GOVERNMENT NOTICE NO. 57

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (FIT AND PROPER REQUIREMENTS FOR PERSONS ASSOCIATED WITH THE OWNERSHIP AND MANAGEMENT OF MICROFINANCE INSTITUTIONS) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVES

3. Objectives

PART III—FIT AND PROPER TEST STANDARDS FOR SHAREHOLDERS

4. Approval of shareholders
5. Due diligence

PART IV—FIT AND PROPER TEST REQUIREMENTS FOR DIRECTORS AND SENIOR MANAGEMENT OFFICIALS

6. Approval of directors and senior management officials
7. Board responsibility
8. Restrictions on directors
9. Qualifications for accounting, finance and audit functions requirements
10. Compliance officer
11. Verification of educational qualifications
12. Notification of exits of directors or executive officers
13. Shareholder exit

PART V—PRESCRIBED CRITERIA FOR FIT AND PROPER TEST

14. Eligibility

PART VI—DISQUALIFICATION

15. Powers of Registrar

PARAGRAPH

PART VII—ENFORCEMENT

16. Monetary penalties

17. Administrative penalties

Schedules

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

PART I—PRELIMINARY

1. This Directive may be cited as the Financial Services (Fit and Proper Requirements for Persons Associated with the Ownership and Management of Microfinance Institutions) Directive, 2018. Citation

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

"audit committee" means a permanent committee of the Board of a microfinance institution consisting of at least 3 members, all or the majority of which, shall be non-executive directors;

"Board" means the Board of directors of a microfinance institution;

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

"home country supervisor" means the competent regulatory authority that supervises institutions engaged in microfinance business in the country where the head office of a foreign firm is located;

"managerial functions" means duties or assignments performed or undertaken by a senior management official;

"microfinance institution" means a non deposit taking microfinance institution and deposit taking microfinance institution;

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

"related party" has the same meaning as ascribed to that in section 33 of the Act; Cap. 44: 05

"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*) a branch manager of a microfinance institution that the Registrar declares as a senior management official.

PART II—OBJECTIVES

Objectives

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

(*a*) only fit and proper shareholders are allowed to invest and establish microfinance institutions in Malawi; and

(*b*) microfinance institutions are managed by competent personnel at Board and senior management levels.

PART III—FIT AND PROPER TEST STANDARDS FOR SHAREHOLDERS

Approval of shareholders

4.—(1) A microfinance institution that is not a public company shall seek prior 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.

(2) A microfinance institution that is a public company shall seek the approval of the Registrar in respect of—

(*a*) a new shareholder who may become a controlling party in the microfinance institution;

(*b*) an acquisition that increases the existing shareholding so that the shareholder may become a controlling party as a result of the acquisition; and

(*c*) a change in shareholding structure that results in one or more shareholders ceasing to become a controlling party.

(3) The fit and proper test requirements shall extend to an ultimate beneficial owner of a microfinance institution.

(4) A shareholder referred to in subparagraphs (1), (2) and (3) shall satisfy the fit and proper test requirements provided for in Part V of this Directive.

(5) The Board shall ensure that shareholders of the microfinance institution referred to in subparagraphs (1), (2) and (3) provide the information in Part V of this Directive to the Registrar and meet all the requirements of this Directive.

(6) In the course of carrying out his supervisory responsibilities, the Registrar may direct a proposed or existing shareholder to—

(*a*) submit additional information; or

(*b*) appear before the Registrar.

(7) The Registrar shall, on a regular basis, review the fitness and propriety of a shareholder or controlling party shareholder referred to in subparagraphs (1), (2) and (3) to ensure that the shareholder is financially sound at all times.

Due diligence

5. The Registrar shall conduct a due diligence of a prospective shareholder as part of the fit and proper test requirement.

PART IV—FIT AND PROPER TEST REQUIREMENTS FOR DIRECTORS AND SENIOR MANAGEMENT OFFICIALS

Approval of directors and senior management officials

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

(2) A microfinance institution shall submit to the Registrar a request for the approval in paragraph (1) in the format prescribed in the First Schedule hereto.

(3) A director or senior management official shall be considered to be fit and proper if he or she meets the standards outlined in Part V of this Directive and meets the minimum qualifications prescribed in the Second Schedule hereto.

(4) The Registrar may waive the requirements of subparagraph (3) upon an application by a microfinance institution requesting and justifying for a waiver.

Board responsibility

7.—(1) The Board of a microfinance institution shall ensure that a microfinance institutions has—

(*a*) a designated second in command at a level of senior management;

(*b*) an internal audit function; and

(*c*) an independent risk management and compliance function.

(2) The Registrar may approve alternative arrangements where a microfinance institution is not in a position to have an independent risk management and compliance function.

Restrictions on directors

8.—(1) The Chairperson of the Board of a microfinance institution shall be a non-executive director.

(2) A director of a microfinance institution shall not serve as a director of another microfinance institution except where the other microfinance institution is part of the microfinance institution group or its holding company in which he is already a director.

(3) A salaried employee of Government shall not serve as a director of a microfinance institution or as an *ex-officio* except where the Government has a direct shareholding interest in the microfinance institution.

(4) A salaried employee of Government shall not serve as a chairperson of the board of a microfinance institution.

(5) Except where specified by a written law or approved by the Registrar, directors referred to in subparagraph (3) shall not serve on the board of any other microfinance institution.

(6) A politically exposed person shall not serve as a director or senior management official of a microfinance institution unless approved by the Registrar.

(7) An individual who sits on the board of an institution that is a shareholder of a microfinance institution shall not serve as a director on the board of any other microfinance institution.

Qualifications for accounting, finance and audit functions requirements

9.—(1) The head of the accounting or finance function of a microfinance institution shall be a member of an accredited accounting professional body and shall also be registered by the Institute of Chartered Accountants in Malawi.

(2) The head of the internal audit function of a microfinance institution shall be a registered member of the Institute of Internal Auditors in Malawi.

(3) The Registrar shall not approve a head of the accounting or finance function or head of the internal audit function of a microfinance institution unless the microfinance institution provides written attestation from Institute of Chartered Accountants in Malawi or Institute of Internal Auditors in Malawi satisfying requirements of subparagraphs (1) and (2).

Compliance officer

10.—(1) A compliance officer shall report to a committee of the Board responsible for risk management.

(2) An internal auditor of a microfinance institution shall not qualify as a compliance officer.

(3) A compliance officer shall have relevant qualifications and skills to effectively discharge his duties.

Verification of educational qualifications

11. The Registrar shall verify the credentials and authenticity of academic and professional qualifications of a director, executive officer or senior management official.

Notification of exits of directors, executive officers

12. A microfinance institution shall notify the Registrar within 10 working days after the exit of its director or executive officer citing reasons behind the decision and the timeline regarding the director's or executive officer's replacement.

Shareholder exit

13. A shareholder of a microfinance institution shall seek prior approval of the Registrar before relinquishing shareholding of the microfinance institution.

PART V—PRESCRIBED CRITERIA FOR FIT AND PROPER TEST

Eligibility

14.—(1) The following persons shall not be eligible for appointment as shareholders, beneficial owners, directors, or senior management officials of a microfinance institution or its holding company—

(*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 another microfinance institution, unless he relinquishes that position before the appointment;

(*h*) a director, officer or employee of the Reserve Bank;

(*i*) a politically exposed person;

(*j*) a minor;

(*k*) a person under legal disability;

(*l*) a person who has been 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 relevant to microfinance business. For purposes of this Directive, relevant qualifications or knowledge shall include banking, economics, microfinance, business, finance, law, risk management accounting and other qualifications that the Registrar may consider relevant;

(*o*) a person who has been a controlling party, shareholder, director, executive officer or senior management official of a microfinance institution or other financial institution that 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 without valid reasons three consecutive Board meetings;

(*q*) a director 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) with respect to a financial institution in Malawi or outside Malawi, a person who has—

(i) failed to take all reasonable steps to secure compliance by the financial institution with Malawi's financial services laws, Financial Crimes Act or home country financial services 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 all material interests in credits and other transactions;

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

(*v*) a person who was dismissed from another microfinance institution or licensed financial institution; and

(*w*) any other person that the Registrar may prescribe as such based on the Registrar's assessment or other relevant information.

PART VI—DISQUALIFICATION

Powers of Registrar

15.—(1) The Registrar may for sufficient cause—

(*a*) remove a director of a microfinance institution;

(*b*) remove or suspend a senior management official;

(*c*) remove or suspend the whole Board of a microfinance institution;

(*d*) exclude any member of the Board from qualifying to serve on a Board of any microfinance institution in Malawi for a period of not less than 10 years; or

(*e*) remove a shareholder or direct specific shareholder to reduce or disinvest its control of a microfinance institution.

(2) For the purposes of subparagraph (1) "sufficient cause" means—

(*a*) in relation to a director—

(i) ceasing to comply with the fit and proper test; and

(ii) maintaining non-performing loans with any financial institution; and

(*b*) in relation to the Board, failure, omission or neglect of their responsibilities and duties as prescribed in the relevant financial services laws.

PART VII—ENFORCEMENT

Monetary penalties

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

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

(*b*) for a natural person who is a member of the Board or senior management, up to K10,000,000.

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

17. In addition to the monetary penalty imposed in paragraph 14 (1), the Registrar may impose directions and administrative penalties as provided for under the Act and the Microfinance Act. Administrative penalties Cap.46:05

FIRST SCHEDULE (para. 6(2))

APPLICATION FORM FOR APPROVAL AS A FIT AND PROPER PERSON

1 Name of Applicant:.....

2 Physical address.....

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3 Contact details.....

.....

4 Legal structure in cases of a corporate entity

4.1 Date of registration.....

4.2 Certificate of incorporation number:.....

5 Particulars of shareholding if applying to be a shareholder for a microfinance institution:

Name	*Nationality*	*Address*	*Percentage Share Ownership*	*Source of Fund*

6 Provide evidence of capital:.....

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NOTE: Evidence of capital should be in the form of certified bank statements and confirmation letter from an external auditor

7 Places of business if already in operation:

Name of business place	*Start date*	*Years in operation*

8 Indicate former name by which the Applicant has been known:

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9 List countries where the Applicant operates, if applicable.

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10 Details of capital:

Nominal Value.....

Paid up Value.....

11 Provide the details below for each of the directors:

Name.....

Nationality .....

Date of appointment .....

Address .....

Other Directorship .....

.....

11.1 In addition, submit the following for each of the directors—

(*a*) curriculum vitae and

(*b*) fit and proper questionnaire reproduced in the Appendix.

12 Provide the details below for each of the executive officers:

	Chief Executive Officer	*Finance Manager*	*Chief Operating Officer*
Name			
Nationality			
Age			
Qualifications and date obtained			
Date of appointment			
Details of previous employment			

12.1 In addition , please submit the ollowing for each of the executive officers;

(*a*) curriculum vitae; and

(*b*) certified copies of academic and professional qualifications

13 Borrowings:

Does the Applicant have current loan facility?.....

13.1 If yes, provide the following details for each of the loan facility:

	Loan Facility
Name of lending institution	
Type of facility and status	
Date of offer	
Terms of offer	
Security offered	
Value of security	
Current outstanding balance	

14 Provide details of banker :

Name of banker	*Branch and address*	*Details of bank account*

15 Provide details of external auditor:

Name of external auditor	Physical and Postal address	Telephone and email address

16 Does the Applicant hold, or has it ever held any authority from a supervisory body to carry out any business activity in Malawi or outside Malawi?.....

If yes, give particulars:

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16.2 If any such authority has been revoked, give particulars:

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17 Has the Applicant ever been put under receivership in the past or made any compromise or arrangement with its creditors in the past or otherwise failed to satisfy creditors infull?.....

If yes, give particulars:

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18 Is an inspector or other authorized officer of any government ministry, department or agency, professional association or other regulatory body investigating or has such an investigation ever previously taken place into the affairs of the Applicant?.....

If yes, give particulars:

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19 Is the Applicant currently engaged or does it expect to be involved in any litigation which may have a material effect on the resources of the institution?.....

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If yes, provide particulars:

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20 Is the Applicant engaged or does it expect to be engaged in any business relationship with the microfinance institution?

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If yes, please provide details:

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21 DECLARATION:

I, the undersigned, declare that to the best of our knowledge and belief, the information given in this form and the supporting documentation submitted together with this form are true, correct and complete:

NAME	*DESIGNATION*	*SIGNATURE*	*DATE*

SECOND SCHEDULE (para. 6(3))

MINIMUM QUALIFICATIONS

	ACADEMIC QUALIFICATIONS	*EXPERIENCE*
Chief Executive Officer	Masters Degree in Accounting, Administration, Economics, Finance, Banking or Microfinance related field	3 years experience at senior level in a financial institution
	Bachelors' Degree in Accounting, Administration, Economics, Finance, Banking or Microfinance related field	5 years experience at senior level in a financial institution
	Diploma in Accounting, Administration, Finance, Banking or Microfinance related field	10 years experience at middle level in a financial institution
Chief Financial Officer	Masters Degree in Accounting or Finance and Investment	2 years experience at middle level in a financial institution
	Bachelors Degree in Accounting, Finance or Administration and professional qualification i.e ACCA or CFA	5 years experience in the accounting profession
	Diploma in Accounting, Finance or PAEC	6 years experience in the accounting profession
Chief Operations Officer	Masters Degree in any Microfinance related field	2 years experience at middle level in a financial institution
	Bachelors Degree in Administration, Economics and any Microfinance related field	3 years experience at middle level in a financial institution
	Diploma in Accounting, Administration, Banking or Microfinance related field	6 years experience at middle level in a financial institution

Made this 29th day of June 2018..

D. KABAMBE, PhD
Registrar of Financial Institutions

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