GOVERNMENT NOTICE NO. 58

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (PROMPT CORRECTIVE ACTION FOR FINANCIAL COOPERATIVES) DIRECTIVE, 2018

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation
3. Scope of application

PART II—OBJECTIVES

4. Objectives

PART III—PROMPT CORRECTIVE ACTIONS

5. Prompt corrective actions
6. General enforcement actions

IN EXERCISE of the powers conferred by section 34(1) (*a*) and (2) (*a*) of the Financial Service Act, I, DR DALITSO KABAMBE, Registrar of Financial Institutions, issue the following Directive—

PART I—PRELIMINARY

Citation

1. This Directive may be cited as the Financial Services (Prompt Corrective Action for Financial Cooperatives) Directive 2018.

Interpretation

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

"financial cooperative" means a Savings and Credit Cooperative;

Scope of application Cap. 46: 10

3. The powers specified in this Directive are without prejudice to the general powers of the Registrar under the Act and the Financial Cooperatives Act and other Directives.

PART II—OBJECTIVES

Objectives

4. The objectives of this Directive are to—

(*a*) establish corrective actions that the Registrar may take or impose on financial cooperatives, while the financial cooperative is still under the control of its owners, and the circumstances under which such actions may be taken; and

(*b*) prescribe circumstances under which the Registrar or his agent may exercise powers under the existing legal framework to resolve the financial cooperative while suspending the rights of the owners and management before a financial cooperative reaches actual insolvency.

PART III—PROMPT CORRECTIVE ACTION

Prompt corrective actions

5. The Registrar shall take prompt corrective actions on a financial cooperative that falls in each of the categories prescribed in Table I in the Schedule hereto.

General enforcement ections

6. The Registrar, in addition to the supervisory actions prescribed in Table I in the Schedule hereto, shall take general enforcement actions on a financial cooperative that violates the Act, Financial Cooperatives Act and applicable Directives as prescribed in Table II in the Schedule hereto.

Enforceable undertaking

7. The Registrar shall, where he considers necessary, require an enforceable undertaking from the shareholders and Board of a financial cooperative falling within any of the categories prescribed in Table I in the Schedule hereto.

SCHEDULE (Para. (5), (6) & (7))

TABLE I—SUMMARY OF PROMPT CORRECTIVE ACTIONS

Category	*Financial Cooperative Condition*	*Mandatory Supervisory Action*
CAPITAL ADEQUACY RATIO (CAR)	A. MARGINALLY CAPITALISED FINANCIAL COOPERATIVE A Financial Cooperative with institutional capital ratio of 10% but less than 12% who given its financial developments (e.g. worsening asset quality) is expected to breach the minimum capital requirement within a short period.	(*a*) Caution management to proactively monitor the ratio; (*b*) Put the financial cooperative under Watch List for increased monitoring; and (*c*) Restrict dividend payment.
	B. UNDERCAPITALISED FINANCIAL COOPERATIVE Institutional Capital Ratio of 8 % but less than the prescribed minimum of 10 % in any one quarter,	(*a*) Place the financial cooperative under Watch List for increased monitoring; (*b*) Engage the financial cooperative; (*c*) Restrict investment in new products and branches; (*d*) Restrict investment in fixed assets; (*e*) Restrict dividend payment; (*f*) Financial recovery plan required; and (*g*) Conduct targeted on-site examination.

Category	*Financial Cooperative Condition*	*Mandatory Supervisory Action*
	C. SIGNIFICANTLY UNDERCAPITALISED FINANCIAL COOPERATIVE Institutional Capital Ratio of 5% but less than 8%	A combination of the following may be used in addition to the continuation of measures above— (*a*) restrict lending; (*b*) require the financial cooperative to replace management, directors or both (without prejudice to the power of the Registrar to remove relevant persons that do not meet its fit and proper criteria) ; (*c*) restrict undertaking of any material transaction without Registrar's approval; (*d*) prohibit changes in accounting methods except as directed by the Registrar; (*e*) direct immediate new recapitalisation or capital restoration plan; (*f*) Registrar to review capital plan within two weeks and communicate to the financial cooperative its acceptability or otherwise; (*g*) conclude an enforceable undertaking with the concerned financial cooperatives; (*h*) within a maximum period of six months after final call, the Registrar may take over management and control of the financial cooperative or hand over the financial cooperative to a deposit insurance agency if one is established; (*i*) Registrar, his authorised agent, or deposit insurance agency shall immediately after issuance of final capital call, start compiling all critical information in readiness for implementation of any resolution option as stipulated in a critically undercapitalised financial cooperative; or

Category	*Financial Cooperative Condition*	*Mandatory Supervisory Action*
		(*f*) if capital plan is unacceptable or if shareholders fail to recapitalise within the period specified in paragraph (*e*) above; the Registrar or deposit insurance agency shall implement either of the resolution options as stipulated in a critically undercapitalised financial cooperative .
	D. CRITICALLY UNDERCAPITALISED FINANCIAL COOPERATIVE Financial cooperative with an Institutional Capital Ratio of 2 % but less than 5 %	Any one or a combination of the following in addition to supervisory actions under a significantly under capitalized financial cooperative the Registrar shall take over management of the financial cooperative immediately or appoint a statutory manager or a deposit insurance agency if one is established, to consider exercising any or all of the resolution powers available under the Act and the Financial Cooperatives Act.
	E. FAILED FINANCIAL COOPERATIVE A financial cooperative with Institutional Capital Ratio of below 2%	The Registrar shall immediately initiate procedures for liquidation of the institution in accordance with the provisions of the Act and the Financial Cooperatives Act.
LIQUIDITY	A. MARGINALLY LIQUID FINANCIAL COOPERATIVE A financial cooperative with liquidity ratios of 10% but less than 12 %	Engage management to closely monitor the ratio
	B. FINANCIAL COOPERATIVE WITH WEAK LIQUIDITY POSITION A financial cooperative with liquidity ratio of 7.5% but less than 10%	Any one or more of the following shall apply— (*a*) engage management for discussion on its plans to improve liquidity; (*b*) direct plan for restoring liquidity. Registrar to review plan within two weeks and communicate to

Category	*Financial Cooperative Condition*	*Mandatory Supervisory Action*
		the financial cooperative its acceptability or otherwise; or (*c*) administrative penalty.
	C. SIGNIFICANTLY ILLIQUID FINANCIAL COOPERATIVE A financial cooperative that records a liquidity ratio of 5% but less than 7.5%	In addition to the supervisory actions in a marginally liquid financial cooperative to a financial cooperative with weak liquidity position, if the financial cooperative does not improve liquidity, the Registrar or his authorised agent shall— (*a*) conduct a spot check to investigate the problem of the financial cooperative including compliance with its own liquidity management practices and contingency plan; (*b*) invite the financial cooperative's Board and management for discussion on efforts being pursued to address the problem; (*c*) direct the financial cooperative to realise illiquid assets to improve liquidity; (*d*) direct the financial cooperative to embark on aggressive debt recovery; (*e*) advise the financial cooperative to divest its equity in subsidiaries or related entities.
	D. CRITICALLY ILLIQUID FINANCIAL COOPERATIVE A financial cooperative that persistently registers liquidity ratio of below 5%	Any one of or a combination of the following, in addition to a.financial cooperative with weak liquidity position and a. financial cooperative with weak liquidity position above— (*a*) Change management, directors or both; and (*b*) Place financial cooperative under statutory management if unable or unlikely to meet maturing obligations for five days.

TABLE II

SUMMARY OF GENERAL ENFORCEMENT ACTIONS

Type of Violation, Condition or Conflict	*Sanctions or Supervisory Action*
A. Non-compliance with provisions of Financial Services Laws	Pursuant to sections 39 and 75 of the Act: (*a*) Written warning; (*b*) Written directions; (*c*) Administrative penalties; (*d*) Monetary penalties; Court orders to enforce relevant law upon application of the Registrar.
B. Non-compliance with any relevant statutory provision for which no other penalty exists	Pursuant to section 68 of the Financial Cooperatives Act and the Act (*a*) Fine; and (*b*) Imprisonment.

Made this 29th day of June 2018..

D. KABAMBE, PhD
Registrar of Financial Institutions

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