GOVERNMENT NOTICE NO. 33

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (AGENT BANKING) REGULATIONS, 2018

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IN EXERCISE of the powers conferred by Section 116 (1) of the Financial Services Act, I, GOODAL EDWARD GONDWE, Minister of Finance, Economic Planning and Development, make the following Regulations—

PART I—PRELIMINARY

Citation

1. These Regulations may be cited as Financial Services (Agent Banking) Regulations, 2018.

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

Application

2. These Regulations shall apply to banks and deposit taking microfinance institutions, SACCOs and their appointed agents.

Interpretation

3. In these Regulations unless the context otherwise requìre—

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

"agent" means an entity that has been contracted by an institution and approved by the Registrar, to provide banking services on behalf of the institution in the manner specified in these Regulations;

"agent banking business" means the banking business carried out by an agent on behalf of an institution as permitted under these Regulations;

Cap. 44:01 "bank" has the same meaning ascribed to that term in the Banking Act;

Cap. 44:01 "banking business" has the same meaning ascribed to that term in the Banking Act;

"institution" means a bank, a deposit taking microfinance institution or a SACCO;

"Minister" means the Minister of Finance;

"outlet" means an agent's place that is used for carrying out its commercial activity but does not include a mobile unit;

"real time" means the electronic processing of transactional data instantaneously upon data entry or receipt of a command;

"Registrar" means the Registrar of Financial Institutions appointed under the Act; and

"SACCO" means Savings and Credit Cooperative Society.

PART II—OBJECTIVES

Objectives

4. The objectives of these Regulations are to provide—

(*a*) for agent banking as a delivery channel for offering banking services in a cost effective manner; and

(*b*) a framework for offering agent banking services.

PART III—APPLICATION FOR AGENT BANKING BUSINESS

Registrar's approval

5.—(1) An institution intending to conduct banking business through an agent shall obtain written approval from the Registrar before commencing the agent banking business.

(2) In considering an application for the approval of the institution to conduct agent banking business, the Registrar shall at a minimum assess the institution on the following factors—

(*a*) the adequacy of capital ;

(*b*) record of earning capabilities;

(*c*) adequacy of risk management practices; and

(*d*) track record of adherence to relevant laws, regulations, and directives.

Eligibility for appointment as an agent

6. The following entities may be eligible for appointment as agents—

(*a*) Limited liability companies;

(*b*) Merchant or retail shops;

(*c*) Agro dealers;

(*d*) Pharmacies;

(*e*) Sole proprietorships;

(*f*) Partnerships;

(*g*) Cooperative societies;

(*h*) State corporations; and

(*i*) any other entity which the Registrar may approve.

Vetting of agents

7.—(1) An institution shall, before seeking approval of the Registrar for an entity to be contracted as an agent, satisfy itself as to the suitability of the proposed entity.

(2) An institution shall—

(*a*) be responsible for the accuracy of the information provided by an agent; and

(*b*) sensitize its agents on the provisions of these Regulations and the obligation to comply with them.

Completion of application

8.—(1) An institution shall apply for agent banking business by completing the application form set out in the Schedule hereto.

(2) An institution may submit an application for several agents at one go.

Submission of business strategy

9. In addition to completing an application form, an institution shall, submit to the Registrar a business strategy for agent banking that articulates the following—

(*a*) the institution's delivery channel, strategy and how agents fit in this strategy;

(*b*) an estimate of the total population and economically active population of the areas where the agents will operate;

(*c*) an estimate of the proposed agents' volumes or transactions;

(*d*) a description of the commercial activities the proposed agents have been conducting for the twelve (12) months immediately preceding the date of the application;

(*e*) a copy of the standard contract with the agents; and

(*f*) a declaration by the Chief Executive Officer or Director of the institution confirming that the institution has carried out the suitability assessment of the proposed agents.

Notification to the Registrar

10. An institution shall notify the Registrar regarding the opening of any new agent.

PART IV—APPROVAL PROCESS OF AGENTS

Approval period

11. The Registrar shall communicate to an institution which applies for agent banking business the outcome of the application within ten (10) working days from the date of receipt of a complete set of accurate information.

Approval letter

12. Where the Registrar approves an agent, the Registrar shall issue an approval letter to the institution.

Refusal of application

13. Where the Registrar declines to approve an application, the Registrar shall communicate to the applicant, in writing, the reasons for declining the approval.

Re-submission of application

14. An institution whose application has been declined by the Registrar may resubmit the application upon fulfillment of the conditions specified by the Registrar.

PART V—AGENCY CONTRACT

Agency contract

15. An institution shall enter into a written contract with an entity for the provision, on behalf of the institution of any banking services.

Outlet of an entity to be part of an entity

16. An outlet of an entity whose operations or activities are managed, supervized or is subject to the direction of its head office shall be regarded as part of the entity for purposes of an application to be appointed as an agent.

Termination of agency contract

17. Where an agency contract is terminated, the institution shall inform the general public of the cessation of the agent from offering banking services through publication of a notice—

(*a*) within the premises where the agent was operating; or

(*b*) in any other manner so as to inform the general public of the cessation of the agent from offering banking services.

PART VI—PERMISSIBLE AND PROHIBITED ACTIVITIES

Services to be performed by agents

18. An agent may provide the following banking services as may be specifically agreed with the institution—

(*a*) cash deposit and cash withdrawal;

(*b*) cash disbursements and repayment of loans;

(*c*) payment of bills;

(*d*) cash payment of retirement and social benefits;

(*e*) cash payment of salaries;

(*f*) transfer of funds;

(*g*) balance enquiry;

(*h*) generation and issuance of mini bank statements ;

(*i*) collection of documents in relation to account opening, loan application, credit and debit card applications;

(*j*) agent mobile phone banking services;

(*k*) collection of crossed cheques;

(*l*) cheque book request;

(*m*) cheque book collection by customers;

(*n*) collection of bank's mail or correspondence for customers; and

(*o*) any other activity as the Registrar may prescribe or approve.

Prohibited activities

19. An agent shall not—

(*a*) carry out an electronic transaction when there is communication failure in the system;

(*b*) carry out a transaction when a transactional receipt or a Short Message Service (SMS) acknowledgement cannot be generated; except where the transaction involved does not require issuance of a receipt, such as cheque book collection;

(*c*) charge any fees directly to the customers;

(*d*) offer any type of guarantee in favour of any institution or customer;

(*e*) offer banking services on its own accord by providing on its own account banking services similar to those provided by it under an agency contract;

(*f*) provide or hold itself out to be rendering a banking service which is not specifically permitted in the contract;

(*g*) open accounts, grant loans or carry out any appraisal function for purposes of opening an account or granting of a loan or any other facility;

(*h*) undertake cheque deposit and encashment of cheques on its own;

(*i*) transact in foreign currency;

(*j*) be run or managed by an institution's employee or its associate; and

(*k*) subcontract another entity to carry out agent banking on its behalf.

Other prohibted activities

20. An institution may in the contract document specify other activities which the agent is prohibited from undertaking.

PART VII—OBLIGATIONS OF BANKS

Policies, procedures and guidelines

21. The Board of Directors of each institution shall formulate policies, procedures and guidelines that ensure that:—

(*a*) credible agents are identified;

(*b*) risks associated with agent banking are properly identified, documented and mitigated; and

(*c*) agent's activities are constantly monitored to ensure compliance with all financial services laws, agent contracts and any other applicable law.

Monitoring and supervision of agents

22. The institution shall be responsible for monitoring and supervising the activities of its agents.

Compliance with Anti-Money Laundering laws

23. An institution shall comply with all applicable Anti-Money Laundering and Combating Financing of Terrorism laws and requirements. Among others, the institution shall take into account the following—

(*a*) simplified Know Your Customer (KYC) requirements;

(*b*) transactional limits per day, month or year for persons and corporate entities;

(*c*) maximum balance limits on debit and credit;

(*d*) minimum technological security requirements; and

(*e*) authentication criteria per customer per transaction.

Training of agents

24. An institution shall train its agents on Anti-Money Laundering and Combating Financing of Terrorism requirements and on use of simplified know your customer requirements.

PART VIII—AGENT OPERATIONS

Non exclusivity of agency contract

25.—(1) An agency contract between an institution and an agent shall not be exclusive.

(2) an agent may provide agent banking services to multiple institutions provided that the agent has—

(*a*) separate contracts for the provision of such services with each institution; and

(*b*) the capacity to manage the transactions for the different institutions.

Information on transactions

26. An institution shall—

(*a*) maintain information on the numbers and volumes of transactions carried out for each type of service by each agent; and

(*b*) monitor effective compliance with set limits.

PART VIX—SETTLEMENT OF TRANSACTIONS BY AGENTS

Transaction to be real time

27.—(1) All transactions by an agent involving deposit, withdrawal, payment or transfer of cash from or to an account shall be real time.

(2) An institution shall ensure that an agent is able to carry out real time transactions.

Transaction to be carried out with effective devices

28. An institution shall ensure that agent banking transactions are carried out with devices which are technically effective and can—

(*a*) transmit transaction information in code;

(*b*) carry out electronic transactions on real time basis;

(*c*) allow handling under different user profiles for administration, maintenance and operation;

(*d*) reverse incomplete transactions due to error, system failure, power outage or other defects;

(*e*) process or generate transactional documents or receipts;

(*f*) issue electronic receipts or acknowledgements such as Short Message Service (SMS) acknowledgement ;

(*g*) automatically log off an agent once the agent exhausts his daily cash limit or display an error message in case of unauthorized transaction; and

(*h*) generate an audit trail.

Contract with third party service providers

29. An institution may enter into a written contract with a third party service provider for the provision of the following services in respect of its agent banking business—

(*a*) technology platform;

(*b*) agent selection;

(*c*) agent network management;

(*d*) agent training;

(*e*) equipment provision; and

(*f*) equipment maintenance.

PART X—CONSUMER PROTECTION

Consumer protection systems

30. An institution shall have appropriate consumer protection systems for purposes of establishing trust among consumers of agent banking services.

Minimum consumer protection requirements

31. At a minimum, an agent of banking services shall comply with the following consumer protection requirements—

(*a*) list the services or products being offered to enable customers or users to appropriately identify their agents and the services provided through them;

(*b*) have signs that are clearly visible to the public indicating that it is a provider of services of the institution with which it has an agent contract;

(*c*) display the name of the institution it is working for and the institution's logo;

(*d*) display a written notice to the effect that if the electronic system is down, no transaction shall be carried out;

(*e*) display a written notice to the effect that services shall be provided subject to availability of funds;

(*f*) list of charges or fees applicable for each service which are payable to the bank by the customers; and

(*g*) list the name, telephone numbers and location of the institution's branch to which the agent reports its agent activities.

PART XI—REPORTING REQUIREMENTS

Submission of agent data and information

32.—(1) An institution shall submit to the Registrar, the following information on a monthly basis—

(*a*) nature, value, volume and geographical distribution of operations or transactions;

(*b*) incidents of fraud, theft or robbery; and

(*c*) customer complaints and the remedial measures taken to address the complaints.

(2) The institution shall submit the information specified in subregulation (1) with fifteen (15) days after the end of the preceding month.

PART XII—ENFORCEMENT

Regitrar's powers

33. In addition to any other powers conferred on the Registrar under any financial services law, the Registrar may—

(*a*) request for any information from the institution or agent at any time;

(*b*) carry out impromptu or scheduled inspection of the books and premises of the agent;

(*c*) direct the institution or agent to take such action or desist from such conduct as may be deemed necessary;

(*d*) direct the termination of the agency contract and closure of the agent business;

(*e*) direct the institution to take such action or measures against or on behalf of the agent as the Registrar may find appropriate;

(*f*) revoke the agent banking approval and prohibit the institution from engaging in agent banking business;

(*g*) prohibit the institution from contracting new agents; and

(*h*) impose directions, administrative penalties and enforcement actions as provided under the Act.

34.—(1) Notwithstanding the Registrar's enforcement powers under regulation 33 above, the Registrar shall impose the following monetary penalties for violations of these Regulations— Monetary penalties

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

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

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

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

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

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

35. The Financial Services (Agent Banking) Regulations, 2012 are hereby revoked. Revocation of G. N. 27/2012

SCHEDULE (reg. 8 (1))

APPLICATION FORM FOR APPROVAL OF AN AGENT

1. Name of Institution:.....

2. Name of Agent(s) (including postal address and contact details)

.....

3. Exact location and name of district where the Agent(s) is/are located

.....

4. Proposed commencement date for each Agent :.....

5. Commercial activity of each Agent

.....

6. List of banking services to be provided by each Agent

.....

7. Responsible Branch(es)

.....

Name: .....

Signed.....
(Chief Executive Officer/Managing Director)

Dated at ..... this ..... day of..... 20.....

This Application form must be submitted together with a written declaration by the Chief Executive Officer of the institution or Director confirming that the institution has carried out the suitability assessment of the proposed agents and they have been found to have met the minimum requirements set out in these Regulations.

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*Tick the applicable

Made this 13th day of April, 2018.

GOODALL GONDWE
Minister of Finance, Economic Planning and Development

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