The Malawi Gazette Supplement, dated 23rd October, 2015, containing Regulations, Rules, etc. (No. 22A)

GOVERNMENT NOTICE NO. 36

FINANCIAL SERVICES ACT

(ACT NO. 26 OF 2010)

FINANCIAL SERVICES (REGISTRATION REQUIREMENTS FOR INVESTMENT ADVISERS) DIRECTIVE, 2015

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IN EXERCISE of the powers conferred by section 21 (5) of the Financial Services Act, I, CHARLES S. S. CHUKA, the Registrar of Financial Institutions issue the following Directive —

PART I—PRELIMINARY

Citation

1. This Directive may be cited as Financial Services (Registration Requirements for Investment Advisers) Directive, 2015.

PART II—OBJECTIVES

Objectives

2. The objectives of this Directive are to—

(*a*) ensure that investment advisers are registered with the Registrar of Financial Institutions; and

(*b*) registered investment advisers adhere to high standards of market conduct.

PART III—REGISTRATION

Registration

3.—(1) An application for registration to operate as an investment adviser shall be made in the prescribed form set out in the First Schedule hereto.

(2) An applicant shall provide all information required in the application form including—

(*a*) track record of operation;

(*b*) Curriculum Vitae of the applicant and in case of a corporate body, a Curriculum Vitae of the Chief Executive Officer, directors and shareholders;

(*c*) in the case of a foreign-owned partially-owned or controlled investment adviser, a copy of the resolution of the parent company's board of Directors, approving the establishment and functioning of the subsidiary in Malawi;

(*d*) where the applicant is a corporate body, the by-laws of the applicant which shall contain specific provisions on corporate governance, particularly with regard to the appointment of directors and senior managers; and

(*e*) a non-refundable application fee of two hundred thousand Kwacha (K200,000.00).

Portfolio managers to be deemed registered

4. A licensed portfolio manager shall be deemed to have been registered under the Act, to operate as an investment adviser.

Interview

5. The Registrar, may, where necessary, invite an applicant for an interview in order to verify and assess an application, and any such invitation shall be in writing, stating specific objectives of the interview.

Approval of changes

6. The Registrar shall approve any subsequent changes to the contents of the documents submitted at the time of registration.

PART IV—APPROVAL PROCESS

Approval criteria

7.—(1) The Registrar may deny to grant an application for a registration for the following reasons—

(*a*) non-submissions of required documents;

(*b*) submission of misleading information;

(*c*) submission of information deemed suspicious;

(*d*) person(s) designated as executive management, having been convicted of a criminal offence; or

(*e*) upon discovery that the persons designated as executive management, have been liable for losses caused by their activity at other financial institutions or organizations.

(2) The applicant may resubmit an application for a registration in accordance with paragraph 3, at any time in the event that the reason for refusal has been positively addressed.

Grant or denial of registration

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

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

(3) A registration certificate shall not be transferred, assigned or encumbered in any way, except in the event of an amalgamation or similar corporate re-structuring transactions, on such terms and conditions, as the Registrar shall approve.

(4) The registration certificate shall automatically expire where the registered person fails to commence his business within a period of one year following the granting of the certificate.

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

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

De-registration

9. The Registrar may, upon written notice to an investment adviser, deregister the registration of an investment adviser if the Registrar is satisfied that—

(*a*) any director or officer of the investment adviser is subject to a statutory disqualification;

(*b*) any director or officer is subject to a statutory restriction;

(*c*) an investment adviser or any of its officers has contravened any provision of the Act, the Securities Act, 2010 or any Directive made thereunder;

Act No. 20 of 2010

(*d*) the investment adviser is not carrying on, or is likely not to carry on, the business in respect of which it was registered, with integrity, prudence, professional skill or sound business principles;

(*e*) the investment adviser has failed to comply with any of the conditions of its registration;

(*f*) the investment adviser has supplied misleading or false information to the Registrar; or

(*g*) the investment adviser is unable to meet its liabilities and other debt obligations as they become due.

Notification

10. A registered investment adviser shall not voluntarily cease carrying on business without prior notification of five calendar days, to the Registrar , from the date the decision is made.

PART V—REPORTING REQUIREMENTS

Bi-annual call reports

11. All registered investment advisers shall furnish the Registrar with a bi-annual call report, which shall comprise statement of comprehensive income and financial position, not later than six weeks after the end of each half year.

PART VI—GENERAL REQUIREMENTS

Record keeping

12. An investment adviser shall maintain and preserve records for a period of seven years.

Prohibited practices

13. An investment adviser is prohibited from—

(*a*) recommending to a customer the purchase or sale of any security, without reasonable grounds to believe that the recommendation is suitable for the customer, on the basis of information furnished by the customer, after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known or acquired by the securities representative, after reasonable inquiry of the customer's position;

(*b*) placing an order to purchase or sell a security for the account of a customer without written authority to do so;

(*c*) placing an order to purchase or sell a security for the account of a customer upon instruction of a third party;

(*d*) exercising any discretionary power in placing an order for the purchase or sale of securities for a customer, without obtaining written discretionary authority from the customer;

(*e*) inducing trading in a customer's account that is excessive in size or frequency in view of the financial resources, investment objectives

and character of the account;

(*f*) misrepresenting to any customer, or prospective customer, his qualifications or omitting to state a material fact necessary to make the statements regarding qualifications, in light of the circumstances under which they are made;

(*g*) providing a report or recommendation to any customer prepared by someone other than the employer of the securities representative without disclosing that fact;

(*h*) failing to disclose to customers in writing before any advice is rendered, any material conflict of interest relating to the employer of the securities representative or the securities representative, that could reasonably be expected to impair the rendering of unbiased and objective advice;

(*i*) guaranteeing to a customer that a specific result will be achieved arising from advice that will be rendered, except in the case of fixed income securities; or

(*j*) disclosing the identity, affairs or investment of any customer to any third party, unless required by any written law, a court order, or with the consent of the customer.

Maintenance of customer information

14. An investment adviser shall maintain an account for each customer containing at least the following information—

(*a*) for individuals—

(i) name and residential address including documentary proof such, as utility bills, etc;

(ii) telephone numbers and e-mail addresses;

(iii) occupation including name and address of employer, if any;

(iv) tax identification information;

(v) copy of passport or driving license;

(vi) country of birth;

(vii) nationality;

(viii) tax residency; and

(*b*) for corporate entities—

(i) name and registered address;

(ii) telephone numbers;

(iii) names and identification details of shareholders and directors of the corporate entity;

(iv) names and designations of persons authorized to transact business;

(v) copy of certificate of incorporation;

(vi) tax identification number; and

(vii) country of incorporation.

Professional indemnity

15. A registered investment adviser shall obtain a professional indemnity insurance cover, the value of which, shall be sufficient to cover losses arising in the course of business.

Complaints resolution

16.—(1) A registered investment adviser shall put in place complaints handling procedures, to guide him and his clients in the event of complaints.

(2) A registered investment adviser shall maintain a complaints register where the following details shall be recorded—

(*a*) date of receipt of a complaint;

(*b*) nature of complaint;

(*c*) steps taken to resolve the complaint; and

(*d*) date and resolution of the complaint.

(3) An investment adviser shall report to the Registrar all complaints received on a quarterly basis in the form provided in the Third Schedule hereto.

Monetary penalties

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

(*a*) failure to submit any report by the due date, a penalty of twenty thousand Kwacha (K20,000.00) and ten thousand Kwacha (K10,000.00) thereafter, for each subsequent day that the investment adviser remains in default; and

(*b*) engagement in a prohibited practice or failure to meet the requirements of this Directive, an administrative penalty of up to fifty million Kwacha (K50, 000,000.00).

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

Administrative penalties

18. In addition to penalties prescribed in paragraph 17, the Registrar may impose administrative penalties or issue directions under the Act or the Securities Act, 2010.

PART VII—REVOCATION

Revocation

19. The Securities (Investment Adviser) Directive, 2011, is hereby revoked.

FIRST SCHEDULE (para. 3)

APPLICATION FOR REGISTRATION TO OPERATE AS AN INVESTMENT ADVISER

APPLICATION FORM

All questions must be answered in full.

Application is hereby made for the grant of a registration certificate as an Investment Adviser under the Financial Services Act, 2010, and the following statements are made in respect thereof—

1. Name of Applicant:
2. Date of incorporation (where applicable):
3. Registered office:
4. Mailing address:
5. E-mail address:
6. Website address (where applicable):
7. Physical address (location of business):
8. Telephone numbers:
9. Fax numbers:
10. Name and address of auditor (where applicable):
11. Details of Directors, shareholders (where applicable) (Please provide names, address es, educational and professional qualifications, employment history and other business interests and company directorships. Details of any experience in securities business must be included):
12. Details of senior management (where applicable) (Please provide names, addresses, educational and professional qualifications, employment history and any business interests and company directorships. Details of any experience in securities business must be included):
13. Give details of the company bankers and details of bank accounts:
14. Please include the following information—
    a. business plan for three years including projected profit and loss account and balance sheets for each of the three years. (Where applicable, the assumptions on which the projected financial statements have been prepared must be disclosed).
    b. an organisation chart showing the designations and levels of authority of staff.
    c. a tree diagram showing the group structure if the company belongs to a group of companies.
15. Has the applicant, a Director or Principal Officer of the applicant:
    a. been convicted of any offence, or are there any proceedings now pending which may lead to a conviction 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 it, in any civil proceedings, or are there any proceedings now pending that may lead to such a judgment or finding?

       .....
       (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. had a receiver or manager been appointed in respect of any of the assets of the applicant?

.....
(If so, please provide details)

e. had a petition presented in a court for its winding up?

.....
(If so, please provide details)

f. been subjected to any form of disciplinary proceedings or action by any professional or regulatory body?

.....
(If so, please provide details)

16. Please attach the following documents—

a. certified copy of Certificate of Incorporation;

b. copy of the Memorandum and Articles of Association;

c. copy of the last audited financial statements; and

d. cheque for two hundred thousand Kwacha (K200,000.00) being registration 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. This application is made in good faith with the purpose and intent that affairs of the company will at all times be honestly conducted with good and sound business principles, and in full compliance with all applicable laws and regulations.

3. 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.....

Name.....

Director

Signature.....

Name.....

Director

Signature.....

Name.....
Principal Officer

Notes:

1. All enquiries concerning the preparation, filing and status of this application shall be made to: The Director, Microfinance and Capital Market 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 Market Supervision, Reserve Bank of Malawi, P. O. Box 565, Blantyre, Malawi.

3. A non-refundable registration fee of two hundred thousand Kwacha (K 200,000.00) payable to the Reserve Bank of Malawi must be included with the application.

SECOND SCHEDULE (para 8)

REGISTRATION CERTIFICATE

REGISTRAR OF FINANCIAL INSTITUTIONS

FINANCIAL SERVICES ACT, 2010

INVESTMENT ADVISER REGISTRATION CERTIFICATE

A REGISTRATION CERTIFICATE is hereby granted to..... of .....to operate as an investment adviser. This registration certificate is issued subject to the provisions of the Financial Services Act, 2010.

GRANTED THIS..... DAY OF ..... 20.....

.....
REGISTRAR OF FINANCIAL INSTITUTIONS

THIRD SCHEDULE

QUALIFICATIONS AND EXPERIENCE FOR PERSONS WHO DEAL WITH CLIENTS

PART I—LOCAL QUALIFICATIONS

Local Qualifications	Requisite Experience
A business degree from a recognized Institution	5 years
Other qualifications evaluated by Registrar on a case by case basis	As may be determined by the Registrar

PART II—FOREIGN QUALIFICATIONS

Foreign Qualifications	Requisite Experience
Investment Advice qualification offered by the South African Institute of Financial Markets	5 years
A business degree from a recognized University	5 years
Registered persons examinations of the South African Institute of Financial Markets	5 years
Association of Chartered Certified Accountants (ACCA) or Chartered Institute of Management Accountant (CIMA) or Chartered Accountant	5 years
Chartered Financial Analyst (any level)	None
Other qualifications evaluated by Registrar on a case by case basis	As may be determined by the Registrar

THIRD SCHEDULE

COMPLAINTS REPORT FORM

No.	Date Received	Description	Date Resolved	Notes

Made this 4th day of May, 2015.

C. S. R. CHUKA
Registrar of Financial Institutions

(FILE NO EA/FSPU/1/1)