GOVERNMENT NOTICE NO. 32

FINANCIAL SERVICES ACT,

(CAP.44:05)

FINANCIAL SERVICES (CORPORATE GOVERNANCE REQUIREMENTS FOR SECURITIES MARKET PLAYERS) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation
3. Application

PART II—OBJECTIVES

4. Objectives

PART III—BOARD AND MANAGEMENT OVERSIGHT

5. Board of directors
6. Board composition
7. Responsibilities of the board
8. Delegated responsibilities
9. Board committees
10. Management composition
11. Qualifications of management
12. Management appointments

PART IV—GENERAL REQUIREMENTS

13. Internal audit
14. External audit
15. Ethics
16. Performance of the board
17. Delegation of powers
18. Disclosure of confidential information

PART V—ENFORCEMENT

19. Monetary penalties
20. Administrative penalties

PART VI—TRANSITIONAL ARRANGEMENTS

21. Transitional arrangements

Schedules

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

PART I—PRELIMINARY

Citation

1. This Directive may be cited as the Financial Services (Corporate Governance Requirements for Securities Market Players) Directive, 2018.

Interpretation

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

"Act" means the Financial Services Act; Cap. 44:05

"board" refers to the board of directors of a securities market player;

"executive management or management" means a person employed by a securities market player and is responsible for decision making at operational level;

"insider" means any person as defined in the Securities Act; Cap. 44:06

"securities market intermediaries" has the meaning ascribed to that term in the Securities Act; Cap. 44:06

"securities market players" include stock exchanges, brokers and dealers, portfolio managers, transfer secretaries, investment advisers, operators of collective investment schemes, securities market intermediaries;

"senior management official" means—

(*a*) an executive officer;

(*b*) a head of a department or a function;

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

(*d*) a branch manager of a securities market player that the Registrar, declares as a senior management official by a notice published in a newspaper of wide circulation.

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

Application

3. This Directive shall apply to all securities market players licensed under the Act.

PART II—OBJECTIVES

Objectives

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

(*a*) securities market players are managed and overseen by competent personnel at board and management level;

(*b*) corporate self-discipline is promoted in the management of all securities market players; and

(*c*) the board and management make reasonable and impartial business judgements in the best interest of the shareholders.

PART III—BOARD AND MANAGEMENT OVERSIGHT

Board of directors

5.—(1) A securities market player shall have a duly elected board of directors.

(2) The board shall be headed by a chairperson who shall not be a member of executive management.

(3) A securities market player shall ensure that only persons with relevant qualifications, competencies and character are nominated for election as board members.

(4) A securities market player shall prescribe minimum qualifications for a board member in its election policy.

(5) A securities market player shall seek the approval of the Registrar prior to electing any board member.

(6) A proposed board member shall—

(*a*) be subjected to a fit and proper test by the Registrar; and

(*b*) complete the fit and proper questionnaire set out in the Second Schedule and Third Schedule to this Directive.

Board composition

6.—(1) The board shall have a minimum number of three directors.

(2) The majority of the board members of a securities market player shall be non-executive directors.

(3) A securities market player shall ensure that the election of board members and their terms of office comply with the provisions of the Act and the Securities Act.

Cap. 46:06

Responsibilities of the board

7. (1) The responsibilities of the board shall include the following—

(*a*) exercise appropriate oversight to ensure sound and prudent management of the securities market player;

(*b*) have overall responsibility for the securities market player, including approving and monitoring the overall business strategy while giving consideration to long-term financial impact, risk exposure, and ability to manage risks effectively;

(*c*) review and approve annual work plan and budget;

(*d*) approve and oversee overall risk strategy of a securities market player, including risk appetite and risk tolerance and limits, risk management and compliance policies, internal control systems, governance practices, and corporate values, including a code of conduct;

(*e*) provide an independent check on management;

(*f*) have a mechanism for an annual evaluation of the board's own performance;

(*g*) have a documented and well defined board charter setting out roles and responsibilities of the board;

(*h*) have a clear policy for setting remuneration packages for management, board of directors and board committees;

(*i*) ensure that proposed remuneration packages in (*h*) are approved;

(*j*) review and approve all requisite policies and procedures to guide management and staff in carrying out operations of the securities market player; and

(*k*) ensure that the securities market players' operating policies and procedures including the code of best practices are strictly enforced and adhered to.

(2) The board shall ensure that every director and senior manager has competent skills for effective and prudent operation of the securities market player.

(3) The board collectively and each director individually shall be accountable to the Registrar for appropriate oversight to ensure sound and prudent management of the securities market player.

(4) Where the Registrar requests to meet the board, chairperson of the board, a board member or senior management, they shall be available for such a meeting.

Delegated responsibilities

8.—(1) The board shall delegate authority to management to act on its behalf, as determined by the board.

(2) Such delegated authority shall be duly documented and approved by the board.

(3) The board shall not abrogate responsibility for delegated authority and shall—

(*a*) monitor that senior management's actions are consistent with the strategy and policies approved by the board, including the risk appetite and risk tolerance;

(*b*) meet regularly with senior management;

(*c*) question and review critical explanations and information provided by senior management;

(*d*) set and monitor performance standards for senior management consistent with the long- term objectives, strategy and financial soundness of the securities market player; and

(*e*) ensure that senior management's knowledge and expertise remain appropriate given the business and risk conditions affecting the securities market player.

Board committees

9.—(1) A securities market player shall have board committees including or at a minimum an audit committee as may be required to perform specific tasks from time to time.

(2) The audit committee in paragraph (1) shall comprise at least three (3) members, all or the majority of which shall be non-executive directors.

(3) The board shall establish terms of reference for each board committee.

Management composition

10. The board shall ensure that, at a minimum, management of a securities market player comprise of—

(*a*) principal officer;

(*b*) finance officer; and

(*c*) operations officer.

Qualification of management

11. The board shall ensure that management of a securities market player possess minimum qualifications and experience as set out in the First Schedule to this Directive.

Management appointment

12.—(1) A securities market player shall ensure that only persons with relevant competencies and character are appointed as management.

(2) A securities market player shall seek the approval of the Registrar prior to appointing a member of senior management.

(3) A proposed member of senior management shall—

(*a*) be subjected to a fit and proper test by the Registrar; and

(*b*) complete the fit and proper questionnaire set out in the Second Schedule and Third Schedule to this Directive.

PART IV—GENERAL REQUIREMENTS

Internal audit

13.—(1) A securities market player shall have an independent and adequately resourced internal audit function.

(2) The objective of the internal audit function is to evaluate the adequacy and effectiveness of the financial and internal risk management framework of the securities market player.

(3) To fulfill its functions, the internal auditor shall have unfettered access to the business lines and support functions of the securities market player.

(4) The internal auditor shall not have other operational responsibilities or duties.

(5) The internal auditor shall report to, and have unfettered access to the audit committee.

(6) Where a securities market player is not in a position to have a dedicated internal audit function, the Registrar may approve alternative arrangements.

External audit

14.—(1) The board shall recommend the appointment of a suitable external auditor.

(2) The board shall ensure that there is no conflict of interest that could compromise or be seen to compromise the independence of the external auditor.

(3) As part of the process of assessing the suitability and independence of the external auditor, a securities market player shall ensure that it conforms to requirements stipulated in the Act.

Ethics

15. A securities market player board and management shall—

(*a*) conduct their business on the principle of utmost good faith and in accordance with internationally accepted corporate governance principles;

(*b*) demonstrate commitment to organizational integrity by determining best standards of ethical behaviour and establishing a board approved code of best practice;

(*c*) on the request of the Registrar avail a copy of the code of best practice or and any amendments to the Directive;

(*d*) disallow any unacceptable behaviour that could result in the securities market player engaging in illegal activities such as money laundering, fraud, market manipulation, bribery or corruption;

(*e*) ensure that the code of best practice binds all directors, management, employees and agents of the securities market player;

(*f*) ensure that the securities market player complies with relevant laws, directives and regulations by the Registrar;

(*g*) create systems and procedures to oversee compliance to the code of best practice;

(*h*) assess the integrity of appointees in selection and promotion procedures;

(*i*) exercise due care in delegating authority;

(*j*) communicate with and train all employees regarding organizational values, standards and compliance procedures;

(*k*) provide, monitor and audit secure systems for reporting unethical or risky behaviours;

(*l*) enforce appropriate discipline with consistency;

(*m*) respond to offences and prevent re-occurrence; and

(*n*) reporting to the Registrar any incident of unethical behaviour.

(2) A securities market player shall disclose adherence to the code of ethics against set criteria in the annual report.

(3) The board of directors shall ensure that senior management implements policies that prohibit or appropriately limit activities and relationships that diminish the quality of corporate governance including—

(*a*) lending to directors and employees at non arms length;

(*b*) providing preferential treatment to insiders;

(*c*) improper use of securities market players' property or information;

(*d*) unfair dealing with clients, employees, suppliers, competitors and other stakeholders;

(*e*) allowing a director to become delinquent in their loan repayment; avoiding activities that could create conflicts of interest or the appearance of conflicts of interest; and

(*f*) permitting a director with interest in a transaction to take part in the decision making including voting on those transactions.

Performance of the Board

16.—(1) The board shall have procedures for assessing at least annually the performance of the board, board committees and individual directors.

(2) A securities market player shall ensure that it inducts and train the directors on various aspects of the securities market player business operations.

(3) Directors shall attend at least seventy five percent (75%) of all board meetings in a year.

(4) Where attendance is less than seventy five percent, a securities market player shall inform the Registrar not later than January 31 of the following year, providing reasons for lack of attendance and why such director should be allowed to continue serving on securities market player board.

(5) The board shall meet at least four times a year and shall keep minutes of all proceedings.

Delegation of powers

17.—(1) A securities market player shall have a policy on delegation of powers.

(2) The delegation policy shall identify an officer to perform the role of the chief executive officer in his or her absence.

(3)A securities market player shall inform the Registrar of the identity of the delegate in writing.

Disclosure of confidential information

18.—(1) A prospective, current, or former officer or employee of a securities market player shall not be constrained by confidentiality clauses or otherwise from—

(*a*) disclosing information to the Registrar;

(*b*) discussing issues of relevance to the management and supervision of the securities market player with the Registrar;

(*c*) providing documents under the control of the employee to the Registrar; and

(*d*) providing information to auditors, and other persons who have statutory responsibilities in relation to the securities market player.

(2) A securities market player shall ensure that internal policies and contractual arrangements do not explicitly or implicitly restrict or discourage auditors or other parties from communicating with the Registrar.

PART V—ENFORCEMENT

Monetary penalties

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

(*a*) for securities market players up to five million Kwacha (K5,000,000); and

(*b*) for natural persons who are members of the board of directors, or senior management up to two million Kwacha (K2,000,000).

(2) The penalty in 20 (1) above shall be made through a bank certified cheque payable to the Reserve Bank of Malawi within ten (10) working days after being notified by the Registrar.

Administrative penalities

Cap. 46:06

20. In addition to the monetary penalty imposed in paragraph 20 (1) above, the Registrar may impose directions, administrative penalties and enforcement action as provided under the Act and the Securities Act.

PART VI—TRANSITIONAL ARRANGEMENTS

Transitional arrangements

21. Any registered or licensed securities market player operating at the date of commencement of this Directive that does not meet its requirements shall, within twelve (12) months from the date of commencement comply with this Directive.

FIRST SCHUDULE (para. 11)

MINIMUM QUALIFICATIONS FOR MANAGEMENT

	Qualifications
Principal Officer	Degree in Administration, Accountancy, Finance, Economics with 3 years relevant experience in a financial institution.
	Diploma in Administration, Accountancy, Finance and any other necessary qualifications as may be approved by the Registrar with 6 years relevant experience in a financial institution.
Finance Officer	ACCA, Degree in Accountancy or Finance, ICAM Qualification (CA(M)) with 2 years experience in the accounting profession.
	PAEC, Diploma in Accountancy or Finance with 5 years experience in the accounting profession.
Operations Officer	Relevant Degree with 2 years relevant experience.
	Relevant Diploma with 3 years relevant experience.

SECOND SCHEDULE (para. 5)

FIT AND PROPER QUESTIONNAIRE FOR A BOARD MEMBER

(Where space provided is not enough, please provide the extra information on additional sheets).

1. Full Name of Nominee: .....

2. Postal Address: .....

   :.....

   Telephone Number: .....

   Email address:.....

3. Physical Address:.....

4. Date joined the securities market player.....

5. Minimum Academic Qualification:

   :.....

6. Highest Academic/Professional Qualification:

   :.....

7. Other Qualifications: .....

   :.....

   :.....

8. Work Experiences: .....

   :.....

   Other Directorship:.....

   Date of Appointment:.....

9. Has the Nominee:

   (*a*) been convicted of any offence, or are there any proceedings now pending which may lead to a conviction for any offence involving fraud or dishonesty?

   :.....
   (If so, please provide details)

   (*b*) had judgment involving findings of fraud or other dishonesty, or violence, misrepresentation, breach of contract, breach of fiduciary duty or professional negligence given against it, in any civil proceedings, or are there any proceedings now pending that may lead to such a judgment or finding?

   :.....
   (If so, please provide details)

   (*c*) contravened any written law designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against

financial loss due to the conduct of discharged or undischarged bankrupts?

:.....
(If so, please provide details)

THIRD SCHEDULE

FIT AND PROPER QUESTIONNAIRE FOR A MANAGER

1. Full Name of Nominee:.....
2. Position applied for:.....
3. Postal Address: .....

   .....

   Telephone Number: .....

   Email Address:.....

   Physical Address:.....

   .....
4. Minimum Academic Qualification:.....
5. Highest Academic/Professional Qualification.....
6. Other relevant qualifications:.....

   .....

   .....
7. Previous work experiences:

   .....
8. Has the Nominee:

   (*a*) been convicted of any offence, or are there any proceedings now pending which may lead to a conviction for any offence involving fraud or dishonesty?

   .....
   (If so, please provide details)

   (*b*) had judgment involving findings of fraud or other dishonesty, or violence, misrepresentation, breach of contract, breach of fiduciary duty or professional negligence given against it, in any civil proceedings, or are there any proceedings now pending that may lead to such a judgment or finding?

   .....
   (if so, please provide details)

   (*c*) contravened any written law designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts?

   .....
   (if so, please provide details)

Made this 3rd day of April, 2018.

D. KABAMBE, PhD
Registrar of Financial Institutions

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