ΓICE NO. 55

FINANCIAL SERVICES ACT
(CAP. 44:05)

:RVICES (CORPORATE GOVERNANCE REQUIREMENTS FOR
)PMENT FINANCE INSTITUTIONS) DIRECTIVE, 2018

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

PART I—PRELIMINARY

Citation

1. This Directive may be cited as the Financial Services (Corporate Governance for Development Finance Institutions) Directive, 2018.

Interpretation

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

"affiliate" means any entity, corporate or unincorporated where 5 or more of any class of its voting shares or other voting participation is directly or indirectly owned or controlled by that institution or is held by the institution with power to vote;

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

"conflict of interest" means a situation in which a person has direct or indirect private or personal interest in a matter which is sufficient to directly or indirectly influence or has the potential to directly or indirectly influence the objective exercise of his official or professional duties or the making of impartial judgment over the same or related matter;

"control" has the meaning ascribed to it in International Accounting Standards and includes the power to govern the financial and operating policies of the institution to obtain benefits from its activities. The existence of control is generally evidenced by either of the following—

(*a*) direct or indirect ownership of more than 50% of voting power;

(*b*) power over more than 50% of voting rights or power to cast the majority votes at a meeting of the Board or shareholders;

(*c*) power to govern the financial and operating policies of the institution;

(*d*) power to appoint or remove the majority of the members of the Board;

"executive director" means a member of the Board who is involved in the day-to-day management of an institution and is in full time salaried employment of the institution, its parent company or any of its subsidiaries or affiliates;

"executive officer" means an officer at the most senior levels of management of an institution, whether or not the officer is director, who effectively manages the affairs of institution;

"general reserve" means a mandatory non-distributable reserve created by transfer of specified proportion of annual profits of the institution;

"group" means a group consisting two or more institutions that have common controlling party and the body corporate of which any of those institutions is a controlling party;

"independent director" means a director that—

(*a*) is not a shareholder of the institution, either directly or indirectly;

(*b*) is not related or affiliated to a shareholder that has the ability to control or influence management;

(*c*) has not been employed by the institution, its subsidiary or affiliate in any executive capacity for the past two years;

(*d*) is not a member of the immediate family of an individual who, in any of the past two years, is or has been, employed by the institution or the group in an executive capacity;

(*e*) is not a professional advisor to the institution or the group other than in a director capacity;

(*f*) has no significant contractual relationship with the institution or the group; or

(*g*) is free from any business or other relationship which could be seen to materially interfere with the individual's capacity to act in an independent manner;

"Institution" means the development finance institution;

"non-executive director" means a member of the Board who is not

involved in the day to day management of an institution and is not in full time salaried employment of the institution, its parent company or any of its subsidiaries or affiliates;

"politically exposed person" has the meaning ascribed to that term in the Financial Crimes Act; Act No 14 of 2017

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

"related party" has the meaning ascribed to that term in the Banking Act;

"senior management official" means—

(*a*) an executive officer;

(*b*) head of department or function;

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

(*d*) any other official that the Registrar may determine; and

"significant" means 5% of the value of the transaction conducted with the institution.

PART II—OBJECTIVE

Objective

3. The objective of this Directive is to prescribe minimum corporate governance requirements for an Institution.

PART III—REGULATORY REQUIREMENTS

Obligations of shareholders

4. A shareholder of an institution shall—

(*a*) jointly and severally protect, preserve and exercise supreme authority over the institution;

(*b*) ensure that the Board is held accountable and responsible for the efficient and effective governance of the institution;

(*c*) ensure that only competent and reliable persons with appropriate knowledge, skills and experience are appointed to serve on the Board;

(*d*) change the composition of a Board that does not perform to expectations or in accordance with the mandate of the institution;

(*e*) ensure that the Board adheres to the objectives for which the institution was established;

(*f*) appoint competent external auditors; and

(*g*) approve director's remuneration or fees during annual general meetings or extraordinary meetings.

Restrictions on shareholders

5. A shareholder or any person affiliated to a shareholder shall not be—

(*a*) the chairperson of the Board; and

(*b*) a member of the audit committee of the Board .

Board charter

6.—(1) The Board shall have a formal charter which shall, at a minimum—

(*a*) outline the Board's responsibility for the formulation and adoption of strategic plans;

(*b*) provide for the monitoring of operational performance of management;

(*c*) document the procedure for the selection, orientation and evaluation of directors;

(*d*) provide for the criteria for managing conflict of interest among directors of the institution; and

(*e*) provide criteria for managing exposures to politically exposed persons or their related parties.

(2) The Board shall at a minimum, meet on quarterly basis.

Directors' powers and responsibilities

7. The Board shall—

(*a*) individually and jointly be accountable for the affairs of the institution;

(*b*) determine appropriate policies and processes to ensure the integrity of the institution's risk management practices, internal controls and communications policy;

(*c*) be responsible for monitoring of management in the implementation of the institution's plans and strategies;

(*d*) provide strategic direction to the institution;

(*e*) approve credit facilities referred to it by the credit committee;

(*f*) appoint and remove senior management officials of the institution;

(*g*) allocate time and resources for directors to acquire and retain a sound understanding of their responsibilities;

(*h*) ensure the development and implementation of the organization's succession plan;

(*i*) ensure that the institution complies with all relevant laws, regulations and policies;

(*j*) have access to all the institution's information, records, documents and property;

(*k*) set and approve limits of authority for management;

(*l*) ensure that senior management implements projects that are in line with the objectives of the institution;

(*m*) have a clear policy for setting remuneration of executive and non-executive directors at levels that are fair and reasonable in a competitive market for the skills, knowledge, experience, nature and size of the institution;

(*n*) have a policy on general reserve which requires transfer of maximum of 25% of the institution's annual profits; and

(*o*) have a funds and investment policy for adequate management of liquidity.

Restrictions on shareholding

8. An institution shall seek the approval of the Registrar in respect of—

(*a*) a new shareholder;

(*b*) a shareholder who may become a controlling party; or

(*c*) a change in shareholding structure.

Prior approval of Registrar

9.—(1) A person shall not serve as a director or senior management official of an institution without prior approval of the Registrar.

(2) The criteria for appointing an executive officer of the institution shall be based on relevant professional qualifications, experience and technical knowledge.

Fit and proper eligibility criteria

10. The following persons shall not be eligible for appointment or serve as shareholders, directors, or senior management officials of an institution—

(*a*) a person who has been adjudged bankrupt or declared insolvent and has not been discharged from bankruptcy or insolvency;

(*b*) a person who has been convicted of a felony or an offence involving dishonesty or fraud, forgery, perjury, money laundering, or any other material breach of a financial service law;

(*c*) a person who has been removed as a director, senior management official, shareholder or trustee by the Registrar or a regulator of financial institutions in any country;

(*d*) a person who has been removed as a shareholder, director or senior management official by a court of competent jurisdiction or any other enforcement agency;

(*e*) a person who has been directed to disinvest or had his investment wound up or closed up by a supervisory authority;

(*f*) a person who has been disqualified or suspended from practicing any profession on the grounds of professional misconduct;

(*g*) a person who is employed directly or indirectly by a bank or financial institution, unless he relinquishes that position before the appointment;

(*h*) a director, officer or employee of the Financial Intelligence Authority;

(*i*) a salaried employee of Government;

(*j*) a politically exposed person;

(*k*) a minor or a person under legal disability;

(*l*) a person who has been proven to be responsible for a loss suffered by a licensed institution in Malawi or outside Malawi;

(*m*) a person who does not have a good professional reputation and has a background that does not demonstrate integrity;

(*n*) a person whose education, technical knowledge and

professional experience is not directly relevant to development finance or banking business;

(*o*) a person who has been a controlling party, shareholder, director, executive officer or senior management official of a bank or other financial institution which is or was subject to formal remedial measures for operating in an unlawful or unsound manner or for which a management advisor, conservator or liquidator has been appointed or that has had its licence revoked or which has been wound-up;

(*p*) a director whose attendance of Board meetings is unsatisfactory or who misses 3 consecutive Board meetings without valid reasons;

(*q*) a person who has a non performing credit facility or whose related party has a non performing credit facility;

(*r*) in the case of an executive officer and senior management official, a person who is not resident in Malawi, unless specifically exempted in writing by the Registrar;

(*s*) a person who has—

(i) failed to take all reasonable steps to secure compliance by the financial institution with Malawi's Financial Crimes Act or home country financial laws;

Act No. 14 of 2017

(ii) failed to take all reasonable steps to ensure the accuracy and completeness of information submitted to the Registrar or home country supervisory authority;

(iii) failed or delayed to supply information to the Registrar; or

(iv) obstructed or endeavored to obstruct, an inspection by an officer or other appointed person of the Registrar or any other financial regulator whether inside or outside Malawi;

(*t*) a person who has not disclosed to the institution all material interests in credits and other transactions;

(*u*) a person who directly or indirectly, alone or acting in concert with others has credit from the institution that exceeds the 10% of the capital and reserves of the institution;

(*v*) a person who has supplied false or misleading information to the Registrar;

(*w*) a person who was removed or dismissed from a bank or a licensed financial institution; and

(*x*) any other person that may be prescribed as such by the Registrar based on the Registrar's assessment or other relevant information.

Balance of power on the Board

11. The Board shall have an appropriate balance of power and authority, such that an individual or a group of individuals shall not dominate the Board's decision making process.

Removal of Board of directors

12. The chairperson shall recommend to shareholders, the removal of a Board director who does not contribute effectively to the Board.

13. A director or a senior management official shall be held liable for false or misleading statements to the Board, the Registrar or other stakeholders.

Liability of directors and senior management officials

14. The Board shall—

Board composition

(*a*) have a minimum of 9 directors, the majority of which shall be independent or non-executive directors; and

(*b*) have appropriate balance of skills, knowledge and experience.

15. The chairperson of the institution shall be an independent and non-executive director.

Board chairperson

16.—(1) A director of an institution shall not—

Restrictions on directors

(*a*) simultaneously hold the roles of Board chairperson and chief executive officer or its equivalent at the same time;

(*b*) be a member of more than 6 other Boards, unless where the Board is for an entity that is not registered or incorporated under the Companies Act;

Act No 15 of 2013

(*c*) serve on the Board of another financial institution in Malawi; and

(*d*) own shares directly or indirectly in a credit reference bureau.

(2) A director who contravenes subparagraphs 1 (*a*) to (*d*) shall cease to be eligible as a director of the institution.

17. An independent director shall not be considered independent after serving on the Board of the institution for a period of more than 9 years.

Restriction on independent directors

18.—(1) An institution shall, at a minimum, have the following committees in place—

Board and Management Committees

(*a*)Audit Committee of the Board;

(*b*) Risk Management Committee of the Board;

(*c*) Credit Review Committee; and

(*d*) the Nominations, Appointments and Remuneration Committee.

(2) The Board shall ensure that proceedings of committee meetings are properly minuted and are available to the Registrar upon request.

(3) All Board committees shall be chaired by a non- executive director.

(4) The Board chairperson shall not be a member of any subcommittee, except with prior approval of the Registrar.

(5) A member of the audit committee of the Board or Risk Committee of the Board shall not sit in any other committees of the Board.

(6) The chief executive officer shall not be a member of the Audit Committee of the Board.

(7) An institution shall have an Asset Liability Management Committee that shall meet monthly.

Internal audit committee

19—(1) The Head of internal audit shall have unrestricted access to the Audit Committee.

(2) The Board shall ensure that internal audit recommendations are dealt with in a timely manner and that corrective actions are taken on deficiencies noted in the audit.

(3) The Board shall ensure that the internal audit function is adequately resourced and that the annual audit work plan is timely approved.

(4) Non-executive directors of the Board shall, in the absence of management, meet annually with the institution's external auditors and the head of internal audit.

(5) The audit committee of the Board shall approve the appointment, resignation or dismissal of the head of internal audit.

(6) The audit committee of the Board shall review, at least annually, the system of internal controls to determine whether it works to expectation and to ensure it remains appropriate.

(7) A head of the internal audit function of an institution shall be a registered member of the respective audit profession body in Malawi.

Risk function

20. The Board shall ensure that the risk function is independent and is adequately resourced.

Finance function

21. A head of the accounting or finance functions of an institution shall be an accredited member of the respective professional body in Malawi.

Approval attestation

22. The Registrar shall not approve a head of the accounting or finance or a head of the internal audit function of an institution unless the institution provides written attestation from the respective professional body satisfying requirements of paragraphs 19 (7) and 21.

Annual accounts and external audit

23.—(1) The Board shall ensure that accounts of the institution are prepared and kept fully in accordance with international accounting standards.

(2) An institution shall appoint an external auditor whose appointment shall be subject to Registrar's approval.

(3) The institution shall within 3 months after the close of its financial year, submit to the Registrar a copy of its audited financial statements together with a report of its external auditor.

(4) The institution shall, unless exempted by the Registrar, publish a copy of the balance sheet and statement of financial position under subparagraph (3) within 4 months after the close of its financial year in at least 2 local newspapers of wide circulation in Malawi.

Submission of call reports

24.—(1) An institution shall submit call reports to the Registrar in accordance with the instructions for completion of Call Reports Manual.

(2) An institution shall submit the call reports in subparagraph (1) to the Registrar within 30 days after the last day of every month.

(3) Where the Registrar determines that reports submitted have errors and that corrected reports are not resubmitted within the stipulated deadlines, the institution shall be considered by the registrar to be in violation of this Directive.

Submission of other information and data

25. In addition to submission of call reports, an institution shall—

(*a*) provide any other information, reports or data within deadlines as directed by the Registrar; and

(*b*) submit information including any material changes on credit history of the bank's borrowers and customers to all licensed credit reference bureaux.

Record keeping

26.—(1) An institution shall keep a record of—

(*a*) a customer's loan account;

(*b*) correspondence relating to the loan transactions; and

(*c*) any other transaction that an institution carries out in the course of its business.

(2) The records shall be—

(*a*) sufficient to enable a transaction to be readily reconstructed at any time;

(*b*) stored electronically or otherwise; and

(*c*) maintained in a manner that will enable the institution to comply immediately with requests for information from the Registrar.

PART IV—ENFORCEMENT

Monetary penalties

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

(*a*) for an 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

28. In addition to the monetary penalties imposed in paragraph 27, the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act.

Made this 29th day of June 2018..

D. KABAMBE, PhD
Registrar of Financial Institutions

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