulations shall apply to banks and deposit taking microfinance institutions, SACCOs and their appointed agents.

Application

Interpretation	3. In these Regulations unless the context otherwise require—
Cap. 44:05	“Act” means the Financial Services Act;
	“agent” means an entity that has been contracted by an institution and approved by the Registrar, to provide banking services on behalf of the institution in the manner specified in these Regulations;
	“agent banking business” means the banking business carried out by an agent on behalf of an institution as permitted under these Regulations;
Cap. 44:01	“bank” has the same meaning ascribed to that term in the Banking Act;
Cap. 44:01	“banking business” has the same meaning ascribed to that term in the Banking Act;
	“institution” means a bank, a deposit taking microfinance institution or a SACCO;
	“Minister” means the Minister of Finance;
	“outlet” means an agent’s place that is used for carrying out its commercial activity but does not include a mobile unit;
	“real time” means the electronic processing of transactional data instantaneously upon data entry or receipt of a command;
	“Registrar” means the Registrar of Financial Institutions appointed under the Act; and
	“SACCO” means Savings and Credit Cooperative Society.

PART II—OBJECTIVES

Objectives	4. The objectives of these Regulations are to provide—
	(a) for agent banking as a delivery channel for offering banking services in a cost effective manner; and
	(b) a framework for offering agent banking services.

PART III—APPLICATION FOR AGENT BANKING BUSINESS

Registrar’s approval	5.—(1) An institution intending to conduct banking business through an agent shall obtain written approval from the Registrar before commencing the agent banking business.
	(2) In considering an application for the approval of the institution to conduct agent banking business, the Registrar shall at a minimum assess the institution on the following factors—
	(a) the adequacy of capital ;
	(b) record of earning capabilities;
	(c) adequacy of risk management practices; and
	(d) track record of adherence to relevant laws, regulations, and directives.
Eligibility for appointment as an agent	6. The following entities may be eligible for appointment as agents—
	(a) Limited liability companies;

- (b) Merchant or retail shops;
- (c) Agro dealers;
- (d) Pharmacies;
- (e) Sole proprietorships;
- (f) Partnerships;
- (g) Cooperative societies;
- (h) State corporations; and
- (i) any other entity which the Registrar may approve.

7.—(1) An institution shall, before seeking approval of the Registrar for an entity to be contracted as an agent, satisfy itself as to the suitability of the proposed entity.

Vetting of
agents

(2) An institution shall—

(a) be responsible for the accuracy of the information provided by an agent; and

(b) sensitize its agents on the provisions of these Regulations and the obligation to comply with them.

8.—(1) An institution shall apply for agent banking business by completing the application form set out in the Schedule hereto.

Completion
of application

(2) An institution may submit an application for several agents at one go.

9. In addition to completing an application form, an institution shall, submit to the Registrar a business strategy for agent banking that articulates the following—

Submission
of business
strategy

(a) the institution's delivery channel, strategy and how agents fit in this strategy;

(b) an estimate of the total population and economically active population of the areas where the agents will operate;

(c) an estimate of the proposed agents' volumes or transactions;

(d) a description of the commercial activities the proposed agents have been conducting for the twelve (12) months immediately preceding the date of the application;

(e) a copy of the standard contract with the agents; and

(f) a declaration by the Chief Executive Officer or Director of the institution confirming that the institution has carried out the suitability assessment of the proposed agents.

10. An institution shall notify the Registrar regarding the opening of any new agent.

Notification
to the
Registrar

PART IV—APPROVAL PROCESS OF AGENTS

11. The Registrar shall communicate to an institution which applies for agent banking business the outcome of the application within ten (10) working days from the date of receipt of a complete set of accurate information.

Approval
period

- Approval letter 12. Where the Registrar approves an agent, the Registrar shall issue an approval letter to the institution.
- Refusal of application 13. Where the Registrar declines to approve an application, the Registrar shall communicate to the applicant, in writing, the reasons for declining the approval.
- Re-submission of application 14. An institution whose application has been declined by the Registrar may resubmit the application upon fulfillment of the conditions specified by the Registrar.

PART V—AGENCY CONTRACT

- Agency contract 15. An institution shall enter into a written contract with an entity for the provision, on behalf of the institution of any banking services.
- Outlet of an entity to be part of an entity 16. An outlet of an entity whose operations or activities are managed, supervised or is subject to the direction of its head office shall be regarded as part of the entity for purposes of an application to be appointed as an agent.
- Termination of agency contract 17. Where an agency contract is terminated, the institution shall inform the general public of the cessation of the agent from offering banking services through publication of a notice—
- (a) within the premises where the agent was operating; or
 - (b) in any other manner so as to inform the general public of the cessation of the agent from offering banking services.

PART VI—PERMISSIBLE AND PROHIBITED ACTIVITIES

- Services to be performed by agents 18. An agent may provide the following banking services as may be specifically agreed with the institution—
- (a) cash deposit and cash withdrawal;
 - (b) cash disbursements and repayment of loans;
 - (c) payment of bills;
 - (d) cash payment of retirement and social benefits;
 - (e) cash payment of salaries;
 - (f) transfer of funds;
 - (g) balance enquiry;
 - (h) generation and issuance of mini bank statements ;
 - (i) collection of documents in relation to account opening, loan application, credit and debit card applications;
 - (j) agent mobile phone banking services;
 - (k) collection of crossed cheques;
 - (l) cheque book request;
 - (m) cheque book collection by customers;

- (n) collection of bank's mail or correspondence for customers; and
- (o) any other activity as the Registrar may prescribe or approve.

19. An agent shall not—

Prohibited
activities

(a) carry out an electronic transaction when there is communication failure in the system;

(b) carry out a transaction when a transactional receipt or a Short Message Service (SMS) acknowledgement cannot be generated; except where the transaction involved does not require issuance of a receipt, such as cheque book collection;

(c) charge any fees directly to the customers;

(d) offer any type of guarantee in favour of any institution or customer;

(e) offer banking services on its own accord by providing on its own account banking services similar to those provided by it under an agency contract;

(f) provide or hold itself out to be rendering a banking service which is not specifically permitted in the contract;

(g) open accounts, grant loans or carry out any appraisal function for purposes of opening an account or granting of a loan or any other facility;

(h) undertake cheque deposit and encashment of cheques on its own;

(i) transact in foreign currency;

(j) be run or managed by an institution's employee or its associate; and

(k) subcontract another entity to carry out agent banking on its behalf.

20. An institution may in the contract document specify other activities which the agent is prohibited from undertaking.

Other
prohibited
activities

PART VII—OBLIGATIONS OF BANKS

21. The Board of Directors of each institution shall formulate policies, procedures and guidelines that ensure that:—

Policies,
procedures
and
guidelines

(a) credible agents are identified;

(b) risks associated with agent banking are properly identified, documented and mitigated; and

(c) agent's activities are constantly monitored to ensure compliance with all financial services laws, agent contracts and any other applicable law.

22. The institution shall be responsible for monitoring and supervising the activities of its agents.

Monitoring
and
supervision of
agents

Compliance
with
Anti-Money
Laundering
laws

23. An institution shall comply with all applicable Anti-Money Laundering and Combating Financing of Terrorism laws and requirements. Among others, the institution shall take into account the following—

- (a) simplified Know Your Customer (KYC) requirements;
- (b) transactional limits per day, month or year for persons and corporate entities;
- (c) maximum balance limits on debit and credit;
- (d) minimum technological security requirements; and
- (e) authentication criteria per customer per transaction.

Training of
agents

24. An institution shall train its agents on Anti-Money Laundering and Combating Financing of Terrorism requirements and on use of simplified know your customer requirements.

PART VIII—AGENT OPERATIONS

Non exclusivity
of agency
contract

25.—(1) An agency contract between an institution and an agent shall not be exclusive.

(2) an agent may provide agent banking services to multiple institutions provided that the agent has—

- (a) separate contracts for the provision of such services with each institution; and
- (b) the capacity to manage the transactions for the different institutions.

Information on
transactions

26. An institution shall—

- (a) maintain information on the numbers and volumes of transactions carried out for each type of service by each agent; and
- (b) monitor effective compliance with set limits.

PART VIX—SETTLEMENT OF TRANSACTIONS BY AGENTS

Transaction to
be real time

27.—(1) All transactions by an agent involving deposit, withdrawal, payment or transfer of cash from or to an account shall be real time.

(2) An institution shall ensure that an agent is able to carry out real time transactions.

Transaction to
be carried out
with effective
devices

28. An institution shall ensure that agent banking transactions are carried out with devices which are technically effective and can—

- (a) transmit transaction information in code;
- (b) carry out electronic transactions on real time basis;
- (c) allow handling under different user profiles for administration, maintenance and operation;
- (d) reverse incomplete transactions due to error, system failure, power outage or other defects;
- (e) process or generate transactional documents or receipts;

(f) issue electronic receipts or acknowledgements such as Short Message Service (SMS) acknowledgement ;

(g) automatically log off an agent once the agent exhausts his daily cash limit or display an error message in case of unauthorized transaction; and

(h) generate an audit trail.

29. An institution may enter into a written contract with a third party service provider for the provision of the following services in respect of its agent banking business—

Contract with
third party
service
providers

(a) technology platform;

(b) agent selection;

(c) agent network management;

(d) agent training;

(e) equipment provision; and

(f) equipment maintenance.

PART X—CONSUMER PROTECTION

30. An institution shall have appropriate consumer protection systems for purposes of establishing trust among consumers of agent banking services.

Consumer
protection
systems

31. At a minimum, an agent of banking services shall comply with the following consumer protection requirements—

Minimum
consumer
protection
requirements

(a) list the services or products being offered to enable customers or users to appropriately identify their agents and the services provided through them;

(b) have signs that are clearly visible to the public indicating that it is a provider of services of the institution with which it has an agent contract;

(c) display the name of the institution it is working for and the institution's logo;

(d) display a written notice to the effect that if the electronic system is down, no transaction shall be carried out;

(e) display a written notice to the effect that services shall be provided subject to availability of funds;

(f) list of charges or fees applicable for each service which are payable to the bank by the customers; and

(g) list the name, telephone numbers and location of the institution's branch to which the agent reports its agent activities.

PART XI—REPORTING REQUIREMENTS

Submission of
agent data and
information

32.—(1) An institution shall submit to the Registrar, the following information on a monthly basis—

- (a) nature, value, volume and geographical distribution of operations or transactions;
- (b) incidents of fraud, theft or robbery; and
- (c) customer complaints and the remedial measures taken to address the complaints.

(2) The institution shall submit the information specified in subregulation (1) with fifteen (15) days after the end of the preceding month.

PART XII—ENFORCEMENT

Registrar's
powers

33. In addition to any other powers conferred on the Registrar under any financial services law, the Registrar may—

- (a) request for any information from the institution or agent at any time;
- (b) carry out impromptu or scheduled inspection of the books and premises of the agent;
- (c) direct the institution or agent to take such action or desist from such conduct as may be deemed necessary;
- (d) direct the termination of the agency contract and closure of the agent business;
- (e) direct the institution to take such action or measures against or on behalf of the agent as the Registrar may find appropriate;
- (f) revoke the agent banking approval and prohibit the institution from engaging in agent banking business;
- (g) prohibit the institution from contracting new agents; and
- (h) impose directions, administrative penalties and enforcement actions as provided under the Act.

34.—(1) Notwithstanding the Registrar's enforcement powers under regulation 33 above, the Registrar shall impose the following monetary penalties for violations of these Regulations—

Monetary
penalties

(a) for institutions, up to fifty million Kwacha (K50, 000,000); and

(b) for natural persons who are members of the Board of Directors or senior management, up to ten million Kwacha (K10,000,000).

(2) With respect to banks, the Registrar shall—

(a) debit the penalty in subparagraph (1) (a) from the main account of the bank maintained at the Reserve Bank of Malawi; and

(b) notify the bank in writing prior to debiting the account.

(3) With respect to natural persons or where the institution does not maintain an account with the Reserve Bank of Malawi, the natural person or the institution shall pay the penalty through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within ten (10) working days after being notified by the Registrar.

35. The Financial Services (Agent Banking) Regulations, 2012 are hereby revoked.

Revocation of
G N. 27/2012

SCHEDULE

(reg. 8 (1))

APPLICATION FORM FOR APPROVAL OF AN AGENT

1. Name of Institution:.....
2. Name of Agent(s) (including postal address and contact details)
.....
3. Exact location and name of district where the Agent(s) is/are located
.....
4. Proposed commencement date for each Agent :.....
5. Commercial activity of each Agent
.....

6. List of banking services to be provided by each Agent
-

7. Responsible Branch(es)
-

Name:

Signed.....
(Chief Executive Officer/Managing Director)

Dated at this day of..... 20.....

This Application form must be submitted together with a written declaration by the Chief Executive Officer of the institution or Director confirming that the institution has carried out the suitability assessment of the proposed agents and they have been found to have met the minimum requirements set out in these Regulations.

.....
*Tick the applicable

Made this 13th day of April, 2018.

(FILE NO. FIN/PFSPD/03/04)

GOODALL GONDWE
*Minister of Finance, Economic
Planning and Development*

GOVERNMENT NOTICE No. 34

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (SUPERVISORY LEVY FOR BANKS) REGULATIONS,
2018

ARRANGEMENT OF REGULATIONS

REGULATION

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVES

3. Objectives

PART III—PAYMENT AND ASSESSMENT OF SUPERVISORY LEVY

4. Methodology for assessing supervisory levy
5. Payment of supervisory levy
6. Review of methodology for assessing supervisory levy
7. Use of supervisory levy

PART IV—ENFORCEMENT

8. Enforcement
9. Administrative penalties
10. Revocation

IN EXERCISE of the Powers conferred under section 13 of the Financial Services Act, I, GOODALL EDWARD GONDWE, Minister of Finance, and Economic Planning and Development, make the following Regulations—

PART I—PRELIMINARY

1. These Regulations may be cited as the Financial Services (Supervisory Levy for Banks) Regulation, 2018. Citation
2. In these Regulations, unless the context otherwise requires— Interpretation
 - “Act” means Financial Services Act; Cap. 44: 05
 - “bank” has the meaning ascribed to that term in the Banking Act; Cap. 44:01
 - “banking business” has the meaning ascribed to that term in the Banking Act; Cap. 44: 01
 - “non-performing loans” has the same meaning as defined in the Financial Services (Financial Asset Classification for Banks)– Directive;
 - “Registrar” means the Registrar of Financial Institutions appointed under the Act; and
 - “regulatory governance” means the capacity to manage resources efficiently and to formulate, implement, and enforce sound prudential policies and regulations within the premises of legal mandate and in accordance with internationally accepted supervisory standards.

PART II—OBJECTIVES

Objectives

3. The objectives of these Regulations are to—

(a) ensure that banks contribute towards the costs incurred by the Registrar in discharging his supervisory functions; and

(b) strengthen and enhance a sound regulatory governance framework that will promote financial sector stability and soundness in Malawi.

PART III—PAYMENT AND ASSESSMENT OF SUPERVISORY LEVY

Methodology
for assessing
supervisory

4.—(1) A bank shall pay a supervisory levy as set out in the Schedule.

(2) The amount of supervisory levy payable under regulation 4 (1) above shall be subject to—

(a) a minimum supervisory levy of twenty five million Kwacha (K25,000,000) or such minimum amount as the Registrar may prescribe through a circular to all banks; and

(b) a maximum supervisory levy of seventy five million Kwacha (K75,000,000) or such maximum amount as the Registrar may prescribe through a circular to all banks.

(3) The non-performing loan ratios prescribed in subregulation 4 (1) above shall be based on audited financial statements of the bank of the preceding financial year.

(4) Where audited financial statements have not been provided to the Registrar within the timelines stipulated in the Act or the Financial Services (Annual Audits for Banks) Directive, the non-performing loan ratios shall be based on December call reports of the preceding financial year.

(5) A bank shall pay the supervisory levy prescribed under this provision to the Registrar by 30th April of each year.

Payment of
supervisory
levy

5.—(1) The Registrar shall—

(a) debit the supervisory levy from the main account of the bank maintained at the Reserve Bank of Malawi; and

(b) notify the bank in writing prior to debiting the account.

(2) Where the bank does not maintain an account with the Reserve Bank of Malawi, the bank shall pay the supervisory levy through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within ten (10) working days after being notified by the Registrar.

Review of
methodology
for assessing
supervisory
levy

6.—(1) The methodology for assessing and determining the amount of supervisory levy to be paid by a bank as prescribed in regulation 4 above, shall be subject to review from time to time by the Registrar through circulars to banks.

(2) A newly licensed bank shall not be subject to assessment of supervisory levy until after twelve months from date of commencement of its operations.

(3) The waiver in subregulation 6 (2) shall not apply to new entities arising from mergers, amalgamations, acquisitions, conversions or similar transactions.

7. All supervisory levies and penalties collected under these Regulations shall accrue for the benefit of the Registrar in his discharge of supervisory functions in line with the provisions of the Act. Use of
supervisory
levy

PART IV—ENFORCEMENT

8.—(1) The Registrar shall impose a penalty interest, for each day of default, at the ruling bank rate on a bank which fails to pay the supervisory levy within the period stipulated under regulation 5. Enforcement

(2) The penalty in subparagraph (1) shall not be annualized.

9. In addition to the penalty interest prescribed in regulation 8, the Registrar may impose directions, administrative penalties and enforcement actions as provided for in the Act and the Banking Act. Administrative
penalties
Cap 44:01

10. The Financial Services (Supervisory Levy for Banks) Regulations 2012 are hereby revoked. Revocation of
G. N. 26 2012

SCHEDULE

PAYMENT AND ASSESSMENT OF SUPERVISORY LEVY

1. Bank that has a non-performing loans ratio of 5% or less shall pay a supervisory levy amounting to 0.1 percent of the value of its non-performing loans.
2. Bank that has a non-performing loans ratio of above 5 % but not more than 10% shall pay a supervisory levy amounting to 0.15% of the value of its non-performing loans.
3. Bank that has a non-performing loans ratio of above 10% but not more than 15% shall pay a supervisory levy amounting to 0.20% of the value of its non-performing loans.
4. Bank that has a non-performing loans ratio of above 15% but not more than 20% shall pay a supervisory levy amounting to 0.25% of the value of its non-performing loans.
5. Bank that has a non-performing loans ratio of above 20% shall pay a supervisory levy amounting to 0.30% of the value of its non-performing loans.

Made this 13th day of April, 2018.

GOODALL E. GONDWE
*Minister of Finance, Economic
Planning and Development*

(FILE NO. FIN/PFSPD/03/04)