GOVERNMENT NOTICE NO. 52

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (LICENSING OF DEVELOPMENT FINANCE INSTITUTIONS) DIRECTIVE, 2018

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IN EXERCISE of the powers conferred by section 21 (5) 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 (Licensing of Development Finance Institutions) Directive, 2018.

Interpretation

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

"application fee" means licence processing fee for a development finance institution payable in Malawi Kwacha to the Registrar;.

"applicant" means shareholders of a proposed development finance institution for which an application for a development finance institution licence has been submitted to the Registrar;

"Board" means the Board of directors of an insiitution;

"development finance institution" "means a financial institution that provides medium and long term financing for economic development but is not a bank;

"home supervisory authority" means the competent regulatory authority that supervises institutions engaged in development finance institution business in the country where the head office of a foreign financial institution is located;

"institution" means the development finance institution;

"licence" means a development finance institution licence;

"principal shareholder" means a shareholder owning or controlling or more of the shares or voting rights of the institution;

"senior management official" means—

(*a*) an executive officer;

(*b*) head of department or 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; and

(*d*) branch managers of a development finance institution that the Registrar declares as senior management officials; and

"shell company" – means a company that has no physical presence and does not trade or operate.

PART II—OBJECTIVES

Objectives

3. The objectives of this Directive are to—

(*a*) establish licensing requirements for development finance institutions;

(*b*) specify information required by the Registrar in assessing licensing applications for development finance institutions; and

(*c*) ensure that licence applications for development finance institutions are objectively and consistently evaluated in a timely manner.

PART III—DECLARATION OF A DEVELOPMENT FINANCE INSTITUTION AS A PRUDENTIALLY REGULATED FINANCIAL INSTITUTION

Declaration of a development finance institution as a prudentially regulated financial institution

4. It is hereby declared that a development finance institution is a prudentially regulated financial institution for the purposes of section 2 of the Act.

PART IV—PERMISSIBLE ACTIVIES OF A DEVELOPMENT FINANCE INSTITUTION

Permissible activities of an institution

5. An institution shall engage in, but not limited to, the following activities—

(*a*) making available medium and long term finance for economic development;

(*b*) participating in equity in medium and long term investments;

(*c*) guarantee medium and long term loans and other financial obligations;

(*d*) mobilizing funds from sources within and outside the country to finance medium and long term investments;

(*e*) providing technical assistance and advisory services for the purpose of promoting sustainable economic development;

(*f*) buying and selling securities;

(*g*) studying and promoting medium and long term investment opportunities;

(*h*) administering special funds as may from time to time be entrusted to it; and

(*i*) engaging in such other activities as are customarily carried out by institutions.

PART V—APPLICATION PROCESS

Application procedures

6.—(1) A person wishing to conduct business as an institution shall apply to the Registrar for a licence through a written letter signed by a representative of the shareholders.

(2) The applicant of a licence shall complete the application form set out in the First Schedule hereto and provide in the application all the information outlined in the Second Schedule hereto.

(3) The Registrar may, where the information submitted by the applicant is not adequate, request the applicant in writing to submit additional information.

Eligibility

7.—(1) Only body corporates shall be eligible to apply for a licence.

(2) The Registrar shall not grant approval for a licence if the shareholders or one of the shareholders of the proposed institution is a shell company.

Application fee

8. An application of a licence shall be accompanied by a non refundable application fee in form of a bank certified cheque of Malawi Kwacha equivalent of US$10,000 payable to the Reserve Bank of Malawi

Paid- up capital

9. The paid-up capital for a proposed institution shall be Malawi Kwacha equivalent of US$50,000,000.

Registration of capital

10.—(1) Where an applicant is a foreign investor, the applicant shall register the capital with the Reserve Bank of Malawi.

(2) Where the applicant is a foreign investor and a regulated financial institution, the applicant shall submit to the Registrar a letter from the home supervisory authority—

(*a*) authorizing the applicant to establish a proposed institution in Malawi;

(*b*) confirming that the foreign investor is not a shell company; and

(*c*) agreeing to exchange information with the Registrar.

Other regulatory requirements

11.—(1) The number of Board members for a proposed institution shall not be less than 9.

(2) The majority of Board members for a proposed institution shall be resident in Malawi.

(3) All directors, executive officers and senior management officials of a proposed institution shall not assume their respective roles without prior

approval of the Registrar.

PART VI—APPROVAL PROCESS

Approval criteria

12. In considering an application for a licence, the Registrar shall take into account the following—

(*a*) whether the applicant has submitted all the required information, including, where necessary, additional information requested by the Registrar;

(*b*) whether the applicant has fulfilled all the licensing requirements as stipulated in the Act and this Directive;

(*c*) whether the application is in respect of the business of an institution and its proposed activities, services and products are permissible under the existing laws;

(*d*) the socio economic development impact the institution would have in the country;

(*e*) the applicant's business plan;

(*f*) sources of funding;

(*g*) the legal structure of the proposed institution, its affiliates and parent company or shareholders;

(*h*) the applicant's financial capacity to support the institution;

(*i*) the applicant's demonstrated commitment to good corporate governance practices;

(*h*) the risk management systems to be adopted; and

(*i*) any other factors that the Registrar considers relevant.

Due diligence

13. The Registrar shall carry out a due diligence of an applicant as part of the licensing process.

Communication of the Registrar's decision

14.—(1) The Registrar shall communicate to the applicant the outcome of the application within 90 days of receipt of a complete set of accurate information.

(2) Where approval of a licence has been granted, the Registrar shall issue a licence to the applicant in the form set out in the Third Schedule hereto.

(3) Where approval of a licence has not been granted, the Registrar shall communicate in writing to the applicant, the reason for the decision.

PART VII—POST APPROVAL PROCESS

Commencement of business

15.—(1) A licensed institution shall commence its business within 12 months from the date of the issuance of its licence.

(2) The Registrar shall revoke the licence of an institution that does not commence business stipulated in subparagraph (1).

(3) An institution shall maintain customer accounts to facilitate repayments of loans by customers.

(4) An institution shall not accept deposits from the public except for capital contributions towards project financing.

(5) An institution may open branches in any part of the country subject to approval from the Registrar.

Agreements

16. All management or technical assistance agreements involving an institution shall be subject to the approval of the Registrar.

Prohibition on equity investments

17.—(1) An institution shall not invest in or hold publicly traded equity shares.

(2) Notwithstanding subparagraph (1), an institution may participate in equity and similar ownership rights in long term investment projects

PART VIII—ENFORCEMENT

Monetary penalties

18. The Registrar shall impose the following monetary penalties for violations of this Directive—

(*a*) for institution up to K50,000,000; and

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

Administrative penalties

19. In addition to the monetary penalties imposed in paragraph 18, the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act.

FIRST SCHEDULE (para. 6 (2))

APPLICATION FORM

SECTION I—PROPOSED INSTITUTION

This section requests information about the proposed institution. A complete Section I must be filled out and submitted.

1. Name. Please state name of the proposed institution.

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2. Legal form. Indicate the legal form of the institution (e.g. private limited company, public, etc).....

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3. Incorporation. Date and place of incorporation.

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4. Head Office. Proposed place of Head Office in Malawi.

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5. Business Place-(Proposed places of business in Malawi branches, agencies etc).

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6. Directors and Executive Officers. State the names, addresses and occupation of the individuals who will be directors of the proposed institution.

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7. Executive Officers. State the names and occupation of executive officers identified for the institution.

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8. Capital Structure and other forms of financing. Indicate the capital structure of the proposed institution—

(*a*) authorized capital K.....

(*b*) paid up capital K.....

(*c*) total number authorized shares K.....

(*d*) total number issued shares K.....

(*e*) other sources and amount (Please indicate) K.....

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9. Shareholder List. (Provide a complete list of the initial shareholders of the proposed institution. Indicate the name of the shareholder, address and physical location, nationality, number of shares and percentage to be owned).

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10. Debt. To what extent will borrowed funds be used by the initial shareholders, to purchase shares? Provide full details on the amounts, sources, collateral, and repayment terms for any such borrowed funds.

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11. Activities. What type of activities does the proposed institution plan to engage in? Outline the proposed products and services to be offered by the new development finance institution.

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12. Premises. Describe the premises and equipment to be utilized by the proposed institution indicating whether owned or leased, costs of acquisition or lease payments, from whom purchased or leased, and how such premises and equipment were determined to be adequate.

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13. Business Plan. Please provide a business or strategic plan for the proposed institution covering a minimum of five years including the sources, nature and scale of business envisaged, balance sheet and profit and loss projections for each year and details of staffing and management. Assumptions used in preparing the plan and the financial projections should be realistic and based on actual comparative data for the market to be served and the current economic environment.

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14. Memorandum and Articles of Association. (Please provide copies of the Memorandum and Articles of Association of the proposed institution and if applicable its by-laws).

15. Additional Information. (Please provide any other information regarding the proposed institution which may assist the Registrar in reaching a decision on the application).

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SECTION II—INDIVIDUAL SHAREHOLDERS, DIRECTORS AND EXECUTIVE OFFICERS

This section requests biographical and financial information on individuals who are proposing to become principal shareholders, directors and executive officers of the proposed institution. A complete Section II must be filled out and submitted by each principal shareholder, director or executive officer.

1. Name and Address. State your full name and residential address.

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2. Position. State the position and/or title you will hold in the proposed institution.

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3. Nationality. State your nationality and passport number.

(*a*) nationality.....

(*b*) passport number.....

4. Birth-Date. State the date and place of birth.

(*a*) place of birth.....

(*b*) date of birth.....

5. Role, Responsibility, and Reporting. What role will you have in organizing and managing the affairs of the proposed institution? Indicate to whom you will report and or from whom you will receive directions or instructions. If you will be an executive officer, describe the specific duties and responsibilities for the position to be held. If you will be a director and will also have executive officer responsibilities within the proposed institution, indicate the nature and extent of such responsibilities.

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6. Qualifications. Provide your professional and educational qualifications, listing in reverse chronological order, i.e. most recent first.

Degree or Certificate	Issued By	Date Received
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7. Employment History. Provide the following information, in reverse chronological order, regarding your employment history and professional experience during the past 10 years—

(*a*) name and address of employer:.....

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(*b*) nature or type of business:

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(*c*) title and duties or responsibilities;.....

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(*d*) date employed:.....

(*e*) date and reason for leaving.....

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8. Affiliations. State the name of any other bank or financial institution with which you are now or will be affiliated as a director or executive officer. Indicate your title or official capacity, duties or responsibilities in the other financial institution, and describe any relationship which now exists or will exist between the other institution and the proposed institution.

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9. Shareholding. If you are now or ever have been a principal shareholder of any other bank or, provide details thereof including any relationship which now exists or will exist between the other institution and the proposed institution.

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10. Professional Membership. If you are now or will be a member of any professional or trade association concerned with banking or financial activities, in Malawi or elsewhere, provide details including whether such membership has ever been refused or terminated.

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11. Discipline. Have you ever been censured, prosecuted, warned as to conduct, disciplined, or publicly criticized by or made subject to a court order at the instigation of any governmental department or agency, professional association, or other regulatory body appointed under any Malawi enactment or the substantial equivalent thereof elsewhere? If yes provide details.

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12. Convictions. Have you ever been convicted of any offence, or has a petition for an administrative order or the substantial equivalent thereof been served on you, in Malawi or outside Malawi, within the last 7 years? If yes, provide details.

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13. Investigations. Have you ever been or are you now subject to an investigation in Malawi or outside Malawi, by or at the instigation of any governmental department or agency, professional association, or other regulatory body? If yes, provide details.

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14. Judgement. Have you within the last seven years, failed to satisfy within 1 year a judgement of debt under a court order in Malawi or outside Malawi ? If yes, provide details.

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15. Fraud. Have you ever been adjudged by a court, in Malawi or outside Malawi, to be

civilly liable for fraud, malfeasance, or any other misconduct? If yes, provide details.

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16. Bankruptcy. Have you been adjudged bankrupt by a court, in Malawi or outside Malawi, or has a bankruptcy petition ever been served on you within the last 7 years, have made any compromise arrangement or otherwise failed to satisfy your creditors in full within the last 10 years? If yes, provide details.

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17. Receivership. Has a receiver or an administrator of any of your property been appointed within the last 7 years in Malawi, or has the substantial equivalent of any such receiver been appointed in any other jurisdiction? If yes, provide details including whether the receiver or equivalent thereof is still acting under the appointment.

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18 Winding-Up. Has any body corporate, partnership or unincorporated institution with which you were associated as a shareholder, director, or manager, in Malawi or outside Malawi, been wound up, made subject to an administration order, otherwise made any compromise or arrangement with its creditors or ceased trading either while you were associated with it or within one year after you ceased to be associated with it or has anything analogous to any of these events occurred under the laws of any other jurisdiction. If yes, give particulars.

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19 How many shares of stock in the proposed institution are or will be registered in your name or in the name of a related party? State the name in which the shares will be registered and the class of shares if other than common shares

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20. Beneficial Interest. How many shares of stock in the proposed institution, which are not registered in your name or in the name of a related party, will you have a beneficial interest in? State the name in which the shares will be registered and the nature of the beneficial interest.

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21. Trustee or Nominee. Will you or any party related to you hold shares in the proposed institution as a trustee or nominee? If yes, provide details.

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22. Assignments or Pledges. Are, or will any of the shares described in response to Questions 19 to 21 be equitably or legally assigned or pledged to any other party? If yes, provide details.

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23. Voting Authority. What proportion of the voting power at any general meeting of the proposed institution, or of any other organization of which the proposed institution is a subsidiary, will you be entitled to vote or exercise control over? Provide details of such voting authority or control.

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24. Indirect Authority. If the exercise of voting power at any general meeting of the proposed development finance institution, or of any other organization of which the proposed institution is a subsidiary, is or may be controlled or influenced by someone other than yourself, provide the identity of that person and the proportion of voting power so controlled or influenced.

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25. Financial Data. Provide all such financial data that will reflect your assets and liabilities including bank accounts and information on other business run or owned by you.

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26. Additional Information. Provide a latest credit report from a Licensed Credit Reference Bureau (where possible) and any other information regarding yourself which may assist the Registrar in evaluating your acceptability as a shareholder, director or executive officer of the proposed bank.

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I hereby certify that the information shown in this financial statement, including supplemental schedules, is true and correct to the best of my knowledge and that there are no misrepresentations or omissions of material facts.

Signature..... Date.....

SECTION III—INSTITUTIONAL CONTROLLING SHAREHOLDERS

This section requests background and financial information on institutional shareholders (IS) of the proposed institution. A complete Section III must be filled out and submitted for each institutional shareholder.

1. Name and Address. State the name and address of the institution which is or will be an institutional shareholder of the proposed institution. If applicable, indicate any other corporate, business, or trade name used by the institutional shareholder.

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2. Control. State the manner in which the IS will exercise control or otherwise exert influence over the affairs of the proposed institution

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3. Legal Form. State the legal form of the IS (eg private limited company, partnership etc).

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4. Incorporation. Date of incorporation or formation of IS:.....

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5. Officers and Principal Shareholders. Provide the following information for each director, executive officer, or principal shareholder of the IS.

Name	*Address*	*Title/Position in IS*	*% of IS shares owned*
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6. Address. State the registered address of the IS's headquarters and the principal place of business, if different from that shown in Question 1 above.

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7. Auditors and Bankers. State the names and addresses of the IS's auditors and primary bankers during the past 5 years.

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8. Affiliates. State the name, address, and type of business for any organization which is or will be in any way affiliated with the IS.

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9. Shareholding. If the IS is now or ever has been a principal shareholder (owning 10% or more equity or voting stock) *of any other bank or financial institution*, provide details thereof including any relationship which now exists or will exist between the other institution and the proposed institution.

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10. Professional Membership. If the IS is now or will be a member of any professional or trade association concerned with banking or financial activities, in Malawi or elsewhere, provide details including whether such membership has ever been refused or terminated.

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11. Discipline. Has the IS ever been censured, prosecuted, warned as to conduct, disciplined, or publicly criticized by, or made subject to a court order at the instigation of any governmental department or agency, professional association, or other regulatory body appointed under any Malawi enactment or the substantial equivalent thereof elsewhere? If yes, provide details.

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12. Convictions. Has the IS ever been convicted of any offence, or has a petition for an administrative order or the substantial equivalent thereof been served on the IS, in Malawi or outside Malawi, within the last 7 years? If yes, provide details.

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13. Investigations. Has the IS ever been or is it now subject to an investigation, in Malawi or outside Malawi, by or at the instigation of any governmental department or agency, professional association, or other regulatory body? If yes, provide details.

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14. Litigation. Is the IS engaged or expecting to be engaged in litigation, in Malawi or outside Malawi, which may have a material effect on its resources or ability to financially support the proposed institution? If yes, provide details.

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15. Judgements. Has the IS, within the last 7 years, failed to satisfy within one year a judgement of debt under a court order in Malawi or outside Malawi? If yes, provide details.

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16. Fraud. Has the IS ever been adjudged by a court, in Malawi or outside Malawi, to be civilly liable for fraud, or any other misconduct? If yes, provide details.

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17. Bankruptcy. Has the IS been adjudged bankrupt by a court, in Malawi or outside Malawi, or has a bankruptcy petition ever been served on the IS within the last 7 years, or has the IS made any compromise or otherwise failed to satisfy its creditors in full within the last 7 years? If yes, provide details.

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18. Receivership. Has a receiver or an administrator of any property of the IS been appointed within the last 7 years in Malawi, or has the substantial equivalent of any such receiver been appointed in any other jurisdiction? If yes, provide details including whether the receiver or equivalent thereof is still acting under appointment.

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19. Liquidation:

(*a*) Voluntary. Has a notice for the voluntary liquidation of the IS been issued within the last 7 years in Malawi, or has the substantial equivalent thereof been issued in any other jurisdiction? If so, provide details including whether the liquidation has been fully resolved.

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(*b*) Compulsory. Has a petition for the compulsory liquidation of the IS been issued within the last 7 years in Malawi, or has the substantial equivalent thereof been issued in any other jurisdiction? If yes, provide details including whether the petition or its equivalent is still unresolved.

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20. Winding-up. Has any organization with which the IS is or has been affiliated, in Malawi or outside Malawi, ever been wound up or ceased trading while the IS was associated with the organization 1 year after the IS ceased being associated with the organization? If yes, provide details.

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21. Shares. How many shares of stock in the proposed institution are or will be registered in the name of the IS or in the name of a related party? State the name in which the shares will be registered and the class of shares if other than common shares.

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22. Beneficial Interest. How many shares of stock in the proposed institution which are not registered in the name of the IS or in the name of a related party, will the IS have a beneficial interest in? State the name in which shares will be registered and the nature of the beneficial interest.

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23. Trustee and Nominee. Does or will the IS or any party related to it hold shares in the proposed institution as a trustee or nominee? If yes, provide details.

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24. Assignments and Pledges. Are or will any of the shares described in response to Questions 21 to 23 be equitably or legally assigned or pledged to any other party? If yes, provide details.

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25. Voting Authority. What proportion of the voting power at any general meeting of the proposed institution, or of any other organization of which the proposed institution will be a subsidiary, is or will the IS be entitled to vote or exercise control over? Provide details of such voting authority or control.

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26. Indirect Control. If the exercise of voting at any general meeting of the proposed institution, or any other organization of which the proposed institution is a subsidiary, is or may be controlled or influenced by someone other than the IS, provide the identity of such other person and the proportion of voting power so controlled or influenced.

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27. Audited Accounts. Provide audited accounts for the past 3 years.

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28. Acquisition Debt. If borrowed funds will be used to purchase shares of stocks in the proposed institution, provide a statement showing the amount, source, collateral and repayment terms of the borrowed funds.

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29. Additional Information. Provide a latest credit report from a Licensed Credit Reference Bureau (where possible) and any other information regarding the Institutional Shareholder which may assist the Registrar in evaluating its acceptability as an institutional shareholder.

DECLARATION

with regard to

APPLICATION FOR A DEVELOPMENT FINANCE INSTITUTION LICENCE

We/I, the undersigned, do hereby certify that—

(*a*) all the information given in response to and in support of the questions in this application is true and correct to the best of our knowledge and belief; and

(*b*) this application is made in good faith with the purpose and intent that affairs and business of the proposed institution will at all times be honestly conducted in accordance with good and sound business principles and in full compliance with all applicable laws and directives.

We further certify that to the best of our knowledge and belief there are no other facts or information relevant to this application of which the Registrar should be aware, and we pledge to promptly inform the Registrar of any material change to this application which may arise while it is being considered by the Registrar.

Name	*Signature*	*Title/Position*
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Date: .....

SECOND SCHEDULE (para. 6 (2))

INFORMATION REQUIREMENTS FOR APPLICANTS FOR DEVELOPMENT FINANCE INSTITUTION LICENCES

Applications for an institution licence submitted to the Registrar should contain complete information on all requirements as listed below—

1. Application information should be accompanied by supporting documents as required.

2. Applications which are incomplete will not be processed.

3. Do not leave any requirements blank or unanswered. If the response to a requirement is "no" "none," "not applicable," or "not known," then state so and provide an explanation.

4. Submitting inaccurate or incomplete information will delay the processing of the application.

5. The application must be signed by a duly authorized officer of the Applicant and submitted to the following address—

The Registrar of Financial Institutions
Reserve Bank of Malawi
P.O. Box 30063
Capital City, Lilongwe 3
Malawi

6. Inquiries concerning the preparation, submission, and status of an application should be addressed to:

The Director
Financial Sector Regulation Department
Reserve Bank of Malawi
P.O. Box 565
Blantyre
Malawi

1. Legal Structure

1.1. The corporate name to be used by the proposed institution for the purpose of carrying on its business.

1.2. Location of the proposed institution's head office in Malawi.

1.3. Location of all other offices (branches, agencies, representative offices) planned for the new institution during the first five years of its operation.

1.4. Legal status of proposed institution.

1.5. Copy of the certificate of incorporation of the proposed institution.

1.6. Copies of the Memorandum of Association and a copy of the Articles of Association.

1.7 Certified minutes or resolution of the meeting of proposed shareholders authorizing the establishment of an institution.

1.8 Valid tax Compliance certificate.

1.9. The capital structure of the proposed institution showing the proposed amount of paid-in capital including the amount previously been paid-in or subscribed to; provided, however, that no capital may be contributed in-kind. Identify the type, number and par value of each class of shares proposed to be issued.

1.10. A complete list of the initial shareholders of the proposed new institution (the

"applicants"), including name, address, nationality, and whether the shareholder is an individual person or a legal entity. If a legal entity, specify type.State the number and class of shares to be held, and as a percentage of the total shares. Indicate the purchase price per share, and the total purchase price.

1.11. Provide copies of any agreements between the applicants regarding the proposed institution.

1.12. If any applicant is a legal entity, then provide an official copy of the Board resolution and minutes of the meeting of its Board of Directors authorizing the submission of the application for an institution licence.

1.13. If the proposed development finance institution will be part of a group—

1.13.1. A diagram or chart of the group structure showing the proposed institution's position within the group, relationships within the group and percentage holdings, and the lines of authority and reporting from the institution to the parent.

1.13.2. Complete information on all entities within the group, including name, address, type of entity, principal shareholders, directors, and senior management officials.

1.13.3. Business or other activities of all entities within the group.

1.13.4. An indication of which, if any, entities within the group have no significant activities or operations other than holding stock (including that of the proposed institution) and other similar investments (i.e., a shell company).

1.14. State whether any applicant already owns or controls at least 10% of the shares of one or more other banks in any other jurisdiction that will not be connected through a corporate link to the proposed new institution.

2. Ownership Structure

Provide the following information on all beneficial owners of the initial stock of the institution.

2.1. Name (all names used, including trade names).

2.2. Address.

2.3. Nationality and country identification number.

2.4. For individuals:

2.4.1. Passport number and date.

2.4.2. Date and place of birth.

2.5. For legal entities:

2.5.1. Legal form; date of incorporation or formation.

2.5.2. Annual reports for the past 3 consecutive years.

2.5.3. Identification of external auditors and bankers during the past 10 years.

2.5.4. Identification of principal shareholders, directors, and senior management officials—

(*a*) name;

(*b*) address;

(*c*) position with applicant: principal shareholder, member of the Board of directors, and/or senior management official; and

(*d*) amount and percentage of shareholding in applicant, if any.

2.5.5. Credit rating assigned by an internationally recognized rating agency.

2.6. Number and type of shares to be held in the proposed institution, par value, price per share, total price, and resulting percentage ownership.

2.7. History of the applicant including professional and business interests.

2.7.1. Knowledge or experience in the oversight or management of institutions or other financial institutions.

2.7.2. History of ownership of 10% or more of the stock in any bank or other financial institution located anywhere in the world. State whether, during that time, the bank or financial institution—

(*a*) was subject to formal remedial measures for operating in an unlawful or unsound manner;

(*b*) was threatened with insolvency or illiquidity;

(*c*) had appointed a management advisor, receiver, conservator, liquidator, or similar official; or

(*d*) had its licence revoked or was otherwise wound-up.

2.8. Signed financial statements (statement of position, statement of comprehensive income and cash flow) for the 3 years immediately preceding the date of application, including the current period if available, and audited if available. If proposed institution is a new incorporated entity, provide similar information for its shareholders.

2.9. Complete information on the source of funds to be used to purchase the shares of stock in the proposed institution, including the amount of funds required and the specific sources of those funds.

2.9.1. If assets were (or will be) sold: Complete information on the sale, including copies of all pertinent documents.

2.9.2. If funds were (or will be) borrowed—

(*a*) complete information on the loan including identification of the lender, amount to be borrowed, amount of the loan as a percentage of the total purchase price, collateral to be pledged, and all terms of the transaction;

(*b*) specific information on how the loan will be repaid; and

(*c*) complete details if dividends, salary, fees, or any other payments from the institution are anticipated to be used to service the debt.

2.10. Identification of all persons who would be "related parties" of the proposed development finance institution as a result of the applicant's stock ownership in the institution.

2.11. Information on all memberships in companies, partnerships, professional or trade associations, and with groups of persons acting in concert whether or not organized or registered as a formal business concern. Provide the following—

(*a*) name;

(*b*) address;

(*c*) type of entity; and

(*d*) description of activities.

2.12. Information on legal entities and other business concerns in which the applicant has an interest as a principal shareholder, director, partner, proprietor, senior management official, or guarantor. Provide the following—

(*a*) name;

(*b*) address;

(*c*) type of interest: principal shareholder, director, partner, proprietor, senior management official or guarantor;

(*d*) amount and percentage of shareholding, if any;

(*e*) credit rating or report; and

(*f*) Statement of Position and Statement of Comprehensive Income for the 3 years preceding the date of the application, audited if available.

2.13. Provide complete details of all of the following legal proceedings with which the proposed director, executive officer, or senior management official has been a party, including date, location and disposition

2.13.1. Provide complete details of all of the following legal proceedings with which the applicant is, or has been, a party including date, location and disposition:

.....

.....

2.13.2. Litigation. Is the applicant engaged or expecting to be engaged in litigation, in Malaŵi or outside Malawi, which may have a material impact on the person's financial condition?

2.13.3. Discipline. Has the applicant ever been censured, prosecuted, warned as to conduct, disciplined, disqualified or suspended from practising a profession, removed from office, publicly criticized or made subject to a court order at the instigation of any governmental body appointed under any enactment, by a professional organization, or the substantial equivalent thereof in Malawi or outside Malawi?

2.13.4. Conviction. Has the applicant ever been convicted of an offense, or been served a petition for an administrative order or the substantial equivalent thereof in Malaŵi or outside Malawi?

2.13.5. Investigation. Is the person, or has the person ever been, subject to an investigation in Malaŵi or outside Malawi, by or at the instigation of any

governmental department or agency, professional association, or other regulatory body?

2.13.6. Judgment. Has the applicant ever failed to satisfy within 1 year a judgment of debt under a court order in Malawi or outside Malawi?

2.13.7. Fraud. Has the applicant ever been adjudged by a court, in Malawi or outside Malawi, to be civilly liable for actions which could have resulted in an indictment for a felony offence, as well as fraud, malfeasance, forgery, perjury, money laundering, or any other misconduct?

2.13.8. Bankruptcy. Has the applicant ever been adjudged bankrupt by a court, in Malawi or outside Malawi? Has a bankruptcy petition ever been served on the applicant? Has the applicant made any compromise arrangement or otherwise failed to satisfy creditors in full?

2.13.9. Receivership. Has a receiver or an administrator been appointed for any of the applicant's property, or has the substantial equivalent of any such receiver been appointed in any other jurisdiction? If yes, provide details including whether the receiver or equivalent thereof is still acting under the appointment.

2.13.10. Liquidation. Has a notice for voluntary liquidation, or a petition for compulsory liquidation, been issued to the applicant or to any of the applicant's business interests? If yes, state whether the petition or its equivalent remains unresolved.

2.13.11. Winding-Up. Has any body corporate, partnership, or unincorporated institution with which the applicant was associated as a principal shareholder, director, executive officer or senior management official in Malawi or elsewhere, been wound up, made subject to an administration order, otherwise made any compromise or arrangement with its creditors or ceased trading either while the person was associated with it or within 1 year after the applicant ceased to be associated with it or has anything analogous to any of these events occurred under the laws of any other jurisdiction?

2.14. Please provide the following information as to how the stock in the proposed bank will be held by the applicant.

2.14.1. Shares. How many shares in the proposed new institution are or will be registered in the applicant's name or in the name of a "related person"? State the names in which the shares will be registered and the class of shares if other than common shares:

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.....

2.14.2. Beneficial Interest. In how many shares of the proposed institution which are not registered in the applicant's name or in the name of a "related person," will the applicant have a beneficial interest? State the names in which the shares will be registered and the nature of the beneficial interest.....

2.14.3. Trustee or nominee. Will the applicant or any "related person" hold shares in the proposed institution as a trustee or nominee? If yes, provide details.....

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2.14.4. Assignments or pledges. Are, or will, any of the shares described in response to other questions be equitably or legally assigned or pledged to another party? If yes, provide details.....

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2.14.5. Voting authority. What proportion of the voting power at any general meeting of the proposed institution, or of any other organization of which the proposed institution is a subsidiary, will the applicant be entitled to vote or exercise control over? Provide details.....

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2.14.6. Indirect Authority. If the exercise of voting power at any general meeting of the proposed institution, or of any other organization of which the proposed institution is a subsidiary, is or may be controlled or influenced by someone other than the applicant, provide the identity of such other person and the proportion of voting power so controlled or influenced.....

.....

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2.15. For foreign investor applicants:

2.15.1. An official letter addressed to the Registrar must be received directly from the home country supervisor that affirms the following—

2.15.1.1. The applicant is "in good standing" with the home country supervisor—

(*a*) the home country supervisor is satisfied with the prudential and overall financial management of the applicant;

(*b*) is fully meeting all capital requirements; and

(*c*) no formal supervisory measures are currently in force or pending against the applicant.

2.15.1.2. The home country supervisor has given written consent or a statement of "no objection" for the applicant to establish a subsidiary institution in Malaŵi subject to the receipt of licence to conduct business by the Registrar.

2.15.1.3. The applicant and its subsidiary institution in Malawi) is, and will be, supervized on a consolidated basis by both, the Registrar and the home country supervisor.

2.15.1.4. The home country supervisor agrees to—

(*a*) keep the Registrar informed of any significant developments adversely affecting the applicant's financial soundness or reputation; and

(*b*) promptly provide the Registrar with copies of the applicant foreign bank's reports of on-site examination and published financial statements.

2.15.2. The most recent report of the "full-scope" on-site examination of the applicant.

2.15.3. The most recent audit report (including management letter).

2.15.4. An organization chart of the applicant showing lines of authority and reporting from the subsidiary institution in Malawi to the parent institution, and specifically identifying the parties within the applicant who are responsible for the sound operation and financial condition of the proposed subsidiary institution in Malawi.

3. Management Structure:

List all proposed members of the Board, members of the audit committee, and senior management officials. The following information must be provided for each person listed. If any proposed director, audit committee member, or senior management official is also an initial shareholder, then only submit information on the items not previously addressed in section 2, "Ownership Structure."

3.1. Name.....

3.2. Address.....

3.3. Country identification or passport number.....

3.4. Date and place of birth.....

3.5. Amount, type, and percentage of shareholding in the proposed institution, if any .....

3.6. Position with the proposed institution: executive officer, director, audit committee member, or senior management official (specify title and provide a position description).....

3.7. Education, qualifications, professional experience, and employment history included in a detailed curriculum vitae.....

3.8. Signed financial statements. Statement of position, statement of comprehensive income and cash flow for 3 years immediately preceding the date of application, including the interim period if available.

3.9. History of ownership of 10% or more of the stock or holding a position as a director or senior management official in any bank or financial institution located anywhere in the world. State whether, during such time period, the institution—

(*a*) was subject to formal remedial measures for operating in an unlawful or unsound manner;

(*b*) was threatened with insolvency or illiquidity;

(*c*) had appointed a management advisor, receiver, conservator, liquidator, or similar official; or

(*d*) had its licence revoked or was otherwise wound-up.

3.10. Membership in companies, partnerships, professional or trade associations, and groups of persons acting in concert whether or not organized or registered as a formal business concern: Name, address, type of entity, and description of activities.

3.11. Provide complete details of all of the following legal proceedings with which the proposed director, audit committee member, or senior management official has been a party, including date, location, and disposition.

3.11.1. Litigation. Is the person engaged or expecting to be engaged in litigation, in Malaŵi or outside Malawi, which may have a material impact on the person's financial condition?

3.11.2. Discipline. Has the person ever been censured, prosecuted, warned as to conduct, disciplined, disqualified or suspended from practising a profession, removed from office, publicly criticized, or made subject to a court order at the instigation of any governmental body, appointed under any enactment, by a professional organization, or the substantial equivalent thereof in Malawi or outside Malawi?

3.11.3. Conviction. Has the person ever been convicted of any offense, or been served a petition for an administrative order or the substantial equivalent thereof in Malaŵi or outside Malawi?

3.11.4. Investigation. Is the person, or has the person ever been, subject to an investigation in Malaŵi or outside Malawi, by or at the instigation of any governmental department or agency, professional association, or other regulatory body?

3.11.5. Judgment. Has the person ever failed to satisfy within 1 year a judgment of debt under a court order in Malaŵi or outside Malawi,?

3.11.6. Fraud. Has the person ever been adjudged by a court, in Malaŵi or outside Malawi, to be civilly liable for actions which could have resulted in an indictment for a felony offence, as well as fraud, malfeasance, forgery, perjury, money laundering or any other misconduct?

3.11.7. Bankruptcy Has the person ever been adjudged bankrupt by a court, in Malawi or outside Malawi? Has a bankruptcy petition ever been served on the person? Has the person made any compromise arrangement or otherwise failed to satisfy creditors in full?

3.11.8. Receivership. Has a receiver or an administrator been appointed for any of the person's property, or has the substantial equivalent of any such receiver been appointed in any other jurisdiction? If yes, provide details including whether the receiver or equivalent thereof is still acting under the appointment.

3.11.9. Winding-up. Has any body corporate, partnership, or unincorporated institution with which the person was associated as a controlling shareholder, director, executive officer or senior management official in Malaŵi or outside Malawi, been wound up, made subject to an administration order, otherwise made any compromise or arrangement with its creditors or ceased trading either while the person was associated with it or within 1 year after the person ceased to be associated with it or has anything analogous to any of these events occurred under the laws of any other jurisdiction?

3.12. Copies of all existing or proposed employment contracts.

4. Business Plan

Please submit a business plan covering the first 3 years of operation of the new institution in the following prescribed format. The purpose of the business plan is to provide an overview of the intentions of the applicants and management and show how their established objectives will be achieved. The business plan will be used to assess the likelihood of success of the proposed institution and to monitor the institution's business and condition during its first 5 years of operation. The business plan should consist of two parts—

(*a*) a narrative; and

(*b*) financial projections.

4.1. Narrative

The business plan should contain a narrative in which the following essential elements are thoroughly addressed.

4.1.1. Identifying Information

State the name and location of the institution including the location of any branches or other offices. Describe and provide a diagram of the development finance institution's corporate structure and include all entities within the structure (parents, subsidiaries, companies under common control, and other affiliates), if the institution will be part of a group. Briefly discuss how the organizing group (the applicants) came together and the reasons for wanting to start an institution.

Identify the key strategic goals of the proposed development finance institution. Provide a basic statement on the nature and scale of the proposed institution's business, and arrangements for its management.

4.1.2. Market Analysis

Identify the markets to be served by the proposed institution and specifically address how the needs and convenience of the communities or sectors identified as the institution's target market will be served. Describe the geographical areas, economic characteristics, and clientele in the target market and the types of products and services to be offered. Address any anticipated changes in the market, factors influencing such changes, and possible effects on the proposed institution.

Describe how the institution intends to ensure that the interests of depositors and creditors of the new institution, the national economy, and the general public will be served and not threatened by the new institution's conduct in the business proposed in the business plan.

A copy of the feasibility study of the financial sector upon which the decision was made to commence business as an institution in Malawi should be submitted as part of the application.

4.1.3. Assumptions

List and discuss all assumptions used in the preparation of the business plan and upon which the financial projections are based. Include, at a minimum: economic conditions in Malawi, expectations of market changes, level of competition, growth forecasts, and interest rates on earning assets and interest-bearing liabilities. Provide support for the business plan's financial projections, specifically for asset and liability mix and growth, profitability, maintenance of an adequate capital base and capital ratios, and proposed dividends.

4.1.4. Corporate Governance

Describe the structure of the organization and management of the proposed institution. Show the relationships between the Board, audit and other permanent committees, senior management officials, and operational and administrative divisions and their sub-divisions and functions. Indicate lines of authority and reporting relationships.

Provide a list of showing all members of the Board, the audit committee, and any other permanent committee of the Board. The list should include name, position, term, authority, responsibilities, and remuneration.

Provide a list of all senior management officials that shows each person's name, title, salary, incentive compensation, fees, benefits and other remuneration. Submit names of executive officers who will effectively manage the new development finance institution.

Provide copies of all proposed agreements for management, technical services, software maintenance, and other services. If any agreement for lease or service is anticipated to be entered into with any "insider" or "related person," then provide a written description of such transaction and include—

(*a*) identification of the "insider" or "related party;"

(*b*) rates and terms;

(*c*) comparative comparative market data to evidence that the transaction will be on an arm's-length basis; and

(*d*) a justification as to why the transaction with an "insider" or "related person" is in the best interest of the institution as opposed

to a similar transaction with a person or entity not an "insider" or "related party."

Describe the operating systems of the institution including—

(*a*) corporate policies and procedures;

(*b*) accounting standards;

(*c*) books of account and record-keeping;

(*d*) reporting to management, Board, shareholders, and theRegistrar;

(*e*) information technology;

(*f*) internal controls; and

(*g*) internal and external audit.

Confirm that information systems will be capable of producing all required reports to the Registrar in an accurate and timely manner.

Identify the independent external auditor who will be engaged for the annual audit of the development finance institution.

Address staff projections, including recruitment and training.

4.1.5. Development finance institution Business

Discuss the types and scale of institution business envisaged. This presentation should be supported by information which clearly shows the proposed new institution's capability to undertake those activities in terms of board oversight, management, expertise, systems support, organization and staff. Specifically address—

(*a*) the types of loans to be offered, targeted economic sectors, and plans for diversification;

(*b*) planned borrowing activity;

(*c*) method for pricing loans;

(*d*) proposed off-balance sheet activities; and

(*e*) agency arrangements.

4.1.6. Capital

Describe plans for financing growth, internally and externally, over the first five years of operation. Describe all additional sources of capital that are available should the need arise in the future ensuring that the proposed institution is adequately capitalized at all times.

4.1.7. Risk Management

Describe the analysis conducted of the risks associated with the sectors to be served by the proposed institution. Specifically describe the risk management processes risk identification, measurement, monitoring and control for the following risks—

(*a*) strategic risk;

(*b*) credit risk;

(*c*) liquidity risk;

(*d*) interest rate risk;

(*e*) foreign foreign exchange rate risk;

(*f*) price risk;

(*g*) operational risk;

(*h*) compliance risk;

(*i*) reputational risk;

(*k*) money laundering and terror financing risk;

(*l*) country and transfer risk; and

(*m*) all other risks to which the proposed institution will be exposed when engaged in the activities envisaged by this business plan.

With regard to credit risk, specifically address and include—

(*a*) credit policies (which must include limitations on loans to "related persons");

(*b*) plans to minimize concentration risk through diversification and limitations on exposures to individuals and groups of related borrowers; and

(*c*) asset quality considerations such as credit-granting standards, classification, and provisioning for loan losses.

With regards to money laundering, specifically address and include—

Risk assessments for products, customers, delivery channels and geographical location.

4.1.8. Premises

Describe the premises and equipment to be utilized by the proposed institution. Indicate whether facilities and equipment will be leased or purchased. Describe the basis for the decision to lease or purchase and how such premises and equipment were determined to be adequate. Provide information on the cost of acquisition or lease payments and terms, and the counter-party to the purchase or lease agreement. Address plans for future expansion, including branches.

4.1.9. Business Plan Monitoring

Discuss the methods that the Board will use to regularly monitor the institution's performance under the business plan and management's adherence to the plan for the first 5 years of operation.

4.2 Submit any other information not listed above that could support your application.

THIRD SCHEDULE (para. 14.(2))

REGISTRAR OF FINANCIAL INSTITUTIONS FINANCIAL SERVICES ACT

LICENCE TO CONDUCT BUSINESS AS A DEVELOPMENT FINANCE INSTITUTION

A LICENCE is hereby granted to—

.....Whose office address is

.....

And authorizes the said development finance institution to conduct and carry on business as a development finance institution in Malawi. This licence is issued subject to the provisions of the Act.

Dated this.....day of....., 20.....

LICENCE NO. .....

Made this 29th day of June 2018..

D. KABAMBE, PhD
Registrar of Financial Institutions

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