GOVERNMENT NOTICE NO. 43

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (DISCLOSURE REQUIREMENTS FOR INVESTMENT PRODUCTS AND SERVICES) DIRECTIVE, 2018.

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IN EXERCISE of powers conferred by section 34 (2) of the Financial Services Act, I, DR. DALITSO KABAMBE, Registrar of Financial Institutions, issue this Directive as follows—

PART I—PRELIMINARY

Citation

1. This Directive may be cited as the Financial Services (Disclosure Requirements for Investment Products and Services) Directive, 2018.

Application

2. This Directive applies to a securities dealer, a securities broker, a securities representative, an investment adviser, a stock exchange, a securities depository, a collective investment scheme, an investment company, a portfolio manager, and a securities market intermediary.

Interpretation

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

"Board" means the highest body of authority in a financial institution responsible for strategically guiding the institution, effectively monitoring management and properly accounting to shareholders;

"financial consumer" in relation to a financial service, means—

(*a*) (i) a natural person, not acting in the course of business;

(ii) a sole trader, partnership, trust club or charity (not being a body cor-

porate), with an annual turnover in its previous financial year of MK250, 000,000 or less; or

(iii) an incorporated body that—

(I) had an annual turnover in its previous financial year of MK250,000,000 or less; or

(II) is not a body corporate that is a member of a group of companies with a combined annual turnover (in the previous financial year of the group of companies), of greater than MK250, 000,000 that—

(A) is a customer of a financial institution;

(B) is a person or body to whom a financial institution has offered to provide a financial product or service; or

(C) has sought the provision of a financial product or service;

(*b*) an actual or potential beneficiary of a financial product or service;

"key fact statement" means a short form, standardized disclosure document prepared by a financial institution in relation to a financial product or service which—

(*a*) summarizes the key terms, annual percentage rate and other fees and charges;

(*b*) can be used to compare the product offers of different financial institutions; and

(*c*) is in a format and contains the content, which is specified in the Registrar's directive on disclosure;

"share" has the same meaning ascribed to that term in the Securities Act.

(2) Any term used in this Directive, and which has been defined in the Act and the Securities Act has the meaning ascribed to that term under the Act and the Securities Act . Cap. 46:06

Cap. 46:06

PART II—OBJECTIVES

4. The objectives of this Directive are to— Objectives

(*a*) set minimum disclosure requirements for investment products and services;

(*b*) ensure that financial consumers are provided with full, accurate and timely information to evaluate whether and to what extent the investment product and service is appropriate;

(*c*) promote comparability of investment products and services by a financial consumer; and

(*d*) promote fair treatment of financial consumers.

PART III—BOARD AND MANAGEMENT OVERSIGHT

Board and management oversight

5.—(1) The Board and management of a financial institution are responsible for adherence and compliance with the requirements of this Directive.

(2) A financial institution shall have a formal written disclosure policy on an investment service or product, approved by the Board.

(3) The Board shall ensure that—

(*a*) management is implementing the disclosure policy; and

(*b*) there is full, timely and accurate disclosure of all relevant information on an investment service or product in line with the requirements of this Directive.

PART IV—MINIMUM DISCLOSURE REQUIREMENTS

General requirements

6.—(1) A financial institution shall disclose to a financial consumer all necessary information related to an investment to enable the financial consumer make an informed decision.

(2) A financial institution, before entering into a contract with a financial consumer, shall disclose to the financial consumer the fundamental benefits, risks, terms and costs of the product and service.

(3) A financial institution shall disclose information that is clear, accurate and not misleading to a financial consumer.

No cost for information

7. A financial institution shall provide information prescribed in this Directive at no cost, before a financial consumer buys an investment service and product.

Information about financial institution

8. A financial institution shall disclose in a contract—

(*a*) its official trade name and address of its principal office to the financial consumer prior to granting an investment product; and

(*b*) its regulated status and, where required by the financial consumer, contact details of the Registrar.

Information about the product and service

9. The disclosed information about the investment product shall be contained in a key fact statement which shall include—

(*a*) clear, accurate and complete contractual terms and conditions;

(*b*) type of investment;

(*b*) investment allocation policy;

(*c*) minimum investment amount;

(*d*) mode and time of payment;

(*e*) period and conditions when a consumer can receive an investment certificate or evidence of transaction after initial investment;

(*f*) if applicable, the duration of the contract and maturity date;

(*g*) time and mode of payment after maturity;

(*h*) factors that may affect investment performance;

(*i*) product valuation or pricing and its frequency;

(*j*) fees, commissions or any other costs associated with the product or service;

(*k*) penalties, for termination of contract prior to maturity of investment;

(*l*) if applicable, replacement cost of investment certificate;

(*m*) conditions and costs of transferring ownership of the investment;

(*n*) tax implications on return;

(*o*) method of calculating return on investment;

(*p*) if applicable, basis for making investment decisions;

(*q*) basis of investment advice;

(*r*) responsibility of making investment decision;

(s) conflict of interest with related parties connected to the investment;

(*t*) complaints handling mechanisms; and

(*u*) any other information that can have material impact on consumers' investment.

PART V—FORM OF DISCLOSURE

Disclosure form

10.—(1) The disclosures in paragraph 9 shall be in the prescribed format in the Schedule hereto and communicated to the financial consumers before, during and at the point of signing an agreement—

(*a*) in English or vernacular language which is easy to read and understand;

(*b*) in written form, and accessible to the financial consumer; and

(*c*) the information must be—

(i) in legible font size of not less than 12;

(ii) available to financial consumers through numerous channels, such as in branches, pension fund offices and online platforms;

(iii) provided on paper or electronic format in graphs to elaborate practical communication taking into account that participants have differing levels of knowledge and information:

provided that where an insurer or an insurance intermediary opts to use electronic form of communication, the needs and capabilities of the financial consumer must be properly assessed where appropriate; and

(*d*) simplified through consumer testing, especially with the needs of vulnerable client groups in mind.

(2) A financial institution shall indicate a breakdown of the costs to the customer if the costs relate to more than one item.

Intermediary

11. An intermediary shall also disclose information in paragraph 9 to a financial consumer.

PART VI—ENFORCEMENT

Monetary penalties

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

(*a*) for financial institutions, a fine not exceeding K50,000,000;

(*b*) for individuals who are members of the Board or management, a fine not exceeding K10, 000, 000; and

(*c*) in addition, a penalty of K50,000 may be imposed on the institution for each subsequent day for which the violation continues after being notified by the Registrar of the violation.

(2) The penalties imposed in subparagraph (*a*) shall be paid through a bank certified cheque or electronic transfer payable to the Reserve Bank of Malawi within 10 working days after being notified of the violation.

Administrative penalties

13. In addition to the monetary penalty imposed in paragraph 12(1) , the Registrar may impose directions, and administrative penalties as provided for under the Act and other financial services laws.

FIRST SCHEDULE (para. 10)

KEY FACTS STATEMENT FOR

INVESTMENT PRODUCT AND SERVICES

(Application No.:.....)

I.—PARTIES CONCERNED

(1) Investment company name:.....

(2) Contact information (*address, telephone, e-mail*):.....

.....

.....

(3)The information provided remains valid until:.....

(4) (*Full legal name of the regulated entity*) is authorized and supervised by the Registrar of Financial Institutions (see more information below).

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(5) Agent / Intermediary/Broker Details: (*name, address, telephone, e-mail*):.....

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(6) Contact Information (*address, telephone, e-mail*):.....

.....

.....

(7) Applicant's name:.....

II. KEY TERMS—Review carefully before buying a policy

A.—INVESTMENT DETAILS

1. Type of Investment: .....

.....

2. Excess charges or costs:.....

3. Consequences of termination of contract before maturity of investment:.....

.....

.....

4. Replacement cost of investment certificate:.....

.....

5. Tax implications on return:.....

B.—COST OF INVESTMENT PRODUCT AND SERVICE

6. Minimum Investment amount payable (monthly/quarterly/lump sum):.....

7. Other Fees and Charges (*Administration Costs*)

.....

8. Benefits associated with the investment :.....

.....

9. Estimated total sum after maturity:.....

10. Basis of making investment decision :.....

.....

C.—INVESTMENT SCHEDULE

11. Duration:.....

12. Maturity Date:.....

13. Period to receive investment certificate:.....

14. Are there any Riders to this investment (Clearly state the additional benefits and products on the policy) Yes or No.

.....

15. Exclusions:.....

16. Penalties for termination of the policy prior to maturity:.....

.....

17. conditions and costs of transferring ownership of investment

.....

III.—STATUTORY RIGHTS

18. Payment of investment benefits: Your investment benefits payment is expected to be made .....days from the date of maturity

19. Customer Recourse: Complaints or comments? Please call (.....), email (.....) or write to (.....)

20. Redress Mechanism: In case of a dispute you may lodge a complaint with the Registrar or file a lawsuit. To contact the Registrar, call: 01 820299 or Toll Free: 80008444, email: complaints-handling@rbm.mw, mail: The Consumer Protection Unit, Reserve Bank of Malawi, P O Box 565, Blantyre, or visit: http://www.rbm.mw.

21. Right to Certificate: You have the right to obtain a certificate of the proposed investment free of any charge.

22. Termination of policy: You may terminate the policy in the following manner

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IV.—CLAIMS PROCESSING

D.—BY MEMBER

Amount claimable MKW:.....

Payment options available MKW:.....

E.—THIRD PARTY

Total amount of benefits MKW:.....

F.—DOCUMENTATION

Documents required:.....

.....

CERTIFIED CORRECT:

....

Signature of investment provider representative *Date*

I ACKNOWLEDGE THAT I RECEIVE AND UNDERSTAND THIS STATEMENT PRIOR TO PURCHASE OF THE POLICY/ANNUITY:

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Signature of investor *Date*

....

Signature of broker/agent (*if applicable*) *Date*

Dated this 29th day of June 2018

D. KABAMBE, PhD
Registrar of Financial Institutions

(FILE NO. FIN/PFSPD/03/04)