GOVERNMENT NOTICE NO.60

INSURANCE ACT

(CAP. 47:01)

INSURANCE (OPERATION OF LIFE INSURANCE FUNDS) DIRECTIVE, 2018

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IN EXERCISE of the powers conferred by section 79(1) of the Insurance Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, issue the following Directive—

PART I—PRELIMINARY

1. This Directive may be cited as the Insurance (Operation of Life Insurance Funds) Directive, 2018. Citation

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

"co-investor" means a person other than the life insurer that invests in a special purpose vehicle;

"discretionary policy" means a policy where the life insurer has discretion over additions to policies including those from investment earnings;

"inherited estate" refers to assets accumulated before the current year in respect of discretionary policies, and held in excess of assets reasonably expected to meet technical provisions and policyholders' reasonable expectations of future benefits;

"investment plan" means the document in terms of which the special purpose vehicle will invest in unlisted investments specified in this Directive and all matters incidental thereto;

"policyholders" profits' means the policyholders' interest in profits attributable to discretionary policies;

"shareholders profits" means—

(*a*) profits attributable to policies that are not discretionary policies; and

(*b*) shareholder's interest in the profits from discretionary policies;

"solvency margin" means solvency margin as defined in the Insurance (Minimum Capital and Solvency Requirements for Life Insurers) Directive 2017;

"look-through principle" means an approach to assessment of an entity's assets that treats the assets and liabilities held by an issuer of a financial instrument as if they were directly held by the entity holding the instrument for purposes of investment limits under this Directive;

"Real Estate Investment Trust" means a body corporate which holds a portfolio of real estate and established for the sole purpose of providing investors with a means of investing in a portfolio of real estate or leaseholds;

"special purpose vehicle" means a body corporate created to raise funds, build, operate and potentially transfer a capital project;

"subscription agreement" means an agreement between an investor or a co-investor and an issuer of securities;

"technical provisions" has the same meaning ascribed to that term in the Insurance (Minimum Capital and Solvency Requirements for Life Insurers) Directive, 2017.

PART II—OBJECTIVES

Objectives

3. The objectives of this Directive are to—

(*a*) ensure the proper attribution of assets and liabilities to the business of a life insurer through appropriate segregation of life insurance funds;

(*b*) set out requirements on the establishment and maintenance of life insurance funds;

(*c*) ensure that policyholders are treated fairly; and

(*d*) ensure that proper records of a life insurer's policies and claims are maintained at all times.

PART III—SPECIFIC REQUIREMENTS

Requirements regarding life insurance funds

4.—(1) A life insurer shall have separate life insurance funds exclusively for each of unit-linked insurance business and discretionary policies.

(2) A life insurance policy shall be referable solely to one life insurance fund.

(3) A life insurer shall credit all amounts received in respect of the business of a life insurance fund to the life insurance fund.

(4) A life insurer shall include all assets and investments related to the business of a life insurance fund in the life insurance fund.

(5) A life insurer shall treat all liabilities including policy liabilities arising out of the conduct of the business of a life insurance fund as liabilities of the life insurance fund.

(6) The assets of a life insurance fund shall only be available for expenditure related to the conduct of the business of the life insurance fund.

(7) Life insurance funds shall not be restructured or terminated without the approval of the Registrar.

(8) A life insurance fund shall deal with its profits and losses in accordance with this Directive.

Duty of life insurer in relation to life insurance funds

5.—(1) In the investment, administration, and management of the assets of a life insurance fund, a life insurer shall—

(*a*) give priority to the interests of policyholders of life policies referable to the life insurance fund; and

(*b*) comply with this Directive.

(2) Where there is a conflict between the interests of policyholders of life policies referable to a life insurance fund and the interests of shareholders of a life insurer, the life insurer shall give priority to the interests of policyholders of those policies over the interests of shareholders.

(3) In the event that compliance with this Directive leads to a policyholder not being treated fairly, the life insurer shall inform the Registrar within 5 working days of discovering the situation.

(4) A reference in paragraphs (1), (2) and (3) to policyholders of life policies referable to a life insurance fund is a reference to those persons viewed as one or more groups.

Notice to registrar when fund established

6. Where a life insurer establishes a life insurance fund other than as part of the initial licensing process of the insurer, the life insurer shall give the Registrar written notice of—

(*a*) the establishment of the fund;

(*b*) the date on which the fund was established;

(*c*) the nature of the life insurance business of the life insurer to which the fund relates;

(*d*) the financial arrangements of the establishment; and

(*e*) any other matters that the Registrar may request.

Payments to life insurance fund

7.—(1) A life insurer shall credit the following amounts to the life insurance fund—

(*a*) premiums payable under life policies referable to the life insurance fund;

(*b*) income from the investment of assets of the life insurance fund;

(*c*) any other funds received by the life insurer in connection with its conduct of the business of the life insurance fund.

(2) Nothing in this paragraph shall prevent a life insurer from making a capital payment to a life insurance fund.

Expenditure and application of life insurance fund

8.—(1) The assets of a life insurance fund shall only be applied by the life insurer to—

(*a*) meet liabilities, including policy liabilities or expenses incurred for the purposes of the business of the life insurance fund;

(*b*) make investments in accordance with paragraph 10 of this Directive; or

(*c*) for the purposes of distribution under paragraph 13 of this Directive.

(2) A life insurer shall not pledge or charge any of the assets of a life insurance fund except where the pledge or charge is for securing a bank overdraft for the purposes of the business of the life insurance fund.

Investment of life insurance funds

9.—(1) A life insurer shall invest the assets of a life insurance fund in a manner that a prudent person would apply in respect of investments or loans.

(2) In applying the principle of prudence, a life insurer shall seek to maintain a diversified asset portfolio so as to minimize undue risk except where a policy contract, related disclosures to the consumer and principles and practices of financial management explicitly permit otherwise, for such policy.

(3) A life insurer shall invest the assets of a life insurance fund in line

with the asset risk tolerance position determined by the life insurer's Board committee on asset liability management.

(4) A life insurance fund's assets shall not be—

(*a*) used for speculative investments;

(*b*) invested in a manner that is prohibited by any law;

(*c*) invested in instruments that are subject to any type of prohibitions or limitations on the sale or purchase of such instrument, except for investment categories allowed by this Directive;

(*d*) used to provide guarantees or assure any type of contingent liability, except as approved by the Registrar; and

(*e*) used to trade in financial instruments at prices that are prejudicial to the life insurance fund's assets.

(5) A life insurer shall invest a life insurance fund's assets in any of the investment categories provided in the First Schedule and within the prudential limits provided in the Second Schedule.

(6) A life insurer shall engage professional valuers registered under the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act to undertake valuation of the insurer's real properties.

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(7) A life insurer shall report the assets of a life insurance fund to the Registrar at fair value.

Life insurer to keep records of inflows and outflows of funds

10. A life insurer shall keep records of the inflows and outflows of funds in each life insurance fund and properly record the affairs and transactions of the life insurer in respect of those life insurance funds.

Duty of directors in relation to life funds

11.—(1) A director of a life insurer shall have the duty to take reasonable care and use due diligence to ensure that, in the investment, administration, and management of the assets of a life insurance fund, the life insurer—

(*a*) complies with this Part; and

(*b*) gives priority to the interests of policyholders of life policies referable to the life insurance fund.

Distribution of profits

12.—(1) A life insurer shall distribute profits of a life insurance fund in accordance with the following rules—

(*a*) policyholders' profits shall only be distributed to policyholders of life policies that are discretionary policies;

(*b*) a minimum of 85% of the profits from discretionary policies shall be profits for policyholders of discretionary policies; and

(*c*) shareholder profits from discretionary policies shall only be transferred from a life fund when the proportional policyholder profits, according to the principles and practices of financial management, have been declared and guaranteed to the policyholders of the discretionary policies.

(2) A life insurer may transfer profits from a life insurance fund in respect

of its shareholders.

(3) A life insurer shall not distribute profits of a life insurance fund if the distribution will—

(*a*) result into insolvency of the life insurance fund either immediately or in the subsequent year; or

(*b*) lead to a contravention of this Directive or a direction given by the Registrar.

Usage of reserves for any purpose other than investment and distribution

13 In the absence of principles and practices of financial management approved by the Registrar in accordance with this Directive, all reserves held in respect of insurance business shall not be used for any purpose other than investment and distribution to policyholders.

Approval of the principles and practices of financial management

14. The Registrar shall approve the principles and practices of financial management approved by the Board of a life insurer and these shall govern all policies offered by the life insurer regarding but not limited to—

(*a*) the determination of profits for discretionary policies;

(*b*) the proportions of profits allocated between policyholders and shareholders;

(*c*) determination of bonuses and returns passed on to policyholders;

(*d*) smoothing of bonuses and returns passed on to policyholders;

(*e*) management and decisions regarding reserves for the policies;

(*f*) fairness and cross-subsidization between different generations and groups of policyholders;

(*g*) investment strategy;

(*h*) business risk;

(*i*) the structure of charges, fees, prices, premiums and expenses;

(*j*) management, distribution and reattribution of the inherited estate;

(*k*) rounding decisions concerning unit values;

(*l*) market value reductions;

(*m*) management of the management books;

(*n*) closure to new business;

(*o*) management of unit-linked business; and

(*p*) disclosures and other considerations regarding the fair treatment of customers.

Appointment of a policyholder advocate

15.—(1) Notwithstanding paragraph 14 (*j*), the Registrar shall appoint a policyholder advocate to negotiate on behalf of policyholders and to represent the interests of policyholders regarding the inherited estate.

(2) Any decision regarding the distribution, transfer or reattribution of the inherited estate shall not be valid without the explicit agreement of the

policyholder advocate.

(3) Fees and operating expenses of the policyholder advocate shall be agreed upon by the Registrar and the life insurer before the policyholder advocate commences services, and shall be paid from the inherited estate.

Versions of the principles and practices of financial management

16.—(1) For purposes of the Registrar's approval in paragraph 14, a life insurer shall submit versions of the principles and practices of financial management which are consumer friendly and tailored to the different policies offered by the insurer.

(2) The Registrar shall not grant the approval in paragraph 14 unless he is satisfied that—

(*a*) the existence of the principles and practices of financial management is made known to and they are accessible to policyholders; and

(*c*) the principles and practices of financial management are presented in a form appropriate for financial consumers.

Validity period of financial management of principles and practices

17. Where the Registrar grants an approval in terms of paragraph 14, the principles and practices of financial management shall be valid for up to 3 years.

Revision of financial management principles and practices

18. Notwithstanding paragraph 17 above, the Registrar may direct a life insurer to revise the principles and practices of financial management before 3 years has elapsed.

Assessment of investments

19.—(1) In the application of this Directive with regard to the prescribed investment limits in the Second Schedule, where a life or shareholder fund has investments in a collective investment scheme, the investments shall be assessed in accordance with the look-through principle.

(2) An investment manager shall make every effort to provide a full look through principle of the underlying assets in an investment portfolio to the investor and co-investors.

Restriction on investments

20. A life insurer shall not invest funds of a life fund in any unlisted infrastructure and development oriented projects except through a security issued by a special purpose vehicle.

Investment in a special purpose vehicle

21.—(1) A life insurer shall invest in a special purpose vehicle that—

(*a*) has an investment plan;

(*b*) has a memorandum of association, trust deed or founding documents that are consistent with the investment plan;

(*c*) has an investment management agreement;

(*d*) has a signed generic subscription agreement;

(*e*) does not have any Board directors who are politically exposed persons; and

(*f*) has the Board chairperson and majority of the directors

independent of the investment manager, government and other co-investors.

(2) A life insurer shall declare to the Registrar the asset holdings and liability exposures of special purpose vehicles it has investments in as part of the quarterly and annual reports required under the directive on reporting requirements of insurers.

PART IV—ENFORCEMENT

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

(*a*) a fine up to K50,000,000 where the violation is committed by a life insurer;

(*b*) a fine up to K10,000,000 where the violation is committed by individuals who are members of the Board or management; and

(*c*) in addition, a fine of K50,000 may be imposed on the life insurer or individual for each subsequent day for which a violation continues after being notified by the Registrar that it is in breach of the provisions of this Directive.

(2) The penalties imposed in subparagraph (1) shall be paid through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within 10 working days after being notified of the violation.

23. Where the Registrar determines that a life insurer has not met the requirements of this Directive, the Registrar shall impose administrative penalties in accordance with the provisions of the Financial Services Act to correct the situation. Administrative penalties

FIRST SCHEDULE (para. 9(5))

INVESTMENT CATEGORIES AND LIMITS

(1) Investment categories—

(*a*) government securities being securities issued by Malawi Government or Reserve Bank of Malawi;

(*b*) quasi-Government securities being securities issued and guaranteed by Malawi Government entities provided that, if not fully guaranteed by Malawi Government or Reserve Bank of Malawi, they are listed on the Malawi Stock Exchange;

(*c*) bank securities being deposits and other instruments of financial institutions licensed under the Banking Act;

(*d*) unlisted Debt Securities being corporate bonds, debentures, redeemable or convertible preference shares and other debt instruments issued by any institution registered in Malawi but not listed on a stock exchange;

(*e*) listed Debt Securities being corporate bonds, debentures, redeemable or convertible preference shares and other debt instruments issued by any institution listed on a licensed stock exchange in Malawi;

(*f*) asset Backed Securities being mortgage backed securities and asset backed infrastructure bonds issued by Banks licensed under the Banking Act;

(*g*) infrastructure bonds being debt securities issued by quasi-government institutions or institutions with controlling stake owned by Malawi Government for purposes of infrastructure development;

(*h*) listed equities being shares, issued publicly and listed on a licensed stock exchange;

(*i*) unlisted equities being shares issued by companies registered in Malawi but not listed on any licensed stock exchange;

(*j*) money market instruments issued by banks licensed under the Banking Act.

(*k*) collective investment schemes approved under the Securities Act, 2010;

(*l*) Real Estate being real properties including properties constructed or acquired for the purpose of leasing to prospective tenants or for sale, provided that the property shall be handled by a licensed property manager and or a property developer in case of construction;

(*m*) real Estate Investment Trust, 80% of whose income is solely from rents, mortgage interest, and capital gains from real estate sales, 85% of whose annual profit is distributed to investors within 3 months of the end of its financial year and whose total debts and liabilities do not exceed 50% of the fair value of its investment assets;

(*n*) derivatives traded on a licensed exchange;

(*o*) offshore investments limited to—

(i) deposits with financial institutions in Common Market for East and Southern Africa (COMESA), Southern African Development Cooperation (SADC) and Organisation for Economic Cooperation and Development (OECD)countries as may be approved by the Registrar;

(ii) securities issued by governments in COMESA, SADC and OECD countries as may be approved by the Registrar;

(iii) securities issued in COMESA, SADC and OECD countries, and listed on a stock exchange that is a member of the World Federation of Exchanges subject to such conditions as may be imposed by the Registrar;

(iv) collective investment schemes approved by the Registrar under this Directive; and

(*v*) derivatives traded on a licensed exchange; and

(*p*) other assets which shall be any other assets that may be approved in writing by the Registrar provided that any such approval shall be conveyed to all participants in the life insurance sector and shall have set limits.

(2) Limits–

(*a*) notwithstanding the provisions in paragraph (1) above, the investment of life insurance fund assets in any investment category shall be limited to the percentages prescribed in Second Schedule attached hereto, where the percentage is the amount to which the market value of the investment in the category expressed as a percentage of the market value of the total assets of the life insurance funds;
Provided that—

i. fund assets may exceed the maximum indicated in the column for maximum limits in the event of increase in the market price of assets, bonus issues or transfer of investment from one class of asset to another provided that any such excess shall be reported to the Registrar within 21 working days with an action plan as to how the life insurer intends to return the life insurance fund into compliance;

ii. the exposure limits per issuer in each asset category shall be as prescribed in the Second Schedule attached hereto; and

(*d*) the Registrar may approve a life insurance fund that follows different investment limits to those in the Second Schedule in line with the nature of the policies to which the fund relates;

(*e*) the Registrar may amend from time to time the investment limits, exposures and asset categories provided in this Directive.

SECOND SCHEDULE (para. 9(5))

INVESTMENT LIMITS

Item	*Investment Category*	*Maximum exposure limit to life fund assets*[i]	*Maximum Exposure limit per issuer*[ii]
1	Bank Securities and Money Market Instruments in institutions licensed under the Banking Act	30%	15%
2	Government securities	80%; and maximum 30% for securities of 365 days or less	No limit
3	Collective Investment Schemes	Look-through Principle	Look through principle
4	Quasi-Government securities	20%	5%
5	Listed Debt Securities	75%*	10%
6	Asset backed securities	10%*	5%
7	Listed Equity	75%*	10% in any one corporate
8	Unlisted Debt Securities and Unlisted Equity	10%*	5 % of assets in any one issuer
9	Real Estate	10%*	5% of life fund assets in any one property
10	Real Estate Investment Trusts	20%*	10% in any one property when the look-through principle is applied

Item	*Investment Category*	*Maximum exposure limit to life fund assets*[i]	*Maximum Exposure limit per issuer*[ii]
11	Unlisted securities or unlisted equity in infrastructure projects	20%*	10%
12	Derivatives	10%*	3%
13	Offshore investments	10%*	5% per foreign government and 5% per institution

Note

*The maximum exposure for all these categories combined shall not exceed 80%.

Made this 29th day of June, 2018.

D. KABAMBE, PhD
Registrar of Financial Institutions

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