

# RESERVE BANK OF MALAWI

# TRUSTEE CODE OF PRACTICE

## PENSION AND INSURANCE SUPERVISION DEPARTMENT

## DECEMBER 2014

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## 1. INTRODUCTION

This *Trustee Code of Practice/Conduct* (the Code) has been developed to provide guidance to *individuals* entrusted with the duty to oversee the management of a Pension Scheme. It is not meant to replace the overall policies and procedures established for the governance of the pension scheme.

The Code consists of eight principles, together with corresponding guidance. The Code is not a law itself but sets out expectations of the Registrar for a trustee to be considered fit and proper on a continuing basis. A breech of the Code may be grounds for removal as a trustee and disqualification from acting as a trustee in future.

A Trustee must, as part of Fit and Proper requirements sign a statement, on appointment, confirming that they have read and understood the Code and that, they shall at all times fulfil their duties in accordance with the Code.

## 2. CODE OF PRACTICE PRINCIPLES

Principle 1: Act in good faith and in the best interests of Pension fund members.

Principle 2: Act with prudence and reasonable care.

Principle 3: Act with skill, competence and diligence.

Principle 4: Avoid conflicts of interest.

Principle 5: Maintain confidentiality.

Principle 6: Comply with all applicable laws, regulations, trust deed and fund rules.

Principle 7: Communicate effectively in a transparent manner with all members and the Registrar.

Principle 8: Review the performance of pension fund service providers

## 3. GUIDANCE ON THE PRINCIPLES

***Principle 1: Act in good faith and in the best interests of fund members***

The overriding objective of the pension scheme is to serve as a secure source of retirement income. Pension scheme trustees have a primary duty to act for the benefit of the scheme members and beneficiaries. Trustees comply with this duty by striving to safeguard and grow the assets of the pension scheme to provide maximum benefit to the scheme members and beneficiaries. An effective trustee should

a) act in good faith with proper motive and purpose;

b) act in the best interests of members in accordance with the objects of the trust. This includes striving to achieve a balance between the fund's various objectives, such as:

   i. Achieving long-term asset growth;

   ii. Minimising management costs;

   iii. Minimising risks;

   iv. Making payments to members in a timely manner; and

   v. Taking steps to ensure that the employer is current in paying contributions.

c) Be on guard that while the overriding concern is to give priority to the interests of members, their decisions should not be overly burdensome on other stakeholders such as the fund sponsor.

d) Treat all members fairly and not put the interests of any one group of members above another. This includes decisions regarding investments and risk/return trade-offs.

e) Maintain and disclose to members a clear and comprehensible statement of the risks and objectives of the fund, as well as being clear and transparent on members' rights.

f) ensure that any fees and charges are appropriate and fair to all members and avoid the cross-subsidization of one group of member in favour of another.

g) Understand that while many trustees will undertake their role on a purely voluntary basis, some funds may provide for a modest meeting allowance or professional fee. Such allowances and fees should be disclosed clearly to members and ideally, voted on by the membership when new Trustees are elected.

***Principle 2: Act with prudence and reasonable care***

An effective trustee will exhibit the care and prudence necessary to meet their obligations to pension scheme members and beneficiaries. The exercise of prudence requires acting with the appropriate levels of care, skill, and diligence that a person acting in a like capacity and familiar with such matters would use under the same circumstances. Depending on the nature of the scheme, some trustees are expected to make various decisions with regards to management of pension schemes including dealing with complaints and appeals from members. It is therefore imperative that they should exercise prudence and reasonable care in the performance of their duties including:

a) Being fully aware of the schemes trust deeds and rules and acting in accordance with the objects of the trust within the parameters set out in the trust's deed and rules and any established procedures.

b) Being fully comprehensive of any powers given to trustees by law or the schemes' trust deed and rules and obtain all relevant facts and information so that trustees use these powers properly and fairly

c) Understanding when it is necessary to provide reports or issues for the attention of the registrar of financial institutions

d) Acting in a judicious manner to avoid harming members.

e) Acting on a fully informed basis and actively participating in discussions and decisions over matters which the trustee has discretion under the trust deed.

f) Helping to identify and manage risks proactively, consistently and in a timely manner.

g) Seeking assistance from relevant experts internally or externally where required. A trustee should make reasonable efforts to ensure that:

   i. The experts act with appropriate skill, competence and diligence.

   ii. The experts have the knowledge, experience and qualifications necessary to provide the service agreed

   iii. There are clearly defined responsibilities of the appointed experts and agreements made on monitoring their performance

iv. Trustees receive any professional advice in writing for purposes of keeping records of the advice received.

v. The experts are free of conflicts of interests and their incentives are aligned such that they act in the best interests of the Pension fund's members and beneficiaries.

vi. The experts' decisions have a reasonable basis and the decision process is properly documented.

h) Exercising powers and discretion consistently. Where a trustee makes a decision which is a departure from agreed practice or procedure, the trustee should be able to demonstrate that the decision was appropriate and reasonable in the circumstances.

***Principle 3: Act with skill, competence and diligence***

Skill and diligence require trustees to be knowledgeable about the matters and duties with which they have been entrusted. Improper or ill-advised decisions can be costly to the pension scheme and detrimental to the scheme's members and beneficiaries. Prior to taking action on behalf of the scheme, effective trustees should analyse the implication of their decisions and act only after undertaking due diligence to ensure they have sufficient knowledge on the matter.

A trustees should have adequate knowledge and understanding of:

a) Financial Services laws and other trust related laws including the Financial Services Act, Pension Act, Insurance Act, Trustee Act, Registrar's Directives etc

b) Pension fund policies and procedures.

c) The investment strategies of the pension fund. While Trustees are generally not expected to be investment experts, they should seek the appropriate expert or professional guidance if they believe themselves lacking the necessary expertise to make an informed investment decision.

d) The basic structure and function of the selected investments of the Pension fund.

e) Pension fund liabilities and what is due and payable by sponsors.

***Principle 4: Avoid conflicts of interest***

a) Malawi is a relatively small market with only a limited number of participants to provide services to financial institutions and pension funds. At a minimum, the custodian and

external auditor must not be a related party to the sponsors, pension administrator or investment manager. Where the sponsor or sponsors are themselves a potential provider of these services (e.g. an audit firm), special relief must be granted by the Registrar, before the services are provided.

b) A trustee must avoid actual, potential or perceived conflicts of interest at all times, and should always have regard to their legal duties as trustees. It is the duty of a trustee to act impartially and in line with the fund's trust deed and rules. This takes priority over any other interests or external duties trustees may have.

c) A trustee must place the interests of members first – before the sponsor, before service providers and before themselves.

d) A trustee need to ensure that any decisions regarding the sponsor or service providers or other connected party are made on arm's length basis, that is, independently as if no other relationship existed. This is clearly challenging where a related party provides services such as investment management or pension administration. In such circumstances, a trustee must ensure that fees and charges, brokerage fees, trade execution fees, fund management fees are competitive and deliver the best value for money option for members.

e) A trustee must declare relationships with connected parties and declarations must be maintained in a register. A trustee should have procedures for dealing with conflicts, which may include prohibition of individual trustees deliberating on certain decisions where a conflict may exist.

f) A trustee should not seek or accept, whether directly or indirectly, any gifts, service, remuneration, favour or entertainment from anyone engaged by or seeking business from the trustee on behalf of the fund. It is recommended that a trustee implements written gifts and entertainment policies and, where in the normal course of business such gifts services or remuneration have been received, such gifts must be declared and included on the register.

g) A trustee should not use the status of their position, or any information obtained in the course of their duties, for personal advantage or gain.

h) Where actual or perceived conflicts of interest arise, Trustees are expected to:

   i. Disclose all actual or potential conflicts of interest in an effective and timely manner.

   ii. Exclude oneself from any deliberations and decision-making on matters where there may be a conflict of interest.

***Principle 5: Maintain confidentiality***

A trustee should

a) Maintain confidentiality in respect of any information obtained in the course of their duties, and treat any personal data of members with the utmost care and sensitivity, including financial, pay, medical, and personal or other information.

b) Avoid disclosure of information to third parties unless it is necessary for the management of the fund, has the express consent of the pension fund member or is required by applicable law and regulations.

c) Develop and ensure that all trustees sign confidentiality policy agreement upon assuming office

***Principle 6: Comply with all applicable laws, regulations, trust deed and fund rules***

a) A trustee should, to the best of their abilities, assist in monitoring and ensuring that the fund, its sponsor and all service providers comply with all applicable laws, Registrar's Directive's, regulations, trust deed and fund rules. While trustees are generally not expected to be experts in law or pension regulation, they should report any suspected illegal or unethical activities, or financial irregularities, to the Registrar or the Fund's auditor.

b) Where necessary, trustees should consider consulting professional experts to provide technical expertise on applicable laws, Directive's and regulations.

***Principle 7: Communicate effectively in a transparent manner with all members and the Registrar***

A trustee should

a) Communicate with members, the Registrar and other interested parties (e.g. sponsors, employers, investment managers and pension administrators) in a timely, accurate and transparent manner. This includes the provision of complete and accurate data in the regular returns required by the Registrar for compliance and supervision purposes.

b) ensure that information communicated, in particular to members, is accurate, relevant and complete. Where Trustees are considering implementing significant changes, this information should be communicated well in advance to affected parties to allow them the opportunity to provide inputs or otherwise prepare for the changes.

c) not misrepresent any aspect of their services or activities in any communications, including information communicated verbally, electronically or in writing.

d) As far as possible, ensure that the information communicated is in plain language, and in a manner which facilitates effective communication of the information.

e) ensure that the literature about the scheme is consistent with the scheme trust deed and rules and does not mislead members or potential members

***Principle 8: Review the performance of pension fund service providers.***

a) A trustee should regularly review the performance of pension fund's service providers such as investment managers, pension administrator, custodian, consultants and actuaries by ensuring that an appropriate service level agreement has been signed. The Service Level Agreement should clearly spell out the expected deliverables of the service providers. This review may include assessing whether service providers;

   i. are adequately staffed and qualified to provide their services effectively.

   ii. have adequate levels of compliance and meet all professional standards.

   iii. continue to be competitive, have been able to meet their stated objectives, service level agreement and all aspects of their contract.

b) A trustee should ensure that the fund has proper monitoring and control procedures for investment managers. While a trustee may delegate the selection and monitoring of investment managers to an investment committee or other professional staff, a trustee should continue to maintain essential oversight and decision-making powers over investment managers.

## 4. DECLARATION

We the undersigned declare that we have read, understood and agree to abide by the provisions of the above Trustee Code of Practice. We confirm that a breach of this Code of Practice may result in removal from the trustee board.

| NAME OF TRUSTEE | SIGNATURE | DATE |
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