2. INVESTING ACTIVITIES :.....

2.1 Investment Income Received :.....

2.2 Acquisition/Disposal of Investments (Net):.....

Made this 4th day of May, 2015..

C. S. R. CHUKA
*Registrar of Financial Institutions*

(FILE NO.EA/FSPU/1/1)

GOVERNMENT NOTICE NO. 28

FINANCIAL SERVICES ACT, 2010

(ACT NO 26 OF 2010)

FINANCIAL SERVICES (ESTABLISHMENT AND OPERATIONS OF TRANSFER SECRETARIES) DIRECTIVE, 2015

ARRANGEMENT OF PARAGRAPHS

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2. Objectives

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3. Application for licence
4. Grant or denial of licence
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12. Monetary penalties
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IN EXERCISE of the powers conferred by section 21 (5) of the Financial Services Act, I, CHARLES S.R. CHUKA, Registrar of Financial Institutions, issue the following Directive—

PART I—PRELIMINARY

Citation

1. This Directive may be cited as the Financial Services (Establishment and Operations of Transfer Secretaries) Directive, 2015.

PART II—OBJECTIVES

Objectives

2. The objectives of this Directive are to ensure that transfer secretaries—

(*a*) are licensed and comply with the provisions of the Act;

(*b*) conduct safe transfer of ownership of securities to bonafide shareholders; and

(*c*) maintain professional and market conduct standards.

PART III—LICENSING

Application for Licence Act No. 15 of 2013

3.—(1) Only a company incorporated under the Companies Act shall be eligible to apply for a licence under this Directive.

(2) The application for a licence under subparagraph (1) shall be—

(*a*) made in the prescribed form set out in the First Schedule hereto; and

(*b*) accompanied by a non-refundable application fee of one hundred and fifty thousand Kwacha (K150,000.00).

(2) An applicant who wishes to amend any documentation submitted in support of an application for a licence under subparagraph (1) shall first obtain an approval from the Registrar.

Grant or denial of licence

4.—(1) The Registrar shall communicate to the applicant the outcome of the application within sixty (60) days of receipt of a complete application.

(2) Where the Registrar approves an application for a licence, he shall issue a licence to the applicant in the Form set out in the Second Schedule hereto.

(3) The licence shall automatically expire if the transfer secretary fails to commence business within a period of twelve months following the granting of the licence.

(4) Where the Registrar has not granted an application for a licence, he shall communicate in writing to the applicant, the reasons for the decision.

(5) Where the applicant is not satisfied with the reasons given under subparagraph (4), he may appeal to the Appeals Committee within twenty one (21) working days of receiving the communication.

(6) A licence issued under sub-paragraph (1) shall be valid for a period of twelve months.

Renewal of licence

5. An application for renewal of a licence issued under paragraph 4 (2) shall be—

(*a*) made in the prescribed form set out in the Third Schedule hereto;

(*b*) made at least two months prior to the expiry of the licence; and

(*c*) accompanied by a non-refundable renewal fee of one hundred thousand Kwacha (K100,000.00).

General requirements

6. A licensed transfer secretary shall have a minimum of two full time employees who shall—

(*a*) possess one of the minimum educational qualifications ; and

(*b*) have the number of years of experience, as set out in the Fourth Schedule hereto.

Suspension or revocation of Licence

7. The Registrar may, upon written notice to a transfer secretary, suspend or revoke the transfer secretary's licence if the Registrar determines that—

(*a*) a director or officer of the transfer secretary has become subject to a statutory disqualification or statutory restriction;

(*b*) the transfer secretary does not have a minimum of two full time employees;

(*c*) the transfer secretary does not have the appropriate information systems to carry out its duties effectively;

(*d*) the transfer secretary or any of its officers has contravened any provision of the Act, Securities Act, 2010 or any Directive issued thereunder .

(*e*) the transfer secretary is, in the opinion of the Registrar, unable to carry out its functions effectively;

(*f*) the operations of the transfer secretary no longer facilitate the prompt and accurate transfer of ownership, record ownership and the safeguarding of securities and funds; or

(*g*) the transfer secretary no longer complies with the minimum performance standards regarding the transfer of record ownership, and related record keeping and reporting rules.

PART IV—GENERAL REQUIREMENTS

General requirements

8.—(1) A transfer secretary shall ensure that—

(*a*) share registers are current and up to date;

(*b*) contact details for shareholders include at least two (2) next of kin;

(*c*) where transfer documents sent by a broker to the him or her are not in order, then he or she shall immediately, but not later than the next working day, return the transfer documents to the broker;

(*d*) where the transfer documents are in order, a new share certificate in the name of the transferee shall be prepared and sent to the broker, together with the share certificate for the balance, if any in the name of the transferor, within three (3) working days;

(*e*) all monies received in respect of payment of dividends are paid into a bank account opened solely for the payment of a particular dividend for the shareholders of a particular company;

(*f*) funds for different dividends or for different clients are not mixed in the same bank account and reconciliation of each bank account balance is performed regularly;

(*g*) bank charges in the dividend bank account are met by the transfer secretary and that interest received is credited to individual shareholders;

(*h*) dividend to the shareholders is remitted, not later than two (2) days after funds are credited into their dividend account;

(*i*) it has adequate internal control measures to prevent any manipulation of records and documents; and

(*j*) it has in place appropriate safekeeping measures to protect documents from theft and other hazards.

(2) A licensed transfer secretary shall report to the Registrar any disruption in the services offered by such transfer secretary and shall indicate the measures and the time span to be taken to remedy the situation.

(3) A licensed transfer secretary shall, immediately, report to the Registrar any fraud or malpractices being investigated or reported against their member of staff or customer.

(4) A licensed transfer secretary shall, before effecting a transfer, satisfy himself that the transfer documents received from a broker are in good order.

(5) A licensed transfer secretary shall, at the time of initial public offering and after allotment of shares, ensure that share certificates are safely delivered to bonafide shareholders.

Record keeping

9.—(1) A transfer secretary shall maintain and reserve, for a minimum period of seven years—

(*a*) its records and accounts;

(*b*) records of securities transactions;

(*c*) financial records of all transfer secretarial transactions; and

(*d*) any other records, accounts and documents that the Registrar may determine, from time to time.

(2) A transfer secretary shall keep computerised records, provided that such records—

(*a*) are subject to acceptable back-up and recovery procedures; and

(*b*) can be reproduced in printed form.

(3) The Registrar may demand the production, in legible form, of the records and documents referred to in subparagraph (1).

Provision of assistance

10. A transfer secretary shall provide such assistance and information to the Registrar, as the Registrar may reasonably require for the performance of his functions and duties, including furnishing of returns and information relating to the business of the transfer, or in respect of dealings in securities or any specified information, as the Registrar may require.

Reporting requirements

11.—(1) A transfer secretary shall—

(*a*) forward to the Registrar a summary of the composition, structure and percentage of shareholding of each listed company within thirty (30) calendar days at the end of each quarter;

(*b*) by the 31st March in each year, provide the Registrar with a report of its activities during the preceding calendar year, which shall contain information on—

(i) any changes in membership of its board of directors or management; and

(ii) any other information that the Registrar may determine from time to time;

(*c*) forward to the Registrar, the details showing the number of new investors in respect of each company divided into retail investors and institutional investors, separately; and

(*d*) report to the Registrar, all unclaimed dividends at the end of each quarter.

(2) A transfer secretary shall report to the Registrar, whenever it comes to its knowledge, any contravention of the Act or this Directive.

## PART V—ENFORCEMENT

Monetary penalties

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

(*a*) a fine of zero point five (0.5%) percent of the market value of the transaction for each day of delay beyond the third working day;

(*b*) a transfer secretary who fails to meet other requirements of this Directive shall be liable to a penalty of up to ten million Kwacha (K10.0 million); and

(*c*) for natural persons who are members of the board of directors or management, a penalty of up to one million Kwacha (K1.0 million).

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

13. In addition to the monetary penalties imposed in paragraph 12, the Registrar may impose directions and administrative penalties as provided for under the Act and the Securities Act, 2010. Administrative penalties

PART VI—REVOCATION

14. The Securities (Operations of Transfer Secretaries) Directive, 2012 is hereby revoked. Revocation

FIRST SCHEDULE para. 3(2) (*a*))

LICENCE APPLICATION FORM

APPLICATION FOR A LICENCE TO OPERATE AS A TRANSFER SECRETARY

All questions must be answered fully.

Application is hereby made for the grant of a licence to operate as a Transfer Secretary under the Financial Services Act and the following statements are made in respect thereof—

1. Name of Company:
2. Physical address:
3. Mailing address:
4. Website:
5. E-mail address:
6. Telephone numbers:
7. Fax numbers:
8. Names and addresses of employees engaged in share registration duties:
9. Details of educational and professional qualifications of employees engaged in registration of securities transfer duties:
10. Names and addresses of the Directors:
11. Has any director or officer of the applicant company—
    (*a*) been convicted of any offence, or are there any proceedings now pending for any offence involving fraud or dishonesty?

    .....

    .....

    (If so, please provide details)

    (*b*) had judgment involving findings of fraud or other dishonesty, misrepresentation, breach of contract, breach of fiduciary duty or professional negligence given against him, in any civil proceedings?,

    .....

    .....

    (if so, please provide details)

(*c*) contravened any written law designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts?

.....

.....

(if so, please provide details)

(*d*) been subjected to any form of disciplinary proceedings or action by any professional or regulatory body?

.....

.....

(if so, please provide details)

12. Please attach the following documents:

(*a*) Certified copy of the Certificate of Incorporation

(*b*) Memorandum and Articles of Association

(*c*) Copies of certificates in support of academic and professional qualifications of employees engaged in securities transfer registration duties.

(*d*) Curriculum vitae (CV) of employees engaged in securities transfer registration duties.

(*e*) Cheque of one hundred and fifty thousand Kwacha (K 150,000) being a non-refundable licence application fee.

We the undersigned do hereby certify that—

1. 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.

2. To the best of my knowledge and belief there are no other facts or information relevant to this application of which the Registrar should be made aware of, and we hereby pledge to promptly inform the Registrar of any material change to this application which may arise while it is being considered.

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

Signature .....
Director

Name.....

Signature.....
Director

Name.....

Notes:

1. All enquiries concerning the preparation, filing and status of this application should be made to: The Director, Microfinance and Capital Markets Supervision, Reserve Bank of Malawi.

2. Upon completion the original and two duplicate copies of the application and all other attachments must be submitted to: The Director, Microfinance and Capital Markets Supervision, Reserve Bank of Malawi, P. O. Box 565, Blantyre, Malawi.

3. A non refundable licence processing fee of one hundred and fifty thousand Kwacha (MK 150,000) payable to the Reserve Bank of Malawi must be included with the application.

SECOND SCHEDULE (para. 4(2))

LICENCE FORMAT

REGISTRAR OF FINANCIAL INSTITUTIONS

FINANCIAL SERVICES ACT, 2010

TRANSFER SECRETARY LICENCE

A LICENCE is hereby granted to of ..... to operate as Transfer Secretary. This licence is issued subject to the provisions of the Financial Services Act, 2010, and is valid for a period of one year from..... to .....

ISSUED THIS..... DAY OF ..... 20.....

.....

REGISTRAR OF FINANCIAL INSTITUTIONS

THIRD SCHEDULE (para. 5(*a*))

LICENCE RENEWAL APPLICATION FORM

APPLICATION FOR RENEWAL OF A LICENCE TO OPERATE AS A TRANSFER SECRETARY

All questions must be answered fully.

Application is hereby made for the renewal of a licence as a Transfer Secretary under the Financial Services Act, 2010, and the following statements are made in respect thereof—

1. Name of Applicant:
2. Number of the previous licence:
3. Physical address:
4. Website:
5. Mailing address:
6. E-mail address:
7. Telephone numbers:
8. Fax numbers:
9. Details of educational and professional qualifications of employees engaged in registration of securities transfer duties:

10. Names and addresses of Directors:

11. Has any director or officer of the applicant company—

(*a*) been convicted of any offence, or are there any proceedings now pending for any offence involving fraud or dishonesty?

.....

.....

(If so, please provide details)

(*b*) had any judgment involving findings of fraud or other dishonesty, misrepresentation, breach of contract, breach of fiduciary duty or professional negligence given against the applicant, in any civil proceedings, or are there any proceedings?

.....

.....

(If so, please provide details)

(*c*) contravened any written law designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts?

.....

.....

(If so, please provide details)

(*d*) been subjected to any form of disciplinary proceedings or action by any professional or regulatory body?

.....

.....

(If so, please provide details)

12. Please attach the following documents:

(*a*) Copies of certificates in support of academic and professional qualifications of employees engaged in securities transfer registration duties.

(*b*) Curriculum vitae (CVs) of employees engaged in securities transfer registration duties.

(*c*) Cheque for one hundred thousand Kwacha (K100,000.00) being a non-refundable licence renewal fee.

We the undersigned do hereby certify that—

1. All the information given in response to and in support of the questions in this a pplication is true and correct to the best of our knowledge and belief.

2. 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 made aware of, and we hereby pledge to promptly inform the Registrar of any material change to this application which may arise while it is being considered.

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

Signature of Director.....

Name.....

Signature of Director.....

Name.....

Notes:

1. All enquiries concerning the preparation, filing and status of this application should be made to: The Director, Microfinance and Capital Markets Supervision, Reserve Bank of Malawi.

2. Upon completion the original and two duplicate copies of the application and all other attachments must be submitted to The Director, Microfinance and Capital Markets Supervision, Reserve Bank of Malawi, P .O. Box 565, Blantyre, Malawi.

3. A non refundable licence renewal fee of one hundred thousand Kwacha (K100,000.00) payable to the Reserve Bank of Malawi must be accompanied with the application.

FOURTH SCHEDULE para. 6 (*b*))

MINIMUM QUALIFICATIONS AND EXPERIENCE FOR ATLEAST TWO EMPLOYEES

| QUALIFICATIONS | EXPERIENCE |
|---|---|
| Professional qualification in company secretarial practice | 1 year |
| Business degree from a recognised university or relevant professional qualification. | 2 years |
| Other qualifications evaluated by Registrar on a case by case basis | Determined by Registrar on a case by case basis |

Made this 4th day of May, 2015..

C. S. R. CHUKA
*Registrar of Financial Institutions*

(FILE NO.EA/FSPU/1/1)

GOVERNMENT NOTICE NO. 29

SECURITIES ACT, 2010

(NO 20 OF 2010)

SECURITIES (PREMISES INSPECTION REQUIREMENTS FOR SECURITIES MARKET PLAYERS) DIRECTIVE, 2015