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GOVERNMENT NOTICE NO. 19

FINANCIAL SERVICES ACT

(CAP 44: 05)

FINANCIAL SERVICES (CORPORATE GOVERNANCE REQUIREMENTS FOR SAVINGS AND CREDIT COOPERATIVE SOCITIES) DIRECTIVE, 2016

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IN EXERCISE of the powers conferred by section 29 of the Financial Service 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 (Corporate Governance Requirements for Savings and Credit Cooperative Societies) Directive, 2016.

Interpretation

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

"board "refers to the board of directors of a SACCO;

"director" means a member of a SACCO duly elected at an annual general meeting or any other special convened meeting to run the affairs of a SACCO on behalf of the entire membership for a specified period;

"management" means a person employed by a SACCO and is responsible for decision making at operational level;

"member" means a person with fully paid up minimum member shares as determined by a SACCO from time to time;

"Registrar" means the Registrar of Financial Institutions appointed under the Financial Services Act; and

"SACCO" means a Savings and Credit Cooperative Society.

(2) Any term used in this Directive, and which has been defined in the Act, has the meaning ascribed to that term under the Act.

Application

3. This Directive shall apply to all SACCOs licensed under the Act.

PART II—OBJECTIVES

Objectives

4.—The objectives of this Directive are to ensure that—

(*a*) SACCOs are managed and overseen by competent personnel both at board level and management level;

(*b*) corporate self discipline is promoted in the management of all SACCOs; and

(*c*) the board and management make reasonable and impartial business judgements in the best interest of the members.

PART III—BOARD AND MANAGEMENT OVERSIGHT

Board of directors

5.—(1) A SACCO shall elect its board at an annual general meeting from the general membership.

(2) The board shall be headed by a chairperson who shall not be a member of management.

Responsibilities of board

6.—(1) The board shall have a minimum of five and a maximum of eleven directors.

(2) A person duly elected as a director shall be a serving member of a SACCO.

(3) The SACCO shall ensure that the election of board members and their terms of offices comply with the provisions of the Financial Cooperatives Act. Cap 46: 10

Responsibilities of board

7.—(1) The board shall—

(*a*) exercise appropriate oversight to ensure sound and prudent management of a SACCO;

(*b*) have overall responsibility for the SACCO, including approving and monitoring the overall business strategy while giving consideration to long-term financial impact, risk exposure and ability to manage risks effectively;

(*c*) in consultation with management, formulate and approve annual work plan and budget;

(*d*) approve and oversee overall risk strategy, including risk appetite, tolerance and limit, risk and compliance policies, internal control systems, governance practices, and corporate values, including a code of conduct;

(*e*) provide an independent check on management;

(*f*) have a documented and well defined board charter setting out roles and responsibilities of the board;

(*g*) have a clear policy for setting remuneration packages for management, board of directors and board committees;

(*h*) ensure that proposed remuneration packages are approved at an annual general meeting;

(*i*) put in place all requisite policies and procedures to guide management and staff in carrying out operations of the SACCO; and

(*j*) ensure that the SACCO's operating policies and procedures, including the code of best practices, are strictly enforced and adhered to.

(2) The board shall ensure that management has competent skills for effective and prudent operation of the SACCO.

(3) A member of the board shall be accountable to the Registrar for appropriate oversight to ensure sound and prudent management of the SACCO.

(4) Where the Registrar requests to meet the board, the chairperson of the board, a board member or senior management, the board, the chairperson of the board, a board member or senior management shall avail themselves for the meeting.

Delegated responsibility

8.—(1) The board shall delegate authority to management to act on its behalf, with respect to certain matters, as may be determined by the board

from time to time and the board shall document and approve the delegated authority.

(2) The board shall not abrogate responsibility for the delegated authority and shall—

(*a*) monitor that senior management's actions are consistent with the strategy and policies approved by the board, including the risk appetite and risk tolerance;

(*b*) meet regularly with senior management;

(*c*) question and review critical explanations and information provided by senior management;

(*d*) set and monitor performance against formal performance standards for senior management consistent with the long term objectives, strategy and financial soundness of the SACCO; and

(*e*) ensure that senior management's knowledge and expertise remain appropriate given the business and risk conditions affecting the SACCO.

Board committees

9.—(1) A SACCO shall have board committees which shall include a credit committee, an education committee and any other committee as may be required to perform specific tasks, from time to time.

(2) The board shall establish terms of reference for each board committee.

Supervisory committee Cap 46: 10

10.—(1) In accordance with the Financial Cooperatives Act, a SACCO shall elect a supervisory committee at its annual general meeting.

(2) The supervisory committee shall comprise a minimum number of three and a maximum number of five members.

(3) The supervisory committee shall oversee all internal audit functions and coordinate external audits.

(4) A person shall have, at a minimum, an accounting or book keeping qualification in order to be eligible for election as a member of the supervisory committee.

Management composition

11.—The board shall ensure that, at a minimum, the management of a SACCO comprises—

(*a*) a chief executive officer;

(*b*) an accountant; and

(*c*) a member services manager.

Qualifications of management

12.—The Board shall ensure that management of a SACCO possesses minimum qualifications and experience as set out in the First Schedule to this Directive.

Board, supervisory committee and management

13.—(1) A SACCO shall ensure that a fit and proper person with the relevant competency is nominated for election as a board member, a supervisory committee member or appointed as management.

(2) The SACCO shall seek the approval of the Registrar on nominated persons in sub paragraph (1) prior to their elections to serve on the board or prior to their appointment as managers.

(3) The proposed board member, supervisory committee member or manager shall—

(*a*) be subjected to a fit and proper test by the Registrar; and

(*b*) complete the fit and proper questionnaire set out in the Second Schedule and Third Schedule to this Directive.

(4) Where a proposed board member, supervisory committee member or manager fails the fit and proper test, the Registrar shall not approve the person as a board member, supervisory committee member or manager, and the SACCO shall nominate and submit new proposed names to the Registrar.

(5) The SACCO shall prescribe minimum qualifications for a board member in its Election Policy.

PART IV—GENERAL REQUIREMENTS

Internal audit

14.—(1) A SACCO shall have an independent and adequately resourced internal audit function.

(2) The objective of the internal audit function shall include the evaluation of the adequacy and effectiveness of the financial and internal risk management framework of the SACCO.

(3) To fulfill his functions, an internal auditor shall have unfettered access to the business lines and support functions of the SACCO.

(4) The internal auditor shall not have other operational responsibilities or duties.

(5) The internal auditor shall report to and have unfettered access to the supervisory committee.

(6) Where the SACCO is not in a position to have a dedicated internal audit function, the Registrar may approve alternative arrangements.

External audit

15.—(1) The supervisory committee shall, in consultation with the board, recommend the appointment of a suitable external auditor to the annual general meeting.

(2) The supervisory committee and the board shall ensure that there is no conflict of interest that could compromise or be seen to compromise the independence of the external auditor.

(3) As part of the process of assessing the suitability and independence of the external auditor, the SACCO shall ensure that it conforms to requirements stipulated in the the Financial Cooperatives Act. Cap 46:10

Annual general meeting

16.—(1) A SACCO shall convene an annual general membership meeting within four months after the end of a financial year and upon receipt of a report of audited accounts.

(2) The annual general meeting shall be the highest decision making authority of the SACCO.

(3) Members shall, at an annual general meeting at the end of an electoral cycle, elect a board of directors and the supervisory committee in a manner as provided for under section 21 (*a*) to (*b*) and section 43 of the Financial Cooperatives Act.

Cap 46:10

(4) If the SACCO fails to hold an annual general meeting within the period specified in sub-paragraph (1), the board shall write to the Registrar seeking approval to hold the meeting at a later date and shall specify the reasons for the failure.

Ethics

17.—(1) A SACCO board and management shall—

(*a*) conduct their business in line with principles of utmost good faith and in accordance with internationally accepted cooperative principles;

(*b*) determine best standards of ethical behaviour and establish a board approved SACCO'S code of best practice;

(*c*) demonstrate commitment to organizational integrity by displaying in a conspicuous place in the SACCO office, the SACCO's code of best practice;

(*d*) at the request of the Registrar, avail a copy of the code of best practice and any amendments thereto;

(*e*) prohibit any conduct that may engage the SACCO in illegal activities such as money laundering, fraud, bribery or corruption;

(*f*) ensure that the code of best practice binds all directors, management and employees or agents of the SACCO;

(*g*) ensure that the SACCO complies with relevant laws and directives by the Registrar;

(*h*) create systems and procedures to oversee compliance to the code of best practice;

(*i*) assess the integrity of new appointees in selection and promotion procedures;

(*j*) exercise due care in delegating discretionary authority;

(*k*) communicate with and train all employees regarding organisational values, standards and compliance procedures;

(*l*) provide, monitor and audit safe systems for reporting unethical or risky behaviours;

(*m*) consistently enforce appropriate discipline measures; and

(*n*) respond to offences and prevent re-occurrence.

(2) The SACCO shall assess and disclose its own adherence to the code of best practice.

(3) The board of directors shall ensure that senior management shall implement policies that prohibit or appropriately limit activities and relationships that diminish the quality of corporate governance, including—

(*a*) lending to directors and employees at nonarm's length;

(*b*) providing preferential treatment to insiders;

(*c*) improper use of SACCO property or information;

(*d*) unfair dealing with clients, employees, suppliers, competitors and other stakeholders;

(*e*) allowing a director to become delinquent in his loan repayment;

(*f*) avoiding activities that could create conflicts of interest or the appearance of conflicts of interest; and

(*g*) permitting a director who has an interest in a particular subject matter to take part in the deliberations, including voting, on that particular subject matter.

Performance of board

18.—(1) The board shall have procedures for assessing, at least annually, the performance of the board, board committees and individual directors.

(2) A SACCO shall ensure that it inducts and trains the directors on various aspects of the SACCO's business operations.

(3) A director shall attend at least seventy five percent of all board meetings in a year and where his attendance is less than seventy five percent, the board shall inform the Registrar, in writing, not later than 31st January of the following year, providing reasons for lack of the director's attendance and reasons for such a director to be allowed to continue serving on SACCO board.

(4) The board shall meet at least four times a year and shall keep minutes of all proceedings.

Succession planning

19.—(1) A SACCO shall prepare a succession plan for its chief executive officer.

(2) The succession plan of the SACCO shall identify a deputy chief executive officer who shall perform the role of the chief executive officer in his absence and the SACCO shall inform the Registrar of this arrangement in writing.

Disclosure of confidential information

20.—(1) A prospective, current or former officer, employee or contractor of a SACCO shall not be constrained by confidentiality paragraphs or otherwise from—

(*a*) disclosing information to the Registrar;

(*b*) discussing issues of relevance to the management and supervision of the SACCO with the Registrar;

(*c*) providing documents under the control of the employee to the Registrar; and

(*d*) providing information to auditors, and other persons who have statutory responsibilities in relation to the SACCO.

(2) The SACCO shall ensure that internal policy and contractual arrangements do not explicitly or implicitly restrict or discourage auditors or other parties from communicating with the Registrar.

PART V—ENFORCEMENT

Monetary penalties

21.—(1) With respect to monetary penalties for violations of this Directive, that may be imposed by the Registrar, the following shall apply—

(*a*) a maximum fine of K5,000,000 for a SACCO;

(*b*) a maximum fine of K2, 000, 000 for natural persons who are members of the board of directors or senior management.

(2) The penalty in paragraph 21(1) above shall be paid through a bank certified cheque payable to the Reserve Bank of Malawi within ten working days of the penalty being imposed by the Registrar.

Administrative penalties

Cap 46:10

22. In addition to the monetary penalty imposed in 15 (1) above, the Registrar may impose directions, administrative penalties and enforcement action as provided under the Act, and the Financial Cooperatives Act, 2011.

FIRST SCHEDULE

MINIMUM QUALIFICATIONS FOR MANAGEMENT

	Qualifications	Experience
Chief Executive Officer	Degree in Administration, Accountancy or Finance	3 years' experience in a financial institution
	Diploma in Administration, Accountancy or Finance	6 years' experience in a financial institution
Accountant	ACCA, Degree in Accountancy or Finance	2 years' experience in the accounting profession
	PAEC, Diploma in Accountancy or Finance	5 years' experience in the accounting profession
Member Services Manager	Degree	1 year relevant experience
	Diploma	3 years relevant experience

SECOND SCHEDULE

FIT AND PROPER QUESTIONNAIRE FOR A BOARD OR SUPERVISORY COMMITTEE MEMBER

(*Where space provided is not enough, please provide the extra information on additional sheets*).

1. Full Name of Nominee: .....
2. Postal Address: .....
   Telephone Number: .....
   Email address: .....
3. Physical Address: .....
4. Date joined SACCO: .....

5. Minimum Academic Qualification: .....
6. Highest Academic/Professional Qualification: .....
7. Other Qualifications: .....

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8. Work Experience: .....

Other Directorship: .....

Date of Appointment: .....

9. Has the Nominee: 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)

10. Had judgment involving findings of fraud or other dishonesty, or violence, 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)

11. 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?

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(If so, please provide details)

THIRD SCHEDULE

FIT AND PROPER QUESTIONNAIRE FOR A MANAGER

1. Full Name of Nominee: .....
2. Position applied for: .....
3. Postal Address: .....

Telephone Number: .....

Email Address: .....

Physical Address: .....

4. Minimum Academic Qualification: .....
5. Highest Academic/Professional Qualification: .....
6. Other Relevant Qualifications: .....

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7. Previous Work Experience

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8. Has the Nominee:

(*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, or violence, 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?

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(If so, please provide details)

Made this day of , 2016

C. S. R. CHUKA
Registrar of Financial Institutions

(FILE NO. C/DEA/3/2/7/5)

GOVERNMENT NOTICE NO. 20

FINANCIAL SERVICES ACT

(CAP 44:05)

FINANCIAL SERVICES (INTERNAL COMPLAINTS HANDLING REQUIREMENTS) DIRECTIVE, 2016

ARRANGEMENT OF PARAGRAPHS

PARAGRAPHS

PART I—PRELIMINARY

1. Short title
2. Interpretation

PART II—OBJECTIVES

3. Objectives

PART III—BOARD OVERSIGHT

4. Board oversight