GOVERNMENT NOTICE NO. 9

FINANCIAL SERVICES ACT

(CAP. 44: 05)

FINANCIAL SERVICES (PROMPT CORRECTIVE ACTION FOR DEPOSIT TAKING MICROFINANCE INSTITUTIONS) 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 Services 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 Deposit Taking Microfinance Institutions) Directive, 2018.

Interpretation

2. In this Directive unless the context otherwise requires—

"core capital" has the meaning ascribed to that term in the Financial Services (Capital Adequacy Requirement for Deposit Taking Microfinance Institutions) Directive, 2014; GN. 38/2014

"institution" means a deposit taking microfinance institution under the Microfinance Act; and Cap. 46:08

"Registrar" means the Registrar of Financial Institutions appointed under the Act.

Scope of application

3. The powers specified in this Directive are in addition to the general powers of the Registrar under the Act and the Microfinance Act and other Directives. Cap. 46:08

PART II—OBJECTIVES

Objecives

4. The objectives of this Directive are to—

(*a*) establish corrective actions that the Registrar may take or impose on an institution; and

(*b*) prescribe circumstances under which the Registrar or his agent may exercise powers under the existing legal framework to resolve an institution while—

(i) the institution is still under the control of its owners; and

(ii) suspending the rights of the owners and management before an institution becomes insolvency.

PART III—PROMPT CORRECTIVE ACTION

Prompt corrective actions

5. The Registrar shall take prompt corrective actions on an institution that falls in each of the categories set out in the Schedule.

General Enforcement Actions

6. The Registrar shall, in addition to the supervisory actions outlined in the Schedule, impose the directions and administrative penalties prescribed in section 39 and 75 of the Act.

SCHEDULE *para 5*

SUMMARY OF PROMPT CORRECTIVE ACTIONS

Category	*Institution Condition*	*Mandatory Supervisory Action*
Capital Adequacy Ratio	A. Marginally Capitalised Institution: An institution with core capital ratio which is greater than 10% but less than 15% which, given its financial developments, for example, worsening asset quality, is expected to breach the minimum capital requirement prescribed by the Registrar.	The Registrar shall take the following measures— (*a*) caution management to proactively monitor the ratio; (*b*) put the institution under the Registrar's watch list for increased monitoring; and (c) restrict dividend payment.
	B. Undercapitalised Institution: An institution with core capital ratio which is greater than 8% but less than the prescribed minimum of 10%.	The Registrar shall take the following measures in addition to the measures prescribed for a marginally capitalised institution—

	(*a*) engage the management, board or shareholders of the institution to discuss ways to resolve the undercapitalization; (*b*) restrict investment in new branches; (*c*) restrict investment in fixed assets; (*d*) request the institution to submit a financial recovery plan to the Registrar; (*e*) conduct targeted on-site examination; (*f*) conclude an enforceable undertaking with the institution; and (*g*) request an institution to recapitalize to meet the regulatory minimum capital requirement.
C. Significantly Undercapitalised Microfinance Institution: An institution with core capital ratio which is equal to, or greater than, 5.0% but less than 8.0%.	The Registrar shall take the following measures in addition to the measures prescribed for a marginally capitalised and undercapitalised institution— (*a*) restrict lending; (*b*) direct the institution to replace management, board, or both management and board, in addition to the Registrar's power to remove relevant persons that do not meet the fit and proper requirements prescribed by the Registrar; (*c*) restrict the undertaking of any material transaction without Registrar's approval; (*d*) prohibit changes in the institution's accounting methods; (*e*) direct immediate new recapitalisation or capital restoration plan;

		(*f*) review the institution's capital plan within fourteen days and communicate to the institution its acceptability or otherwise; (*g*) take over management and control of the institution with in six months after final capital call; (*h*) immediately after issuance of final capital call, start compiling all critical information in readiness for implementation of any resolution option, prescribed for a critically undercapitalised institution; and (*i*) if the institution's capital plan is unacceptable or if the institution's shareholders fail to recapitalise within the period specified by the Registrar, implement any of the resolution options prescribed for a critically undercapitalised institution.
	D. Critically undercapitalised institution: An institution with core capital ratio which is less than 5.0%	The Registrar shall take the following measures in addition to the measures prescribed for a marginally capitalised, undercapitalised and significantly undercapitalised institution— (*a*) immediately take over management of the institution or appoint a statutory manager to exercise any or all of the resolution powers available under the Act and the Microfinance Act; and (*b*) immediately initiate procedures for liquidation of the institution in accordance with the provisions of the Act and the Microfinance Act.
Cap. 46:08		
Cap. 46:08		

Liquidity	A. Marginally liquid Microfinance Institution: An institution with a liquidity ratio which is greater than 20% but less than 25 %	The Registrar shall engage management to closely monitor the institution's liquidity ratio.
	B. Institution with weak liquidity position. An institution with liquidity ratio which is between 15% and 20%	The Registrar shall take the following measures in addition to the measures prescribed for a marginally liquid institution— (*a*) engage management for discussion on its plans to improve liquidity; (*b*) direct the institution to submit a plan for restoring liquidity to the Registrar; (*c*) review the plan within fourteen days and communicate to the institution its acceptability or otherwise; and (*d*) impose administrative penalty.
	C. Significantly Illiquid Institution: A Microfinance Institution that records a liquidity ratio of between 10% and 15%	The Registrar shall take the following measures in addition to the measures prescribed for a marginally liquid institution and an institution with a weak liquidity position— (*a*) conduct a spot-check to investigate the problem of the institution including compliance with its own liquidity management practices and contingency plan; (*b*) invite the institution's board and management for discussion on efforts being pursued to address the problem; (*c*) direct the institution to realise illiquid assets inorder to improve liquidity;

	(*d*) direct the institution to intensify debt recovery; and (*e*) direct the institution to divest its equity in subsidiaries or related entities.
D. Critically illiquid institution: An institution that persistently registers liquidity ratio which is below 10%.	The Registrar shall take the following measures in addition to the measures prescribed for a marginally liquid institution, an institution with a weak liquidity position and a significantly illiquid institution— (*a*) change management or directors; and (*b*) place the institution under statutory management if unable or unlikely to meet maturing obligations for five days.

Made this 24th day of January, 2018.

DR. D. KABAMBE
Registrar of Financial Institutions

FILE NO. FIN/PFSPD/03/04