

The Malawi Gazette Supplement, dated 13th July, 2018, containing  
Regulations, Rules, etc. (No. 18A)

GOVERNMENT NOTICE NO. 51

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (RISK AND GOVERNANCE REQUIREMENTS FOR  
BANKS AND BANK HOLDING COMPANIES) DIRECTIVE, 2018

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

- Citation 1. This Directive may be cited as the Financial Services (Risk and Governance for Banks and Bank Holding Companies) Directive, 2018.
- Interpretation 2. In this Directive unless the context otherwise requires—
- “affiliate” means any entity, corporate or unincorporated where 5% or more of any class of its voting shares or other voting participation is directly or indirectly owned or controlled by that institution or is held by the institution with power to vote;
- “associate” has the meaning ascribed to it in the Act;
- “bank” means a person who conducts banking business in Malawi, including by accepting funds withdrawable by cheque or transferable by other means;
- “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;
- “Board” means the highest body of authority in an institution, responsible for strategically guiding the institution, effectively monitoring management, and properly accounting to shareholders;
- “conflict of interest” means a situation in which a person has direct or indirect private or personal interest in a matter which is sufficient to directly or indirectly influence or has the potential to directly or indirectly influence the objective exercise of his official or professional duties or the making of impartial judgment over the same or related matter;
- “controlling party” has the same meaning ascribed to it in the Act;
- “executive director” means a member of the Board who has management responsibilities within the institution;
- “executive officer” has the same meaning ascribed to it in the Act;
- “governance” means the set of relationships between the institution’s management, board, shareholders and stakeholders which provide the structure through which the objectives of the institution are set, and the means of attaining those objectives and monitoring performance;
- “group” means a group consisting two or more institutions that have common controlling party and the body corporate of which any of those institutions is a controlling party;
- “independent director” means a director that—
- (a) is not a significant shareholder of the institution, either directly or indirectly;
  - (b) is not related or affiliated to a shareholder;
  - (c) has not been employed by the institution, its subsidiary or affiliate in any executive capacity for the past two years;

(d) is not a member of the immediate family of an individual who, in any of the past two years, is or has been, employed by the institution or the group in an executive capacity;

(e) is not a professional advisor to the institution or the group other than in a director capacity;

(f) has no significant contractual relationship with the institution or the group; or

(g) is free from any business or other relationship which could be seen to materially interfere with the individual's capacity to act in an independent manner;

“institution” means a bank or a bank holding company;

“internal control” means process effected by the institution's Board, management and other personnel designated to provide reasonable assurance regarding the achievement of objectives such as effectiveness and efficiency of operations, reliability of financial reporting and compliance with applicable laws and regulations;

“non-executive director” means a member of the Board who does not have management responsibilities in the institution;

“person affiliated to a shareholder” means—

(a) an employee of the shareholder;

(d) an associate of the shareholder; or

(e) any other person as the Registrar may determine;

“senior management official” have the same meaning as ascribed in the Financial Services (Fit and Proper) Directive, 2018 ;

“significant contractual relationship” means five percent of the value of the transaction conducted with the institution; and

“significant shareholder” means a shareholder who, directly or indirectly, owns five percent or more of the shares or voting rights of the institution.

#### PART II—OBJECTIVE

3. The objective of this Directive is to prescribe minimum risk and governance requirements for a bank and a bank holding company. Objective

#### PART III—REGULATORY REQUIREMENTS

4. A shareholder of an institution shall—

(a) jointly and severally protect, preserve and actively exercise supreme authority over the institution;

(b) ensure that the Board is held accountable and responsible for the efficient and effective governance of the institution;

Obligations  
of  
shareholders

(c) ensure that only competent and reliable persons with appropriate knowledge, skills and experience are appointed to serve on the Board;

(d) change the composition of a Board that does not perform to expectations or in accordance with the mandate of the institution;

(e) appoint competent external auditors; and

(f) approve director's remuneration or fees during annual general meetings or extraordinary meetings.

Restrictions on  
shareholders

5.—(1) A significant shareholder, directly or indirectly, shall not be a chairperson of the Board, a member of the Board Audit Committee or Board Risk Committee.

(2) Except with the prior written approval of the Registrar, a person affiliated to a shareholder shall not be the chairperson of the Board or a member of the Board Audit Committee or the Board Risk Committee.

Shareholder  
loan

6. Management shall grant a shareholder loan on non-preferential terms and on an arm's length basis.

Board charter

7.—(1) The Board shall have a formal charter which shall, at a minimum—

(a) outline the Board's responsibility for the formulation and adoption of strategic plans;

(b) provide for the monitoring of operational performance of management;

(c) document the procedure for the selection, orientation and evaluation of directors; and

(d) provide for the criteria for managing conflict of interest among directors of the institution.

(2) The Board shall review the charter as and when necessary.

Directors'  
powers and  
responsibilities

8. The Board shall—

(a) severally and jointly be liable for the affairs of the institution;

(b) have clear, well- defined responsibilities;

(c) determine appropriate policies and processes to ensure the integrity of the institution's risk management practices, internal controls and communications policy;

(d) be responsible for monitoring of management in the implementation of the Board's plans and strategies;

(e) provide strategic direction to the institution;

(f) approve the organizational structure of the institution;

(g) appoint and remove senior management of the institution;

(h) allocate time and resources for directors to acquire and retain a sound understanding of their responsibilities;

(i) ensure the development and implementation of the organization's succession plan;

(k) ensure that the institution complies with all relevant laws, regulations and policies;

(l) have access to all the institution's information, records, documents and property;

(m) set and approve limits of authority for management;

(n) in accordance with the Schedule hereto, conduct formal annual self-assessments and submit assessments reports to the Registrar by 31st March of every year;

(o) not make any public announcement about any proposed appointment of chief executive officer or director before the Registrar has granted approval to the appointment;

(p) ensure that senior management implements strategic policies and procedures that are designed to promote good and acceptable ethical behaviour;

(q) ensure that the institution discloses to the Registrar all complex shareholding structures of the institution;

(r) have a clear policy for setting remuneration of executives and non-executive directors at levels that are fair and reasonable in a competitive market for the skills, knowledge, experience, nature and size of the institution;

(s) ensure that where executive directors' remuneration packages include an element that is dependent on individual performance as well as the institution's performance, such schemes strike a proper balance between risk and reward;

(t) have a formal written conflicts-of-interest policy and an objective compliance process for implementing the policy; and

(u) ensure that the governance of the institution is adequately transparent to its shareholders, depositors, other relevant stakeholders and market participants.

9. The Chairperson of the Board shall ensure that the company secretary— Company secretary

(a) facilitates orientation of new directors on the institution's business and governance practices;

(b) facilitates annual self-assessment for directors; and

(c) is a central source of advice and guidance to the Board on matters of ethics and governance.

10. The Board shall have an appropriate balance of power and authority, such that an individual or a group of individuals shall not dominate the Board's decision making process. Balance of power on the Board

11. The chairperson, shall through a Board resolution, recommend to the shareholders, the removal of a Board member who does not contribute effectively to the Board. Removal of board member

- Liability of directors and senior management officials
12. A director or a senior management official shall be held liable for false or misleading statements to the Board, the Registrar or other stakeholders.
- Board composition
13. The Board shall—
- (a) have a minimum of 9 directors, the majority of which shall be independent or non-executive directors; and
- (b) have appropriate balance of skills, knowledge and experience;
- Residence of directors
14. A majority of directors of the Board shall be resident in Malawi.
- Board chairperson
- 15.—(1) The chairperson of the institution shall be an independent and non-executive director except where the individual proposed to be the chairperson is affiliated to a shareholder of the institution.
- (2) Notwithstanding subparagraph (1), the person affiliated to the shareholder shall not serve as the chairperson unless with prior written approval of the Registrar.
- Restrictions on directors
- 16.—(1) A director of an institution shall not simultaneously hold the roles of Board chairperson and chief executive officer or equivalent designation for the same institution.
- (2) A director of the institution shall not be a member of more than six other Boards except where the six other Boards are part of the group.
- (3) The restriction in subparagraph (2) shall not apply to Boards of entities not registered under the Companies Act.
- (4) Where the director exceeds the limitation in subparagraph (2) by virtue of the Boards being part of the group, the director shall not serve on any other Board outside the group.
- (5) A director who contravenes subparagraphs (2) and (4) shall cease to be eligible as a director of the institution and shall be subject to such administrative penalties as the Registrar may prescribe.
- (6) A director of a bank shall not serve on the Board of another financial institution unless the other financial institution is part of the group.
- (7) A director of a bank shall not be an executive officer or a director of a credit reference bureau or a collateral registry.
- Act No. 15 of 2013
17. An independent director shall not be considered independent after serving on the Board for a period of more than 10 years.
- Restriction on independent directors
- 18.—(1) A bank holding company shall, at a minimum, have the following Board committees in place—
- (a) Audit committee; and
- (b) Risk Management Committee.
- (2) Where a bank is part of a group, the Board of the holding company
- Board committees

shall ensure that it is aware of the material risks and issues that might affect the group.

(3) A bank shall, at a minimum, have the following Board committees in place—

- (a) Audit Committee;
- (b) Risk Management Committee;
- (c) Credit Review Committee; and
- (d) Nominations (Appointments) and Remuneration Committee.

(4) The Board shall ensure that the proceedings of committee meetings are properly minuted and made available to the Registrar upon request.

(5) All Board committees shall be chaired by a non- executive director.

(6) The Board chairperson shall not be a member of any subcommittee, except with prior written approval of the Registrar.

(7) A member of the Board Audit Committee shall not sit in any other Board Committee.

(8) A member of the Board Risk Committee shall not sit in any risk taking Board Committee.

(9) The chief executive officer and an executive director shall not be a member of the Board Audit Committee.

19.—(1) The head of internal audit shall functionally report to the Board Audit Committee. Internal audit

(2) The head of internal audit shall have unrestricted access to the Board Audit Committee.

(3) The internal audit function shall have full, free and unrestricted access to all functions, premises, assets, personnel, records, and other documentation and information that it considers necessary to meet its responsibilities.

(4) The Board Audit Committee shall ensure that recommendations made in internal audit reports are dealt with in a timely manner and that corrective actions are taken on deficiencies noted in the audit.

(5) The Board shall ensure that the internal audit function is adequately resourced and that the annual audit work plan is timely approved.

(6) The Board Audit Committee shall assess the performance of the internal audit function and determine the remuneration of the head of internal audit.

(7) Non-executive directors of the Board shall, in the absence of management, at least, meet annually with the institution's external auditors, the head of internal audit and the heads of compliance and legal functions.

(8) The Board Audit Committee shall approve the appointment, resignation or dismissal of the head of internal audit.

(9) The Board Audit Committee shall review, at least annually, the system of internal controls to determine whether it works to expectation and to ensure it remains appropriate.

(10) The Board shall ensure that operations of the internal audit function are carried out in accordance with international standards for professional practice of internal auditing as issued by the Institute of Internal Auditors in Malawi.

Risk  
management  
function

20. The Board shall ensure that an institution has an effective independent risk management function, under the direction of a chief risk officer or similar designation, with sufficient authority, independence, resources and access to the Board.

#### PART IV—ENFORCEMENT

Monetary  
penalties

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

(a) for an institution, up to K50,000,000; and

(b) for natural persons who are members of the Board or senior management, up to 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 a natural person or an institution that does not maintain an account with the Reserve Bank of Malawi, the natural person or the institution, as the case may be, shall pay the penalty through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within 10 working days after being notified by the Registrar.

Administrative  
penalties  
Cap. 44:01

22. In addition to the monetary penalty imposed in paragraph 21 (1), the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act and the Banking Act.

#### SCHEDULE

(par. 8 (n))

##### GUIDANCE ON BOARD OF DIRECTORS' PERFORMANCE EVALUATION

(1) The review and evaluation shall include, among other things, an assessment of the Board's—

(a) composition and independence;

(b) performance against its objectives at the beginning of the year;

(c) performance against the Board charter;

(d) effectiveness in the institution's strategic direction;

(e) response to problems and crises;

- (f) responsiveness to shareholders' and stakeholders' concerns;
  - (g) maintenance and implementation of the Board's governance principles;
  - (h) access to and review of information from management and the quality of such information; and
  - (i) opinion on coercion or influence from a dominant entity be it shareholder, other director or management that affects delivery on the Board.
- (2) The following are some of the questions that should be considered in a performance evaluation. They are however, by no means definitive or exhaustive. An institution should tailor questions to suit its own needs and circumstances.
- (3) The responses to these questions and others should enable boards to assess how they are performing and to identify how certain elements of their performance areas might be improved.

#### BOARD EVALUATION

- (1) Have any performance objectives been set for the Board?
- (2) How well has the Board performed against any performance objectives that have been set?
- (3) What has been the Board's contribution to the development, determination, testing and monitoring of the institution's strategy?
- (4) What has been the Board's contribution to ensuring robust and effective risk management?
- (5) Is the composition of the Board and its committees appropriate, with the right mix of knowledge and skills to maximize performance in light of current and future strategy? Are inside and outside the Board relationships working effectively?
- (6) How has the Board responded to any problems or crises that have emerged and could or should these have been foreseen?
- (7) Are the matters specifically reserved for the Board the right ones?
- (8) How well does the Board communicate with the management team, company employees and others? How effectively does it use mechanisms such as the Annual General Meeting and the annual report?
- (9) Is the Board as a whole up to date with latest developments in the regulatory environment and the market?
- (10) Has the Board developed or ensured that the institution has a workable succession plan?
- (11) How effective are the Board's committees? (Specific questions on the performance of each committee should be included such as, for example, their role, composition, attendance and interaction with the Board).
- (12) The processes that help underpin the Board's effectiveness should also be evaluated e.g.—
  - (a) is appropriate, timely information of the right depth and quality provided to the Board and is management responsive to requests for clarification or amplification? Does the Board provide helpful feedback to management on its requirements?

- (b) are sufficient Board and committee meetings of appropriate length held to enable proper consideration of issues? Is time used effectively?
- (c) are Board procedures conducive to effective performance and flexible enough to deal with all the eventualities?
- (d) are new directors properly oriented to the institution and their roles, responsibilities and expectations?

#### CHAIRMAN AND DIRECTORS' EVALUATION

- (1) In addition, there are some specific issues relating to the chairman, which should be included as part of an evaluation of the Board's performance e.g.—
  - (a) is the chairman demonstrating effective leadership of the Board?
  - (b) are relationships and communication with shareholders well managed?
  - (c) are relationships and communication with the Board constructive?
  - (d) are the processes for setting the agenda working? Do they enable Board members to raise issues and concerns?
  - (e) is the Company Secretary being used appropriately and to maximum value?
- (2) The Chairman and other members should consider the following issues and the individual concerned should also be asked to assess themselves. For each director—
  - (a) how well prepared and informed are they for Board meetings and is their attendance satisfactory?
  - (b) do they demonstrate willingness to devote time and effort to understand the company and its business and a readiness to participate in events outside the boardroom such as site visit?
  - (c) what has been the quality and value of their contributions at Board meetings?
  - (d) what has been their contribution to development of strategy and to risk management?
  - (e) how successfully have they brought their knowledge and experience to bear in the consideration of strategy?
  - (f) how effectively have they probed to test information and assumption? Where necessary, how resolute are they in maintaining their own views and resisting pressure from others?
  - (g) how effectively and proactively have they followed up their areas of concern?
  - (h) how effective and successful are their relationships with fellow Board members, the Company Secretary and Senior Management official? Does their performance and behaviour engender mutual trust and respect within Board?
  - (i) how actively and successfully do they refresh their knowledge and skills and are they up to date with the latest developments in areas such as corporate governance framework and financial reporting?
  - (k) the industry and market conditions?
  - (l) how well do they communicate with fellow Board members, senior management officials and others, for example shareholders? Are they able to present their views

convincingly yet diplomatically and do they listen and take on board the views of others?

- (m) do they or their affiliates have obligations to the institution that may affect their objectivity? In particular, are there any advances or loans to a director less than current?
- (n) do they have any litigation in or outside our jurisdictions that raise issues of fitness or propriety as director?

Made this 29th day of June 2018.

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

D. KABAMBE, PhD  
Registrar of Financial Institutions

GOVERNMENT NOTICE NO. 52

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (LICENSING OF DEVELOPMENT FINANCE INSTITUTIONS) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

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19. Administrative penalties  
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

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

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

“application fee” means licence processing fee for a development finance institution payable in Malawi Kwacha to the Registrar;

“applicant” means shareholders of a proposed development finance institution for which an application for a development finance institution licence has been submitted to the Registrar;

“Board” means the Board of directors of an institution;

“development finance institution” means a financial institution that provides medium and long term financing for economic development but is not a bank;

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

“institution” means the development finance institution;

“licence” means a development finance institution licence;

“principal shareholder” means a shareholder owning or controlling or more of the shares or voting rights of the institution;

“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; and

(d) branch managers of a development finance institution 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 development finance institutions;

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

(c) ensure that licence applications for development finance institutions are objectively and consistently evaluated in a timely manner.

#### PART III—DECLARATION OF A DEVELOPMENT FINANCE INSTITUTION AS A PRUDENTIALLY REGULATED FINANCIAL INSTITUTION

4. It is hereby declared that a development finance institution is a prudentially regulated financial institution for the purposes of section 2 of the Act.

Declaration of a development finance institution as a prudentially regulated financial institution

#### PART IV—PERMISSIBLE ACTIVITIES OF A DEVELOPMENT FINANCE INSTITUTION

5. An institution shall engage in, but not limited to, the following activities—

Permissible activities of an institution

(a) making available medium and long term finance for economic development;

(b) participating in equity in medium and long term investments;

(c) guarantee medium and long term loans and other financial obligations;

(d) mobilizing funds from sources within and outside the country to finance medium and long term investments;

(e) providing technical assistance and advisory services for the purpose of promoting sustainable economic development;

(f) buying and selling securities;

(g) studying and promoting medium and long term investment opportunities;

(h) administering special funds as may from time to time be entrusted to it; and

(i) engaging in such other activities as are customarily carried out by institutions.

#### PART V—APPLICATION PROCESS

Application  
procedures

6.—(1) A person wishing to conduct business as an institution shall apply to the Registrar for a licence through a written letter signed by a representative of the shareholders.

(2) The applicant of a 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) The Registrar may, where the information submitted by the applicant is not adequate, request the applicant in writing to submit additional information.

Eligibility

7.—(1) Only body corporates shall be eligible to apply for a licence.

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

Application  
fee

8. An application of a licence shall be accompanied by a non refundable application fee in form of a bank certified cheque of Malawi Kwacha equivalent of US\$10,000 payable to the Reserve Bank of Malawi

Paid-up capital

9. The paid-up capital for a proposed institution shall be Malawi Kwacha equivalent of US\$50,000,000.

Registration  
of capital

10.—(1) Where an applicant is a foreign investor, the applicant shall register the capital with the Reserve Bank of Malawi.

(2) Where the applicant is a foreign investor and a regulated financial institution, the applicant shall submit to the Registrar a letter from the home supervisory authority—

(a) authorizing the applicant to establish a proposed institution in Malawi;

(b) confirming that the foreign investor is not a shell company; and

(c) agreeing to exchange information with the Registrar.

Other  
regulatory  
requirements

11.—(1) The number of Board members for a proposed institution shall not be less than 9.

(2) The majority of Board members for a proposed institution shall be resident in Malawi.

(3) All directors, executive officers and senior management officials of a proposed institution shall not assume their respective roles without prior

approval of the Registrar.

#### PART VI—APPROVAL PROCESS

12. In considering an application for a licence, the Registrar shall take into account the following—

Approval  
criteria

(a) whether the applicant has submitted all the required information, including, where necessary, additional information requested by the Registrar;

(b) whether the applicant has fulfilled all the licensing requirements as stipulated in the Act and this Directive;

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

(d) the socio economic development impact the institution would have in the country;

(e) the applicant's business plan;

(f) sources of funding;

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

(h) the applicant's financial capacity to support the institution;

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

(h) the risk management systems to be adopted; and

(i) any other factors that the Registrar considers relevant.

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

Due  
diligence

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

Communica-  
tion of the  
Registrar's  
decision

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

(3) Where approval of a licence has not been granted, the Registrar shall communicate in writing to the applicant, the reason for the decision.

#### PART VII—POST APPROVAL PROCESS

15.—(1) A licensed institution shall commence its business within 12 months from the date of the issuance of its licence.

Commence-  
ment of  
business

(2) The Registrar shall revoke the licence of an institution that does not commence business stipulated in subparagraph (1).

(3) An institution shall maintain customer accounts to facilitate repayments of loans by customers.

(4) An institution shall not accept deposits from the public except for capital contributions towards project financing.

(5) An institution may open branches in any part of the country subject to approval from the Registrar.

Agreements

16. All management or technical assistance agreements involving an institution shall be subject to the approval of the Registrar.

Prohibition on equity investments

17.—(1) An institution shall not invest in or hold publicly traded equity shares.

(2) Notwithstanding subparagraph (1), an institution may participate in equity and similar ownership rights in long term investment projects

PART VIII—ENFORCEMENT

Monetary penalties

18. The Registrar shall impose the following monetary penalties for violations of this Directive—

(a) for institution up to K50,000,000; and

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

Administrative penalties

19. In addition to the monetary penalties imposed in paragraph 18, the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act.

FIRST SCHEDULE  
APPLICATION FORM

(para. 6 (2) )

SECTION I—PROPOSED INSTITUTION

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

1. Name. Please state name of the proposed institution.

.....

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 institution.  
.....  
.....  
.....
7. Executive Officers. State the names and occupation of executive officers identified for the institution.  
.....  
.....  
.....
8. Capital Structure and other forms of financing. Indicate the capital structure of the proposed institution—
  - (a) authorized capital K.....
  - (b) paid up capital K.....
  - (c) total number authorized shares K.....
  - (d) total number issued shares K.....
  - (e) other sources and amount (Please indicate) K.....  
.....  
.....  
.....
9. Shareholder List. (Provide a complete list of the initial shareholders of the proposed institution. Indicate the name of the shareholder, address and physical location, nationality, number of shares and percentage to be owned).  
.....  
.....  
.....
10. Debt. To what extent will borrowed funds be used by the initial shareholders, to purchase shares? Provide full details on the amounts, sources, collateral, and repayment terms for any such borrowed funds.  
.....  
.....  
.....
11. Activities. What type of activities does the proposed institution plan to engage in? Outline the proposed products and services to be offered by the new development finance institution.  
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- .....
- .....
- .....
12. Premises. Describe the premises and equipment to be utilized by the proposed institution 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 or strategic plan for the proposed institution covering a minimum of five 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.
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14. Memorandum and Articles of Association. (Please provide copies of the Memorandum and Articles of Association of the proposed institution and if applicable its by-laws).

15. Additional Information. (Please provide any other information regarding the proposed institution which may assist the Registrar in reaching a decision on the application).
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**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 institution. 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 residential address.
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- .....
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2. Position. State the position and/or title you will hold in the proposed institution.

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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 institution? 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 to be held. If you will be a director and will also have executive officer responsibilities within the proposed institution, indicate the nature and extent of such responsibilities.

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

(a) name and address of employer:.....

.....

(b) nature or type of business:

.....

(c) title and duties or responsibilities:.....

.....

(d) date employed:.....

(e) date and reason for leaving.....

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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 financial institution, and describe any relationship which now exists or will exist between the other institution and the proposed institution.

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9. Shareholding. If you are now or ever have been a principal shareholder of any other bank or, provide details thereof including any relationship which now exists or will exist between the other institution and the proposed institution.  
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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.  
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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.  
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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 outside Malawi, within the last 7 years? If yes, provide details.  
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13. Investigations. Have you ever been or are you now subject to an investigation in Malawi or outside Malawi, by or at the instigation of any governmental department or agency, professional association, or other regulatory body? If yes, provide details.  
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14. Judgement. Have you within the last seven years, failed to satisfy within 1 year a judgement of debt under a court order in Malawi or outside Malawi ? If yes, provide details.  
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15. Fraud. Have you ever been adjudged by a court, in Malawi or outside Malawi, to be

civilly liable for fraud, malfeasance, or any other misconduct? If yes, provide details.

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16. Bankruptcy. Have you been adjudged bankrupt by a court, in Malawi or outside Malawi, or has a bankruptcy petition ever been served on you within the last 7 years, have made any compromise arrangement or otherwise failed to satisfy your creditors in full within the last 10 years? If yes, provide details.

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17. Receivership. Has a receiver or an administrator of any of your property been appointed within the last 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.

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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 outside Malawi, 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.

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19 How many shares of stock in the proposed institution are or will be registered in your name or in the name of a related party? State the name in which the shares will be registered and the class of shares if other than common shares

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20. Beneficial Interest. How many shares of stock in the proposed institution, 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 in which the shares will be registered and the nature of the beneficial interest.

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21. Trustee or Nominee. Will you or any party related to you hold shares in the proposed institution as a trustee or nominee? If yes, provide details.

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22. Assignments or Pledges. Are, or will any of the shares described in response to Questions 19 to 21 be equitably or legally assigned or pledged to any other party? If yes, provide details.

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23. Voting Authority. What proportion of the voting power at any general meeting of the proposed institution, or of any other organization of which the proposed institution is a subsidiary, will you be entitled to vote or exercise control over? Provide details of such voting authority or control.

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24. Indirect Authority. If the exercise of voting power at any general meeting of the proposed development finance institution, or of any other organization of which the proposed institution 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.

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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.

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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.

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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.

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7. Auditors and Bankers. State the names and addresses of the IS's auditors and primary bankers during the past 5 years.

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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.

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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 institution.

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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.

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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.

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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 outside Malawi, within the last 7 years? If yes, provide details.

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

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

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

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

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

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18. Receivership. Has a receiver or an administrator of any property of the IS been appointed within the last 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.

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19. Liquidation:

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

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(b) Compulsory. Has a petition for the compulsory liquidation of the IS been issued within the last 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.

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20. Winding-up. Has any organization with which the IS is or has been affiliated, in Malawi or outside Malawi, ever been wound up or ceased trading while the IS was associated with the organization 1 year after the IS ceased being associated with the organization? If yes, provide details.

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21. Shares. How many shares of stock in the proposed institution are or will be registered in the name of the IS or in the name of a related party? State the name in which the shares will be registered and the class of shares if other than common shares.

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22. Beneficial Interest. How many shares of stock in the proposed institution 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 in which shares will be registered and the nature of the beneficial interest.

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23. Trustee and Nominee. Does or will the IS or any party related to it hold shares in the proposed institution as a trustee or nominee? If yes, provide details.

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24. Assignments and Pledges. Are or will any of the shares described in response to Questions 21 to 23 be equitably or legally assigned or pledged to any other party? If yes, provide details.

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25. Voting Authority. What proportion of the voting power at any general meeting of the proposed institution, or of any other organization of which the proposed institution 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.

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26. Indirect Control. If the exercise of voting at any general meeting of the proposed institution, or any other organization of which the proposed institution 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.

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27. Audited Accounts. Provide audited accounts for the past 3 years.

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28. Acquisition Debt. If borrowed funds will be used to purchase shares of stocks in the proposed institution, provide a statement showing the amount, source, collateral and repayment terms of the borrowed funds.

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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 A DEVELOPMENT FINANCE INSTITUTION 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 institution 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.

<i>Name</i>	<i>Signature</i>	<i>Title/Position</i>
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Date: .....

SECOND SCHEDULE (para. 6 (2))

INFORMATION REQUIREMENTS FOR APPLICANTS FOR DEVELOPMENT FINANCE INSTITUTION LICENCES

Applications for an institution 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 Malaŵi  
P.O. Box 30063  
Capital City, Lilongwe 3  
Malaŵi

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

The Director  
Financial Sector Regulation Department  
Reserve Bank of Malaŵi  
P.O. Box 565  
Blantyre  
Malawi

1. Legal Structure

- 1.1. The corporate name to be used by the proposed institution for the purpose of carrying on its business.
- 1.2. Location of the proposed institution's head office in Malaŵi.
- 1.3. Location of all other offices (branches, agencies, representative offices) planned for the new institution during the first five years of its operation.
- 1.4. Legal status of proposed institution.
- 1.5. Copy of the certificate of incorporation of the proposed institution.
- 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 an institution.
- 1.8. Valid tax Compliance certificate.
- 1.9. The capital structure of the proposed institution 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 institution (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 institution.
- 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 an institution licence.
- 1.13. If the proposed development finance institution will be part of a group—
  - 1.13.1. A diagram or chart of the group structure showing the proposed institution’s position within the group, relationships within the group and percentage holdings, and the lines of authority and reporting from the institution to the parent.
  - 1.13.2. Complete information on all entities within the group, including name, address, type of entity, principal shareholders, directors, and senior management officials.
  - 1.13.3. Business or other activities of all entities within the group.
  - 1.13.4. 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 institution) and other similar investments (i.e., a shell company).
- 1.14. State whether any applicant already owns or controls at least 10% of the shares of one or more other banks in any other jurisdiction that will not be connected through a corporate link to the proposed new institution.

## 2. Ownership Structure

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

- 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 3 consecutive years.
  - 2.5.3. Identification of external auditors and bankers during the past 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 institution, 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 institutions 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 3 years immediately preceding the date of application, including the current period if available, and audited if available. If proposed institution 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 institution, 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, 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 institution are anticipated to be used to service the debt.

- 2.10. Identification of all persons who would be “related parties” of the proposed development finance institution as a result of the applicant’s stock ownership in the institution.
- 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 the following—
  - (a) name;
  - (b) address;
  - (c) type of entity; and
  - (d) 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; and
  - (f) Statement of Position and Statement of Comprehensive Income for the 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
- 2.13.1. 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:  
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- 2.13.2. **Litigation.** Is the applicant engaged or expecting to be engaged in litigation, in Malaŵi or outside Malawi, which may have a material impact on the person’s financial condition?
- 2.13.3. **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 Malaŵi or outside Malawi?
- 2.13.4. **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 Malaŵi or outside Malawi?
- 2.13.5. **Investigation.** Is the person, or has the person ever been, subject to an investigation in Malaŵi or outside Malawi, by or at the instigation of any

governmental department or agency, professional association, or other regulatory body?

- 2.13.6. Judgment. Has the applicant ever failed to satisfy within 1 year a judgment of debt under a court order in Malawi or outside Malawi?
- 2.13.7. Fraud. Has the applicant ever been adjudged by a court, in Malawi or outside Malawi, 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?
- 2.13.8. Bankruptcy. Has the applicant ever been adjudged bankrupt by a court, in Malawi or outside Malawi? 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?
- 2.13.9. 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.
- 2.13.10. 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.
- 2.13.11. Winding-Up. Has any body corporate, partnership, or unincorporated institution with which the applicant was associated as a principal 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 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 institution 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:  
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  - 2.14.2. Beneficial Interest. In how many shares of the proposed institution 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 institution as a trustee or nominee? If yes, provide details.....  
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- 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.....  
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- 2.14.5. Voting authority. What proportion of the voting power at any general meeting of the proposed institution, or of any other organization of which the proposed institution is a subsidiary, will the applicant be entitled to vote or exercise control over? Provide details.....  
 .....  
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- 2.14.6. Indirect Authority. If the exercise of voting power at any general meeting of the proposed institution, or of any other organization of which the proposed institution 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.....  
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- 2.15. For foreign investor 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 is "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;
  - (b) is fully meeting all capital requirements; and
  - (c) no formal supervisory measures are currently in force or pending against the applicant.
- 2.15.1.2. The home country supervisor has given written consent or a statement of "no objection" for the applicant to establish a subsidiary institution in Malaŵi subject to the receipt of licence to conduct business by the Registrar.

- 2.15.1.3. The applicant and its subsidiary institution in Malaŵi) is, and will be, supervized 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'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.
- 2.15.3. The most recent audit report (including management letter).
- 2.15.4. An organization chart of the applicant showing lines of authority and reporting from the subsidiary institution in Malaŵi to the parent institution, and specifically identifying the parties within the applicant who are responsible for the sound operation and financial condition of the proposed subsidiary institution in Malaŵi.
3. Management Structure:
- List all proposed members of the Board, 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.....
  - 3.2. 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 institution, if any.....
  - 3.6. Position with the proposed institution: 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 3 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 or financial institution located anywhere in the world. State whether, during such time period, the 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 outside Malawi, 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 Malaŵi or outside Malawi?
  - 3.11.3. Conviction. Has the person ever been convicted of any offense, or been served a petition for an administrative order or the substantial equivalent thereof in Malaŵi or outside Malawi?
  - 3.11.4. Investigation. Is the person, or has the person ever been, subject to an investigation in Malaŵi or outside Malawi, 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 1 year a judgment of debt under a court order in Malaŵi or outside Malawi,?
  - 3.11.6. Fraud. Has the person ever been adjudged by a court, in Malaŵi or outside Malawi, 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 outside Malawi? 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 shareholder, director, executive officer or senior management official in Malawi or outside Malawi, 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 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 3 years of operation of the new institution 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 institution and to monitor the institution's business and condition during its first 5 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 institution including the location of any branches or other offices. Describe and provide a diagram of the development finance institution's corporate structure and include all entities within the structure (parents, subsidiaries, companies under common control, and other affiliates), if the institution will be part of a group. Briefly discuss how the organizing group (the applicants) came together and the reasons for wanting to start an institution.

Identify the key strategic goals of the proposed development finance institution. Provide a basic statement on the nature and scale of the proposed institution's business, and arrangements for its management.

##### 4.1.2. Market Analysis

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

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

A copy of the feasibility study of the financial sector upon which the decision was made to commence business as an institution 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 institution. Show the relationships between the Board, 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, 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 executive officers who will effectively manage the new development finance institution.

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 institution as opposed

to a similar transaction with a person or entity not an "insider" or "related party."

Describe the operating systems of the institution including—

- (a) corporate policies and procedures;
- (b) accounting standards;
- (c) books of account and record-keeping;
- (d) reporting to management, Board, shareholders, and the Registrar;
- (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 development finance institution.

Address staff projections, including recruitment and training.

#### 4.1.5. Development finance institution Business

Discuss the types and scale of institution business envisaged. This presentation should be supported by information which clearly shows the proposed new institution'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 borrowing activity;
- (c) method for pricing loans;
- (d) proposed off-balance sheet activities; and
- (e) agency arrangements.

#### 4.1.6. Capital

Describe plans for financing growth, internally and externally, over the first five years of operation. Describe all additional sources of capital that are available should the need arise in the future ensuring that the proposed institution is adequately capitalized at all times.

#### 4.1.7. Risk Management

Describe the analysis conducted of the risks associated with the sectors to be served by the proposed institution. 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 foreign exchange rate risk;
- (f) price risk;
- (g) operational risk;
- (h) compliance risk;
- (i) reputational risk;
- (k) money laundering and terror financing risk;
- (l) country and transfer risk; and
- (m) all other risks to which the proposed institution 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 institution. 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.

#### 4.1.9. Business Plan Monitoring

Discuss the methods that the Board will use to regularly monitor the institution’s performance under the business plan and management’s adherence to the plan for the first 5 years of operation.

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

## THIRD SCHEDULE

(para. 14.(2) )

## REGISTRAR OF FINANCIAL INSTITUTIONS FINANCIAL SERVICES ACT

## LICENCE TO CONDUCT BUSINESS AS A DEVELOPMENT FINANCE INSTITUTION

A LICENCE is hereby granted to—

.....Whose office address is  
 .....

And authorizes the said development finance institution to conduct and carry on business as a development finance institution in Malawi. This licence is issued subject to the provisions of the Act.

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

LICENCE NO. ....

Made this 29th day of June 2018..

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

D. KABAMBE, PhD  
Registrar of Financial Institutions

GOVERNMENT NOTICE No. 53

## FINANCIAL SERVICES ACT

(CAP.44:05)

FINANCIAL SERVICES (CREDIT RISK MANAGEMENT FOR DEVELOPMENT  
FINANCE INSTITUTIONS) DIRECTIVE, 2018

## ARRANGEMENT OF PARAGRAPHS

## PARAGRAPH

## PART I—PRELIMINARY

1. Citation
2. Interpretation

## PART II—OBJECTIVES

3. Objectives

## PART III—REQUIREMENTS

4. Board responsibility
5. Executive officer's responsibility
6. Lending criteria
7. Funding records
8. Loan portfolio audit
9. Independence of the risk function
10. Re-Classification of non-performing credits
11. Review of credit facilities

## PARAGRAPH

12. Write-offs
13. Income recognitions
14. Loan loss provisions
15. Accounting treatment for provisioning of losses
16. Restrictions

## PART IV—ENFORCEMENT

17. Monetary penalties
18. Administrative penalties

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 (Credit Risk Management for Development Finance Institutions) Directive, 2018.

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

“book value” means the value of an asset as stated on the books of accounts of the institution or the amount at which an asset is recognized in the statement of financial position;

“classification categories” means classification categories of standard, sub-standard, doubtful and loss as outlined in this Directive;

“fair value” means the amount for which an asset could be exchanged between knowledgeable and willing parties in an arm’s-length transaction and not in a forced sale;

“group of related borrowers” means a group of debtor companies or enterprises operating under common control of an individual or of a group of related individuals, or of a corporate body acting as a controlling party as defined in the Act;

“institution” means a development finance institution;

“large exposure” means a direct or an indirect exposure, of an institution to any person or group of related parties equal to or exceeding 10% of core capital of the institution;

“loan loss reserve” means a provision arising from differences in the amounts of specific provisions on identified losses from using prudential guidelines and International Financial Reporting Standards (IFRS);

“long term credit facility” means a credit facility with a repayment period of more than 60 months;

“medium term credit facility” means a credit facility with a repayment period of not less than 12 months but not more than 60 months;

“non-performing credit facility” means a credit facility which is

classified in one of the following asset categories: substandard, doubtful or loss;

“short term credit facility” means a credit facility with a repayment period of not more than 12 months; and

“specific provision” means the amount of reserves set aside to cover bad debts and computed as the difference between the book value of the credit facility and the estimated recoverable amount.

#### PART II—OBJECTIVES

3. The objectives of this Directive are to ensure that an institution— Objectives
- (a) enhances its credit risk management practices;
  - (b) complies with capital adequacy requirements particularly with regard to impairment of credit facilities and recognition of income and expenses;
  - (c) properly identifies and makes provisions on non-performing credit facilities; and
  - (d) presents statements of financial position and statements of comprehensive income that properly reflect the financial impact of non-performing credit facilities.

#### PART III— REQUIREMENTS

4. The Board or a credit committee of the Board of an institution shall— Board  
responsibility
- (a) approve all credit facilities;
  - (b) adopt and ensure implementation of a written policy covering, among other things, the following—
    - (i) approval of credit facilities and their timelines;
    - (ii) environmental impact assessments for applicable projects;
    - (iii) interest rate risk management;
    - (iv) syndication or co-financing;
    - (v) guarantee arrangements by the institution itself or by other financiers;
    - (vi) write-offs of loss credit facilities;
    - (vii) collection procedures, including on past due credit facilities;
    - (viii) sectors of lending the institution may be engaged in;
    - (ix) lending in foreign currency and foreign exchange risk management;
    - (x) restructuring of credit facilities;
    - (xi) pricing of credit facilities; and
    - (xii) practices relating to various kinds of collateral and valuation;

(c) determine primary economic impact measures and acceptable economic rate of return for the institution;

(d) determine, adopt and ensure implementation of sound risk management policies with respect to classification and provisioning on non-performing credit facilities; and

(e) review and approve the policies on an annual basis or as and when there are applicable regulatory changes.

Executive  
officer's  
responsibility

5.—(1) An executive officer shall—

(a) put in place an analytical framework for assessing credit quality;

(b) have written valuation methods for determining fair value of collateral and their impact on the capital and earnings of the institution;

(c) submit periodic reports to the Board about the institution's loan portfolio and projects under implementation;

(d) ensure that the institution has robust management information system; and

(e) ensure adherence to the requirements of this Directive.

(2) All documentation in subparagraph (1) shall be made available to the Registrar during on site examination or when requested.

Lending  
criteria

6. An institution shall grant a credit facility to an applicant where the application of the credit facility meets the following conditions—

(a) be commercially viable;

(b) ability to service the loan;

(c) creates employment;

(d) generates foreign currency; and

(e) generates tax revenue.;

(2) An institution shall obtain a credit report of the applicant from a licensed credit reference bureau prior to granting a credit facility.

Funding  
records

7. An institution shall maintain and update its records of committed and undisbursed lines of credit.

Loan portfolio  
audit

8. The internal audit function shall review the institution's loan portfolio at least on a yearly basis.

Independence  
of the risk  
function

9.—(1) The risk function shall be independent of the business and credit underwriting functions.

(2) The risk function shall perform quarterly review of the institution's loan portfolio.

Classification  
of non-  
performing  
credits

10. An institution shall classify credit facilities in the following categories—

(a) Standard – A credit facility shall be classified as standard if—

(i) it is current;

(ii) repayment installments are not more than 30 days overdue for short term credit facility; and

(iii) repayment installments are 31 to 90 days overdue for medium and long term credit facility;

(b) Special Mention – A credit facility shall be classified as special mention if—

(i) repayment installments are 31 to 90 days overdue for short term credit facilities; and

(ii) repayment installments are 91 to 180 days overdue for medium and long term credit facilities;

(c) Substandard – A credit facility shall be classified as sub-standard if—

(i) repayment installments are 91 to 180 days overdue for short term credit facilities; and

(ii) repayment installments are 181 to 365 days overdue for medium and long term credit facilities;

(d) Doubtful – A credit facility shall be classified as doubtful if—

(i) repayment installments are 181 to 365 days overdue for short term credit facilities; and

(ii) repayment installments are 366 to 746 days overdue for medium and long term credit facilities; and

(e) Loss – A credit facility shall be classified loss if—

(i) repayment installments are more than 365 days overdue for short term credit facilities; and

(ii) repayment installments are more than 746 days for medium and long term credit facilities.

11.—(1) An institution shall review all credit facilities on a quarterly basis for purposes of credit classification and for determining whether the credit facility has suffered a decline in, or impairment to, value. Review of credit facilities

(2) Where between formal quarterly reviews, the institution establishes a significant deterioration in the quality of an individual credit or in a material part of the credit portfolio, the institution shall—

(a) promptly assign the credit facility to a new classification category that accurately reflects the status of the credit facility; and

(b) make applicable provisions to the income statement.

(3) An institution shall review each large exposure on an individual item basis.

12. An institution shall write off all credit facilities that were classified as loss, from its books in the subsequent quarter preceding the one in which the loss classification was made. Write-offs

13.—(1) An institution shall place all non-performing and value-impaired credit facilities on non-accrual status and the institution shall immediately— Income recognition

(a) cease reflecting in its income statement the accrual of interest;

- (b) reverse uncollected interest which has previously been accrued;  
and  
(c) not classify interest as income except when received in cash.

(2) An institution shall place a non-performing credit facility on non-accrual status regardless of any collateral held against it.

(3) An institution shall restore a credit facility which had been placed on non-accrual status to accrual status only when the borrower has made all payments of past-due principal and interest.

Loan loss provisions

14. An institution shall determine the amount of the provision for loan loss impairment in the manner set out in the Schedule hereto.

Accounting treatment for provisioning of losses

15.—(1) Where provisions required under this Directive are higher than impairment charges computed under International Financial Reporting Standard (IFRS) the excess in provisions shall be treated as an appropriation of retained earnings to loan loss reserve.

(2) The loan loss reserve in subparagraph (1) shall not be treated as capital where it is no longer available to meet unidentified losses which may subsequently arise elsewhere in the credit portfolio.

(3) An institution shall report loan loss reserves separately on the call report as prescribed by the Registrar.

(4) An institution may only credit the loan reserve in subparagraph (1) back to retained earnings after recoveries have been made on non-performing credit facilities or with prior approval of the Registrar.

Restrictions

16.—(1) An institution shall not restructure, renegotiate, roll-over or modify the terms of a credit facility unless approved by the Board.

(2) Credit facilities to a single borrower or group of related borrowers shall not exceed 25% of the institution's core capital without prior approval by the Registrar.

(3) An institution shall not extend any overdraft credit facilities.

#### PART IV—ENFORCEMENT

Monetary penalties

17. The Registrar may impose the following monetary penalties for violation of the provisions of this Directive—

(a) for the institution, up to K50,000,000; and

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

(2) An institution that fails to comply with the provisions of this Directive shall have its financial statements qualified by its external auditor.

Administrative Penalties

18 In addition to the monetary penalties imposed in paragraph (17), the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act.

SCHEDULE <span style="float: right;">(para. 14)</span>		
Classification Category	Repayment Status	Provision Requirement
Standard	Short term 0-30 days overdue Medium and long term: 31-90 days	0%
Standard	Short term: 91 days overdue Medium and long term: 91-180 days	5%
Standard	Short term: 91 days overdue Medium and long term: 181-365 days	20%
Doubtful	Short term: 91 days overdue Medium and long term: 366-746 days	50%
Loss	Short term: 91 days overdue Medium and long term: over 746 days	100%

Made this 29th day of June 2018.

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

D. KABAMBE, PhD  
*Registrar of Financial Institutions*

GOVERNMENT NOTICE No.54

### FINANCIAL SERVICES ACT

(CAP. 44:05)

#### FINANCIAL SERVICES (CAPITAL ADEQUACY FOR DEVELOPMENT FINANCE INSTITUTIONS) 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. Mandatory reserve
7. Equity ownership
8. Record keeping
9. Submission of capital adequacy Schedule

PART IV—ENFORCEMENT

10. Administrative penalties
11. Monetary penalties

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 Citation for Development Finance Institutions) Directive, 2018.

## Interpretation

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

“Board” means the Board of directors of an institution;

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

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

“core capital (tier 1)” means the sum of the following—

(a) paid-up share capital;

(b) share premium;

(c) retained profits (prior years);

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

(d) less, investment in unconsolidated financial institutions;

“general reserve” means a mandatory non-distributable reserve created by transfer of a specified proportion of annual profits of the development finance institution;

“institution” means the development finance institution;

“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;

“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 capital (tier 2); and

“supplementary capital” means the sum of the following—

(a) revaluation reserves;

(b) subordinated debt;

(c) general provisions; and

(d) any other capital instrument not qualifying as core capital (tier 1).

## Objectives

## PART II—OBJECTIVES

3. The objectives of this Directive are to—

(a) ensure that institutions have an adequate cushion of capital to absorb losses;

(b) protect the interests of creditors and the general public;

(c) ensure that institutions maintain internationally recognized prudent capital requirements; and

(d) enhance credibility and self-discipline in the management of institutions.

## PART III—CAPITAL REQUIREMENTS

4. The Board shall—
- (a) ensure that an institution 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 institution'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 institution.
- 5.—(1) An institution shall maintain a paid-up capital of Malawi Kwacha equivalent to USD50,000,000 or a higher amount as the Registrar may determine.
- (2) An institution shall maintain a minimum core capital ratio of 15% of the capital requirement basis.
- (3) Deductions in unconsolidated financial institutions shall be 50% from core capital (tier 1) and 50% from supplementary capital (tier 2).
- (4) Where an institution is required to make deductions from supplementary capital (tier 2) but it does not have sufficient capital to make that deduction, the institution shall deduct the shortfall from core capital (tier 1).
- (5) Long term debt to equity ratio for an institution shall not exceed 10 to 1.
- (6) For an institution to have met the capital requirements of this paragraph, it must be in compliance with all the requirements of the Financial Services (Credit Risk Management for Development Finance Institutions) Directive, 2018.
- (7) The Registrar may raise capital requirements for a specific institution where the supervisory review process reveals existing risks in the institution warranting the increase.
6. An Institution shall have a policy on general reserve which requires transfer of at most 25 % of the institution's annual profits.
- 7.—(1) Equity ownership in an entity that is not a financial subsidiary of the institution shall not exceed 35% of that entity's equity.
- (2) The sum of all equity investments shall not exceed 50% of the institution's total capital.
8. An institution shall maintain adequate records, including daily balance sheets and periodic statements of income and expense for proper assessment of capital adequacy.
- 9.—(1) An institution shall on a monthly basis submit to the Registrar a Capital Adequacy Schedule in the format prescribed by the Registrar.
- (2) The Registrar shall require adjustments to capital calculations with

Board  
responsi-  
bilitiesCapital  
adequacy  
requirementsMandatory  
reserveEquity  
ownershipRecord  
keepingSubmission  
of Capital  
Adequacy  
Schedule

13th July, 2018

ct to increased provisions or interest suspension and reversals if an  
tion is found not to be in compliance with this Directive or the Financial  
ces (Credit Risk Management for Development Finance Institutions)  
tive, 2018.

PART IV—ENFORCEMENT

10. Where the capital ratios of an institution fall below the capital ratios  
ribed in this Directive, shareholders shall inject additional capital in the  
nt prescribed by the Registrar within the prescribed timeframe.

11.—(1) Notwithstanding paragraph 10, the Registrar shall impose the  
wing monetary penalties for violation of this Directive—

(a) for development finance institutions, up to K50,000,000; and

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

h day of June 2018.

D. KABAMBE, PhD

*Registrar of Financial Institutions*

/03/04)

VICE No. 55

FINANCIAL SERVICES ACT

(CAP. 44:05)

RVICES (CORPORATE GOVERNANCE REQUIREMENTS FOR  
DPMENT FINANCE INSTITUTIONS) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PART I—PRELIMINARY

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PART II—OBJECTIVE

PART III—REGULATORY REQUIREMENTS

ns of shareholders

ns on shareholders

urter

powers and responsibilities

ns on shareholding

oval of the Registrar for appointments

oper eligibility criteria

## PARAGRAPH

11. Balance of power on the Board
12. Removal of Board directors
13. Liability of directors and senior management officials
14. Board composition
15. Board chairperson
16. Restrictions on directors
17. Restrictions on independent directors
18. Board committees
19. Internal audit
20. Risk function
21. Finance function
22. Approval attestation
23. Annual accounts and external audit
24. Submission of call reports
25. Submission of other information and data
26. Record keeping

## PART X—ENFORCEMENT

27. Monetary penalties
28. Administrative penalties

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

## PART I—PRELIMINARY

1. This Directive may be cited as the Financial Services (Corporate Governance for Development Finance Institutions) Directive, 2018. Citation

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

“affiliate” means any entity, corporate or unincorporated where 5 or more of any class of its voting shares or other voting participation is directly or indirectly owned or controlled by that institution or is held by the institution with power to vote;

“Board” means the Board of directors of an institution;

“conflict of interest” means a situation in which a person has direct or indirect private or personal interest in a matter which is sufficient to directly or indirectly influence or has the potential to directly or indirectly influence the objective exercise of his official or professional duties or the making of impartial judgment over the same or related matter;

“control” has the meaning ascribed to it in International Accounting Standards and includes the power to govern the financial and operating policies of the institution to obtain benefits from its activities. The existence of control is generally evidenced by either of the following—

(a) direct or indirect ownership of more than 50% of voting power;

(b) power over more than 50% of voting rights or power to cast the majority votes at a meeting of the Board or shareholders;

(c) power to govern the financial and operating policies of the institution;

(d) power to appoint or remove the majority of the members of the Board;

“executive director” means a member of the Board who is involved in the day-to-day management of an institution and is in full time salaried employment of the institution, its parent company or any of its subsidiaries or affiliates;

“executive officer” means an officer at the most senior levels of management of an institution, whether or not the officer is director, who effectively manages the affairs of institution;

“general reserve” means a mandatory non-distributable reserve created by transfer of specified proportion of annual profits of the institution;

“group” means a group consisting two or more institutions that have common controlling party and the body corporate of which any of those institutions is a controlling party;

“independent director” means a director that—

(a) is not a shareholder of the institution, either directly or indirectly;

(b) is not related or affiliated to a shareholder that has the ability to control or influence management;

(c) has not been employed by the institution, its subsidiary or affiliate in any executive capacity for the past two years;

(d) is not a member of the immediate family of an individual who, in any of the past two years, is or has been, employed by the institution or the group in an executive capacity;

(e) is not a professional advisor to the institution or the group other than in a director capacity;

(f) has no significant contractual relationship with the institution or the group; or

(g) is free from any business or other relationship which could be seen to materially interfere with the individual’s capacity to act in an independent manner;

“Institution” means the development finance institution;

“non-executive director” means a member of the Board who is not

involved in the day to day management of an institution and is not in full time salaried employment of the institution, its parent company or any of its subsidiaries or affiliates;

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

Act No 14 of  
2017

“Registrar” means Registrar of Financial Institutions appointed under the Act;

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

“senior management official” means—

(a) an executive officer;

(b) head of department or function;

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

(d) any other official that the Registrar may determine; and

“significant” means 5% of the value of the transaction conducted with the institution.

#### PART II—OBJECTIVE

3. The objective of this Directive is to prescribe minimum corporate governance requirements for an Institution. Objective

#### PART III—REGULATORY REQUIREMENTS

4. A shareholder of an institution shall—

Obligations  
of  
shareholders

(a) jointly and severally protect, preserve and exercise supreme authority over the institution;

(b) ensure that the Board is held accountable and responsible for the efficient and effective governance of the institution;

(c) ensure that only competent and reliable persons with appropriate knowledge, skills and experience are appointed to serve on the Board;

(d) change the composition of a Board that does not perform to expectations or in accordance with the mandate of the institution;

(e) ensure that the Board adheres to the objectives for which the institution was established;

(f) appoint competent external auditors; and

(g) approve director’s remuneration or fees during annual general meetings or extraordinary meetings.

5. A shareholder or any person affiliated to a shareholder shall not be— Restrictions  
on  
shareholders

(a) the chairperson of the Board; and

(b) a member of the audit committee of the Board .

Board charter

6.—(1) The Board shall have a formal charter which shall, at a minimum—

(a) outline the Board's responsibility for the formulation and adoption of strategic plans;

(b) provide for the monitoring of operational performance of management;

(c) document the procedure for the selection, orientation and evaluation of directors;

(d) provide for the criteria for managing conflict of interest among directors of the institution; and

(e) provide criteria for managing exposures to politically exposed persons or their related parties.

(2) The Board shall at a minimum, meet on quarterly basis.

Directors' powers and responsibilities

7. The Board shall—

(a) individually and jointly be accountable for the affairs of the institution;

(b) determine appropriate policies and processes to ensure the integrity of the institution's risk management practices, internal controls and communications policy;

(c) be responsible for monitoring of management in the implementation of the institution's plans and strategies;

(d) provide strategic direction to the institution;

(e) approve credit facilities referred to it by the credit committee;

(f) appoint and remove senior management officials of the institution;

(g) allocate time and resources for directors to acquire and retain a sound understanding of their responsibilities;

(h) ensure the development and implementation of the organization's succession plan;

(i) ensure that the institution complies with all relevant laws, regulations and policies;

(j) have access to all the institution's information, records, documents and property;

(k) set and approve limits of authority for management;

(l) ensure that senior management implements projects that are in line with the objectives of the institution;

(m) have a clear policy for setting remuneration of executive and non-executive directors at levels that are fair and reasonable in a competitive market for the skills, knowledge, experience, nature and size of the institution;

(n) have a policy on general reserve which requires transfer of maximum of 25% of the institution's annual profits; and

(o) have a funds and investment policy for adequate management of liquidity.

8. An institution 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.

Restrictions  
on  
shareholding

9.—(1) A person shall not serve as a director or senior management official of an institution without prior approval of the Registrar.

Prior  
approval of  
Registrar

(2) The criteria for appointing an executive officer of the institution shall be based on relevant professional qualifications, experience and technical knowledge.

10. The following persons shall not be eligible for appointment or serve as shareholders, directors, or senior management officials of an institution—

Fit and proper  
eligibility  
criteria

(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 a felony or 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 on the grounds of professional misconduct;

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

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

(i) a salaried employee of Government;

(j) a politically exposed person;

(k) a minor or a person under legal disability;

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

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

(n) a person whose education, technical knowledge and

professional experience is not directly relevant to development finance or banking business;

(o) a person who has been a controlling party, shareholder, director, executive officer or senior management official of a bank or other financial institution which 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;

(p) a director whose attendance of Board meetings is unsatisfactory or who misses 3 consecutive Board meetings without valid reasons;

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

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

(s) a person who has—

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

(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 to the institution 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 institution that exceeds the 10% of the capital and reserves of the institution;

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

(w) a person who was removed or dismissed from a bank or a licensed financial institution; and

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

Act No. 14 of  
2017

Balance of  
power on the  
Board

11. The Board shall have an appropriate balance of power and authority, such that an individual or a group of individuals shall not dominate the Board's decision making process.

Removal of  
Board of  
directors

12. The chairperson shall recommend to shareholders, the removal of a Board director who does not contribute effectively to the Board.

13. A director or a senior management official shall be held liable for false or misleading statements to the Board, the Registrar or other stakeholders. Liability of directors and senior management officials
14. The Board shall— Board composition
- (a) have a minimum of 9 directors, the majority of which shall be independent or non-executive directors; and
- (b) have appropriate balance of skills, knowledge and experience.
15. The chairperson of the institution shall be an independent and non-executive director. Board chairperson
- 16.—(1) A director of an institution shall not— Restrictions on directors
- (a) simultaneously hold the roles of Board chairperson and chief executive officer or its equivalent at the same time;
- (b) be a member of more than 6 other Boards, unless where the Board is for an entity that is not registered or incorporated under the Companies Act; Act No 15 of 2013
- (c) serve on the Board of another financial institution in Malawi; and
- (d) own shares directly or indirectly in a credit reference bureau.
- (2) A director who contravenes subparagraphs 1 (a) to (d) shall cease to be eligible as a director of the institution.
17. An independent director shall not be considered independent after serving on the Board of the institution for a period of more than 9 years. Restriction on independent directors
- 18.—(1) An institution shall, at a minimum, have the following committees in place— Board and Management Committees
- (a) Audit Committee of the Board;
- (b) Risk Management Committee of the Board;
- (c) Credit Review Committee; and
- (d) the Nominations, Appointments and Remuneration Committee.
- (2) The Board shall ensure that proceedings of committee meetings are properly minuted and are available to the Registrar upon request.
- (3) All Board committees shall be chaired by a non-executive director.
- (4) The Board chairperson shall not be a member of any subcommittee, except with prior approval of the Registrar.
- (5) A member of the audit committee of the Board or Risk Committee of the Board shall not sit in any other committees of the Board.
- (6) The chief executive officer shall not be a member of the Audit Committee of the Board.
- (7) An institution shall have an Asset Liability Management Committee that shall meet monthly.

Internal audit committee

19—(1) The Head of internal audit shall have unrestricted access to the Audit Committee.

(2) The Board shall ensure that internal audit recommendations are dealt with in a timely manner and that corrective actions are taken on deficiencies noted in the audit.

(3) The Board shall ensure that the internal audit function is adequately resourced and that the annual audit work plan is timely approved.

(4) Non-executive directors of the Board shall, in the absence of management, meet annually with the institution's external auditors and the head of internal audit.

(5) The audit committee of the Board shall approve the appointment, resignation or dismissal of the head of internal audit.

(6) The audit committee of the Board shall review, at least annually, the system of internal controls to determine whether it works to expectation and to ensure it remains appropriate.

(7) A head of the internal audit function of an institution shall be a registered member of the respective audit profession body in Malawi.

Risk function

20. The Board shall ensure that the risk function is independent and is adequately resourced.

Finance function

21. A head of the accounting or finance functions of an institution shall be an accredited member of the respective professional body in Malawi.

Approval attestation

22. The Registrar shall not approve a head of the accounting or finance or a head of the internal audit function of an institution unless the institution provides written attestation from the respective professional body satisfying requirements of paragraphs 19 (7) and 21.

Annual accounts and external audit

23.—(1) The Board shall ensure that accounts of the institution are prepared and kept fully in accordance with international accounting standards.

(2) An institution shall appoint an external auditor whose appointment shall be subject to Registrar's approval.

(3) The institution shall within 3 months after the close of its financial year, submit to the Registrar a copy of its audited financial statements together with a report of its external auditor.

(4) The institution shall, unless exempted by the Registrar, publish a copy of the balance sheet and statement of financial position under subparagraph (3) within 4 months after the close of its financial year in at least 2 local newspapers of wide circulation in Malawi.

Submission of call reports

24.—(1) An institution shall submit call reports to the Registrar in accordance with the instructions for completion of Call Reports Manual.

(2) An institution shall submit the call reports in subparagraph (1) to the Registrar within 30 days after the last day of every month.

(3) Where the Registrar determines that reports submitted have errors and that corrected reports are not resubmitted within the stipulated deadlines, the institution shall be considered by the registrar to be in violation of this Directive.

25. In addition to submission of call reports, an institution shall—
- (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 bureaux.
- 26.—(1) An institution shall keep a record of—
- (a) a customer's loan account;
  - (b) correspondence relating to the loan transactions; and
  - (c) any other transaction that an institution carries out in the course of its business.
- (2) 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 the institution to comply immediately with requests for information from the Registrar.

#### PART IV—ENFORCEMENT

- 27.—(1) The Registrar shall impose the following monetary penalties for violations of this Directive—
- (a) for an institution, up to K50,000,000; and
  - (b) for natural persons who are members of the Board of directors or senior management, up to K10,000,000.
28. In addition to the monetary penalties imposed in paragraph 27, the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act.

Made this 29th day of June 2018..

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

D. KABAMBE, PhD  
*Registrar of Financial Institutions*

GOVERNMENT NOTICE No. 56

### FINANCIAL SERVICES ACT

(CAP 44:05)

FINANCIAL SERVICES (CONSOLIDATED SUPERVISION OF BANKS)  
DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

## PARAGRAPH

## PART I—PRELIMINARY

1. Citation
2. Interpretation

## PART II—OBJECTIVES

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9. Double and multiple gearing practices
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11. Intra-group transactions and exposures
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## PART IV—ENFORCEMENT

18. Monetary penalties
19. Administrative penalties

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 (Consolidated Supervision of Banks) Directive, 2018.  |
| Interpretation | 2. In this Directive, unless the context otherwise requires— <p style="margin-left: 20px;">“associate” has the meaning ascribed to that term in section 2(1) of the Act;</p> <p style="margin-left: 20px;">“affiliate” means any entity, corporate or unincorporated where 5 % or more of any class of its voting shares or other voting participation is directly or indirectly owned or controlled by that financial institution or is held by the financial institution with power to vote;</p> <p style="margin-left: 20px;">“bank holding company” means a body corporate that owns or controls at least two financial institutions one of which is a bank, being</p> |

its subsidiaries or significant minority investment or interest;

“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, financial institution or a non-financial company;

“consolidated supervision” means an overall evaluation both qualitative and quantitative aspects of a bank and the banking group to which the bank belongs, taking into account the risks which may affect entities within the group, regardless of whether these risks are carried in the books of the bank or related entities within the group;

“consolidation” means a process of adjusting and combining financial statements of a parent entity, its subsidiaries and affiliates to produce regulatory consolidated financial statements prepared in accordance with the regulatory reporting standards;

“control” has the meaning ascribed to it in International Accounting Standards and includes the power to govern the financial and operating policies of an entity to obtain benefits from its activities. The existence of control is generally evidenced by either of the following—

(a) direct or indirect ownership of more than 50% of voting power;

(b) power over more than 50% of voting rights or power to cast the majority votes at meetings of the board of directors or shareholders;

(c) power to govern the financial and operating policies of the entity; and

(d) power to appoint or remove the majority of the members of the board of directors;

“(50/50) deduction approach” means an approach whereby capital is reduced by 50% from core capital (tier 1) and 50% from supplement capital (tier 2);

“double gearing” occurs whenever one entity holds regulatory capital issued by another entity within the same group and the issuer is allowed to count the capital in its own balance sheet, in that situation, capital of the group is geared up twice; first by the issuer, and then a second time by the dependent;

“encumbered assets” means property owned by the banking group but subject to the legal claims of another party;

“financial institution” has the same meaning ascribed to that term in the Act;

“group capital” means the aggregate capital of the consolidated entities in a banking group subject to adjustments as set out in this Directive;

“intra-group transactions and exposures (ITEs)” means transactions between entities in the same banking group which must be removed from

the regulatory consolidated accounts, so as not to inflate the net income or capital of the parent entity and other entities within the group;

“lending of a capital nature” means long term loans with a maturity period of more than one year and subordinated loans;

“minority interest” means that portion of the profit or loss and net assets of a subsidiary attributable to equity interests that are not controlled, directly or indirectly through subsidiaries, by the parent entity;

“parent entity” means an entity that has majority ownership or control of another entity (subsidiary) or exercises a dominant influence over another entity;

“reciprocal investments” means a crossholding of capital between a bank or bank holding company and any other entity;

Cap. 44:01 “related party” has the same meaning ascribed to that term in the Banking Act ;

“significant minority investment or interest” means any ownership interest of at least 20% but less than 50% of the voting rights or capital held by the reporting bank or bank holding company in the relevant entity;

#### PART II—OBJECTIVES

Objectives

3. The objectives of this Directive are to—

(a) provide for the scope and methodology for consolidated supervision of banks;

(b) facilitate the understanding of a banking group, so as to enable the Registrar to fully and effectively evaluate the structure, business and risks of the entire group, its affiliates, associates and subsidiaries;

(c) provide for prudential limits and standards for banks and bank holding companies on a consolidated basis;

(d) provide reporting requirements for financial institutions and entities within banking groups; and

(e) enable the Registrar to provide oversight over financial institutions that conduct part of their business through the unregulated entities in a banking group whose activities have the potential to affect the principal objectives of supervision of financial institutions as set out in section 3 of the Act;

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#### PART III—REGULATORY REQUIREMENTS OF CONSOLIDATED SUPERVISION

Board oversight

4. The Board of a bank holding company shall be responsible for—

(a) ensuring that policies are in place for the business of the bank holding company, its subsidiaries and affiliates;

(b) supervising all activities engaged in by entities within a banking group;

(c) ensuring existence of clear organizational structures, management reporting lines, internal information systems and controls appropriate to its size, complexity and risk profile;

(d) establishing robust risk management system over all entities in the banking group; and

(e) ensuring that the bank maintains a separate corporate and functional existence from its affiliates.

5.—(1) A bank holding company shall submit to the Registrar, qualitative information as set out in the First Schedule hereto, as at 31st December of each year for all entities within the banking group, not later than the 31st January of the following year. Reporting requirements

(2) A bank holding company shall submit to the Registrar, consolidated returns containing the following quantitative information not later than 30 days after the end of each quarter—

(a) statement of financial position;

(b) statement of comprehensive income;

(c) capital adequacy ratios;

(d) credit concentration;

(e) related party transactions; and

(f) such other prudential requirements as may be specified by the Registrar.

(3) In addition to the reporting requirements specified in this paragraph, the Registrar may request the bank holding company in writing, to submit any additional information that may be required from the bank holding company and any entities within the banking group, in order to satisfy himself that the operations and affairs of such entities are not detrimental to the objectives of supervision of financial institutions as set out in the Act. Cap. 44: 05

(4) The Registrar shall specify the reporting format, frequency, submission dates for the additional information in subparagraph (3).

(5) Notwithstanding the consolidated reporting requirements set out in this paragraph, a bank that is part of the banking group shall submit returns and other information to the Registrar in accordance with the Financial Services (Submission of Information by Banks) Directive, 2018.

6.—(1) A bank or a bank holding company with more than 50% ownership investment in a financial entity shall, based on the requirements set out in the regulatory reporting framework returns, fully consolidate all financial subsidiaries unless specifically otherwise provided for in this Directive. Consolidated financial statements

Provided that the following entities shall be excluded from consolidation—

(a) dormant companies;

- (b) companies acquired in settlement of a debt;
- (c) entities whose individual or aggregate assets that are not more than 1% of assets of the parent company; and
- (d) insurance companies.

(2) A bank or bank holding company which has a significant minority ownership investment, of at least 20% and less than 50% in a financial entity, but does not exercise control, shall apply *pro-rata* or proportionate consolidation.

(3) A bank or bank holding company shall use a deduction approach for investments in financial entities below 20%.

(4) Investments in non-bank financial entities below 20% of the voting rights or capital held by the reporting bank or bank holding company in the relevant entity shall not be consolidated. The investments shall be risk-weighted using the relevant risk-weights.

(5) For significant investments in commercial entities which exceed certain materiality levels, the amount to be deducted shall be that portion of the investment that exceeds the materiality levels and shall be applied as follows—

(a) the excess amount of capital shall be deducted if the investments exceed a materiality level of 10% of the bank or bank holding company's capital on an individual basis; and

(b) the excess amount of capital shall be deducted if the aggregate amount of all investments of 10% or more of the concerned bank or bank holding company exceeds the 60% threshold of the bank or bank holding company's capital.

(6) Investments in commercial entities below the materiality levels stipulated above shall be risk weighted using the applicable weights.

(7) The regulatory consolidation techniques to be used shall be as set out in the Second Schedule hereto.

(8) The consolidation technique to be used in subparagraph (7) shall be based on the percentage of ownership or control and type of business.

(9) Ownership or control in insurance companies shall be calculated using the deduction approach due to dissimilarity with banks.

Capital  
requirements

7.—(1) A bank holding company shall—

(a) have in place a Board approved policy on banking group capital adequacy to ensure that the banking group is adequately capitalized to cover risks that it faces, as well as to meet regulatory, market and strategic needs; and

(b) upon request, provide the Registrar with a copy of its Board approved policy with regard to group capital adequacy, including the methodology used to measure group capital adequacy.

(2) The minimum capital of a bank holding company shall not, on a

consolidated basis, be less than the total regulatory capital requirements for entities within the banking group.

(3) A bank holding company shall, on a consolidated basis, also comply with a minimum core capital (tier 1) and total capital ratios as prescribed in the Financial Services (Capital Adequacy for Banks) Directive, 2018 or such higher ratios as may be determined by the Registrar.

(4) A bank holding company shall ensure that the capital of any regulated entity within the banking group does not at any time amount to less than the prescribed regulatory capital requirements for the regulated entity.

(5) (a) An unregulated entity within a banking group shall be subject to a proxy capital requirement provided that the unregulated entity shall not comply with the capital adequacy requirement on an individual basis.

(b) The requirement shall be for the purposes of calculating regulatory capital requirements on a consolidated basis.

(6) The qualifying capital for an unregulated entity shall—

(a) comprise only of core capital (tier 1) elements;

(b) a be calculated using the following formula—

$$\frac{(\text{Total assets of unregulated entity} + \text{off-balance sheet activities}) - \text{exposures to group entities}}{100} \times 10$$

100; and

(c) the results from the calculation be compared with the core capital (tier 1) of a regulated entity.

(7) In calculating the consolidated amount of qualifying capital, a bank holding company shall deduct from its consolidated capital and reserve funds the following—

(a) goodwill;

(b) investments in significant minority owned financial entities;

(c) investments in commercial entities exceeding materiality levels;

(d) reciprocal investments;

(e) intra-group holdings of shares among consolidated entities; and

(f) non-performing loans to related entities within the group.

(8) Deduction of Investments shall be treated as follows—

(a) where deductions of investments are made as set out in paragraph 7 (7), the deductions shall be 50% from core capital (tier 1) and 50% from supplementary capital (tier 2) (50/50 approach), unless specified otherwise in this Directive;

(b) if the amount deductible from supplementary capital (tier 2) exceeds the consolidated group's actual supplementary capital (tier 2), the group shall deduct the shortfall amount (balance) from core capital (tier 1); and

(c) The qualifying amount of supplementary capital (tier 2) shall be limited to hundred 100% of core capita (tier 1).

(9) A bank holding company shall—

(a) ensure that entities which are not consolidated, and for which capital investments are deducted, are themselves adequately capitalized to reduce the possibility of future potential losses to the banking group and the bank; and

(b) deduct any shortfalls in the capital for such entities from the group's total consolidated capital.

(10) The amount of shortfall to be deducted from the group consolidated capital shall be proportionate to the bank holding company's equity stake in such unconsolidated entities:

Provided that where the bank holding company has control over the entity, a *pro rata* attribution of any deficit may understate a parent's de facto responsibility to provide additional capital and in that regard any solo deficits in such dependants shall be attributed in full.

(11) A bank holding company shall, in the case of any minority interest arising from the consolidation, include in its consolidated group capital such percentage of or amount relating to the said minority interest subject to—

(a) the ability to absorb losses; and

(b) the availability of the amount arising from the minority interest to the bank holding company and the members of the relevant banking group.

(12) Where the conditions in subparagraph (11) (a) and (b) are not met, then the capital shall not be eligible for inclusion in the group's consolidated capital.

(13) Any shortfalls in the regulatory capital of the regulated consolidated financial entities shall be deducted from the group's total consolidated capital.

(14) The following shall also be deducted from the group's total consolidated capital—

(a) lending of a capital nature to subsidiaries and significant minority investment.;

(b) encumbered assets; and

(c) the portion of unsecured loans and advances in excess of prudential limits such as single borrowers, large exposures limit and related party lending limit.

(15) When the Registrar determines that a bank or bank holding company has insufficient capital arising from its group relationships, the Registrar shall direct the bank or bank holding company to increase its capital above the minimum requirements to a level that the Registrar may determine.

8.—(1) Where a bank holding company issues debt to fund equity capital in banking subsidiaries (double leveraging), the bank holding company shall not exert excessive financial pressure on its subsidiary bank by any method including—

Bank holding company not to engage in excessive leveraging

(a) payment of excessive dividends. For the purposes of this Directive, excessive dividend payment shall occur when such payment will—

(i) impact the ability of the bank or bank holding company to maintain adequate capital or to support its business expansion; or

(ii) exceed current audited profits;

(b) pressure subsidiary banks to invest in high risk assets to increase asset yields;

(c) purchase or trade its high quality assets for the other affiliate's lower quality assets;

(d) purchase of unnecessary services from affiliates; and

(e) payment of unjustifiable management or other fees to related entities.

(2) The provisions of section 12 of the Banking Act on restriction of dividends, shall apply *mutatis mutandis* to a bank holding company with respect to dividends from a bank.

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9. A bank holding company shall not engage in double or multiple gearing. Shareholdings in subsidiaries or associates shall therefore be deducted to avoid double counting of capital.

Double and multiple gearing practices

10.—(1) A bank holding company's maximum exposure to a single person shall not exceed 10% of its core capital.

Single borrowers and large exposure limits

(2) A bank holding company's maximum exposure to a group of related persons shall not exceed 25% of its core capital.

(3) In addition, the limit on large exposures in relation to the consolidated group's core capital shall be limited to a maximum of 400%.

(4) A bank holding company shall report to the Registrar all large exposures of 10% and above in line with the reporting requirements specified under the Financial Services (Large Exposures and Concentration Limits for Banks) Directive, 2014.

11.—(1) The Board and senior management of a bank or bank holding company shall have an adequate understanding of the incurred risks and any subsequent changes in the risk profile due to an intra-group transaction or exposure.

Intra-group transactions and exposures

(2) A bank holding company shall have in place Board approved policies and risk management processes and procedures relating to intra-group transactions or exposures and these policies shall—

(a) duly address matters set out in Third Schedule;

(b) ensure that intra-group transactions or exposures are duly documented, reported and accounted for;

(c) ensure that intra-group transactions or exposures are subject to appropriate oversight by the Board and senior management of the relevant bank or bank holding company; and

(d) ensure adequate control in respect of any transfer mechanism adopted within the relevant banking group, including any transfer mechanism relating to capital, funding, risk or income.

(3) A bank holding company shall report to the Registrar all intra-group transactions and exposures within the group of equal to or more than 5% of the total amount of consolidated group capital.

(4) When the Registrar is of the opinion that the bank holding company's board approved policies, processes, procedures and systems relating to intra-group transactions or exposures are inadequate, the Registrar shall—

(a) require the bank holding company to deduct from its capital the amount relating to such transactions or exposure as may be specified in writing by the Registrar;

(b) require the bank or bank holding company to obtain adequate collateral in respect of the relevant exposure; and

(c) specify limits in respect of intra-group transactions or exposures, as considered appropriate by the Registrar.

Liquidity  
requirements

12.—(1) A bank holding company shall comply with the liquidity requirements prescribed by the Financial Services (Prudential Liquidity Requirements for Banks) Directive, 2018.

(2) A bank holding company shall design an adequate contingency liquidity plan for its consolidated position and for each prudentially regulated entity in the group.

(3) The Board of a bank holding company shall exercise adequate oversight over liquidity issues of the group.

Group  
restructuring

13.—(1) A bank holding company shall establish ownership and management corporate structures that are transparent and which do not hinder effective banking supervision or endanger the stability of the banking sector.

(2) The Registrar may require any banking group to amend its existing organizational structure if the Registrar considers that the structure may hinder effective consolidated supervision.

(3) A structure may be considered to hinder the conduct of effective consolidated supervision if the structure impairs or may impair the Registrar's capacity to access information or determine the nature and extent of any relationships or transaction with the bank that may impact on the bank's safety and soundness.

(4) A bank holding company shall not restructure regulated institutions within a banking group without the prior written approval of the Registrar.

(5) The Registrar shall ring fence the operations of a bank where the Registrar determines that there is inadequate access to information about material parts of a banking group. The ring fencing may involve limiting or prohibiting transactions of the bank with other members of the banking group and its related entities, and *vice-versa*.

(6) A bank holding company shall seek approval from the Registrar prior to the acquisition, disposal or closure of a subsidiary or of any interest in any other undertaking.

14.—(1) Pursuant to section 14 (2) of the Banking Act, the Registrar shall conduct examinations of a banking group on a consolidated basis. Examination of banking group  
Cap. 44: 01

(2) Where applicable, the examination may be carried out in coordination with the relevant authority or body which exercises supervision or regulation over such affiliates, associates, or subsidiary companies.

15. A bank holding company shall comply with the guidelines on risk management issued by the Registrar. Risk management processes

16. A bank holding company shall comply with the corporate governance guidelines issued by the Registrar. Corporate governance

17. A bank holding company shall comply with the Financial Services (Fit and Proper Requirements for Directors, Shareholders, and Senior Management Officials of Banks) Directive, 2018. Fit and proper requirements

#### PART IV—ENFORCEMENT

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

(a) for regulated institutions that are members of a banking group, up to K50,000,000; and

(b) for a natural person who is a member of the Board, senior management or shareholders in regulated institutions within a banking group, up to 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 any person who does not maintain an account with the Reserve Bank of Malawi, the person concerned 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.

19. In addition to the monetary penalties imposed in paragraph 18 (1), the Registrar may impose directions, administrative penalties and enforcement actions as provided for under the Act and the Banking Act. Administrative penalties  
Cap. 44: 01

FIRST SCHEDULE  
INFORMATION REQUIREMENTS

(para. 5 (1))

A bank holding company shall submit to the Registrar the following qualitative information—

- (a) chart or series of charts which shows the relationship among the group entities and the extent of outside shareholders' interests;
- (b) chart of the group management structure which clearly indicates the way in which group senior management responsibilities (including the names and job titles) are allocated;
- (c) brief outline of the nature of each of the above mentioned entities business, types of products or range of services being offered and locations of principal places of business;
- (d) list of shareholders, directors and officers of each of such entities or bank holding company;
- (e) name and contact details of the authority or body responsible for regulation and supervision of each of such entities or bank holding company if any; and
- (f) name and contact details of the external auditors for each of such entities or bank holding company.

SECOND SCHEDULE  
CONSOLIDATION TECHNIQUES

(para. 6 (7))

A bank or a bank holding company shall use the following techniques—

(1) Full Consolidation

In the regulatory consolidated returns of the relevant reporting bank or bank holding company, line by line all the relevant assets and liabilities of the entity should be consolidated.

(2) *Pro-rata* or Proportionate Consolidation

In the regulatory consolidated returns of the relevant reporting bank or bank holding company, only the relevant shares of the assets and liabilities of the entity in which the bank or bank holding company and any of its related person can be included. It reflects the fact that the bank or bank holding company has an interest in an entity in which a significant shareholder other than the bank or bank holding company has the means and will to provide parental support and also has participation.

(3) Deduction Approach

(a) The assets of an entity are not fully or pro-rata consolidated with the risk-weighted exposure amount of a bank or bank holding company in accordance with the relevant requirements set out in this Directive, but instead as a minimum, the amounts specified below are deducted from the capital of the reporting bank or bank holding company—

- (i) in the case of a majority owned or controlled entity, the investment by the bank or bank holding company in the equity or other regulatory capital instruments of the relevant entity, plus any shortfall in the capital requirement of the entity,

calculated in accordance with the rules and regulations of the relevant supervisor responsible for the supervision of the entity; and

(ii) in the case of a significant minority owned or controlled financial entity, the investment by the bank or bank holding company in the equity or other regulatory capital instrument of the relevant entity and

(b) The investments referred to under (3) (a) (i) and (ii) are recorded using the equity basis of accounting and are risk-weighted at 0%.

#### MATRIX SHOWING TREATMENT OF ENTITIES IN BANKING GROUP

	<i>Financial Institution</i>	<i>Non- Financial Company</i>	<i>Insurance Company</i>
Above 50% Control	Full consolidation	Deduct investment amount above materiality levels : Risk weight amount below the materiality levels	Deduction approach
20% to 50%	<i>Pro-rata</i> consolidation	Deduct amount above materiality levels: Risk weight amount below materiality levels	Deduction approach
Below 20%	Deduct and weight as risk asset	Deduct amount above materiality levels: Risk weight amount below materiality levels	Deduction approach

#### THIRD SCHEDULE

(para. 11 (2)(a))

#### INFORMATION REQUIREMENTS FOR POLICIES AND RISK MANAGEMENT PROCESSES AND PROCEDURES RELATING TO INTRA-GROUP TRANSACTIONS OR EXPOSURES

- (a) cross -shareholding;
- (b) trading activities in terms of which one entity within the banking group deals with or on behalf of another member of the banking group;
- (c) central management function in respect of the liquidity structure or requirements within the relevant banking group;
- (d) guarantees, loans or commitments provided to or received from any entity within the banking group;
- (e) material exposure exceeding 5% of the banking institution's capital to a major shareholder of the banking institution or bank holding company, including any guarantee, loan or commitment;
- (f) provision of services or support functions, such as internal audit or back office services, provided to or received from any entity within the banking group;
- (g) exposure arising from the placement of funds or assets of clients with any other entity within the banking group;
- (h) purchase or sale of assets between entities within the banking group;

- (i) risk transfers between entities within the banking group, such as reinsurance or securitisations; and
- (j) relevant risk arising from double or multiple gearing of funds.

Made this 29th day of June 2018.

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

D. KABAMBE, PhD  
Registrar of Financial Institutions

GOVERNMENT NOTICE NO. 57

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (FIT AND PROPER REQUIREMENTS FOR PERSONS  
ASSOCIATED WITH THE OWNERSHIP AND MANAGEMENT OF  
MICROFINANCE INSTITUTIONS) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

- 1. Citation
- 2. Interpretation

PART II—OBJECTIVES

- 3. Objectives

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. Compliance officer
- 11. Verification of educational qualifications
- 12. Notification of exits of directors or executive officers
- 13. Shareholder exit

PART V—PRESCRIBED CRITERIA FOR FIT AND PROPER TEST

- 14. Eligibility

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- 15. Powers of Registrar

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## PART VII—ENFORCEMENT

16. Monetary penalties
17. Administrative penalties  
Schedules

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

## PART I—PRELIMINARY

1. This Directive may be cited as the Financial Services (Fit and Proper Requirements for Persons Associated with the Ownership and Management of Microfinance Institutions) Directive, 2018. Citation

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

“audit committee” means a permanent committee of the Board of a microfinance institution consisting of at least 3 members, all or the majority of which, shall be non-executive directors;

“Board” means the Board of directors of a microfinance institution;

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

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

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

“microfinance institution” means a non deposit taking microfinance institution and deposit taking microfinance institution;

“politically exposed person” has the same meaning as ascribed to that term in the Financial Crimes Act; Act No. 14 of 2017

“related party” has the same meaning as ascribed to that in section 33 of the Act; Cap. 44: 05

“senior management official” means—

(a) an executive officer;

(b) head of department or function;

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

(d) a branch manager of a microfinance institution that the Registrar declares as a senior management official.

## PART II—OBJECTIVES

Objectives

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

(a) only fit and proper shareholders are allowed to invest and establish microfinance institutions in Malawi; and

(b) microfinance institutions are managed by competent personnel at Board and senior management levels.

## PART III—FIT AND PROPER TEST STANDARDS FOR SHAREHOLDERS

Approval of shareholders

4.—(1) A microfinance institution that is not a public company shall seek prior 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.

(2) A microfinance institution 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 microfinance institution;

(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) The fit and proper test requirements shall extend to an ultimate beneficial owner of a microfinance institution.

(4) A shareholder referred to in subparagraphs (1), (2) and (3) shall satisfy the fit and proper test requirements provided for in Part V of this Directive.

(5) The Board shall ensure that shareholders of the microfinance institution referred to in subparagraphs (1), (2) and (3) provide the information in Part V of this Directive to the Registrar and meet all the requirements of this Directive.

(6) 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.

(7) The Registrar shall, on a regular basis, review the fitness and propriety of a shareholder or controlling party shareholder referred to in subparagraphs (1), (2) and (3) to ensure that the shareholder is financially sound at all times.

Due diligence

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

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

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

Approval of directors and senior management officials

(2) A microfinance institution shall submit to the Registrar a request for the approval in paragraph (1) in the format prescribed in the First Schedule hereto.

(3) A director or senior management official shall be considered to be fit and proper if he or she meets the standards outlined in Part V of this Directive and meets the minimum qualifications prescribed in the Second Schedule hereto.

(4) The Registrar may waive the requirements of subparagraph (3) upon an application by a microfinance institution requesting and justifying for a waiver.

7.—(1) The Board of a microfinance institution shall ensure that a microfinance institutions has—

Board responsibility

(a) a designated second in command at a level of senior management;

(b) an internal audit function; and

(c) an independent risk management and compliance function.

(2) The Registrar may approve alternative arrangements where a microfinance institution is not in a position to have an independent risk management and compliance function..

8.—(1) The Chairperson of the Board of a microfinance institution shall be a non-executive director.

Restrictions on directors

(2) A director of a microfinance institution shall not serve as a director of another microfinance institution except where the other microfinance institution is part of the microfinance institution group or its holding company in which he is already a director.

(3) A salaried employee of Government shall not serve as a director of a microfinance institution or as an *ex-officio* except where the Government has a direct shareholding interest in the microfinance institution.

(4) A salaried employee of Government shall not serve as a chairperson of the board of a microfinance institution.

(5) Except where specified by a written law or approved by the Registrar, directors referred to in subparagraph (3) shall not serve on the board of any other microfinance institution.

(6) A politically exposed person shall not serve as a director or senior management official of a microfinance institution unless approved by the Registrar.

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

Qualifications for accounting, finance and audit functions requirements

9.—(1) The head of the accounting or finance function of a microfinance institution shall be a member of an accredited accounting professional body and shall also be registered by the Institute of Chartered Accountants in Malawi.

(2) The head of the internal audit function of a microfinance institution shall be a registered member of the Institute of Internal Auditors in Malawi.

(3) The Registrar shall not approve a head of the accounting or finance function or head of the internal audit function of a microfinance institution unless the microfinance institution provides written attestation from Institute of Chartered Accountants in Malawi or Institute of Internal Auditors in Malawi satisfying requirements of subparagraphs (1) and (2).

Compliance officer

10.—(1) A compliance officer shall report to a committee of the Board responsible for risk management.

(2) An internal auditor of a microfinance institution shall not qualify as a compliance officer.

(3) A compliance officer shall have relevant qualifications and skills to effectively discharge his duties.

Verification of educational qualifications

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

Notification of exits of directors, executive officers

12. A microfinance institution shall notify the Registrar within 10 working days after the exit of its director or executive officer citing reasons behind the decision and the timeline regarding the director's or executive officer's replacement.

Shareholder exit

13. A shareholder of a microfinance institution shall seek prior approval of the Registrar before relinquishing shareholding of the microfinance institution.

#### PART V—PRESCRIBED CRITERIA FOR FIT AND PROPER TEST

Eligibility

14.—(1) The following persons shall not be eligible for appointment as shareholders, beneficial owners, directors, or senior management officials of a microfinance institution or its 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 a felony or 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 on the grounds of professional misconduct;

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

(h) a director, officer or employee of the Reserve Bank;

(i) a politically exposed person;

(j) a minor;

(k) a person under legal disability;

(l) a person who has been responsible for a loss suffered by a licensed institution in Malawi or outside Malawi;

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

(n) a person whose education, technical knowledge and professional experience is not relevant to microfinance business. For purposes of this Directive, relevant qualifications or knowledge shall include banking, economics, microfinance, business, finance, law, risk management accounting and other qualifications that the Registrar may consider relevant;

(o) a person who has been a controlling party, shareholder, director, executive officer or senior management official of a microfinance institution 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;

(p) a director whose attendance of Board meetings is unsatisfactory or who misses without valid reasons three consecutive Board meetings;

(q) a director who has a non performing credit facility or whose related party has a non performing credit facility;

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

(s) with respect to a financial institution in Malawi or outside Malawi, 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 financial services laws ;

(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 all material interests in credits and other transactions;

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

(v) a person who was dismissed from another microfinance institution or licensed financial institution; and

(w) any other person that the Registrar may prescribe as such based on the Registrar's assessment or other relevant information.

#### PART VI—DISQUALIFICATION

Powers of Registrar

15.—(1) The Registrar may for sufficient cause—

(a) remove a director of a microfinance institution;

(b) remove or suspend a senior management official;

(c) remove or suspend the whole Board of a microfinance institution;

(d) exclude any member of the Board from qualifying to serve on a Board of any microfinance institution in Malawi for a period of not less than 10 years; or

(e) remove a shareholder or direct specific shareholder to reduce or disinvest its control of a microfinance institution.

(2) For the purposes of subparagraph (1) "sufficient cause" means—

(a) in relation to a director—

(i) ceasing to comply with the fit and proper test; and

(ii) maintaining non-performing loans with any financial institution; and

(b) in relation to the Board, failure, omission or neglect of their responsibilities and duties as prescribed in the relevant financial services laws.

#### PART VII—ENFORCEMENT

Monetary penalties

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

(a) for microfinance institutions, up to K50,000,000; and

(b) for a natural person who is a member of the Board or senior management, up to K10,000,000.

(2) The penalty in subparagraph (1) shall be paid through a bank certified cheque payable to the Reserve Bank of Malawi within 10 working days after being notified by the Registrar.

17. In addition to the monetary penalty imposed in paragraph 14 (1), Administrative penalties the Registrar may impose directions and administrative penalties as provided for under the Act and the Microfinance Act. Cap.46:05

FIRST SCHEDULE

(para. 6(2))

APPLICATION FORM FOR APPROVAL AS A FIT AND PROPER PERSON

- 1 Name of Applicant:.....
- 2 Physical address.....
- 3 Contact details.....
- 4 Legal structure in cases of a corporate entity
  - 4.1 Date of registration.....
  - 4.2 Certificate of incorporation number:.....
- 5 Particulars of shareholding if applying to be a shareholder for a microfinance institution:

<i>Name</i>	<i>Nationality</i>	<i>Address</i>	<i>Percentage Share Ownership</i>	<i>Source of Fund</i>

- 6 Provide evidence of capital:.....

NOTE: Evidence of capital should be in the form of certified bank statements and confirmation letter from an external auditor

- 7 Places of business if already in operation:

<i>Name of business place</i>	<i>Start date</i>	<i>Years in operation</i>

8 Indicate former name by which the Applicant has been known:

.....  
 .....

9 List countries where the Applicant operates, if applicable.

.....  
 .....

10 Details of capital:

Nominal Value.....

Paid up Value.....

11 Provide the details below for each of the directors:

Name.....

Nationality .....

Date of appointment .....

Address .....

Other Directorship .....

.....

11.1 In addition, submit the following for each of the directors—

(a) curriculum vitae and

(b) fit and proper questionnaire reproduced in the Appendix.

12 Provide the details below for each of the executive officers:

	<i>Chief Executive Officer</i>	<i>Finance Manager</i>	<i>Chief Operating Officer</i>
Name			
Nationality			
Age			
Qualifications and date obtained			
Date of appointment			
Details of previous employment			

12.1 In addition, please submit the following for each of the executive officers;

(a) curriculum vitae; and

(b) certified copies of academic and professional qualifications

13 Borrowings:

Does the Applicant have current loan facility?.....

13.1 If yes, provide the following details for each of the loan facility:

	<i>Loan Facility</i>
Name of lending institution	
Type of facility and status	
Date of offer	
Terms of offer	
Security offered	
Value of security	
Current outstanding balance	

14 Provide details of banker :

<i>Name of banker</i>	<i>Branch and address</i>	<i>Details of bank account</i>

15 Provide details of external auditor:

Name of external auditor	Physical and Postal address	Telephone and email address

16 Does the Applicant hold, or has it ever held any authority from a supervisory body to carry out any business activity in Malawi or outside Malawi?.....

If yes, give particulars:

.....

.....

.....

16.2 If any such authority has been revoked, give particulars:

.....

.....

.....

17 Has the Applicant ever been put under receivership in the past or made any compromise or arrangement with its creditors in the past or otherwise failed to satisfy creditors in full?.....

If yes, give particulars:

.....

.....

.....

- 18 Is an inspector or other authorized officer of any government ministry, department or agency, professional association or other regulatory body investigating or has such an investigation ever previously taken place into the affairs of the Applicant?.....

If yes, give particulars:

.....  
 .....  
 .....

- 19 Is the Applicant currently engaged or does it expect to be involved in any litigation which may have a material effect on the resources of the institution?.....

.....  
 .....  
 .....

If yes, provide particulars:

.....  
 .....  
 .....

- 20 Is the Applicant engaged or does it expect to be engaged in any business relationship with the microfinance institution?

.....  
 .....  
 .....

If yes, please provide details:

.....  
 .....  
 .....

21 DECLARATION:

I, the undersigned, declare that to the best of our knowledge and belief, the information given in this form and the supporting documentation submitted together with this form are true, correct and complete:

NAME	DESIGNATION	SIGNATURE	DATE

## SECOND SCHEDULE

(para. 6(3))

## MINIMUM QUALIFICATIONS

	<i>ACADEMIC QUALIFICATIONS</i>	<i>EXPERIENCE</i>
Chief Executive Officer	Masters Degree in Accounting, Administration, Economics, Finance, Banking or Microfinance related field	3 years experience at senior level in a financial institution
	Bachelors' Degree in Accounting, Administration, Economics, Finance, Banking or Microfinance related field	5 years experience at senior level in a financial institution
	Diploma in Accounting, Administration, Finance, Banking or Microfinance related field	10 years experience at middle level in a financial institution
Chief Financial Officer	Masters Degree in Accounting or Finance and Investment	2 years experience at middle level in a financial institution
	Bachelors Degree in Accounting, Finance or Administration and professional qualification i.e ACCA or CFA	5 years experience in the accounting profession
	Diploma in Accounting, Finance or PAEC	6 years experience in the accounting profession
Chief Operations Officer	Masters Degree in any Microfinance related field	2 years experience at middle level in a financial institution
	Bachelors Degree in Administration, Economics and any Microfinance related field	3 years experience at middle level in a financial institution
	Diploma in Accounting, Administration, Banking or Microfinance related field	6 years experience at middle level in a financial institution

Made this 29th day of June 2018..

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

D. KABAMBE, PhD  
Registrar of Financial Institutions

GOVERNMENT NOTICE NO. 58

## FINANCIAL SERVICES ACT

(CAP. 44:05)

## FINANCIAL SERVICES (PROMPT CORRECTIVE ACTION FOR FINANCIAL COOPERATIVES) DIRECTIVE, 2018

## ARRANGEMENT OF PARAGRAPHS

## PARAGRAPH

## PART I—PRELIMINARY

1. Citation
2. Interpretation
3. Scope of application

## PART II—OBJECTIVES

4. Objectives

## PART III—PROMPT CORRECTIVE ACTIONS

5. Prompt corrective actions
6. General enforcement actions

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

## PART I—PRELIMINARY

- |                                     |   |
|-------------------------------------|---|
| Citation                            | 1. This Directive may be cited as the Financial Services (Prompt Corrective Action for Financial Cooperatives) Directive 2018.  |
| Interpretation                      | 2.—(1) In this Directive, unless the context otherwise requires—<br>“financial cooperative” means a Savings and Credit Cooperative;   |
| Scope of application<br>Cap. 46: 10 | 3. The powers specified in this Directive are without prejudice to the general powers of the Registrar under the Act and the Financial Cooperatives Act and other Directives. |

## PART II—OBJECTIVES

- |            |  |
|------------|--|
| Objectives | 4. The objectives of this Directive are to—<br>(a) establish corrective actions that the Registrar may take or impose on financial cooperatives, while the financial cooperative is still under the control of its owners, and the circumstances under which such actions may be taken; and<br>(b) prescribe circumstances under which the Registrar or his agent may exercise powers under the existing legal framework to resolve the financial cooperative while suspending the rights of the owners and management before a financial cooperative reaches actual insolvency. |
|------------|--|

## PART III—PROMPT CORRECTIVE ACTION

5. The Registrar shall take prompt corrective actions on a financial cooperative that falls in each of the categories prescribed in Table I in the Schedule hereto.

Prompt  
corrective  
actions

6. The Registrar, in addition to the supervisory actions prescribed in Table I in the Schedule hereto, shall take general enforcement actions on a financial cooperative that violates the Act, Financial Cooperatives Act and applicable Directives as prescribed in Table II in the Schedule hereto.

General  
enforcement  
actions

7. The Registrar shall, where he considers necessary, require an enforceable undertaking from the shareholders and Board of a financial cooperative falling within any of the categories prescribed in Table I in the Schedule hereto.

Enforceable  
undertaking

## SCHEDULE

(Para. (5), (6) &amp; (7))

TABLE I—SUMMARY OF PROMPT CORRECTIVE ACTIONS

<i>Category</i>	<i>Financial Cooperative Condition</i>	<i>Mandatory Supervisory Action</i>
CAPITAL ADEQUACY RATIO (CAR)	<p><b>A. MARGINALLY CAPITALISED FINANCIAL COOPERATIVE</b> A Financial Cooperative with institutional capital ratio of 10% but less than 12% who given its financial developments (e.g. worsening asset quality) is expected to breach the minimum capital requirement within a short period.</p>	<p>(a) Caution management to proactively monitor the ratio; (b) Put the financial cooperative under Watch List for increased monitoring; and (c) Restrict dividend payment.</p>
	<p><b>B. UNDERCAPITALISED FINANCIAL COOPERATIVE</b> Institutional Capital Ratio of 8 % but less than the prescribed minimum of 10 % in any one quarter,</p>	<p>(a) Place the financial cooperative under Watch List for increased monitoring; (b) Engage the financial cooperative; (c) Restrict investment in new products and branches; (d) Restrict investment in fixed assets; (e) Restrict dividend payment; (f) Financial recovery plan required; and (g) Conduct targeted on-site examination.</p>

Category	Financial Cooperative Condition	Mandatory Supervisory Action
	<p data-bbox="302 339 665 427">C. SIGNIFICANTLY UNDERCAPITALISED FINANCIAL COOPERATIVE</p> <p data-bbox="333 446 686 495">Institutional Capital Ratio of 5% but less than 8%</p>	<p data-bbox="705 339 1116 427">A combination of the following may be used in addition to the continuation of measures above—</p> <ul style="list-style-type: none"> <li data-bbox="705 446 915 476">(a) restrict lending;</li> <li data-bbox="705 495 1116 671">(b) require the financial cooperative to replace management, directors or both (without prejudice to the power of the Registrar to remove relevant persons that do not meet its fit and proper criteria) ;</li> <li data-bbox="705 682 1049 771">(c) restrict undertaking of any material transaction without Registrar's approval;</li> <li data-bbox="705 782 1116 870">(d) prohibit changes in accounting methods except as directed by the Registrar;</li> <li data-bbox="705 881 1022 969">(e) direct immediate new recapitalisation or capital restoration plan;</li> <li data-bbox="705 981 1089 1123">(f) Registrar to review capital plan within two weeks and communicate to the financial cooperative its acceptability or otherwise;</li> <li data-bbox="705 1134 1089 1223">(g) conclude an enforceable undertaking with the concerned financial cooperatives;</li> <li data-bbox="705 1234 1116 1465">(h) within a maximum period of six months after final call, the Registrar may take over management and control of the financial cooperative or hand over the financial cooperative to a deposit insurance agency if one is established;</li> <li data-bbox="705 1476 1116 1740">(i) Registrar, his authorised 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 a critically undercapitalised financial cooperative; or</li> </ul>

Category	Financial Cooperative Condition	Mandatory Supervisory Action
		(j) if capital plan is unacceptable or if shareholders fail to recapitalise within the period specified in paragraph (e) above; the Registrar or deposit insurance agency shall implement either of the resolution options as stipulated in a critically undercapitalised financial cooperative .
	<p><b>D. CRITICALLY UNDERCAPITALISED FINANCIAL COOPERATIVE</b></p> <p>Financial cooperative with an Institutional Capital Ratio of 2 % but less than 5 %</p>	<p>Any one or a combination of the following in addition to supervisory actions under a significantly undercapitalized financial cooperative the Registrar shall take over management of the financial cooperative immediately or appoint 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 Act and the Financial Cooperatives Act.</p>
	<p><b>E. FAILED FINANCIAL COOPERATIVE</b></p> <p>A financial cooperative with Institutional Capital Ratio of below 2%</p>	<p>The Registrar shall immediately initiate procedures for liquidation of the institution in accordance with the provisions of the Act and the Financial Cooperatives Act.</p>
LIQUIDITY	<p><b>A. MARGINALLY LIQUID FINANCIAL COOPERATIVE</b></p> <p>A financial cooperative with liquidity ratios of 10% but less than 12 %</p>	<p>Engage management to closely monitor the ratio</p>
	<p><b>B. FINANCIAL COOPERATIVE WITH WEAK LIQUIDITY POSITION</b></p> <p>A financial cooperative with liquidity ratio of 7.5% but less than 10%</p>	<p>Any one or more of the following shall apply—</p> <p>(a) engage management for discussion on its plans to improve liquidity;</p> <p>(b) direct plan for restoring liquidity. Registrar to review plan within two weeks and communicate to</p>

Category	Financial Cooperative Condition	Mandatory Supervisory Action
		<p>the financial cooperative its acceptability or otherwise; or</p> <p>(c) administrative penalty.</p>
	<p><b>C. SIGNIFICANTLY ILLIQUID FINANCIAL COOPERATIVE</b></p> <p>A financial cooperative that records a liquidity ratio of 5% but less than 7.5%</p>	<p>In addition to the supervisory actions in a marginally liquid financial cooperative to a financial cooperative with weak liquidity position, if the financial cooperative does not improve liquidity, the Registrar or his authorised agent shall—</p> <p>(a) conduct a spot check to investigate the problem of the financial cooperative including compliance with its own liquidity management practices and contingency plan;</p> <p>(b) invite the financial cooperative's Board and management for discussion on efforts being pursued to address the problem;</p> <p>(c) direct the financial cooperative to realise illiquid assets to improve liquidity;</p> <p>(d) direct the financial cooperative to embark on aggressive debt recovery;</p> <p>(e) advise the financial cooperative to divest its equity in subsidiaries or related entities.</p>
	<p><b>D. CRITICALLY ILLIQUID FINANCIAL COOPERATIVE</b></p> <p>A financial cooperative that persistently registers liquidity ratio of below 5%</p>	<p>Any one of or a combination of the following, in addition to a financial cooperative with weak liquidity position and a financial cooperative with weak liquidity position above—</p> <p>(a) Change management, directors or both; and</p> <p>(b) Place financial cooperative under statutory management if unable or unlikely to meet maturing obligations for five days.</p>

TABLE II

## SUMMARY OF GENERAL ENFORCEMENT ACTIONS

<i>Type of Violation, Condition or Conflict</i>	<i>Sanctions or Supervisory Action</i>
A. Non-compliance with provisions of Financial Services Laws	Pursuant to sections 39 and 75 of the Act: (a) Written warning; (b) Written directions; (c) Administrative penalties; (d) Monetary penalties; Court orders to enforce relevant law upon application of the Registrar.
B. Non-compliance with any relevant statutory provision for which no other penalty exists	Pursuant to section 68 of the Financial Cooperatives Act and the Act (a) Fine; and (b) Imprisonment.

Made this 29th day of June 2018..

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

D. KABAMBE, PhD  
*Registrar of Financial Institutions*

GOVERNMENT NOTICE No. 59

## FINANCIAL SERVICES ACT

(Cap. 44:05)

FINANCIAL SERVICES (LICENSING AND REGULATORY REQUIREMENTS  
FOR HOLDING COMPANIES) DIRECTIVE, 2018

## ARRANGEMENT OF PARAGRAPHS

## PARAGRAPH

## PART I—PRELIMINARY

1. Citation
2. Interpretation

## PART II —OBJECTIVES

3. Objectives

## PART III—STRUCTURE OF A HOLDING COMPANY

4. Principal role of holding company
5. Hierarchies of a financial institution
6. Acquisition of a controlling interest in a financial institution
7. Conversion to main line regulated financial services business

## PARAGRAPH

8. Reversal of holding company structure
9. Registrar's power to direct dis-investment from subsidiaries and other investments

## PART IV—LICENSING REQUIREMENTS

10. Licensing of holding company
11. Approval in principle
12. Restriction on source of funding for equity
13. Final approval

## PART V—COMMENCEMENT OF OPERATIONS

14. Commencement of operations

## PART VI—CAPITAL REQUIREMENTS

15. Capital requirements

## PART VII—CORPORATE GOVERNANCE

16. Corporate governance
17. Limitations on management of subsidiaries and other investments
18. Intra-group transactions

## PART VIII—OWNERSHIP AND CONTROL

19. Ownership and control

## PART IX—PERMISSIBLE AND NON-PERMISSIBLE ACTIVITIES

20. Permissible activities
21. Non-permissible activities

## PART X—ENFORCEMENT

22. Effect of revocation of licence
23. Monetary penalties
24. Administrative penalties

IN EXERCISE of the powers conferred by section 21 (5) and section 34 (2) 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 (Licensing and Regulatory Requirements for Holding Companies) Directive, 2018.
- Interpretation 2.—In this Directive unless the context otherwise requires—  
“control” means the ability to exert significant influence over the business or operations of an entity;

“holding company” means a body corporate that owns or controls at least two financial institutions one of which is a prudentially regulated financial institution being its subsidiaries or significant minority investment or interest;

“senior management official” means—

- (a) an executive officer;
- (b) head of department or function; or
- (c) an official who reports either directly to the Board, to a committee of the Board or to an executive officer; and

“significant minority investment or interest” means any ownership interest of 10% and above but less than 50% 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—

- (a) prescribe regulatory requirements for holding companies; and
- (b) specify information required by the Registrar in assessing licensing applications for holding companies.

Objectives

#### PART III—STRUCTURE OF A HOLDING COMPANY

4.—(1) A holding company shall exist mainly to carry out investments in financial subsidiaries or significant minority investments or interests without engaging in the day to day management of the investments themselves.

Principal role of holding company

(2) Subparagraph (1) shall not apply to a financial institution whose licence authorizes the institution to provide other financial services, such as a bank or an insurance company.

5.—A financial group shall have no more than two hierarchies, a parent and intermediate holding company.

Hierarchies of a holding company

6.—(1) A holding company may acquire ownership or controlling interest in any financial institution or entity subject to the approval of the Registrar.

Acquisition of a controlling interest in a financial institution

(2) Where the entity in subparagraph (1) is not a financial institution, approval of the relevant regulator, if applicable, shall also be required.

7. A holding company that seeks to change its business to main line regulated financial services shall seek the prior approval of the Registrar.

Conversion to main line regulated financial services

8 Where a prudentially regulated financial institution opts to adopt the holding company or any other structure under the Act, the structure shall not be reversible except with the approval from the Registrar.

Reversal of holding company structure

Registrar's  
power to direct  
dis-investment  
from  
subsidiaries  
and other  
investments

9. The Registrar may direct a holding company to dis-invest from its subsidiary or significant minority investment or interest where in the opinion of the Registrar, the holding company is being run in a manner that is detrimental to the interests of depositors, policyholders, investors and other stakeholders of the subsidiary or significant minority investment or interest.

#### PART IV—LICENSING REQUIREMENTS

Licensing of  
holding  
company

10.—(1) A person shall not operate as a holding company unless licensed by the Registrar

(2) A holding company shall be a company limited by shares and licenced by the Registrar of Financial Institutions under section 21 of the Act.

(3) An applicant shall complete and submit to the Registrar the application form set out in the First Schedules, hereto and provide all the information outlined in the Second Schedule.

(4) The licensing process shall be in two phases—

(a) approval in principle; and

(b) final approval.

Approval in  
principle

11.—(1) An application for an approval in principle shall be accompanied at least by the following—

(a) a non-refundable application fee of Malawi Kwacha equivalent of USD5,000 or such other sum as the Registrar may specify from time to time, payable to the Reserve Bank of Malawi through a bank certified cheque or electronic transfer—

(b) evidence of availability of minimum start-up capital as prescribed in Part VI of this Directive;

(c) detailed business plan or feasibility report which shall at a minimum include PART I—

(i) objectives of the holding company and those of its subsidiaries or significant minority investment or interest it intends to establish or acquire;

(ii) justification for applying for a holding company licence;

(iii) ownership structure in a tabular form indicating the name of the proposed investor, profession or business and their percentage shareholding in the holding company;

(iv) corporate group structure with shareholding percentage by the holding company in each of the subsidiaries or significant minority investment or interest;

(v) profile of proposed investors;

(vi) source of funding of the proposed equity contribution for each investor;

(vii) corporate governance charter of the holding company stating the roles and responsibilities of the Board and its sub committees;

- (viii) criteria for selecting or appointing Board members;
  - (ix) detailed profile of Board members;
  - (x) fit and propriety declaration executed by prospective investors;
  - (xi) list of proposed senior management officials and their profiles;
  - (xii) a schedule of services to be rendered by the holding company;
  - (xiii) three year projection on the operations of the holding company indicating expected growth, profitability and assumptions that form the basis of the financial projections;
  - (xiv) details of information communication technology to be deployed; and
  - (xv) a written and duly executed undertaking by the promoters or applicants that the holding company will be adequately capitalized for the volume and character of its business at all times and that the holding company shall always submit itself to the supervisory authority of the Registrar as a financial institution;
- (d) for foreign regulated investors who are financial institutions, the Registrar shall require a no objection letter from the regulatory authority of the home country;
- (e) shareholders agreement authorizing the establishment of the holding company;
- (f) proposed technical services agreement where applicable;
- (g) draft copy of the memorandum and articles of association which shall at minimum, contain—
- (i) object clause;
  - (ii) subscribers to the memorandum and articles of association;
  - (iii) procedure for amendment;
  - (iv) procedure for share transfer or disposal; and
  - (v) appointment of directors; and
- (h) any other information which the Registrar may prescribe or request.
- (2) Where the investors of a holding company are institutional investors, the Registrar shall require them to submit the following—
- (a) certificate of incorporation;
  - (b) Board resolution supporting the company's decision to invest in the equity shares of the proposed holding company;
  - (c) names and business and residential addresses of owners, directors and their related companies if any;
  - (d) audited financial statements and reports of the company and tax clearance certificate for immediate past 3 years; and
  - (e) any other information which the Registrar may prescribe or request.

(3) Where the investors are natural persons, the Registrar shall require them to submit the following—

- (a) name, contacts and addresses of the individual investors;
- (b) certified personal bank statements; and
- (c) any other information which the Registrar may prescribe or request.

Restriction  
on source  
of funding  
for equity

12.—(1) Where the source of funding for the equity contribution in terms of paragraph 11 is a loan or a debt instrument, the loan or the debt instrument shall be of at least 5 years tenure and shall not be a loan obtained from the Malawian banking system.

(2) Early redemption of the loan or the debt instrument referred to in subparagraph (1), shall be subject to the Registrar's approval.

Final approval

13.—(1) The applicats or promoters of a holding company shall submit an application to the registrar for a final approval not later than 180 days after obtaining an approval in principal.

(2) The application shall be accompanied by the following—

- (a) evidence of payment of capital contribution by each shareholder;
- (b) certified true copy of certificate of incorporation of the holding company;
- (c) certified copy of memorandum and articles of association;
- (d) certified copy of allotment of shares;
- (e) certified copy of particulars of directors;
- (f) location of head office whether rented or owned for the holding company;
- (g) schedule of changes if any in the Board, management and significant shareholding since the approval in principle;
- (h) evidence of ability to meet technical requirements and modern infrastructural facilities such as office equipment, computers, telecommunications to perform holding company operations;
- (i) copies of letters of offer and acceptance to employment in respect of the senior management team;
- (j) organizational structure showing functional units, responsibilities, reporting relationships and grades of heads of departments; and
- (k) Board and staff training program.

#### PART V—COMMENCEMENT OF OPERATIONS

Commence-  
ment of  
operations

14.—(1) A holding company shall commence operations within 12 months after being granted a licence.

(2) A holding company that fails to commence operations within the

period prescribed in subparagraph (1), shall have its licence automatically withdrawn by the Registrar.

(3) Prior to commencement of operations, a holding company shall submit the following information to the Registrar—

- (a) shareholders register;
- (b) copy of share certificates issued to each shareholder;
- (c) enterprise risk management framework;
- (d) minutes of pre-commencement Board meeting; and
- (e) date of commencement of operations.

(4) A holding company shall —

(a) comply with all directives, regulations and guidelines issued by the Registrar and other relevant laws;

(b) maintain adequate accounting system and records that capture all information which reflect the financial condition of the holding company; and

(c) ensure that the holding company and all its subsidiaries and significant minority investments or interests are adequately capitalized at all times.

#### PART VI—CAPITAL REQUIREMENTS

15—(1) A holding company shall comply with the following minimum start-up capital requirements—

Capital  
requirements

(a) where the holding company intends to own or control a bank as one of its subsidiaries or significant investment or minority interest, the start-up capital shall be the minimum start-up capital applicable to a bank; and

(b) where the holding company intends to own or control only non-bank regulated financial institutions, the start-up capital shall be the prevailing highest start-up capital requirement for a non-bank financial institution.

(2) The minimum start-up capital required under subparagraph (1) shall be ordinary share capital in form of cash.

(3) Any breach of applicable capital adequacy directive by a subsidiary or significant minority investment or interest shall not be redressed by the mere fact that another subsidiary, significant minority investment or interest of the holding company has excess capital.

(4) A holding company shall not declare, credit or pay any cash dividends or make any transfer from the surplus if doing so would result in breach of capital and solvency prescribed in Registrar's Directives.

## PART VII—CORPORATE GOVERNANCE

Corporate  
governance

16—(1) The Board of a holding company shall include at least one individual who is well versed in the practice and theory of each segment of the companies within the group.

(2) Appointment to the Board and senior management positions shall be in line with the requirements of the relevant directives on fit and proper requirements applicable to the respective subsidiaries and significant minority investments and interests.

(3) A holding company shall also comply with the relevant guidelines and directives for corporate governance applicable to the respective subsidiaries and significant minority investments and interests.

Limitations on  
management  
of subsidiaries  
and other  
investments

17 A holding company shall not—

(a) usurp the powers or functions of the Board or internal management responsibilities and obligations of any of its subsidiaries or significant minority investments or interests;

(b) interfere or be involved in day to day activities of the subsidiaries or significant minority investments or interests;

(c) have any of its officers or employees while in the employment of the holding company work for any subsidiary or significant minority investments or interests, except with the approval of the Registrar;

(d) engage the services of an employee of any of its subsidiaries or significant minority investments or interests, except with the approval of the Registrar;

(e) enter into any technical or management service agreements with any of its subsidiaries or significant minority investments or interests except as stipulated in this Directive; and

(f) purchase or dispose assets from or to its subsidiaries or significant minority investments or interests except with the approval of the Registrar.

Intra-group  
transactions

18—A holding company shall not—

(a) engage in any transaction or maintain business relationship with its subsidiaries, significant minority investments or interests except where such transaction is conducted at arm's length; and

(b) borrow from the Malawian banking system for the purpose of capitalizing itself, any of its subsidiaries, significant minority investments or interests.

## PART VII—OWNERSHIP AND CONTROL

Ownership  
and control

19—(1) A holding company shall obtain the approval of the Registrar for the following, regardless of whether the changes shall be effected through the secondary market—

(a) any shareholding of 10% and above or any change in ownership that results in change in control of a holding company; and

(b) any shareholding of 10% and above or any change in the ownership of the subsidiaries or significant minority investments or interests.

(2) Subsidiaries or significant minority investments or interests of a holding company shall not acquire shares in the holding company.

(3) Except with the prior approval of the Registrar, subsidiaries or significant minority investments or interests of a holding company shall not acquire shares of other subsidiaries or significant minority investments or interests of their parent holding company.

(4) Notwithstanding subparagraphs (2) and (3), subsidiaries or significant minority investments or interests acting as nominees may with prior approval of the Registrar invest in any holding company on behalf of their clients provided however that the ultimate beneficiaries of such investments shall be disclosed to the Registrar when seeking approval.

(5) Where a holding company loses control in all subsidiaries or significant minority investments or interests in the group for a period exceeding 12 months, the holding company shall cease to be a holding company and its licence shall be surrendered to the Registrar for cancellation.

(6) Notwithstanding subparagraph (5), where a holding company loses control in all except one subsidiary or significant minority investments or interests in the group for a period exceeding 12 months, the holding company shall cease to be a holding company and its licence shall be surrendered to the Registrar for cancellation.

(7) Any transfer of business, amalgamation, merger or takeover involving the holding company with any other person shall not take effect unless with the prior approval of the Registrar.

#### PART VIII—PERMISSIBLE AND NON-PERMISSIBLE ACTIVITIES

20—(1) Except as provided in this Directive, the activities of the holding company shall be restricted to the holding of equities in its subsidiaries or significant minority investments or interests. Permissible activities

(2) A holding company may with prior approval of the Registrar provide shared services only in the following areas—

(a) human resources;

(b) internal audit;

(c) risk management and compliance;

(d) information communication technology;

(e) legal and company secretarial; and

(f) any other services as may be approved or prescribed by the Registrar.

(3) A holding company shall provide shared services at arm's length basis.

(4) A holding company that provides shared services shall seek the approval of its Board for all services before they are incorporated into a technical management agreement.

Non-permissible activities

21 A holding company shall require the Registrar's approval to—

(a) hold equity investments in non-financial firms;

(b) establish, disinvest and close subsidiaries or significant minority investments or interests; or

(c) derive or receive income from sources other than the following—

(i) dividend income;

(ii) income from shared services where applicable;

(iii) interest earned from idle funds invested in government securities or placements with banks or discount houses;

(iv) profit on disinvestment from subsidiaries or significant minority investments or interests; or

(v) any other sources as may be approved by the Registrar.

#### PART IX—ENFORCEMENT

Effect of revocation of licence

23. Where the Registrar revokes a holding company's licence, the holding company shall automatically become unfit and improper to remain a shareholder in its subsidiaries or significant minority investments or interests.

Monetary penalties

24.—(1) With respect to monetary penalties for violations of this Directive that may be imposed by the Registrar, the following shall apply—

(a) for a holding company up to K50,000,000; and

(b) a natural person who is a member of the Board, or senior management up to K10,000,000.

(2) the penalty prescribed in sub-paragraph (1) shall be paid through a cheque or electronic transfer payable to the Reserve Bank of Malawi within 10 working days after being notified by the Registrar.

Administrative penalties

25. In addition to the monetary penalty imposed in paragraph 24 (1), the Registrar may impose directions, administrative penalties and enforcement action as provided under the Act.

FIRST SCHEDULE  
APPLICATION FORM

(para. 10 (3) )

SECTION I—PROPOSED HOLDING COMPANY

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

1. Name. Please state name of the proposed holding company.  
.....
2. Legal form. Indicate the legal form of the proposed holding company (e.g. private limited company, public, etc).  
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.....  
.....
3. Incorporation. Date and place of incorporation.  
.....
4. Head Office. Proposed place of head office in Malawi.  
.....
5. Business Place. State the proposed places of business in Malawi.  
.....
6. Directors and Executive Officers. State the names, addresses and occupation of the individuals who will be directors of the proposed holding company.  
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.....  
.....
7. Executive Officers. State the names and occupation of all executive officers identified for the proposed holding company.  
.....  
.....  
.....
8. Capital Structure. Indicate the capital structure of the proposed holding company—
  - (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 holding company. Indicate the name of the shareholder, address and physical location, nationality, number of shares and percentage to be owned by each investor). Also attach their resumes, and indicate sources of funding for their respective equity contribution, including certified bank statements (in the case of individual shareholders).

For corporate investors, please provide their respective certificates of incorporation, audited financial statements and reports of the company and tax clearance certificates for immediate past 3 years; respective copies of board resolution supporting their respective companies' decisions to invest in the equity shares of the proposed holding company; and list of names and addresses (business and residential) of owners, directors and their related companies, if any.

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- 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.

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- 11. Financial Services. What type of financial institutions shall form subsidiaries and significant minority investments or interests of the proposed holding company? Attach list of proposed products and services to be offered by the financial institutions that shall be subsidiaries and significant minority investments or interests of the proposed holding company.

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- 12. Premises. Describe the premises and equipment to be utilized by the proposed holding company 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.

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- 13. Business Plan. Please provide a business or strategic plan for the proposed holding company 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 by the subsidiaries and significant minority investments or interests and the current economic environment.

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14. Memorandum and Articles of Association. Please provide certified copies of the Memorandum and Articles of Association of the proposed holding company and if applicable its by-laws.
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- .....
- .....

15. Additional Information. Please provide any additional information regarding the proposed holding company 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 markets 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 holding company including locations of any branches, where applicable;
- (b) Corporate structure. Describe and provide a diagram of the proposed holding company's corporate structure including any parent company, if any, subsidiaries, significant minority investments or interests, or affiliated entities;
- (c) Origin and basis. Briefly discuss how the organizing group came together and the reasons for wanting to start a holding company.

#### II. Market Analysis.

- (a) Market. Identify the market to be served by the proposed holding company's subsidiaries, significant minority investment, interest or affiliates;

- (b) Economy. Describe the economic characteristics of the target market of the holding company operations and of its subsidiaries and significant minority investment or interest. Include any anticipated changes in the market, factors influencing such changes, and possible effect on the proposed holding company.

III. Business Strategy and Objectives.

- (a) Services. Briefly describe the services to be offered by the proposed holding company's subsidiaries and significant minority investments and interests and affiliates. State and list all the envisaged products and services including fiduciary services of the holding company or its subsidiaries and significant minority investment or interest, 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;
- (d) External audits. Indicate the provisions made for an annual external audit as is required by the Act.

IV. Leadership and Management.

- (a) Officers and remuneration. Provide a list of officers showing the fees, salaries, and other forms of remuneration or benefits to be given to each individual;
- (b) Insider agreements. Describe any agreements the proposed holding company intends to enter into with its subsidiaries, significant minority investment or interest, or any of holding company's 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 3 years of operation;
- (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 holding company. A complete Section II must be filled out and submitted by each principal shareholder, director or executive officer.

1. Name and Address. State name and address.

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 .....

2. Position. State the position or title in the proposed holding company.

.....

3. Nationality. State nationality and passport number—

(a) nationality .....

(b) passport number.....

4. Date of Birth. State 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 holding company? 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 to be held. If you will be a director and will also have executive officer responsibilities within the proposed holding company, indicate the nature and extent of such responsibilities.

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

<i>Degree or Certificate</i>	<i>Issued By:</i>	<i>Date Received</i>

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

(a) name and address of employer.....

(b) nature or type of business.....

(c) title and duties or responsibilities.....

(d) date employed.....

(e) date and reason for leaving.....

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8. Affiliations. State the name of any other holding company 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 holding company, and describe any relationship which now exists or will exist between the other institution and the proposed holding company.

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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 holding company or financial institution, provide details thereof including any relationship which now exists or will exist between the other institution and the proposed holding company.

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

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11. Discipline. Have you ever been censured, prosecuted, warned as to conduct, disciplined, or made subject to a court order at the instigation of any governmental department or agency, professional association, or other regulatory body established under the Laws of Malawi or their substantial equivalent outside Malawi? If yes, provide details.

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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 outside Malawi, within the last 7 years? If yes, provide details.

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13. Investigations. Have you ever been or are you now subject to an investigation in Malawi or outside Malawi, by or at the instigation of any governmental department or agency, professional association, or other regulatory body? If yes, provide details.

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14. Judgement. Have you within the last seven years, failed to satisfy within one year a judgement of debt under a court order in Malawi or outside Malawi? If yes, provide details.
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15. Fraud. Have you ever been adjudged by a court in Malawi or outside Malawi, to be civilly liable for fraud, malfeasance, or any other misconduct? If yes, provide details.
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- .....
16. Bankruptcy. Have you been adjudged bankrupt by a court, in Malawi or outside Malawi, or has a bankruptcy petition ever been served on you within the last seven years, have you made any compromise arrangement or otherwise failed to satisfy your creditors in full within the last ten years? If yes, provide details.
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17. Receivership. Has a receiver or an administrator of any of your property been appointed within the last 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.
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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 outside Malawi, been wound up, made subject to an administration order, 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.
- .....
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- .....
19. How many shares of stock in the proposed holding company are or will be registered in your name or in the name of a related party? State the names in which the shares will be registered and the class of shares if other than common shares
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20. **Beneficial Interest.** How many shares of stock in the proposed holding company, which are not registered in your name or in the name of a related party, will you have a beneficial interest in? State the names in which the shares will be registered and the nature of the beneficial interest.

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21. **Trustee or Nominee.** Will you or any party related to you hold shares in the proposed holding company as a trustee or nominee? If yes, provide details.

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22. **Assignments or Pledges.** Are, or will any of the shares described in response to Questions 19 to 21 be equitably or legally assigned or pledged to any other party? If yes, provide details.

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23. **Voting Authority.** What proportion of the voting power at any general meeting of the proposed holding company, or of any other organization of which the proposed holding company is a subsidiary, will you be entitled to vote or exercise control over? Provide details of such voting authority or control.

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24. **Indirect Authority.** If the exercise of voting power at any general meeting of the proposed holding company, or of any other organization of which the proposed holding company 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.

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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.

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26. Additional Information. Provide a latest credit report from a licensed credit reference bureau, an indication of their sources of funding their respective equity contribution, including certified bank statements; 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 holding company.

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INDIVIDUAL FINANCIAL STATEMENTS

TO BE COMPLETED BY EACH PERSON WHO WILL BE A CONTROLLING SHAREHOLDER.

.....  
 (Name and Address of Proposed holding company)

.....  
 (Name and Title of Individual)

As of Date for Financial Statement: .....

.....

STATEMENT OF POSITION

Liabilities and 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		Accounts and Notes	
Taxes Due and Unpaid	K _____	Receivable	K _____
Judgements- Doubtful		Inventories	K _____
Other Liabilities (list)	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 _____



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.

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7. Auditors and Bankers. State the names and addresses of the IS's auditors and primary bankers during the past 5 years.

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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.

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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 holding company or financial institution, provide details thereof including any relationship which now exists or will exist between the other institution and the proposed holding company.

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10. Professional Membership. If the IS is now or will be a member of any professional or trade association concerned with financial services, in Malawi or elsewhere, provide details including whether such membership has ever been refused or terminated.

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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 established under any of the Laws of Malawi or the substantial equivalent outside of Malawi? If yes, provide details.

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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 outside Malawi, within the last seven years? If yes, provide details.

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

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

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

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

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

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18. Receivership. Has a receiver or an administrator of any property of the IS been

appointed within the last seven 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.

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19. Liquidation—

(a) Voluntary. Has a notice for the voluntary liquidation of the IS been issued within the last seven 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.

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(b) Compulsory. Has a petition for the compulsory liquidation of the IS been issued within the last seven 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.

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20. Winding-Up. Has any organization with which the IS is or has been affiliated, in Malawi or outside Malawi, ever been wound up or ceased trading while the IS was associated with the organization one year after the IS ceased being associated with the organization? If yes, provide details.

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21. Shares. How many shares of stock in the proposed holding company are or will be registered in the name of the IS or in the name of a related party? State the names in which the shares will be registered and the class of shares if other than common shares.

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22. Beneficial Interest. How many shares of stock in the proposed holding company 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 names in which shares will be registered and the nature of the beneficial interest.

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23. Trustee and Nominee. Does or will the IS or any party related to it hold shares in the proposed holding company as a trustee or nominee? If yes, provide details.

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24. Assignments and Pledges. Are or will any of the shares described in response to Questions 21 to 23 be equitably or legally assigned or pledged to any other party? If yes, provide details.

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25. Voting Authority. What proportion of the voting power at any general meeting of the proposed holding company, or of any other organization of which the proposed holding company 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.

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26. Indirect Control. If the exercise of voting at any general meeting of the proposed holding company, or any other organization of which the proposed holding company 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.

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27. Audited Accounts. Provide audited accounts for the past three years.

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28. Acquisition Debt. If borrowed funds will be used to purchase shares of stocks in the proposed holding company, provide a statement showing the amount, source, collateral and repayment terms of the borrowed funds.

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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 so indicate as such and provide an explanation.

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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,  
 Financial Sector Regulation Department  
 Reserve Bank of Malawi  
 P.O. Box 565  
 Blantyre

#### 1. Legal Structure

- 1.1. The corporate name to be used by the proposed holding company for the purpose of carrying on financial services business through its subsidiaries and significant minority investments or interests;
- 1.2. Location of the proposed holding company's head office in Malawi.
- 1.3. Location of all other offices (branches, agencies, representative offices etc, where applicable) planned for the new holding company during the first three years of its operation.
- 1.4. Legal status, of proposed holding company.
- 1.5. Copy of the certificate of incorporation of the proposed holding company
- 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 holding company.
- 1.8. Valid TAX Compliance certificate.

- 1.9 The capital structure of the proposed holding company showing the proposed amount of paid-up 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 holding company 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 holding company.
  - 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 authorizing the submission of the application for a holding company licence.
  - 1.13. The proposed new holding company, being part of a group—
    - (a) a diagram or chart of the group structure showing the proposed holding company's position within the group, relationships within the group and percentage holdings, and the lines of authority and reporting from the holding company 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 holding company) and other similar investments (i.e. a shell company).
  - 1.14. State whether any applicant already owns or controls at least 10% of the stock of one or more other financial institutions in any other jurisdiction that will not be connected through a corporate link to the proposed new holding company
2. Ownership Structure
- Provide the following information on all beneficial owners of the initial stock of the holding company.
- 2.1. Name (state 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 consecutive years.
- 2.5.3. Identification of external auditors and bankers during the past ten 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, 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 holding company, 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 financial institutions.
  - 2.7.2. History of ownership of 10% or more of the stock in any holding company or other financial institution located anywhere in the world.

State whether, during that time, that holding company or financial institution above—

    - (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 years immediately preceding the date of application, including the current period if available, and audited if available. If proposed holding company 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 holding company, 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 lenders, 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 institution are anticipated to be used to service the debt.
- 2.10. Identification of all persons who would be "related parties" of the proposed holding company as a result of the applicant's stock ownership in the holding company.
- 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; and
  - (d) statement of Position and Statement of Comprehensive Income for the three 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—
- 2.13.1. Litigation. Is the applicant engaged or expecting to be engaged in litigation, in Malaŵi or outside Malawi, 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 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 outside Malawi?
  - 2.13.3. Conviction. Has the applicant ever been convicted of an offence, or been served a petition for an administrative order or the substantial equivalent thereof in Malaŵi or outside Malawi?
  - 2.13.4. Investigation. Is the person, or has the person ever been, subject to an investigation in Malaŵi or outside Malawi, 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 year a judgment of debt under a court order in Malawi or outside Malawi?.....
- 2.13.6. Fraud. Has the applicant ever been adjudged by a court, in Malawi or outside Malawi, 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?.....
- 2.13.7. Bankruptcy. Has the applicant ever been adjudged bankrupt by a court, in Malawi or outside Malawi? 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 so, provide details including whether the receiver or equivalent thereof is still acting under the appointment.....  
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- 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.  
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- 2.13.10. Winding-Up. Has any body corporate, partnership, or unincorporated institution with which the applicant was associated as a principal party shareholder, director, executive officer or senior management official in Malawi or outside Malawi, 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 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 holding company will be held by the applicant—
- 2.14.1. Shares. How many shares in the proposed new holding company are or will be registered in the applicant's name or in the name of a "related party"? 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 holding company which are not registered in the applicant's name or in the name of a "related party," will the applicant have a beneficial interest? State the

names in which the shares will be registered and the nature of the beneficial interest.

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2.14.3. Trustee or nominee. Will the applicant or any "related party" hold shares in the proposed holding company as a trustee or nominee? If yes, provide details.

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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.

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2.14.5. Voting authority. What proportion of the voting power at any general meeting of the proposed holding company, or of any other organization of which the proposed holding company is a subsidiary, will the applicant be entitled to vote or exercise control over? Provide details

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2.14.6. Indirect Authority. If the exercise of voting power at any general meeting of the proposed holding company, or of any other organization of which the proposed holding company 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 is a financial institution "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 institution;
- (b) the applicant foreign institution is fully meeting all capital requirements; and
- (c) no formal supervisory measures are currently in force or pending against the applicant foreign institution.

- 2.15.1.2. The home country supervisor has given written consent or a statement of “no objection” for the applicant foreign institution to establish a holding company in Malaŵi subject to the receipt of licence by the Registrar.
- 2.15.1.3. The applicant foreign institution (including its subsidiary holding company 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 institution’s financial soundness or reputation; and
  - (b) promptly provide the Registrar with copies of the applicant foreign institution’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 institution.
- 2.15.3. The most recent audit report including management letter.
- 2.15.4. An organization chart of the applicant foreign institution showing lines of authority and reporting from the subsidiary holding company in Malaŵi to the parent foreign institution, and specifically identifying the parties within the applicant foreign institution who are responsible for the sound operation and financial condition of the proposed subsidiary holding company in Malaŵi.
3. Management Structure
- List all proposed members of the Board, 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.....
  - 3.2. 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 holding company, if any.....
  - 3.6. Position with the proposed holding company: 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 holding company or financial institution located anywhere in the world. State whether, during such time period, the holding company 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 outside Malawi, 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, 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 outside Malawi?
  - 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 outside Malawi?
  - 3.11.4. Investigation. Is the person, or has the person ever been, subject to an investigation in Malaŵi or outside Malawi, 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 year a judgment of debt under a court order in Malaŵi or outside Malawi?
  - 3.11.6. Fraud. Has the person ever been adjudged by a court, in Malaŵi or outside Malawi, 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 outside Malawi? 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?

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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 so, provide details including whether the receiver or equivalent thereof is still acting under the appointment.

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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 outside Malawi, 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?

3.12. Copies of all existing or proposed employment contracts.

4. Business Plan

Please submit a business plan covering the first three years of operation of the new holding company 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 holding company and to monitor the holding company'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 holding company including the location of any branches or other offices, if any. Describe and provide a diagram of

the holding company's corporate structure and include all entities within the structure parents, subsidiaries, significant minority investment or interest, companies under common control, and other affiliates. Briefly discuss how the organizing group (the applicants) came together and the reasons for wanting to start a holding company.

Identify the key strategic goals of the proposed holding company. Provide a basic statement on the nature and scale of the proposed holding company's business, and arrangements for its management.

#### 4.1.2. Market Analysis

Identify the markets to be served by the proposed holding company's subsidiaries significant minority investment or interest and specifically address how the needs and convenience of the communities or sectors identified as the holding company's subsidiaries' 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 holding company.

Describe how the holding company intends to ensure that the interests of clients and creditors of the new holding company and its subsidiaries, significant minority investment or interest the national economy, and the general public will be served and not threatened by the new holding company and subsidiaries' conduct in the business proposed in the business plan.

A copy of the feasibility study of the financial sectors upon which the decision was made to commence holding company and financial services subsidiaries and significant minority investment or interest 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 holding company. Show the relationships between the Board, 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 showing all members of the Board, 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 holding company:

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 holding company and clients or clients of its subsidiaries and significant minority investment or interest as opposed to a similar transaction with a person or entity not an "insider" or "related party."

Describe the operating systems of the holding company including—

- (a) corporate policies and procedures;
- (b) accounting standards;
- (c) books of account and record-keeping;
- (d) reporting to management, Board, shareholders, and the Registrar of financial institutions;
- (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 holding company.

Address staff projections, including recruitment and training.

#### 4.1.5. Financial services Business

Discuss the types and scale of financial services business envisaged. This presentation should be supported by information which clearly shows the proposed new holding company's capability to undertake those activities through its subsidiaries and significant minority investments or interests in terms of board oversight, management, expertise, systems support, organization and staff. Specifically address the following—

- (a) the types of products to be offered, targeted economic sectors, and plans for diversification;

- (b) method for pricing of the products and services;
- (c) proposed off-balance sheet activities; and
- (d) correspondent or agency arrangements where applicable.

#### 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 holding company is adequately capitalized at all times.

#### 4.1.7. Risk Management

Describe the analysis conducted of the risks associated with the sectors to be served by the proposed holding company through its subsidiaries and significant minority investments or interests. 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 holding company 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 the 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 holding company. 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.

#### 4.1.9. Business Plan Monitoring

Discuss the methods that the Board will use to regularly monitor the holding company'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 3 years of operations

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

Made this 29th day of June 2018.

D. KABAMBE, PhD

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

*Registrar of Financial Institutions*

## GOVERNMENT NOTICE NO.60

## INSURANCE ACT

(CAP. 47:01)

INSURANCE (OPERATION OF LIFE INSURANCE FUNDS)  
DIRECTIVE, 2018

## ARRANGEMENT OF PARAGRAPHS

## PARAGRAPH

## PART I—PRELIMINARY

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2. Interpretation

## PART II—OBJECTIVES

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## PART III—SPECIFIC REQUIREMENTS

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5. Duty of life insurer in relation to life insurance funds
6. Notice to Registrar when fund established
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9. Investment of life insurance funds
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14. Approval of the principles and practices of financial management
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21. Investment in a special purpose vehicle

## PART IV—ENFORCEMENT

22. Monetary penalties
23. Administrative penalties

IN EXERCISE of the powers conferred by section 79(1) of the Insurance Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, issue the following Directive—

## PART I—PRELIMINARY

1. This Directive may be cited as the Insurance (Operation of Life Insurance Funds) Directive, 2018. Citation
2. In this Directive, unless the context otherwise requires— Interpretation
- “co-investor” means a person other than the life insurer that invests in a special purpose vehicle;
- “discretionary policy” means a policy where the life insurer has discretion over additions to policies including those from investment earnings;
- “inherited estate” refers to assets accumulated before the current year in respect of discretionary policies, and held in excess of assets reasonably expected to meet technical provisions and policyholders’ reasonable expectations of future benefits;
- “investment plan” means the document in terms of which the special purpose vehicle will invest in unlisted investments specified in this Directive and all matters incidental thereto;
- “policyholders’ profits” means the policyholders’ interest in profits attributable to discretionary policies;
- “shareholders profits” means—
- (a) profits attributable to policies that are not discretionary policies; and
  - (b) shareholder’s interest in the profits from discretionary policies;
- “solvency margin” means solvency margin as defined in the Insurance (Minimum Capital and Solvency Requirements for Life Insurers) Directive 2017;
- “look-through principle” means an approach to assessment of an entity’s assets that treats the assets and liabilities held by an issuer of a financial instrument as if they were directly held by the entity holding the instrument for purposes of investment limits under this Directive;
- “Real Estate Investment Trust” means a body corporate which holds a portfolio of real estate and established for the sole purpose of providing investors with a means of investing in a portfolio of real estate or leaseholds;
- “special purpose vehicle” means a body corporate created to raise funds, build, operate and potentially transfer a capital project;
- “subscription agreement” means an agreement between an investor or a co-investor and an issuer of securities;
- “technical provisions” has the same meaning ascribed to that term in the Insurance (Minimum Capital and Solvency Requirements for Life Insurers) Directive, 2017.

## PART II—OBJECTIVES

Objectives

3. The objectives of this Directive are to—

(a) ensure the proper attribution of assets and liabilities to the business of a life insurer through appropriate segregation of life insurance funds;

(b) set out requirements on the establishment and maintenance of life insurance funds;

(c) ensure that policyholders are treated fairly; and

(d) ensure that proper records of a life insurer's policies and claims are maintained at all times.

## PART III—SPECIFIC REQUIREMENTS

Requirements regarding life insurance funds

4.—(1) A life insurer shall have separate life insurance funds exclusively for each of unit-linked insurance business and discretionary policies.

(2) A life insurance policy shall be referable solely to one life insurance fund.

(3) A life insurer shall credit all amounts received in respect of the business of a life insurance fund to the life insurance fund.

(4) A life insurer shall include all assets and investments related to the business of a life insurance fund in the life insurance fund.

(5) A life insurer shall treat all liabilities including policy liabilities arising out of the conduct of the business of a life insurance fund as liabilities of the life insurance fund.

(6) The assets of a life insurance fund shall only be available for expenditure related to the conduct of the business of the life insurance fund.

(7) Life insurance funds shall not be restructured or terminated without the approval of the Registrar.

(8) A life insurance fund shall deal with its profits and losses in accordance with this Directive.

Duty of life insurer in relation to life insurance funds

5.—(1) In the investment, administration, and management of the assets of a life insurance fund, a life insurer shall—

(a) give priority to the interests of policyholders of life policies referable to the life insurance fund; and

(b) comply with this Directive.

(2) Where there is a conflict between the interests of policyholders of life policies referable to a life insurance fund and the interests of shareholders of a life insurer, the life insurer shall give priority to the interests of policyholders of those policies over the interests of shareholders.

(3) In the event that compliance with this Directive leads to a policyholder not being treated fairly, the life insurer shall inform the Registrar within 5 working days of discovering the situation.

(4) A reference in paragraphs (1), (2) and (3) to policyholders of life policies referable to a life insurance fund is a reference to those persons viewed as one or more groups.

6. Where a life insurer establishes a life insurance fund other than as part of the initial licensing process of the insurer, the life insurer shall give the Registrar written notice of—

Notice to registrar when fund established

- (a) the establishment of the fund;
- (b) the date on which the fund was established;
- (c) the nature of the life insurance business of the life insurer to which the fund relates;
- (d) the financial arrangements of the establishment; and
- (e) any other matters that the Registrar may request.

7.—(1) A life insurer shall credit the following amounts to the life insurance fund—

Payments to life insurance fund

- (a) premiums payable under life policies referable to the life insurance fund;
- (b) income from the investment of assets of the life insurance fund;
- (c) any other funds received by the life insurer in connection with its conduct of the business of the life insurance fund.

(2) Nothing in this paragraph shall prevent a life insurer from making a capital payment to a life insurance fund.

8.—(1) The assets of a life insurance fund shall only be applied by the life insurer to—

Expenditure and application of life insurance fund

- (a) meet liabilities, including policy liabilities or expenses incurred for the purposes of the business of the life insurance fund;
- (b) make investments in accordance with paragraph 10 of this Directive; or
- (c) for the purposes of distribution under paragraph 13 of this Directive.

(2) A life insurer shall not pledge or charge any of the assets of a life insurance fund except where the pledge or charge is for securing a bank overdraft for the purposes of the business of the life insurance fund.

9.—(1) A life insurer shall invest the assets of a life insurance fund in a manner that a prudent person would apply in respect of investments or loans.

Investment of life insurance funds

(2) In applying the principle of prudence, a life insurer shall seek to maintain a diversified asset portfolio so as to minimize undue risk except where a policy contract, related disclosures to the consumer and principles and practices of financial management explicitly permit otherwise, for such policy.

(3) A life insurer shall invest the assets of a life insurance fund in line

with the asset risk tolerance position determined by the life insurer's Board committee on asset liability management.

(4) A life insurance fund's assets shall not be—

- (a) used for speculative investments;
- (b) invested in a manner that is prohibited by any law;
- (c) invested in instruments that are subject to any type of prohibitions or limitations on the sale or purchase of such instrument, except for investment categories allowed by this Directive;
- (d) used to provide guarantees or assure any type of contingent liability, except as approved by the Registrar; and
- (e) used to trade in financial instruments at prices that are prejudicial to the life insurance fund's assets.

(5) A life insurer shall invest a life insurance fund's assets in any of the investment categories provided in the First Schedule and within the prudential limits provided in the Second Schedule.

Cap. 53:08

(6) A life insurer shall engage professional valuers registered under the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act to undertake valuation of the insurer's real properties.

(7) A life insurer shall report the assets of a life insurance fund to the Registrar at fair value.

Life insurer to keep records of inflows and outflows of funds

10. A life insurer shall keep records of the inflows and outflows of funds in each life insurance fund and properly record the affairs and transactions of the life insurer in respect of those life insurance funds.

Duty of directors in relation to life funds

11.—(1) A director of a life insurer shall have the duty to take reasonable care and use due diligence to ensure that, in the investment, administration, and management of the assets of a life insurance fund, the life insurer—

- (a) complies with this Part; and
- (b) gives priority to the interests of policyholders of life policies referable to the life insurance fund.

Distribution of profits

12.—(1) A life insurer shall distribute profits of a life insurance fund in accordance with the following rules—

- (a) policyholders' profits shall only be distributed to policyholders of life policies that are discretionary policies;
- (b) a minimum of 85% of the profits from discretionary policies shall be profits for policyholders of discretionary policies; and
- (c) shareholder profits from discretionary policies shall only be transferred from a life fund when the proportional policyholder profits, according to the principles and practices of financial management, have been declared and guaranteed to the policyholders of the discretionary policies.

(2) A life insurer may transfer profits from a life insurance fund in respect

of its shareholders.

(3) A life insurer shall not distribute profits of a life insurance fund if the distribution will—

(a) result into insolvency of the life insurance fund either immediately or in the subsequent year; or

(b) lead to a contravention of this Directive or a direction given by the Registrar.

13 In the absence of principles and practices of financial management approved by the Registrar in accordance with this Directive, all reserves held in respect of insurance business shall not be used for any purpose other than investment and distribution to policyholders.

Usage of reserves for any purpose other than investment and distribution

14. The Registrar shall approve the principles and practices of financial management approved by the Board of a life insurer and these shall govern all policies offered by the life insurer regarding but not limited to—

Approval of the principles and practices of financial management

(a) the determination of profits for discretionary policies;

(b) the proportions of profits allocated between policyholders and shareholders;

(c) determination of bonuses and returns passed on to policyholders;

(d) smoothing of bonuses and returns passed on to policyholders;

(e) management and decisions regarding reserves for the policies;

(f) fairness and cross-subsidization between different generations and groups of policyholders;

(g) investment strategy;

(h) business risk;

(i) the structure of charges, fees, prices, premiums and expenses;

(j) management, distribution and reattribution of the inherited estate;

(k) rounding decisions concerning unit values;

(l) market value reductions;

(m) management of the management books;

(n) closure to new business;

(o) management of unit-linked business; and

(p) disclosures and other considerations regarding the fair treatment of customers.

15.—(1) Notwithstanding paragraph 14 (j), the Registrar shall appoint a policyholder advocate to negotiate on behalf of policyholders and to represent the interests of policyholders regarding the inherited estate.

Appointment of a policyholder advocate

(2) Any decision regarding the distribution, transfer or reattribution of the inherited estate shall not be valid without the explicit agreement of the

policyholder advocate.

(3) Fees and operating expenses of the policyholder advocate shall be agreed upon by the Registrar and the life insurer before the policyholder advocate commences services, and shall be paid from the inherited estate.

Versions of  
the principles  
and practices  
of financial  
management

16.—(1) For purposes of the Registrar's approval in paragraph 14, a life insurer shall submit versions of the principles and practices of financial management which are consumer friendly and tailored to the different policies offered by the insurer.

(2) The Registrar shall not grant the approval in paragraph 14 unless he is satisfied that—

(a) the existence of the principles and practices of financial management is made known to and they are accessible to policyholders; and

(c) the principles and practices of financial management are presented in a form appropriate for financial consumers.

Validity period  
of financial  
management of  
principles and  
practices

17. Where the Registrar grants an approval in terms of paragraph 14, the principles and practices of financial management shall be valid for up to 3 years.

Revision of  
financial  
management  
principles  
and practices

18. Notwithstanding paragraph 17 above, the Registrar may direct a life insurer to revise the principles and practices of financial management before 3 years has elapsed.

Assessment of  
investments

19.—(1) In the application of this Directive with regard to the prescribed investment limits in the Second Schedule, where a life or shareholder fund has investments in a collective investment scheme, the investments shall be assessed in accordance with the look-through principle.

(2) An investment manager shall make every effort to provide a full look through principle of the underlying assets in an investment portfolio to the investor and co-investors.

Restriction on  
investments

20. A life insurer shall not invest funds of a life fund in any unlisted infrastructure and development oriented projects except through a security issued by a special purpose vehicle.

Investment  
in a special  
purpose  
vehicle

21.—(1) A life insurer shall invest in a special purpose vehicle that—

(a) has an investment plan;

(b) has a memorandum of association, trust deed or founding documents that are consistent with the investment plan;

(c) has an investment management agreement;

(d) has a signed generic subscription agreement;

(e) does not have any Board directors who are politically exposed persons; and

(f) has the Board chairperson and majority of the directors

independent of the investment manager, government and other co-investors.

(2) A life insurer shall declare to the Registrar the asset holdings and liability exposures of special purpose vehicles it has investments in as part of the quarterly and annual reports required under the directive on reporting requirements of insurers.

#### PART IV—ENFORCEMENT

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

Monetary  
penalties

(a) a fine up to K50,000,000 where the violation is committed by a life insurer;

(b) a fine up to K10,000,000 where the violation is committed by individuals who are members of the Board or management; and

(c) in addition, a fine of K50,000 may be imposed on the life insurer or individual for each subsequent day for which a violation continues after being notified by the Registrar that it is in breach of the provisions of this Directive.

(2) The penalties imposed in subparagraph (1) shall be paid through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within 10 working days after being notified of the violation.

23. Where the Registrar determines that a life insurer has not met the requirements of this Directive, the Registrar shall impose administrative penalties in accordance with the provisions of the Financial Services Act to correct the situation.

Administrative  
penalties

#### FIRST SCHEDULE

(para. 9(5))

#### INVESTMENT CATEGORIES AND LIMITS

(1) Investment categories—

- (a) government securities being securities issued by Malawi Government or Reserve Bank of Malawi;
- (b) quasi-Government securities being securities issued and guaranteed by Malawi Government entities provided that, if not fully guaranteed by Malawi Government or Reserve Bank of Malawi, they are listed on the Malawi Stock Exchange;
- (c) bank securities being deposits and other instruments of financial institutions licensed under the Banking Act;
- (d) unlisted Debt Securities being corporate bonds, debentures, redeemable or convertible preference shares and other debt instruments issued by any institution registered in Malawi but not listed on a stock exchange;
- (e) listed Debt Securities being corporate bonds, debentures, redeemable or convertible preference shares and other debt instruments issued by any institution listed on a licensed stock exchange in Malawi;

- (f) asset Backed Securities being mortgage backed securities and asset backed infrastructure bonds issued by Banks licensed under the Banking Act;
  - (g) infrastructure bonds being debt securities issued by quasi-government institutions or institutions with controlling stake owned by Malawi Government for purposes of infrastructure development;
  - (h) listed equities being shares, issued publicly and listed on a licensed stock exchange;
  - (i) unlisted equities being shares issued by companies registered in Malawi but not listed on any licensed stock exchange;
  - (j) money market instruments issued by banks licensed under the Banking Act.
  - (k) collective investment schemes approved under the Securities Act, 2010;
  - (l) Real Estate being real properties including properties constructed or acquired for the purpose of leasing to prospective tenants or for sale, provided that the property shall be handled by a licensed property manager and or a property developer in case of construction;
  - (m) real Estate Investment Trust, 80% of whose income is solely from rents, mortgage interest, and capital gains from real estate sales, 85% of whose annual profit is distributed to investors within 3 months of the end of its financial year and whose total debts and liabilities do not exceed 50% of the fair value of its investment assets;
  - (n) derivatives traded on a licensed exchange;
  - (o) offshore investments limited to—
    - (i) deposits with financial institutions in Common Market for East and Southern Africa (COMESA), Southern African Development Cooperation (SADC) and Organisation for Economic Cooperation and Development (OECD )countries as may be approved by the Registrar;
    - (ii) securities issued by governments in COMESA, SADC and OECD countries as may be approved by the Registrar;
    - (iii) securities issued in COMESA, SADC and OECD countries, and listed on a stock exchange that is a member of the World Federation of Exchanges subject to such conditions as may be imposed by the Registrar;
    - (iv) collective investment schemes approved by the Registrar under this Directive; and
    - (v) derivatives traded on a licensed exchange; and
  - (p) other assets which shall be any other assets that may be approved in writing by the Registrar provided that any such approval shall be conveyed to all participants in the life insurance sector and shall have set limits.
- (2) Limits—
- (a) notwithstanding the provisions in paragraph (1) above, the investment of life insurance fund assets in any investment category shall be limited to the percentages prescribed in Second Schedule attached hereto, where the percentage is the amount to which the market value of the investment in the category expressed as a percentage of the market value of the total assets of the life insurance funds; Provided that—

- i. fund assets may exceed the maximum indicated in the column for maximum limits in the event of increase in the market price of assets, bonus issues or transfer of investment from one class of asset to another provided that any such excess shall be reported to the Registrar within 21 working days with an action plan as to how the life insurer intends to return the life insurance fund into compliance;
  - ii. the exposure limits per issuer in each asset category shall be as prescribed in the Second Schedule attached hereto; and
- (d) the Registrar may approve a life insurance fund that follows different investment limits to those in the Second Schedule in line with the nature of the policies to which the fund relates;
- (e) the Registrar may amend from time to time the investment limits, exposures and asset categories provided in this Directive.

## SECOND SCHEDULE

(para. 9(5))

## INVESTMENT LIMITS

Item	Investment Category	Maximum exposure limit to life fund assets <sup>i</sup>	Maximum Exposure limit per issuer <sup>ii</sup>
1	Bank Securities and Money Market Instruments in institutions licensed under the Banking Act	30%	15%
2	Government securities	80%; and maximum 30% for securities of 365 days or less	No limit
3	Collective Investment Schemes	Look-through Principle	Look through principle
4	Quasi-Government securities	20%	5%
5	Listed Debt Securities	75%*	10%
6	Asset backed securities	10%*	5%
7	Listed Equity	75%*	10% in any one corporate
8	Unlisted Debt Securities and Unlisted Equity	10%*	5 % of assets in any one issuer
9	Real Estate	10%*	5% of life fund assets in any one property
10	Real Estate Investment Trusts	20%*	10% in any one property when the look-through principle is applied

<i>Item</i>	<i>Investment Category</i>	<i>Maximum exposure limit to life fund assets<sup>i</sup></i>	<i>Maximum Exposure limit per issuer<sup>ii</sup></i>
11	Unlisted securities or unlisted equity in infrastructure projects	20%*	10%
12	Derivatives	10%*	3%
13	Offshore investments	10%*	5% per foreign government and 5% per institution

Note

\*The maximum exposure for all these categories combined shall not exceed 80%.

Made this 29th day of June, 2018.

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

D. KABAMBE, PhD  
Registrar of Financial Institutions

GOVERNMENT NOTICE No. 61

## INSURANCE ACT

(CAP 47:01)

### INSURANCE (DETERMINATION OF POLICY LIABILITIES OF LIFE INSURERS) DIRECTIVE, 2018

#### ARRANGEMENT OF PARAGRAPHS

##### PARAGRAPH

##### PART I—PRELIMINARY

1. Citation
2. Interpretation

##### PART II—OBJECTIVES

3. Objectives

##### PART III—SPECIFIC REQUIREMENTS

4. Determination of best estimate liabilities
5. Determination of policy liabilities
6. Data and information used by the appointed actuary
7. Statement by the appointed actuary
8. Valuation of policy liabilities and assets
9. Reporting of policy liabilities in financial statements

##### PART IV—ENFORCEMENT

10. Monetary penalties
11. Remedial measures and administrative penalties

IN EXERCISE of the powers conferred by section 79 (3) (k) (iii) of the Insurance Act, 1, DR. DALITSO KABAMBE, Registrar of Financial Institutions, issue the following Directive—

PART I—PRELIMINARY

1. This Directive may be cited as the Insurance (Determination of Citation  
Policy Liabilities of Life Insurers) Directive, 2018.

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

“acquisition costs” means fixed and variable costs of acquiring new business;

“actuarial professional standards” includes actuarial professional standards of South Africa, Canada, Australia, United States of America and United Kingdom or any actuarial professional standards as may be approved by the Registrar;

“accumulation or retrospective method” means the method of calculating the policy liability where the policy liability is represented for saving policies as the value of the account balance (the capital and interest so far accumulated), less any acquisition costs to be recouped from that balance, and for protection policies, as the value of any outstanding claims (including incurred but unreported claims) plus the value of the unexpired risk, less acquisition costs to be recouped from that balance;

“appointed actuary” means an actuary appointed by a life insurer in terms of section 25 of the Act;

“best estimate assumptions” means assumptions about future experience which are made using professional judgment, training and experience and are neither deliberately overstated nor deliberately understated;

“best estimate liability” means the liability calculated using the best estimate assumptions;

“bonus” means an amount added at the discretion of the life insurer to the benefits due under a discretionary policy;

“discretionary policy” means a policy where the life insurer has discretion over additions to policies including those from investment earnings;

“investment management costs” means fixed and variable costs of managing investment funds;

“maintenance costs” means—

(a) fixed and variable costs of administering policies subsequent to the sale and recording of the policies;

(b) fixed and variable costs of administering the general operations of the life insurer; and

(c) all operating costs and expenses other than acquisition costs and investment management costs;

“policy liability” means a liability calculated in accordance with this Directive;

“projection method” means the method of calculating the policy liability where the policy liability is represented by the present value of expected future net cash outflows or inflows relating to the policy plus the expected future profit which is included because the net cash-flows in practice differ from the accounted profit; and

“Valuation date” means an effective date of analysis and valuation of policy liabilities by the appointed actuary.

#### PART II—OBJECTIVES

Objectives

3. The objectives of this Directive are to—

(a) ensure that life insurers undertake a prudent valuation of their actuarial and other policy liabilities;

(b) establish a framework under which an appointed actuary of a life insurer determines appropriate methods and assumptions to value policy liabilities of a life insurer; and

(c) link the underlying policy liability to solvency requirements set down under the Insurance (Minimum Capital and Solvency Requirements for Life Insurers) Directive, 2017.

#### PART III—SPECIFIC REQUIREMENTS

Determination  
of best  
estimate  
liabilities

4.—(1) The policy liabilities of a life insurer shall be determined using best estimate assumptions and with due regard to significant recent experience.

(2) The best estimate liability shall be determined as the value of the expected future payments and receipts under the policy based upon the obligations at the reporting date and shall be equal to the present value of expected future benefit payments plus the present value of future expected expenses less the present value of expected future receipts.

(3) The value determined under subparagraph (2), shall make proper allowance for reinsurance having regard to the nature of the arrangements and the materiality of such business.

(4) A life insurer’s benefit obligations shall include all contractual benefits.

(5) Discretionary policies shall include bonuses declared prior to, but not on or after, the valuation date.

(6) An appointed actuary, in projecting the expected future cash flows, shall make assumptions about the expected future experience, taking into account all factors considered to be material to the calculation including, but not limited to—

(a) investment earnings;

(b) inflation;

(c) taxation;

- (d) expenses;
- (e) mortality and morbidity; and
- (f) policy discontinuances.

(7) The appointed actuary shall review the assumptions at the time of each valuation of policy liabilities including any reviews of the policyholder liabilities before the lapse of a year after the previous valuation.

5.—(1) A life insurer shall determine the policy liability using the projection method. Determination  
of policy  
liabilities

(2) The policy liability shall not be less than the greater of—

- (a) the best estimate liability; and
- (b) the minimum termination value of the policy.

(3) The policy liability shall include the present value of future expected profits, to be released over the remaining life of the policy.

(4) A life insurer may use an alternative approach of calculating the policy liability such as the accumulation or retrospective method, provided that the profit emerging in each year is not materially different from the profit derived using a projection method.

(5) The appointed actuary shall be responsible for justification of the method and assumptions employed.

(6) A insurer shall ensure that the method of determining the amount of policy liabilities and the assumptions for the valuation parameters is not subject to arbitrary discontinuities from one year to the next.

(7) The appointed actuary shall make appropriate adjustments to the policy liability where the basis of asset valuation used for financial statements is not consistent with the basis of asset valuation implicit in the valuation of the liabilities.

(8) A life insurer shall provide an explicit allowance for profits to be recognized prudently over the future life of a policy to avoid the premature recognition of profits that may give rise to losses in future years.

(9) Where the valuation shows a deficit, a life insurer shall immediately recognize that deficit.

(10) The policy liability calculations shall include such margins as the appointed actuary considers appropriate to the particular company.

6.—(1) A life insurer shall ensure that its database is up to date and that the data provided to an appointed actuary is accurate and complete. Data and  
information  
used by the  
appointed  
actuary

(2) A life insurer shall—

(a) give an appointed actuary unrestricted access to the database; and

(b) furnish expeditiously, upon request by an appointed actuary, data and explanation as the appointed actuary may reasonably require when conducting the valuation of liabilities of the life insurer's business.

(3) An appointed actuary shall ensure that the data on business in force is accurate and complete.

(4) An appointed actuary shall make appropriate allowance in his estimations to review and document the basis of an allowance, where he has reason to believe that the data may produce material biases in the results.

Statement  
by an  
appointed  
actuary.

7.—(1) An appointed actuary shall prepare a report to be known as the “financial condition report” in respect of each valuation of policy liabilities covered by this Directive.

(2) An appointed actuary shall provide the financial condition report to the Board of the life insurer and the Registrar of Financial Institutions within 90 days from the end of the financial year of the life insurer.

(3) The financial condition report shall include, but not be limited to—

(a) a summary of the results;

(b) a description of the method adopted for determining the policy liabilities in respect of each type of policy;

(c) a description of the assumptions adopted for the determination of the policy liabilities for each type of policy, including—

(i) the rates of interest and the asset mix from which they were derived;

(ii) the future maintenance and investment costs;

(iii) the rate of inflation applicable to future expenses and any automatic indexation of benefits and premiums;

(iv) the rates of taxation and their legislative basis;

(v) the tables of mortality and morbidity;

(vi) the rates of discontinuance;

(vii) the surrender value basis applied or a sample of surrender values;

(viii) the rates of growth of unit prices in respect of unit linked policies; and

(ix) the basis of future bonus additions in respect of discretionary policies;

(d) a description of the rates of commission reflected in the valuation;

(e) a separate summary of the results including proposed or declared bonuses that are known at the date of the valuation;

(f) an opinion regarding the data upon which the valuation was conducted;

(g) a statement by an appointed actuary confirming that the value of the policy liabilities conforms with this Directive in all material respects;

(h) a classification of discretionary and non-discretionary policies;

(i) an analysis of profit broken down into the planned and experience components;

(j) a certificate attesting to the solvency position of the life insurer;

(k) a summary of the analyses and conclusions concerning the

experience of the business since the previous valuation; and

(l) a summary of the appointed actuary's assessment of the life insurer's business plans, enterprise risk management, skills and practices and the external environment.

(4) An appointed actuary shall ensure that a financial condition report addresses the solvency requirements stipulated in the Insurance (Minimum Capital and Solvency Requirements for Life Insurers) Directive, 2017 and shall—

(a) identify, describe and where practical quantify the material risks facing a life insurer that, in the appointed actuary's opinion, pose a threat to the life insurer's ability to meet current and future solvency requirements;

(b) comment on the steps taken or proposed to be taken to address the risks identified in paragraph (a);

(c) advise on steps to be taken to address risks identified in paragraph (a);

(d) advise the life insurer on the appropriate treatment for solvency purposes of any insurance business with characteristics not adequately addressed by the Insurance (Minimum Capital and Solvency Requirements for Life Insurers) Directive, 2017;

(e) comment on the risks involved with mismatching assets and liabilities;

(f) outline the adverse experience assumptions adopted in establishing liabilities in excess of those arising under the best estimate assumptions;

(g) identify those assumptions to which the life insurer's solvency margin is most sensitive and quantify those sensitivities;

(h) advise on whether the life insurer, having regard to the summary under paragraph 8(3) (k), is likely to fail the solvency requirement in the next 3 years; and

(i) advise on how reasonable estimates of the policy liability and solvency disclosure can be made each quarter during the ensuing year.

8.—(1) A life insurer shall conduct a valuation of its policy liabilities at least once every year as part of its end of financial year reporting of the company.

Valuation  
of policy  
liabilities  
and assets

(2) Notwithstanding paragraph (1), the Registrar may require a life insurer to conduct a valuation of its policy liabilities at any point in time other than at the end of the financial year, depending on the extent of the change in the business volume and profile, claims and underwriting processes, and policy and business conditions.

9.—(1) The value of the policy liabilities must be reflected in the statement of financial position of the life insurer while any increase (or decrease) in policy liabilities must be reflected in the statement of comprehensive income of the life insurer.

Reporting  
of policy  
liabilities in  
financial  
statements

(2) A life insurer shall conduct a valuation of its assets in accordance to accounting standards, at fair value through the profit and loss account.

PART IV—ENFORCEMENT

Monetary  
penalties

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

(a) a fine up to K50,000,000 where the violation is committed by a life insurer;

(b) a fine up to K10,000,000 where the violation is committed by individuals who are members of the Board or management; and

(c) in addition, a fine of K50,000 may be imposed on the life insurer or individual for each subsequent day for which a violation continues after being notified by the Registrar that it is in breach of the provisions of this Directive.

(2) The penalties imposed in subparagraph (1) shall be paid through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within 10 working days after being notified of the violation.

Remedial  
measures and  
administrative  
penalties  
Cap. 44:05

11. Where the Registrar determines that an insurer has not met the requirements of this Directive, the Registrar may impose administrative penalties in accordance with the provisions of the Financial Services Act, to correct the situation.

Dated this 29th day of June 2018

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

D. KABAMBE, PhD  
*Registrar of Financial Institutions*

GOVERNMENT NOTICE No. 62

FINANCIAL SERVICES ACT

(CAP 44:05)

FINANCIAL SERVICES (DISCLOSURE OF INFORMATION BY BANKS)  
DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVES

3. Objectives

## PARAGRAPH

## PART III—REGULATORY REQUIREMENTS

4. Responsibility of the Board and executive officer
5. Audited financial statements
6. Unaudited financial statements
7. Exemptions from publishing unaudited financial statements
8. Other disclosures

## PART IV—ENFORCEMENT

9. Monetary penalties
10. Administrative penalties
11. Revocation

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

1. This Directive may be cited as the Financial Services (Disclosure of Information by Banks) Directive, 2018. Citation
2. In this directive, unless the context otherwise requires— Interpretation
  - “bank” has the meaning ascribed to that term in Banking Act; Cap. 44:01
  - “banking business” has the meaning ascribed to that term in the Banking Act; Cap. 44:01
  - “Board” means the highest body of authority in a banking institution responsible for strategically guiding the institution, effectively monitoring management, and properly accounting to shareholders;
  - “disclosure” means publishing or displaying information to the general public as prescribed in this Directive or by the Registrar from time to time;
  - “executive officer” means an officer at the most senior level of the management of a banking institution, whether or not he is a director, who effectively manages the institution;
  - “financial statements” means—
    - (a) Statement of Position;
    - (b) Statement of Comprehensive Income; and
    - (d) Cash flow statement;
  - “insider” has the meaning ascribed to that term in the Banking Act; Cap. 44:01
  - “related party” has the meaning ascribed to that term in the Banking Act; Cap. 44:01
  - “senior management official” means—
    - (a) an executive officer;
    - (b) head of department or function;

(c) an official who ensures that every bank reports either directly to the Board, to a committee of the Board or to an executive officer; or

(d) a branch manager of a bank that the Registrar declares as a senior management official.

Objectives

3. The objectives of this Directive are to—

(a) maintain a level of transparency that is adequate and relevant to enable depositors and the general public to make informed decisions;

(b) enhance market discipline in the banking sector by providing adequate financial information including that on pricing of products and services to various stakeholders; and

(c) promote and maintain public confidence in the banking industry through enhanced transparency.

Responsibility  
of Board and  
executive  
officer

4.—(1) The Board and an executive officer of a bank shall ensure that the bank complies with the requirements of this Directive.

(2) The bank shall have a formal disclosure policy approved by the Board.

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

(4) The bank shall implement a process for assessing the appropriateness of its disclosures, including validation and frequency of such disclosures.

(5) The executive officer shall be responsible for full, timely and accurate disclosure of all relevant information.

Audited  
Financial  
Statements

5.—(1) A bank shall, within 4 months after the end of each financial year, publish in at least two newspapers of wide circulation in Malawi, excluding on public holidays, and on its website the following information—

(a) a copy of audited financial statements containing at a minimum a statement of financial position, statement of comprehensive income, and cash flow statement; and

(b) other disclosures as listed under paragraph (7) of this Directive and prescribed in Forms 4 to 8 of the Schedule hereto.

(2) The bank shall in addition to publishing the information in subparagraph (1), disclose in detail in its audited annual accounts all the information as required under International Financial Reporting Standards 7: Financial Disclosures.

Unaudited  
Financial  
Statements

6.—(1) A bank shall prepare and publish in at least 2 newspapers of wide circulation in Malawi, excluding public holidays, and on its website, its unaudited financial statements and all disclosures listed in paragraph (7) of this Directive.

(2) The bank shall publish the unaudited financial statements for the first half of the year within 60 days after 30th of June and not later than 31 August.

(3) The bank shall only publish audited financial accounts for the second half of the year, in accordance with paragraph 5:

Provided that the published financial statements shall contain all the disclosures stipulated under paragraph 7.

(4) The bank shall, at a minimum, ensure that the published unaudited financial statements contain the items prescribed in Forms 1 to 3 in the Schedule hereto.

(5) Subject to subparagraph (4), the bank may disclose additional information, including commentary to the Forms where the information enhances disclosure to the general public.

7. A newly licensed bank shall be exempted from publishing unaudited financial statements and other disclosures until after 12 months from the date the bank commenced its operations.

Exemptions  
from  
publishing  
unaudited  
financial  
statements

8.—(1) A bank shall in addition to publication of financial statements as stipulated in paragraphs 5 and 6 of this Directive, publish in at least two newspapers of wide circulation in Malawi, excluding public holidays, and on its website the following information—

Other  
disclosures

(a) total loans to related parties, including loans to insiders, and their proportion to core capital;

(b) base or Prime Lending Rate including the maximum spread or range (basis points) above the prime or base rate including that on foreign currency loans;

(c) director's remuneration, bonuses and management fees;

(d) deposit rates including those on foreign currency deposits for Foreign Currency Denominated Accounts (FCDAs); and

(e) itemized fees or charges on all personal banking products or services.

(2) The bank shall publish all disclosures in the format prescribed in Forms 4 to 8 in the Schedule hereto.

(3) The bank shall publish additional information pertaining to charges or fees where the bank has other personal banking products or services that are not reflected on Form 8 prescribed in the Schedule hereto.

(4) The bank shall at all times exhibit copies of its financial statements and disclosures listed in subparagraph (1) (b), (d), and (e) in a conspicuous place at its place of business and in all banking halls of its branches and agencies.

(5) In addition to the list of disclosures in this paragraph of this Directive, the bank shall publish any other information as the Registrar may from time to time prescribe.

(6) The Registrar shall publish or direct the bank to publish a breach or violation of the Act, the Banking Act or any relevant financial services laws by the bank including the penalties imposed on the bank.

(7) The Registrar may also publish a consolidated summary of major disclosures for all the banks in any widely circulated newspaper.

Monetary  
penalties

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

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

(b) for a natural person who is a member of the Board of directors or senior management, up to 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.

(2) With respect to a natural person 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  
Cap. 44:01

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 and the Banking Act.

Revocation

11. The Directive on Disclosure of Information by Banking Institutions (DO1-2010/DR) is hereby revoked.

## SCHEDULE

(para. 5(1)(b))

### FORMS FOR PUBLISHING FINANCIAL STATEMENTS AND OTHER DISCLOSURES

#### FORM 1

#### STATEMENT OF POSITION

ASSETS	Current Year/ Half Year (K' Million)	Previous Year/ Half Year (K' Million)
Cash and Cash Equivalents .. .. .	x	x
Investment Securities (< 1 year) .. .. .	x	x
Investment Securities (> 1 year) .. .. .	x	x
Loans and Advances (local currency)	x	x
Forex Loans .. .. .	x	x
Property, Plant and Equipment .. .. .	x	x
Other Assets .. .. .	x	x
<b>TOTAL ASSETS</b> .. .. .	<b>x</b>	<b>x</b>

	Current Year/ Half Year (K'Million)	Previous Year/ Half Year (K' Million)
<b>LIABILITIES</b>		
Deposits from Customers (Local) ..	x	x
Deposits from Other Banks ..	x	x
Foreign Currency Deposits (FCDA's) ..	x	x
Borrowed Funds (Local) ..	x	x
Borrowed Funds (Foreign) ..	x	x
Other Liabilities ..	x	x
<b>TOTAL EQUITY</b> ..	x	x
<b>TOTAL LIABILITIES</b> ..	x	x
<b>OFF BALANCE SHEET ITEMS</b> ..	x	x

## FORM 2

## STATEMENT OF COMPREHENSIVE INCOME

	Current Year/ Half Year (K'Million)	Previous Year/ Half Year (K' Million)
Interest Income ..	x	x
Interest Expense ..	x	x
Net Interest Income ..	x	x
Non-Interest Income ..	x	x
Non-Interest Expense ..	x	x
Operating Income ..	x	x
Provisions/Impairment Loss ..	x	x
Other Expenses ..	x	x
Taxation ..	x	x
<b>NET PROFIT</b> ..	x	x
<b>DIVIDENDS</b> ..	x	x

## FORM 3

## CASH FLOW STATEMENT

	Current Year/ Half Year	Previous Year/ Half Year
Net cash flows from Operating activities ..	x	x
Net cash used in Investment activities ..	x	x
Net cash generated from Financing activities ..	x	x
Cash and cash equivalents at end of period ..	x	x

## FORM 4

## LOANS TO DIRECTORS, SENIOR MANAGEMENT AND OTHER RELATED PARTIES

	Current Year/ Half Year	Previous Year/ Half Year
Directors		
Balance at beginning of year/half year	.. x	x
Loans granted during the year/half year	.. x	x
Repayments .. .. .	.. x	x
Balance at end of year/half year	.. x	x
Other Related Parties .. .. .	.. x	x
Balance at beginning of year/half year	.. x	x
Loans granted during the year/half year	.. x	x
Repayments .. .. .	.. x	x
Balance at end of year/half year	.. x	x
Senior Management Officials .. .. .	.. x	x
Balance at beginning of year/half year	.. x	x
Loans granted during the year/half year	.. x	x
Repayments .. .. .	.. x	x
Balance at end of year/half year	.. x	x

## FORM 5

## BASE LENDING RATE

	Current Year/ Half Year	Previous Year/ Half Year
Base Lending Rate (local currency)	.. x	x
Maximum Applicable Range (basis points)	.. x	x
Base Lending Rate (foreign currency loans)	.. x	x
RBM Bank Rate .. .. .	.. x	x

## FORM 6

## DIRECTOR'S REMUNERATION, BONUSES AND MANAGEMENT FEES

	Current Year/ Half Year	Previous Year/ Half Year
Director's Remuneration .. .. .	.. x	x
Total Bonuses Paid by .. .. .	.. x	x
licensed institution		
Management Fees .. .. .	.. x	x

FORM 7  
DEPOSIT RATES

Type of Deposit	Current Year/ Half Year	Previous Year/ Half Year
1. . . . .	x	x
2. . . . .	x	x
3. . . . .	x	x
4. . . . .	x	x

ANNEXURE 8

CHARGES OR FEES ON PERSONAL BANKING ACCOUNTS

Number	Item/Transaction	Charge/Fee
1.0	Current Accounts	
	(1) Required minimum opening balance	
	(2) Monthly service fee (breakdown per customer type)	
	(3) Cheque withdrawal over counter	
	(4) Fees per ATM withdrawal	
	(5) ATM mini statement	
	(6) Interim statement per page	
	(7) Periodic scheduled statement	
	(8) Cheque book	
	(9) Dishonoured cheque	
	(10) Special clearance	
	(11) Counter cheque	
	(12) Stop payment	
	(13) Standing order	
	(14) Balance inquiry	
	(15) New ATM card issuance	
	(16) ATM renewal or replacement (indicate costs for different card types)	
	(17) Overdrawn account interest charge	
	(18) Unarranged overdraft	
	(19) Interbank transfer	
	(20) Bill payments through ATM	
	(21) Deposit fee	
	(22) Other (please specify)	

Number	Item/Transaction	Charge/Fee
2.0	Savings Accounts (Disclose for specific types e.g. Saver Plus, Contract Save, Partnerships etc)	
	(1) Required minimum opening balance (2) Monthly service fee (3) Interim statement (4) Account closure	
3.0	Electronic Banking	
	(1) Internet banking monthly service fee (2) Internet transfers (3) SMS banking(iv) Other	
4.0	Foreign Exchange Transactions	
	(1) Purchase/Sale of TCs (2) Purchase of foreign cheque (3) Sale/purchase of cash passports (4) Telegraphic transfer (5) Telex/Swift (6) Transfer from FCDA to local current account (within bank and to other banks)	
5.0	Personal Loans	
	(1) Processing/Arrangement/Appraisal fee (a) Personal loans (b) Overdrafts (c) Mortgage finance (d) Asset finance (2) Unpaid loan installment (3) Early repayment (4) Valuation fees (5) Other	

We the undersigned attest to the correctness of the above financial statements and other disclosures. We declare that the statements have been examined by us, and to the best of our knowledge and belief have been prepared in conformance with the instructions and are true and correct.

	<i>Name</i>	<i>Designation</i>	<i>Signature</i>	<i>Date</i>
1.	.....	.....	.....	.....
2.	.....	.....	.....	.....
3.	.....	.....	.....	.....

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Questions relating to this Directive should be addressed to the Director, Bank Supervision Department of the Reserve Bank of Malawi.

Made this 29th day of June 2018.

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

D. KABAMBE, PhD  
*Registrar of Financial Institutions*