GOVERNMENT NOTICE NO. 41

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (ADVERTISING OF FINANCIAL PRODUCTS AND SERVICES BY FINANCIAL INSTITUTIONS) DIRECTIVE, 2018

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IN EXERCISE of the powers conferred by section 34 (2) of the Financial Services Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, issue this Directive as follows—

PART I—PRELIMINARY

Citation

1. This Directive may be cited as the Financial Services (Advertising of Financial Products and Services) Directive, 2018.

Application

2. This Directive applies to all financial institutions regulated by the Registrar of financial institutions under the Act.

Interpretation

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

"Board" means the highest body of authority in a financial institution responsible for strategically guiding the institution, effectively monitoring management and properly accounting to shareholders;

"financial consumer" in relation to a financial service, means—

(*a*) (i) a natural person, not acting in the course of business; or

(ii) a sole trader, partnership, trust club or charity (not being a body corporate), with an annual turnover in its previous financial year of MK250,000,000 or less; or

(iii) an incorporated body that—

(I) had an annual turnover in its previous financial year of MK250, 000,000 or less; and

(II) is not a body corporate that is a member of a group of companies with a combined annual turnover (in the previous financial year of the group of companies), of greater than MK250,000,000 that—

(A) is a customer of a financial institution;

(B) is a person or body to whom a financial institution has offered to provide a financial product or service; or

(C) has sought the provision of a financial product or service;

(*b*) an actual or potential beneficiary of a financial product or service.

(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.

PART II—OBJECTIVES

Objectives

4. The objectives of this Directive are to—

(*a*) set minimum requirements for advertising of financial products and services; and

(*b*) ensure that a financial institution does not provide misleading advertising materials.

PART III—BOARD AND MANAGEMENT OVERSIGHT

Board and management oversight

5.—(1) The Board of directors and management of a financial institution are responsible for adherence and compliance with the requirements of this Directive.

(2) A financial institution shall have a formal written policy on advertising of financial products and services duly approved by the Board.

(3) The Board shall ensure that management is implementing the policy on advertising of financial products and services.

PART IV—MINIMUM ADVERTISING REQUIREMENTS

Misleading advertising

6.—(1) A financial institution shall not use misleading or ambiguous information or announcements in its advertisements, which may give rise to false assumptions or expectations about the financial product and service.

(2) A financial institution shall ensure that, where different channels of advertising are employed for a financial product and service, the terms and conditions of the financial product and service contained in the advertisements are the same.

Presentation of information

7.—(1) A financial institution shall ensure that, where an advertisement presents more than one financial product and service, the different characteristics of each financial product and service are clearly presented.

(2) A financial institution shall ensure that footnotes or texts in an advertisement are presented in a sufficiently legible size with a font size of 12 points for texts or 10 points for footnotes.

Information about the institution and regulatory status

8. A financial institution shall disclose in its advertisements—

(*a*) its official trade name;

(*b*) address of its principal office; and

(*c*) its regulated status including, where possible, contact details of the Registrar.

PART V—ENFORCEMENT

Monetary penalties

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

(*a*) a fine not exceeding K50,000,000 where the violation is committed by a financial institution;

(*b*) a fine not exceeding 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 financial institution 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 penalty 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.

Administrative penalties

10. In addition to the monetary penalty imposed in paragraph 9, the Registrar may impose directions, and administrative penalties as provided for under the Act and other financial services laws.

Dated this 29th day of June 2018.

D. KABAMBE, PhD
Registrar of Financial Institutions

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