GOVERNMENT NOTICE NO. 49

FINANCIAL SERVICES ACT, 2010

(ACT NO. 26 OF 2010)

FINANCIAL SERVICES (EXTERNAL BORROWING REQUIREMENTS FOR SAVINGS AND CREDIT COOPERATIVE SOCIETIES) DIRECTIVE, 2013

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IN EXERCISE of the powers conferred by section 34 (2) (*u*) of the Financial Services Act, 2010, I, CHARLES S. R. CHUKA, Registrar of Financial Institutions, make the following Directive—

PART I—PRELIMINARY

Citation

1. This Directive may be cited as the Financial Services (External Borrowing Requirements for Savings and Credit Cooperative Societies) Directive, 2013.

Interpretation

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

"external borrowing" means funds received in the form of a loan from non-members in respect of which a Savings and Credit Cooperative Society (in this Directive hereinafter referred to as a "SACCO") has entered into an agreement to repay;

"institutional capital" means the sum of—

(*a*) fully paid-up permanent and non-withdrawable member share capital;

(*b*) statutory reserves;

(*c*) retained earnings;

(*d*) current year net profits (50%) or net loss (100%); and

(*e*) capital grants and donations.

Less investments in subsidiaries; and

"Registrar" means the Registrar of Financial Institutions appointed under the Act.

(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.

PART II—OBJECTIVE

Limiting of external borrowing

3. The objective of this Directive is to ensure that SACCOs' external borrowing is kept within acceptable limits.

PART III—EXTERNAL BORROWING LIMITS

External borrowing allowed

4.—(1) A SACCO may borrow externally.

(2) A SACCO shall not borrow externally without prior approval of its board of directors.

External borrowing limits

5. Subject to paragraph 6, a SACCO's external borrowing shall be limited to—

(*a*) five per cent (5%) of total assets for a SACCO with institutional capital between ten per cent (10%) and fifteen per cent (15%) of the total assets; and

(*b*) ten per cent (10%) of total assets for a SACCO with institutional capital of more than fifteen per cent (15%) of the total assets.

Variation of limits

6.—(1) The Registrar may grant permission for a SACCO to borrow externally in excess of the limits specified in paragraph 5, provided that the total external borrowing shall be reduced to a level which complies with the limitation of paragraph 5 of this Directive within twelve months from date of the borrowing.

(2) A SACCO shall submit a request to borrow externally in excess of limits to the Registrar through a letter signed by the chairperson of the board.

(3) The request shall include the—

(*a*) amount that the SACCO is intending to borrow;

(*b*) source of the borrowing;

(*c*) cost of borrowing;

(*d*) purpose of the borrowing; and

(*e*) details of any existing external borrowings including amount, cost, and duration.

(4) The Registrar may request a SACCO to submit additional information, if in the opinion of the Registrar, the information, which the SACCO initially submits, is insufficient to enable the Registrar make a decision.

(5) The Registrar shall make a decision on the request and notify the SACCO of its decision in writing within fourteen working days of receipt of all information required for making a decision.

(6) The Registrar shall only grant permission to exceed the limits specified in paragraph 5 if the—

(*a*) SACCO is currently maintaining an institutional capital ratio of fifteen per cent (15%) or more;

(*b*) SACCO is not under supervisory action and no enforcement action is pending against the SACCO;

(*c*) external borrowing is to be used for a well planned expansion programme;

(*d*) board of directors of the SACCO has approved the external borrowing subject to receiving the written permission of the Registrar;

(*e*) SACCO has a history of properly reporting and managing external borrowing, and of complying with the limitations contained in this Directive; and

(*f*) SACCO submits a plan on how it is going to reduce the external borrowing within twelve months from the date of the borrowing to be within the limits specified in paragraph 5 of this Directive.

PART IV—ENFORCEMENT

Monetary penalties

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

(*a*) for SACCOs, up to five million Kwacha (K5,000,000); and

(*b*) for natural persons who are members of the board of directors or management, up to two million Kwacha (K2,000,000).

(2) The SACCO or natural person shall pay the penalty in subparagraph 1 through a bank certified cheque payable to the Reserve Bank of Malawi within ten working days after being notified of the violation.

Other penalties

Act No. 8 of 2011

8. In addition to the monetary penalty imposed in paragraph 7 (1), the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act and the Financial Cooperatives Act, 2011.

PART V—TRANSITIONAL ARRANGEMENTS

Compliance with this Directive

9. A SACCO that does not meet the minimum standards prescribed in this Directive shall comply with the Directive within twelve months from the date of publication of the Directive.

Made this 13th day of November, 2013.

C. S. R. CHUKA
Registrar of Financial Institutions