GOVERNMENT NOTICE NO. 28

FINANCIAL SERVICES ACT

(CAP.44:05)

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

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

PART I—PRELIMINARY

Citation

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

PART II—OBJECTIVES

Objectives

2. The objectives of this Directive are to—

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

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

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

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

PART III—PROMPT CORRECTIVE ACTIONS

Prompt corrective actions

4. In addition to sanctions and supervisory actions as outlined in the Second Schedule of this Directive; the Registrar shall take prompt corrective action on a bank that falls in each of the categories as outlined in the First Schedule.

PART IV—MISCELLANEOUS

Revocation of G. N. 18/2014

5. The Financial Services (Prompt Corrective Action for Banks) Directive, 2014 is hereby revoked.

FIRST SCHEDULE

SUMMARY OF PROMPT CORRECTIVE ACTIONS

CATEGORY	BANK CONDITION	MANDATORY SUPERVISORY ACTION
Capital Adequacy Ratio (CAR)	A. UNDERCAPITALISED R BANKS Core Capital Ratio of greater than 8% but less than the prescribed minimum of 10.0 in any one quarter, or banks who, given their financial developments (e.g. worsening asset quality) are expected to breach the minimum requirement on a short horizon.	(*a*) restrict investment in other subsidiaries, related companies, new branches; (*b*) restrict investment in fixed assets; (*c*) restrict dividend payment; (*d*) financial rehabilitation plan required; (*e*) conduct special examination; or (*f*) place the bank under the Registrar's Watch List for increased monitoring and inform bank of such status.
	B. SIGNIFICANTLY UNDER-CAPITALISED BANKS Core Capital Ratio of equal to or greater than 5% but less than 8%.	A combination of the following may be used in addition to the continuation of measures above— (*a*) restrict new lending to recoveries made (zero-based lending); (*b*) require the bank to replace management and new directors (without prejudice to the power of the Registrar to remove relevant persons that do not meet its fit and proper criteria);

CATEGORY	BANK CONDITION	MANDATORY SUPERVISORY ACTION
		(*c*) restrict undertaking of any material transaction without Registrar's approval; (*d*) prohibiting changes in accounting methods except as directed by the Registrar; (*e*) direct immediate new recapitalization or capital restoration plan; (*f*) registrar to review Capital Plan within two weeks and communicate to the bank its acceptability or otherwise; (*g*) the Registrar should make the final capital call on the bank within 3 months from time of acceptance of the Capital Plan; (*h*) within a maximum of three months after the final capital call, the Registrar may take over management and control of the bank or hand over the bank to a Deposit Insurance agency if one is established; (*i*) registrar, his authorized agent or Deposit Insurance agency shall immediately after issuance of final capital call; start compiling all critical information in readiness for implementation of any resolution option as stipulated in C below; or (*j*) if Capital Plan is unacceptable or if shareholders fail to recapitalize within the period specified in (*e*) above, Registrar or Deposit Insurance agency shall implement either of the resolution options as stipulated in C below.
	C. CRITICALLY UNDERCAPITALISED BANKS	Any one or a combination of the following in addition to supervisory actions under B above:

CATEGORY	BANK CONDITION	MANDATORY SUPERVISORY ACTION
	Banks with a Core Capital Ratio of more than 2% but less than 5%	Registrar takes over management of the bank immediately or appoints a statutory manager (or a Deposit Insurance agency if one is established) to consider exercising any or all of the resolution powers available under the Financial Services Act and Banking Act as may be from time to time amended.
	D. FAILED BANK	
	A bank with Core Capital Ratio of less than or equal to 2%.	revoke banking license. The Registrar shall immediately initiate procedures for the liquidation of the institution in accordance with the provisions of the Financial Services Act, the Banking Act, as may from time to time be amended.
LIQUIDITY	A. BANKS WEAK LIQUIDITY POSITION	Any one or all of the following actions—
	A bank with Liquidity ratio of between 17.5% and 25%.	(*a*) engage management for discussion on its plans to improve liquidity; (*b*) direct plan for restoring liquidity. Registrar to review plan within two weeks and communicate to the bank its acceptability or otherwise; and (*c*) administrative penalty.
	B. SIGNIFICANTLY ILLIQUID BANKS	In addition to the supervisory actions in (A).If they do not improve liquidity, the Registrar or his authorized agent shall—
	A bank that records a Liquidity ratio of between 10% and 17.5%.	(*a*) conduct spot check to investigate the problem of the bank including compliance with its own contingency plan; (*b*) invite the bank's Board and management for discussion on efforts being pursued to address the problem; (*c*) direct the bank to realize assets that do not qualify for inclusion in liquidity ratio computation;

CATEGORY	BANK CONDITION	MANDATORY SUPERVISORY ACTION
		(*d*) direct bank to embark on aggressive debt recovery; and (*e*) advise bank to divest its equity in subsidiaries or related companies.
	C *CRITICALLY ILLIQUID BANKS* A bank that records liquidity ratio of below 10%	Any one or a combination of the following; in addition to (*a*) to (*e*), above— (*a*) change management or directors; and (*b*) place bank under statutory management if unable or unlikely to meet maturing obligations for 5 days.

SECOND SCHEDULE

GENERAL ENFORCEMENT ACTIONS (IN ADDITION TO CAPITAL AND LIQUIDITY BREACHES)

TYPE OF VIOLATION OR CONDITION OR CONDUCT	SANCTIONS OR SUPERVISORY ACTION
Non-compliance with provisions of financial services law (e.g. Banking Act)	(*a*) written warning, written directions, monetary penalty under s. 75(1) of the Act; or (*b*) court orders to enforce relevant law upon application of Registrar under s.76 of the Act.
1. Non-compliance with Financial Services Act or Banking Act provisions. 2. Unsafe or unsound practices. 3. Failure to submit to inspections. 4. Provision of false information.	(*a*) written directions to take action or refrain from taking action, require external audit, restrict directors or officers from taking part in management, appoint directors or officers, remove auditors, restrict borrowing and payment of dividends; and (*b*) impose cease and desist order temporarily or indefinitely under s.39 of the Banking Act.
Non-compliance with registrar's directive (Financial Services Act s.34 (8)) or prudential requirements e.g. liquidity, reserves, and exposure limits under s.54 of the Banking Act	Administrative penalty
Non-compliance with any relevant statutory provision for which no other penalty exists under s.54 of the Banking Act.	Fine and imprisonment of 4 years

TYPE OF VIOLATION OR CONDITION OR CONDUCT	SANCTIONS OR SUPERVISORY ACTION
Failure to meet capital requirements	(*a*) automatic restriction on dividend payment under s.12(3) of the Banking Act; or (*b*) prescribe higher capital requirements to address risks under s.10 of the Banking Act.
Insolvency or likelihood thereof (Banking Act s.48)	(*a*) remove director of bank; (*b*) suspend or remove entire board; or (*c*) remove shareholders or require specific shareholders to reduce their control of the bank.
(*a*) lack of integrity, prudence, professional skill or sound business principles in the conduct of business or in a manner detrimental to customers or the general public; (*b*) unsound financial position or likelihood; (*c*) causing or promoting instability in the financial system or likely to do so; (*d*) non-compliance with Financial Services Act or Banking Act, Registrar's directives, or licence conditions; or (*e*) liquidation, windin-gup, or dissolution.	(*a*) vary the conditions of the licence; (*b*) impose additional conditions; or (*c*) restrict permitted activities, suspend or revoke license.
sections 26 and 27 of the Act.	
1. Unsafe or unsound practices. 2. "Significant" undercapitalization.	(*a*) "cease and desist" orders; and (*b*) order to take remedial action including restitution or reimbursement for losses, payment of a monetary penalty, or order requiring termination of a person's affiliation.
Insolvency	In the case of Significant undercapitalization— (*a*) take any or all of the actions outlined in the Financial Services (Capital Adequacy for Banks) Directive; and (*b*) enter into agreement with bank's board of directors requiring the bank to rectify its significant undercapitalization within 90 days and to restore capital adequacy within 180 days or within such shorter periods as the Registrar shall order under s.26 of the Banking Act.

TYPE OF VIOLATION OR CONDITION OR CONDUCT	SANCTIONS OR SUPERVISORY ACTION
(*a*) unlikely to meet the demand of depositors or pay obligations in the normal course of business under s.27 of the Banking Act;	
(*b*) incurred or likely to incur losses that will deplete all or substantially all of its capital under s.27 of the Banking Act;	
(*c*) failure to remedy significant undercapitalization within specified time under s.26(7) of the Banking Act;	Place under statutory management
(*d*) further deterioration in the financial position of the bank prior to expiry of the time specified for recapitalization under s.68 of the Banking Act;	
(*e*) non-compliance with any financial services law e.g. Banking Act, Financial Services Act s.68;	
(*f*) financial crimes, under s.68 of the Act;	
(*g*) failure to submit to inspection, under s.68; of the Act;	
(*h*) unsafe, or unsound practices; or	
(*i*) in the interest of depositors or financial system under s.68 of the Act.	
(*a*) unsafe or unsound practices;	
(*b*) failure to remedy significant undercapitalization within specified time;	Licence revocation and closure
(*c*) insolvency;	
(*d*) further deterioration in the financial position of the bank prior to expiry of the time specified for recapitalization; or	
(*e*) statutory management for more than 120 days under s.71 (2) of the Act.	

Made this 3rd day of April, 2018.

D. KABAMBE, PhD
Registrar of Financial Institutions

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