GOVERNMENT NOTICE NO. 21

FINANCIAL SERVICES ACT

(ACT No. 26. OF 2010)

FINANCIAL SERVICES (FIT AND PROPER REQUIREMENTS FOR PERSONS ASSOCIATED WITH THE OWNERSHIP AND MANAGEMENT OF SECURITIES MARKET PLAYERS) DIRECTIVE, 2015

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PART IV—FIT AND PROPER TEST REQUIREMENT 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 securities market player without prior approval of the Registrar.

(2) A securities market player shall submit to the Registrar, a request for the approval in paragraph (1) in the format prescribed in the Schedule hereto.

(3) Where a securities market player intends to recruit an executive officer or senior management official who is a foreign national, the securities market player shall—

(*a*) ensure full compliance with provisions of the Immigration Policy Statement on Employment of Expatriates in Malawi; and

(*b*) submit to the Registrar proof of a work permit granted by the Immigration Department.

(3) A director or senior management official shall be considered to be fit and proper if he meets the standards outlined in Part V.

Board responsibility

7.—(1) The board of directors of a securities market player shall ensure that a securities market player has—

(*a*) an audit committee;

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

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

(2) The audit committee in paragraph (1)(*a*) shall comprise at least three (3) members, all or the majority of which, shall be non-executive directors.

(3) Where a securities market player is not in a position to have an independent risk management and compliance function, the Registrar may approve alternative arrangements.

Restrictions on directors

8.—(1) The Chairperson of a board of directors of a securities market player shall be a non-executive director.

(2) A director of a securities market player shall not serve as a director of other securities market players except where the other securities market player is part of the securities market player group or its holding company in which he is already a director.

(4) A public official shall not serve as a director of a securities market player or as an ex-officio member of the board of a securities market player except—

(*a*) where the Government has direct shareholding interests in the securities market player; and

(*b*) prior approval is given by the Registrar.

(5) Except where specified by a relevant law, or approved by the Registrar, directors referred to in subparagraph(4), shall not serve on the board of any other securities market player in which Government has a direct shareholding interest.

IN EXERCISE of the powers conferred by section 34(2) (*a*) of the Financial Services Act, 2010, 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 (Fit and Proper Requirements for Persons Associated with the Ownership and Management of Securities Market Players) Directive, 2015.

Interpretation

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

"audit committee" means a permanent committee of the board of directors of a securities market player constituted under paragraph 7;

"credit facility" has the meaning ascribed to that term in the Banking Act, 2009;

Act No. 10 of 2010

"home country supervisor" means the competent regulatory authority that supervises institutions engaged in securities marketing 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;

"public official" means persons holding prominent public positions in Malawi or a foreign country including heads of state or government, senior government, judicial, parliamentary, military, police official of the rank of undersecretary or equivalent or above, or political party officials on the national level, or senior executives of state owned enterprises or individual or persons identified as having close family ties, or person doing or controlling business jointly with the aforementioned persons or any other persons as may be classified as public officials;

Act No. 20 of 2010

"securities market players" include stock exchanges, brokers and dealers, portfolio managers, transfer secretaries, investment advisers, operators of collective investment schemes, and securities market intermediaries;

"securities market intermediaries" has the meaning ascribed to that term in the Securities Act, 2010; and

"senior management official" means—

(*a*) an executive officer;

(*b*) a head of a department or a function;

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

(*d*) branch managers of a securities market player that the Registrar, declares as senior management officials by Notice published in the *Gazette*.

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 securities firms in Malawi; and

(*b*) securities firms are managed by competent personnel at board and senior management levels.

PART III—FIT AND PROPER TEST STANDARD FOR SHAREHORDERS

Approval of shareholders

4.—(1) A securities market player that is not a public company, 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.

(2) A securities market player 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 securities market player;

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

(4) The board of directors of a securities market player shall ensure that shareholders of the securities market player referred to in subparagraphs (1) and (2) provide the information in Part V of this Directive to the Registrar and meet all the requirements of this Directive.

(5) 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.

(6) The Registrar shall review the fitness and propriety of a shareholder or controlling party shareholder referred to in subparagraphs 4 (1) and (2) on a regular basis to ensure that the shareholder is financially sound.

Due diligence

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

(6) A person who sits on the board of an institution that is a shareholder of a securities market player shall not serve as a director on the board of any other securities market player.

Qualifications requirements for accounting, finance and audit functions

9.—(1) A head of the accounting or finance functions of a securities market player shall be an accredited member of a professional body in the accounting profession and shall also be registered by the Institute of Chartered Accountants in Malawi.

(2) A head of the internal audit function of a securities market player shall be a registered member of the Institute of Internal Auditors (Malawi).

(3) The Registrar shall not approve a head of the accounting or finance functions of a securities market player, or a head of the internal audit function of a securities market player, as a fit and proper person, unless the securities market player provides written attestation from the Institute of Chartered Accountants in Malawi or the Institute of Internal Auditors (Malawi) satisfying requirements of subparagraphs (1) and (2).

Qualifications for a compliance officer

10.—(1) A compliance officer of a securities market player shall be accountable to a board committee responsible for risk management for the securities market player.

(2) An internal auditor of a securities market player shall not qualify as a compliance officer.

(3) A compliance officer shall have a degree in business, accounting, banking, finance, audit, law or be a qualified member of the Association of Certified Chartered Accountants, Chartered Institute of Management Accountants or Chartered Institute of Auditors.

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 or executive officers

12. A securities market player shall—

(*a*) within ten days of the exit of its director; or

(*b*) immediately, after the suspension or exit of its executive officer; notify the Registrar, citing reasons behind the decision and the timeline regarding the director's or executive officer's replacement.

PART V—FIT AND PROPER TEST

Eligibility

13.—(1) A person shall be eligible for appointment as a shareholder, director or senior management official of a securities market player or its holding company, if he has relevant qualifications or experience in banking, economics, business, finance, law, risk management, accounting or any other relevant field as determined by the Registrar.

(2) The following persons shall not be eligible for appointment as shareholders, directors, or senior management officials of a securities market player or its holding company—

(*a*) a person who has been adjudged bankrupt or declared insolvent and has not been discharged from such 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 securities market player, unless he relinquishes that position before the appointment;

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

(*i*) a public official;

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

(*k*) a person who has been responsible for a loss suffered by a licensed institution in Malawi or elsewhere;

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

(*m*) a person whose education, technical knowledge and professional experience is not relevant to the securities market business;

(*n*) a person who has been a controlling party, shareholder, director, executive officer or senior management official of a securities market player or other financial institution—

(i) that is, or was subject to, formal remedial measures for operating in an unlawful or unsound manner;

(ii) for which a management advisor, conservator or liquidator has been appointed;

(iii) that has had its license revoked; or

(iv) which has been wound-up;

(*o*) a director whose attendance of board meetings is unsatisfactory or who without valid reasons, does not attend three (3) consecutive board meetings;

(*p*) a director who has a non performing credit facility or whose related party has a non performing credit facility;

(*q*) 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;

(*r*) with respect to a financial institution in Malawi or elsewhere, a person who has—

(i) failed to take all reasonable steps to secure compliance by the financial institution with Malawi's financial services laws, the Anti Money Laundering, Proceeds of Serious Crimes and Terrorist Financing Act or home country securities laws; Cap 8:07

(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 person appointed by the Registrar or any other financial regulator whether inside or outside Malawi;

(*s*) a person who has not disclosed all material interests in credits and other transactions;

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

(*u*) a person who was dismissed from another securities market player or licensed institution; and

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

PART VI—ENFORCEMENT

Monetary penalties

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

(*a*) for securities market players, up to fifty million Kwacha (K50, 000,000); and

(*b*) for natural persons who are members of the board of directors or senior management of security market players, up to ten million Kwacha (K10,000,000).

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

Administrative penalties Act No. 20 of 2010

15. In addition to the monetary penalties imposed in paragraph 14 (1), the Registrar may impose directions and administrative penalties as provided for under the Act and the Securities Act, 2010.

PART VI—TRANSITION PROVISION

Transition

16.—(1) All securities market players and their holding companies, where applicable, shall comply with provisions of this Directive within six months after commencement of this Directive.

(2) The Registrar may, upon application by a securities market player or its holding company, allow an extension of the compliance period to facilitate compliance with the requirements of this Directive.

SCHEDULE (para.6(2))

APPLICATION FORM FOR APPROVAL AS FIT AND PROPER PERSON

Form of Request

The following information should be presented in the order of request. Copies of documents should be appropriately labeled.

Information Requirements

The following information is required of all persons proposed to be shareholders, directors and senior management officials of securities market players.

(1) Name and address of the securities market player;

(2) Name of contact person for the request;

(3) Address and telephone number in Malawi.

(4) Country identification or passport number.

(5) Date and place of birth.

(6) Amount, type and percentage of shareholding, if any, in the securities market player.

(7) Proposed position with the securities market player (director, executive officer or senior management official) with a position description and where senior management official, then provide functional responsibilities.

(8) Education, technical knowledge and professional experience and employment history submitted in a detailed *Curriculum Vitae*. (Please attach copies of certificates duly certified).

(9) If a person already serves as a senior management official of a securities market player and is now proposed to become a director or executive officer, the securities market player shall provide to the Registrar—

(*a*) a written confirmation by the person affirming that there have been no material changes to the information that had been submitted by the securities market player when the person first received the Registrar's approval to serve in that capacity; or

(*b*) all material changes to the information that had earlier been submitted by the securities market player in support of the application that the Registrar approved.

The above provisions shall also apply to a person serving as a director and being proposed to become Chairman of the board of directors.

(10) Statement of financial position—

(*a*) history of ownership of ten percent (10%) or more of the stock of a securities market player or financial institution; or

(*b*) history of holding a position as a director or senior management official in any securities market player or other financial institution located anywhere in the world.

(11) Where paragraph (8) applies, state whether during such time period, the securities market player or financial institution—

(*a*) was subject to formal remedial measures for operating in an unlawful or unsound manner;

(*b*) was threatened with insolvency or experienced illiquidity which resulted in request for additional capital, emergency liquidity assistance or some other form of financing or regulatory action;

(*c*) had appointed a management advisor, conservator, liquidator, or similar official;

(*d*) had its license revoked; or

(*e*) was wound-up.

(12) Membership in companies, partnerships, professional or trade associations and groups of persons acting in concert, whether or not organized or registered as a formal business concern, name, address, type of entity, and description of activities.

(13) A list of all credit facilities and other transactions with a bank, direct and indirect, alone or acting in concert with others.

(14) Provide complete details of all of the following legal proceedings with which the proposed director, executive officer, or senior management official has been a party, including date, location and disposition.

Litigation. Is the person engaged or expecting to be imminently engaged in litigation, in Malawi or elsewhere, which may have a material impact on the person's financial condition?

Discipline. Has the person ever been censured, prosecuted, warned as to misconduct, disciplined, disqualified or suspended from practicing a profession, removed from office, or made subject to a court order at the instigation of any governmental body appointed under any enactment, by a professional organization, or the substantial equivalent thereof in Malawi or elsewhere?

Conviction. Has the person ever been convicted of an offence, or in Malawi or elsewhere?

Civil liability. Has the person ever been found liable in civil proceedings?

Investigation. Is the person, or has the person ever been, subject to an investigation in Malawi or elsewhere by, or at the instigation of, any governmental department or agency, professional association, or other regulatory body?

Judgment. Has the person ever failed to satisfy within one (1) year, a judgment of debt under a court order in Malawi or elsewhere?

Fraud. Has the person ever been adjudged by a court, in Malawi or elsewhere, to be civilly liable for actions which could have resulted in an indictment for a felony offense, as well as fraud, malfeasance, forgery, perjury, money laundering, or any other misconduct?

Bankruptcy. Has the person ever been adjudged bankrupt by a court in Malawi or elsewhere? Has a bankruptcy petition ever been served on the person? Has the person made any compromise arrangement or otherwise failed to satisfy creditors in full?

Receivership. Has a receiver or an administrator been appointed for any of the person's property, or has the substantial equivalent of any such receiver been appointed in any other jurisdiction? If so, provide details including whether the receiver or equivalent thereof is still acting under the appointment.

Winding-Up. Has any body corporate, partnership, or unincorporated institution with which the person was associated as a controlling party shareholder, director, executive officer or senior management officer, in Malawi or elsewhere, been wound-up, made subject to an administration order, otherwise made any compromise or arrangement with its creditors, or ceased trading either while the person was associated with it, or within one year after the person ceased to be associated with it, or has anything analogous to any of these events occurred under the laws of any other jurisdiction?

(15) An official resolution of the board of directors authorizing the submission of the subject request to the Registrar.

(16) For directors, in addition to the information referred above:

(*a*) proposed membership of committees of the board of directors; and

(*b*) a certified copy of the resolution taken by the general meeting of shareholders or directors of the securities market player on the appointment of the person to the boardof directors which specifically states that the appointment is subject to the written approval of the Registrar and the person will not act in said capacity until the Registrar's written approval of the request has been issued.

(17) For executive officers and senior management officials in addition to items 1-17 above;

(*a*) copies of any employment contracts; and

(*b*) a certified copy of the minutes of the meeting of the board of directors demonstrating that the board of directors has evaluated the proposed executive officer or senior management official according to the "fit and proper" standards prescribed in this directive and has determined that the person is "fit and proper" for the position as an executive officer or senior management officer of the securities market player.

Made this 4th day of May, 2015.

C. S. R. CHUKA
Registrar of Financial Institutions

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

GOVERNMENT NOTICE NO. 22

FINANCIAL SERVICES ACT

(NO. 26 OF 2010)

FINANCIAL SERVICES (LICENSING REQUIREMENTS FOR A STOCK EXCHANGE) DIRECTIVE, 2015

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation
3. Objectives