FINANCIAL SERVICES ACT

(CAP 44:05)

FINANCIAL SERVICES (INTERNAL COMPLAINTS HANDLING REQUIREMENTS) DIRECTIVE, 2016

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IN EXERCISE of powers conferred by section 34 (2) of the Financial Services Act, I CHARLES S. R. CHUKA, Registrar of Financial Institutions, issue this Directive—

PART I—PRELIMINARY

Short title

1. This Directive may be cited as the Financial Services (Complaints Handling Requirements) Directive, 2016.

Interpretation

2.—(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;

'durable medium' means any instrument which enables a financial consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored;

'financial intermediary' means any third person, engaged in marketing, offering, or selling of financial products or services provided by a financial institution, and in preparation, conclusion and administration of agreements and contractual rights related to those products or services;

'internal complaints handling scheme' means a set of detailed rules on handling financial consumer complaints, including rules on lodging, recording, assessing and answering complaints;

(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.

(3)This Directive shall apply in addition to other financial services directives.

PART II—OBJECTIVES

Objectives

3. The objectives of this Directive are to—

(*a*) define minimum requirements on financial complaints management policies of a financial institution;

(*b*) ensure that a financial institution has in place an avenue for resolving complaints lodged by a financial consumer;

(*c*) promote transparency in the process of handling complaints lodged by a financial consumer in order to improve service delivery;

(*d*) ensure that financial institutions timely resolve complaints lodged by a financial consumer and report data on complaints received and handed over to the Registrar in the form and manner prescribed by this Directive.

PART III—BOARD OVERSIGHT

Board oversight

4.—(1) A board of a financial institution shall—

(*a*) document and implement a complaint management policy to ensure that complaints are timely, effectively and amicably resolved;

(*b*) oversee implementation of the requirements set by this Directive;

(*c*) set aside sufficient resources to support the implementation of the complaint handling policy; and

(*d*) review and approve the policy, at least once a year, and where necessary, adapt the policy to new circumstances and new findings.

(2) The chief executive officer of a financial institution shall be responsible for the implementation of a complaints handling policy.

PART IV — INTERNAL COMPLAINTS HANDLING SCHEME

General requirements

5.—(1) A financial institution shall avail the complaints management policy to all members of staff.

(2) The complaint management policy shall, at a minimum, cover the following—

(*a*) procedure for handling complaints lodged by a financial consumer;

(*b*) complaints recording and assessment procedure;

(*c*) internal reporting procedure;

(*d*) training of staff on complaints handling to ensure quick and effective resolution of complaints lodged by a financial consumer;

(*e*) mechanisms to share information about complaints and the

complaints handling process with all relevant members of staff; and

(*f*) management of conflict of interests arising from complaints handling.

Complaints Handling Officer

6.—Management of a financial institution shall establish and maintain a complaints handling function managed by a designated officer which shall enable—

(*a*) complaints to be timely investigated and resolved; and

(*b*) identification and mitigation of possible conflicts of interest.

Consistent approach

7.—(1) A financial institution shall ensure that a process of handling complaints is consistent, fair and adheres to the principles of natural justice.

(2)The internal audit of a financial institution, where applicable, shall, at least once in a year, verify that complaints lodged by financial consumers are handled in line with sub paragraph (1).

Lodging complaints

8.—(1) A financial institution shall ensure that the process for lodging a complaint by a financial consumer is reasonable and conducive to the consumer.

(2) A financial institution shall have in place a number of options of receiving complaints including any of the following—

(*a*) postal mail;

(*b*) facsimile;

(*c*) telephone;

(*d*) electronic mail; or

(*e*) in person.

(3) A financial institution shall not impose any restrictions on how, or, in which form a complaint may be lodged.

(4) Lodging of complaints by a financial consumer shall not be subject to any fee, charge or condition.

(5) A financial institution may establish a toll-free line to receive complaints lodged by a financial consumer.

(6) A financial institution shall receive complaints lodged by a financial consumer, at any of its premises or through an approved financial agent recognized in the financial consumer complaints handling policy.

(7) A financial institution shall be responsible for resolving all complaints lodged through an agent or an intermediary by a financial consumer.

(8) In order to facilitate lodging of a complaint, a financial institution shall ensure that a complaint lodged by a financial consumer contains minimum information as stipulated in the template provided in the First Schedule to this Directive.

Language

9.—A financial institution shall ensure that a complainant lodged by a financial consumer is lodged in the preferred language of the financial

consumer.

Complaints record

10.—(1) A financial institution shall establish and maintain an internal complaints database or register in which all complaints received from a financial consumer shall be recorded.

(2) At a minimum, the register shall contain the following information—

(*a*) the full name of the complainant;

(*b*) the complainant's contact information;

(*c*) a unique tracking number;

(*d*) a summary of the complaint including a reference to a product or service agreement where applicable;

(*e*) a list of documents provided by the complainant;

(*f*) the date when the complaint was lodged;

(*g*) the name and contact information (telephone, postal address or electronic mail address) of an employee of the financial institution responsible for handling the complaint; and

(*h*) the expected or actual date of resolution of the complaint.

(3) A financial institution shall ensure that all records of a complaint are accessible by the Registrar or his appointed agent.

Complaint handling and time limits

11.—(1) A financial institution shall ensure that complaints are handled, resolved and communicated to a financial consumer, within thirty working days or unless otherwise approved by the Registrar.

(2) A financial institution shall, upon receiving a complaint from a financial consumer, provide the complainant with a prompt written acknowledgment which shall include the duration of resolving the complaint as prescribed in sub-paragraph (1).

(3) A financial institution shall carry out steps to handle the complaint as follows—

(*a*) investigate the complaint promptly and impartially;

(*b*) assess fairly and promptly the subject matter of the complaint by the financial consumer, whether the complaint should be upheld and what remedial action or redress may be appropriate;

(*c*) offer an appropriate redress or remedial action;

(*d*) explain to the complainant, in a way that is fair, clear and not misleading, its assessment of the complaint, its decision and any other remedial action or redress made available; and

(*e*) comply with any offer of remedial action or redress which the complainant accepts.

Complaint resolution

12.—(1) A complaint by a financial consumer shall be considered resolved where the financial consumer has made an acceptance in writing to a written response from the financial institution resolving the financial consumer's complaint.

(2) A financial institution shall provide adequate and timely compensation for damages suffered by a financial consumer which, pursuant to the provisions of this directive or any other financial services laws, are attributed to the financial institution or a supplier of financial services.

(3) In the event that the financial consumer is not satisfied with the resolution, the financial institution shall advise the financial consumer to lodge the complaint with the Registrar.

(4) The Registrar's resolution for a financial consumer's complaint shall be binding.

Information to a financial consumer

13.—A financial institution and an intermediary shall clearly inform a financial consumer of the modalities of filing a complaint.

PART V—REGULATORY REPORTING AND COOPERATION WITH REGISTRAR

Reporting

14.—A financial institution shall report to the Registrar, on quarterly basis, information about complaints, as prescribed by the Registrar, from time to time.

PART VI—ENFORCEMENT

Monetary penalties

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

(*a*) a maximum fine of K50,000,000 to financial institutions; and

(*b*) a maximum fine of K10,000,000 to natural persons who are members of the board of directors or management of a financial institution.

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

16. In addition to the monetary penalty in sub-paragraph 15 (1), the Registrar may impose directions and administrative penalties as provided for under the Financial Services Act and other financial services laws.

FIRST SCHEDULE (par. 8)

COMPLAINTS LODGING TEMPLATE

A financial institution may issue this complaint lodging form for use by complainants.

I. For the Official Use Only—Leave Blank

(*a*) Tracking No.	(*b*) Date of Receipt	(*c*) Time Extension / Appeals
(*d*) Responsible Staff	(*e*) Contact Information	(*f*) List of attachments
(*g*) Date of Resolution	(*h*) Outcome	

II. Complainant

1. Names (in full): .....2. Sex: Male Female

3. Address:.....

4. Telephone number/Mobile number: .....

5. E-mail: .....

6. Name of financial product / Contract No.: .....

7. Describe in detail and accurately the nature of your complaint and attach documents related to your complaint (use extra pages if needed):.....

.....

.....

III. If applicable, details of a person complaining on behalf of the complainant,

8. Names (in full): .....9. Sex: Male Female

10. Address:.....

11. Telephone number/Mobile number: .....

12. E-mail: .....

IV. Declaration and signature: .....

13. Please read and sign this declaration

- I confirm that all the information I have given is true and accurate to the best of my knowledge.

14. Other information.....

- We will review your complaint within five (5) working days and inform you within ten (10) working days about our evaluation and proposed solution.
- If the review of your complaint requires more time, we will inform you when we estimate your complaint will be resolved. The maximum time for resolution should not exceed thirty (30) working days. For more information about our complaints handling procedure please call [TBD], ask at our branches or visit our website www.[TBD].mw.

15. Date: ..... 16. Signature .....

SECOND SCHEDULE (par.)

COMPLAINTS DATABASE / REGISTER TEMPLATE

The content of the complaints database or register and the cover sheet for each complaint shall meet the minimum requirements established below—

Category = categorization of information recorded

Level 1 = minimum information required

Level 2 = specification of information provided in Level 1

MINIMUM REQUIREMENT	DETAILS	
Cover sheet	Tracking number Date of receipt Time extension with reason (if applicable) Complainant's full name & contact info Product / service Type / Issue and brief summary of the complaint List of documents enclosed Assigned staff (name, contact) Appeals (if applicable) Outcome and date of complaint closed	
Means of complaint lodging	Means of filing a Complaint	Mail
		Email
		Telephone
		In person
		Other
	Date of receipt	
	Further communication	Dates
		Means
		Content
	Extension time	Days
		Reason
		Approved by
Complainant details	Full name	
	Date of birth / ID number (Optional)	
	Contact information	
		Address
		Phone
		E—mail
	Category of the complainant	Retail consumer (natural person) Small business Other
For complaints submitted by an intermediary	Name of the intermediary	
	Contact information	
	Intermediary identification number	

Complaint type / issue		
	Issue* Nature of the complaint *Based on the portfolio of offered products services, each financial institution shall structure this section of the database accordingly—in the right, examples are provided.	instability of financial institution
		Misleading advertising and sales practices
		Fees charged for products
		Product/service not granted
		Refusal to provide services
		Behavior of internal employees
		Behavior of an intermediary
		Other communication with the financial institution
		Agreement or contract terms and conditions
		Non or lack of disclosure
		Unsuitable product / service / advice
		Penalties charged
		ATM problems
		Problem with card — payment in a store
		Problem with card — payment online
		Other problems with payment services
		Premiums charged for insurance products
		Unpaid claims
		Deposit insurance

		Deposit interest rates
		Interest charged for loans
		Collection practices
		Behavior of claims handling staff (insurance)
		Processing of a claim (insurance)
		Value of the claim (insurance)
		Other
Attachments	Documents enclosed to complaint	
	Documents added into file	
Date of resolution/ complaint closed	Extension time	Days
		Reason
	Date of resolution/complaint closed	
Outcome/Resolution		
	Compensation provided	Partial
		Full
	Apology	
	Other remedy/action	
Date of resolution/ complaint closed	Date of resolution/complaint closed	

THIRD SCHEDULE (par.)

CONTACT INFORMATION

(1) The semiannual / quarterly report shall be sent to the Registrar no later than 31st January and 31st July for the report covering the previous period. The contact information for the reporting pursuant to Paragraph 19, sub-paragraphs 1 and 2 is: [TBD]

(2) The contact information for the reporting pursuant to paragraph 20, sub-paragraphs 2 and 3 is: [TBD]

Made this day of , 2016

C. S. R. CHUKA
Registrar of Financial Institutions

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