The Malawi Gazette Supplement, dated 30th July, 2010 containing Acts **No. 5C**

MALAWI GOVERNMENT

(Published 30th July, 2010)

Act

No. 20 of 2010

I assent

PROF. BINGU WA MUTHARIKA
PRESIDENT

29TH JULY, 2010

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SCHEDULE

An Act to provide for the regulation of capital and securities markets, and persons transacting business in or through capital and securities markets; to promote internal and external confidence in the integrity and proper functioning of the capital and securities markets; and to make provision for matters connected therewith or incidental thereto.

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Securities Act, 2010, and shall come into operation on such date as the Minister shall appoint by notice published in the *Gazette*.

Interpretation

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

"associated person" means any person who is—

(*a*) an officer or director of a broker, dealer, investment adviser, portfolio manager or operator of a collective investment scheme;

(*b*) any person controlling, controlled by, or under common control with, a broker, dealer, investment adviser or portfolio manager; or

(*c*) any securities representative or other employee of a broker, dealer, investment adviser or portfolio manager, other than employees engaged solely in clerical or ministerial functions for such broker, dealer, investment adviser or portfolio manager;

"beneficial owner" means a person who, directly or indirectly, possesses or shares investment or voting power with respect to a security;

"broker" means any person engaged in the business of buying or selling securities for the account of others, but does not include an employee acting within the scope of his duties;

"collective investment scheme" means any arrangement made with respect to securities or property of any description under which—

(*a*) provision is made for participation by persons taking part in the arrangement to participate in profits or income and capital gains arising from the acquisition, holding, management or disposal of property, excluding securities held in majority owned subsidiaries which themselves are not collective investment schemes;

(*b*) property which is the subject of the arrangement is owned by a body corporate or held in trust by a body corporate; and

(*c*) the interests of persons participating in the arrangement are represented by shares of the body corporate or in the case of a unit trust by units;

"dealer" means any person engaged in the regular business of purchasing and selling securities for his own account, and licensed as such, but does not include an employee acting within the scope of his duties;

"exchange rule" in relation to a stock exchange, means any rule made by a stock exchange that is binding on its members;

"investment adviser" means any person who, for a fee, engages in the business of advising others on the purchase, sale or holding of, or advisability of investing in, securities, and licensed as such, but does not include—

(*a*) any broker or dealer who is licensed under this Act and is engaged in such business solely as an incident to the business of acting as a broker or dealer;

(*b*) any securities representative of a broker, dealer or investment adviser acting within the scope of his duty as such;

(*c*) any bank providing such services exclusively in a capacity as a trustee or other fiduciary;

(*d*) an advocate or accountant whose advice is incidental to his professional activities; or

(*e*) the proprietor or publisher of a newspaper, news-magazine, or business or financial publication of general and regular paid circulation distributed only to subscribers thereto or to purchasers thereof, in relation to any advice with respect to investigations given therein, where—

(i) the proprietor or publisher receives no commission or other consideration for giving or publishing the advice; and

(ii) the giving or publication of that advice is incidental to the conduct of the business of a newspaper proprietor or publisher;

"investment company" means a company that is the owner of property which is the subject of a collective investment scheme;

"issuer" means a person who issues or proposes to issue a security;

"licence" means a licence issued under the Financial Services Act; Act No. 26 of 2010

"licensee" means any broker, dealer, investment adviser or securities representative licensed under this Act or the Financial Services Act; Act No. 26 of 2010

"listed security" means a security which has been admitted to listing by a stock exchange for the purposes of dealing in the security on the exchange;

"open ended investment company" means an investment company whose collective investment scheme which offers for sale on continuous basis or has outstanding any security which is redeemable at the option of the holder.

"portfolio manager" means any person engaged in the management of funds and investment portfolios on behalf of customers as a regular part of his business for remuneration and licensed as such, but does not include—

(*a*) any broker or dealer who is licensed under this Act and is engaged in such business solely as an incident to the business of acting as a broker or dealer;

(*b*) any securities representative of a broker, dealer, investment adviser or portfolio manager acting within the scope of his duty as such; or

(*c*) any bank providing such services exclusively in a capacity as a trustee or other fiduciary;

"registered securities" means securities registered in accordance with Part V;

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

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"registration statement" means the registration statement specified by the Registrar pursuant to section 29;

"securities" means—

(*a*) shares, debentures, stocks, bonds, notes or funds issued by a government or a body corporate;

(*b*) any warrant, right, option or interest, whether described as units or otherwise, in respect of any shares, debentures, stocks, bonds, notes or funds referred to in paragraph;

(*c*) any instrument, including a derivative instrument, contract, profit-sharing agreement, fractional interest, right to subscribe or any instrument commonly known as securities or which are prescribed by the Registrar to be securities for the purposes of this Act;

"securities market intermediaries" means underwriters, transfer secretaries, credit rating agencies and such other persons engaged in business in the securities market whom the Registrar may by directive prescribe;

"securities representative" means any person who is employed as such by a broker, dealer or investment adviser, portfolio manager or an operator of a collective investment scheme and who, depending on his employment—

(*a*) engages in the solicitation, purchase or sale of securities;

(*b*) provides advice or recommendations with respect to transactions in securities; or

(*c*) otherwise deals with members of the public with respect to the purchase or sale of securities;

"share" means a share in the capital of a body corporate, and includes a stock except where a distinction between stock and shares is expressed or implied, and a reference to a number of shares shall be construed as including an amount of stock;

"Stabilization Fund" means the Securities Stabilization Fund established under section 50;

"Stabilization Fund Committee" means the Stabilization Fund Committee established under section 51;

"statutory disqualification" means the disqualification of any person if the person—

(*a*) has been convicted of an offence involving fraud, dishonesty or moral turpitude;

(*b*) is subject to an order or directive, entered by consent or otherwise, of any Malawian or foreign regulatory authority or self-regulatory organization suspending or barring the person from conducting any securities, commodity trading, financial institutions, insurance or pension scheme business; or

(*c*) has associated with any person subject to a statutory disqualification;

"statutory restriction" means the restriction of any person if the person—

(*a*) has been adjudged bankrupt;

(*b*) has been adjudged or found in Malawi or elsewhere to have contravened, or caused the contravention of, any securities, commodities trading, banking, financial services, insurance or pension scheme law;

(*c*) has stipulated or consented to the entry of any order or finding with respect to a contravention described in paragraph (*b*); or

(*d*) has associated with any person subject to a statutory restriction;

"stock exchange" means a market or other place at which, or a facility by means of which—

(*a*) offers to sell or purchase securities are regularly made or accepted;

(*b*) offers or invitations, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell or purchase securities, are regularly made; or

(*c*) information is regularly provided concerning the prices at which, or the consideration for which, particular persons or particular classes of persons propose, or may reasonably be expected, to sell or purchase securities and licensed as such;

"unit trust" means a collective investment scheme which is organized under a declaration of trust or similar instrument and issues units representing an interest in the underlying portfolio of securities.

(2) Subject to subsection (1) and except where a contrary intention appears, expressions used in this Act shall have the same respective meanings as in the Financial Services Act.

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Application Act No. 26 of 2010

3. This Act shall apply, in addition to the Financial Services Act, to all persons conducting securities business except to the extent that such persons are exempted by the Registrar pursuant to his authority under the Financial Services Act.

Act No. 26 of 2010

PART II—POWERS OF THE REGISTRAR

Powers of the Registrar

4. Without limiting the powers of the Registrar under the Financial Services Act, the Registrar shall have the following powers, duties and functions—

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(*a*) to take all available steps to ensure that this Act is complied with;

(*b*) to license and supervise the activities of stock exchanges, brokers, dealers, investment advisers, portfolio managers, collective investment schemes, securities market intermediaries and their respective securities representatives;

(*c*) to approve the constitutions, charters, and articles governing and pertaining to any stock exchange;

(*d*) to issue directives implementing the requirements of this Act;

(*e*) to promote and encourage high standards of investor protection and integrity among persons licensed to operate in the securities market;

(*f*) to promote the operation of a free, orderly, fair, secure and properly informed securities market;

(*g*) to regulate the manner and scope for securities traded on any stock exchange;

(*h*) to take all reasonable steps to safeguard the interest of persons who invest in securities and to suppress illegal, dishonourable and improper practices in relation to dealings in securities, whether on a stock exchange or otherwise;

(*i*) to take all reasonable steps to promote and maintain the integrity of persons under Parts IV and IX and encourage the provision by such persons of balanced and informed advice to their clients and to the public generally;

(*j*) to consider and suggest proposals for the reform of the law relating to the securities industry;

(*k*) to encourage the development of securities markets in Malawi consistent with the purposes and standards of this Act;

(*l*) to promote and develop self-regulation by stock exchanges;

(*m*) to co-operate, by the sharing of information and otherwise, with other regulatory bodies within and without Malawi and such cooperation being either solicited or unsolicited;

(*n*) to exercise and perform such other powers, duties, and functions as may be conferred or imposed upon him by or under this Act or any other financial services law.

Directives relating to stock exchanges Act No. 26 of 2010

5. Without limiting the power of the Registrar under the Financial Services Act to issue directives, the Registrar may issue directives in respect of the following—

(*a*) conduct of business by licensed brokers, dealers, investment advisers, portfolio managers and securities market intermediaries, operators of collective investment schemes and securities representatives;

(*b*) conditions subject to, and the circumstances in which, any stock exchange may permit, supervise and suspend dealings in securities;

(*c*) qualifications for membership of stock exchanges and determination of the maximum number of persons that may be admitted to membership of any stock exchange;

(*d*) type of business that may be carried on, and the services that may be provided by or at a stock exchange;

(*e*) requirements to be met before securities may be listed on a stock exchange;

(*f*) procedure for dealing with applications for the listing of securities on a stock exchange;

(*g*) cancellation or suspension of the listing of any specified securities at any stock exchange if the Registrar considers that such action is necessary to maintain an orderly market;

(*h*) amount of deposit required to be made for the purposes of section 26 and the application of deposits under that section;

(*i*) correction of any errors in any register or record kept under this Act;

(*j*) particulars of any books, accounts, reports or records prepared or maintained for the purposes of this Act;

(*k*) lodgement by persons under this Act of annual financial statements;

(*l*) lodgement of auditors' reports and the information to be contained in such reports;

(*m*) remuneration of any inspector appointed, and the costs of any inspection or audit carried out, for the purposes of this Act;

(*n*) forms to be used for the purposes of this Act, and the manner in which applications are to be made for licences;

(*o*) further defining or clarifying terms used in this Act;

(*p*) insurance by persons licensed under Part IV against negligence or default;

(*q*) the issue of duplicate licences in case of loss or destruction; and

(*r*) any other purpose which furthers the purposes of this Act and is in the public interest.

PART III—STOCK EXCHANGES

Prohibition against operating stock exchange without licence Act No. 26 of 2010

6.—(1) No person shall establish or assist in establishing or maintaining, or hold himself out as providing or maintaining, a stock exchange unless such stock exchange is a stock exchange licensed under the Financial Services Act.

(2) Any person who contravenes this section commits an offence.

Application for stock exchange licence Act No. 26 of 2010

7.—(1) An applicant for a licence to establish and operate a stock exchange shall submit an application in writing in a form prescribed under the Financial Services Act and containing such information as the Registrar may specify.

(2) An application under subsection (1) shall be accompanied by a fee in a form specified by the Registrar.

(3) Upon receipt of an application under subsection (1), the Registrar may grant a licence to the applicant if the Registrar is satisfied that—

(*a*) establishment of the stock exchange is necessary in the public interest having regard to the nature of the securities industry; and

(*b*) the applicant satisfies the requirements set out in the Schedule.

(4) This section does not limit the power of the Registrar to deal with an application for a licence.

Management of stock exchange

8.—(1) The affairs of a stock exchange shall be managed by a board whose members shall comprise those elected or appointed in accordance with articles of association of the stock exchange.

(2) Subject to the provisions of this Act, the board of a stock exchange shall have power to administer the affairs of the stock exchange.

Transitional provisions in respect of licensing of stock exchanges

9.—(1) With effect from the date of commencement of this Act, any existing stock exchange in Malawi shall, subject to subsection (2) and (3), be deemed to be licensed under this Part for a period of six (6) months after the commencement of this Act.

(2) An existing stock exchange in Malawi shall, not later than six months (6) after the commencement of this Act or within such longer period as the Registrar may allow—

(*a*) adopt such rules, regulations and policies and take such other steps as are necessary to ensure that it satisfies the requirements set out in the Schedule; and

(*b*) apply and obtain a licence from the Registrar to function as a stock exchange in accordance with the provisions of section 7.

(3) If a stock exchange fails to take action in accordance with subsection (2) within the time specified by or under subsection (2), the Registrar may—

(*a*) direct the stock exchange to take such action as it sees fit to ensure compliance with subsection (2); or

(*b*) may declare the stock exchange to have ceased to be licensed under this Part.

Renewal of stock exchange licences

10.—(1) A stock exchange may, three (3) months prior to the expiry date of the licence, make an application for renewal of the licence to the Registrar in the form prescribed by the Registrar.

(2) An application under subsection (1) shall be accompanied by a fee in a form prescribed by the Registrar.

(3) Section 6 (3) shall apply, *mutatis mutandis*, to an application for renewal of a licence under this section.

Power of the Registrar to issue directives to stock exchange Act No. 26 of 2010

11.—(1) Without limiting the power of the Registrar under the Financial Services Act to issue a directive to any person, where the Registrar is satisfied that it is in the interest of the investing public to give a directive under this section, or that it is appropriate to give such a directive for the protection of investors or for the proper regulation of a stock exchange, the Registrar may give a directive to a stock exchange with respect to—

(*a*) trading on the stock exchange generally or with respect to trading of a particular security listed on the stock exchange;

(*b*) the manner in which the stock exchange carries on any aspect of its business; or

(*c*) any other matter that the Registrar considers necessary for the effective administration of this Act.

Power of the Registrar to close stock exchange

12.—(1) The Registrar may, on the grounds specified in subsection (2), by directive, close a stock exchange for the transaction of dealings in securities for such period as may be specified in the directive.

(2) A directive under subsection (1) may only be given if the Registrar, after consultation with the Minister, is satisfied that the orderly transaction of business on the stock exchange is being or is likely to be prevented as a result of—

(*a*) a natural disaster that has occurred in Malawi;

(*b*) an economic or financial crisis, whether in Malawi or elsewhere, or other like circumstance; or

(*c*) failure by the stock exchange to meet the requirement set forth in the Schedule.

(3) A broker or dealer who deals in securities at or through a stock exchange while a directive is in force under this section with respect to the stock exchange commits an offence.

(4) The Registrar may take such action specified in this Act or the Financial Services Act as he considers necessary to ensure compliance with a directive under this section and, without limiting the generality of the foregoing, may cause the premises of the stock exchange affected by the directive to be locked and secured. Act No. 26 of 2010

Rules of stock exchange

13.—(1) Every stock exchange shall file with the Registrar, in a manner prescribed by the Registrar, copies of any proposed rule, or proposed change in an existing rule, of the stock exchange, with a written statement explaining the proposed rule or rule change, and the basis therefor.

(2) The Registrar may seek public comment on the proposed rule or rule change through publication in the *Gazette* or other means of general communication, if the Registrar determines that public comment will aid the review and evaluation of the proposed rule or rule change.

(3) Any proposed rule or rule change filed pursuant to subsection (1) shall become effective upon expiration of sixty (60) days after receipt thereof by the Registrar, unless the Registrar—

(*a*) extends the period of time for consideration of the proposed rule or rule change, for a further period not exceeding sixty (60) days;

(*b*) by order, declares the proposed rule or rule change to be effective prior to the expiration of the sixty (60) day period or extension thereof; or

(*c*) by order, disapproves the proposed rule or rule change.

(4) The Registrar may, upon his own motion, by a notice published in the *Gazette* or by order, add to, amend, delete or nullify any rules of a licensed stock exchange as the Registrar determines is necessary and appropriate for the protection of investors, the proper administration of this Act, or the fair administration of the activities of the stock exchange.

Stock exchange to assist the Registrar

14. A stock exchange shall provide such assistance to the Registrar as the Registrar may reasonably require for the performance of his functions and duties, including the furnishing of such returns and information relating to the business of the stock exchange or in respect of dealings in securities or any other specified information as the Registrar may require for the proper administration of this Act.

Enforcement of rules of stock exchange

15.—(1) A stock exchange shall, in relation to its members and their associated persons, enforce compliance with the requirements of this Act, and the rules of the stock exchange, by bringing appropriate action against any such person who has engaged in acts or practices, or omissions thereof, constituting contraventions of this Act, or the rules of the stock exchange.

(2) If the stock exchange determines that a member or associated person of a member has contravened or failed to comply the requirements of this Act or the rules of the exchange, the stock exchange may—

(*a*) reprimand the person who has committed the contravention;

(*b*) limit, in a manner appropriate to the nature and gravity of the contravention, the activities of the person;

(*c*) suspend the person from membership of the stock exchange or, in the case of a securities representative, from being associated with a member of the stock exchange; or

(*d*) expel or bar the person from such membership or such association with a member.

(3) All actions taken by a stock exchange under this section shall be instituted and conducted pursuant to rules adopted by the stock exchange which shall—

(*a*) afford the person charged with a contravention with the right to written notification of the charges and particulars;

(*b*) afford the person charged with a contravention with the right to present his views and defend himself; and

(*c*) afford any person found to have committed a contravention with written notice of the findings, conclusions and sanctions with respect thereto.

(4) If a stock exchange fails in any case to take action under this section to enforce compliance with this Act, the Registrar may, by order, direct the stock exchange to take such action as will ensure compliance.

(5) Any failure by a stock exchange to comply with any order issued under subsection (4) shall constitute a contravention of this Act.

(6) Nothing in this section shall prevent or preclude the Registrar from pursuing a legal right or remedy, or taking any regulatory or remedial action permitted under this Act, with respect to a stock

exchange, any member thereof or any person associated with such a member.

Prohibition against use of certain titles

16. Any person, other than a licensed stock exchange, who takes or uses, or has attached to or exhibited at any place—

(*a*) the title "securities exchange" or "stock exchange"; or

(*b*) any title which so closely resembles the title "securities exchange" or "stock exchange" as to be likely to be deceptive,

commits an offence.

PART IV—LICENSING OF BROKERS, DEALERS, INVESTMENT ADVISERS, PORTFOLIO MANAGERS, SECURITIES REPRESENTATIVES AND SECURITIES MARKET INTERMEDIARIES

Prohibition against carrying on business as a broker, etc., without licence

17.—(1) No person, other than the holder of a broker's licence, dealer's licence, investment adviser's licence, portfolio manager's licence or securities market intermediary's licence, shall—

(*a*) carry on business as a broker, dealer, investment adviser, portfolio manager or securities market intermediary; or

(*b*) hold himself out as carrying on business as a broker, dealer, investment adviser, portfolio manager or securities market intermediary.

(2) Any person who contravenes subsection (1) commits an offence.

Prohibition against acting as a securities representative without licence

18.—(1) No person shall be employed as, or act as, a securities representative unless he is the holder of a securities representative's licence.

(2) Any person who contravenes subsection (1) commits an offence.

(3) Subject to section 17, a securities representative's licence shall be granted only on the condition that the licensee is an employee of a broker, dealer, an investment adviser, a portfolio manager, or an operator of a collective investment scheme.

Applications for licences Act No. 26 of 2010

19.—(1) An applicant for a licence under this Part shall submit an application in writing in a form prescribed under the Financial Services Act and containing such information as the Registrar may specify.

(2) Any application under subsection (1) shall be accompanied by a fee in a form prescribed by the Registrar.

(3) Unless specifically exempted by order of the Registrar as being consistent with the public interest and the protection of investors, every licensed broker or dealer shall, within sixty (60) days or such longer period not exceeding an additional ninety (90) days, as the Registrar may allow, of favourable action on an application reviewed under this section, become a member of a stock exchange.

Cap. 46:06

(4) Any person who holds a licence issued under the Capital Market Development Act to act as a broker, dealer, investment adviser or portfolio manager shall be deemed, on and as of the date of coming into force of this Act, to be properly licensed under this Act:

Provided that the person shall thereafter, within one (1) year, from the date of commencement of this Act, or such longer period not exceeding six (6) months as the Registrar may by order prescribe, bring himself into compliance with the requirements of the Act.

(5) This section shall not prevent the Registrar from varying the licence of a person described in subsection (4).

(6) Any person described in subsection (4) who fails to bring himself into compliance with this Act within the time prescribed in subsection (4) shall be in contravention of the requirements of this

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Act and shall be subject to actions or administrative penalties prescribed by this Act or under the Financial Services Act with respect to such contravention.

Refusal of licence

20.—(1) Without limiting the grounds on which the Registrar may, under the Financial Services Act, refuse to grant a licence under this Part, the Registrar may refuse to grant a licence on the grounds that—

(*a*) the applicant has not provided the Registrar with such information relating to himself or any person employed by or associated with him, or to any circumstance likely to affect is method of conducting business, as may be prescribed;

(*b*) in the case of an individual, the applicant—

(i) has become incapable, mentally or physically, of performing the activities to which the licence relates; or

(ii) the person does not meet the fit and proper test;

(*c*) the applicant is subject to a statutory disqualification;

(*d*) the applicant is subject to a statutory restriction, and it appears to the Registrar that, because of such restriction, the applicant is not a fit and proper person to be licensed under this Act;

(*e*) it appears to the Registrar that the applicant is unwilling or unable to comply with the requirements of this Act;

(*f*) the Registrar has reason to believe that the applicant will not perform the duties of the holder of the licence efficiently, honestly and fairly;

(*g*) the applicant is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed; or

(*h*) in the case of an individual, where the application is required to be made by a corporate body.

(2) The Registrar shall not grant a securities representative's licence to a company or to an individual who is under twenty one years (21) of age or who does not meet the fit and proper test.

Validity period of licences

21. Unless sooner revoked, suspended or surrendered, a licence issued this Part shall remain in force for the period specified in the licence.

Revocation or suspension of licences

22.—(1) Where any person licensed under this Part—

(*a*) being an individual, dies; or

(*b*) being a company, is dissolved, the licence of that person shall be deemed revoked without further action by the Registrar.

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(2) Without limiting the grounds on which the Registrar may suspend a licence under the Financial Services Act, the Registrar may suspend for a period of up to one (1) year, or revoke a licence of a broker, dealer or investment adviser, portfolio manager, securities market intermediary or a securities representative, if such person—

(*a*) becomes mentally or physically incapable of performing the activities to which the licence relates;

(*b*) becomes bankrupt, or compounds with his creditors or makes an assignment of his estate for their benefit;

(*c*) becomes subject to, or engages in any act, practice or course of conduct which would result in a statutory disqualification or statutory restriction;

(*d*) is found or adjudged to have contravened, or caused the contravention of this Act;

(*e*) is or has been guilty of any misconduct in relation to the conduct of his business, or the pursuit of the occupation with reference to which he is licensed or, by reason of any other

circumstance, is no longer a fit and proper person to hold a licence under this Part;

(*f*) is unable to meet such applicable financial, solvency and liquidity requirements or other criteria as may be prescribed;

(*g*) ceases to carry on business in Malawi; or

(*h*) being the holder of a securities representative's licence, the licence of the broker, dealer, investment adviser, portfolio manager or operator of a collective investment scheme with whom he is associated is revoked or suspended.

(3) For purposes of subsection (2) (*e*), "misconduct" means—

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(*a*) any contravention of, or failure to comply with, the requirements of this Act or the Financial Services Act with respect to licensed persons;

(*b*) any failure to observe the terms and conditions of a licence; or

(*c*) any act or omission relating to the business or occupation of a licensed person which is, or is likely to be, prejudicial to the interests of members of the investing public.

(4) Any agreement, transaction or arrangement relating to a transaction in securities entered into by a person whose licence has been suspended or revoked, after the suspension or revocation of the licence, shall be voidable at the election of the person with whom such agreement transaction or arrangement was entered into.

(5) Except as provided under subsection (4), the suspension or revocation of a licence issued under this Part shall not affect any right, obligation or liability arising under any agreement, transaction or arrangement described in subsection (4), or any agreement, transaction or arrangement entered into before the suspension or revocation of a licence under this Part.

(6) A person whose licence is revoked under this section may not reapply to be licensed under this Part in any capacity until the expiration of at least twelve (12) months from the date of the revocation.

Records to be kept by licensees

23.—(1) A person who is licensed under this Part shall maintain a record, in the prescribed form, of the publicly traded securities of which he is the beneficial owner.

(2) Particulars required by the form prescribed under subsection (1) shall be entered in the record within fourteen (14) days of the acquisition of the beneficial ownership by the licensee.

(3) Where there is a change in the beneficial ownership of securities by a person licensed under this Part, he shall enter in the record, within fourteen (14) days after the date of the change, full particulars of the change, including the date of the change and the circumstances by reason of which that change has occurred.

(4) For purposes of subsection (3), where a person acquires or disposes of securities, there shall be deemed to be a change in the beneficial ownership of the person in the securities concerned.

(5) A person who fails to keep a record as required by this section commits an offence.

Information to be supplied by licensees

24.—(1) Every applicant for a licence under this Part shall, together with his application, give notice to the Registrar in the prescribed form containing such particulars as are prescribed, including the place at which he will keep the required record of his beneficial ownership of securities.

(2) A person who ceases to carry on the business authorized by a licence under this Part shall, within fourteen (14) days of his so ceasing to carry on business, give notice of the fact to the Registrar.

(3) Every person licensed under this Part shall forthwith, in writing, notify the Registrar of any change which, while his licence is in force, may occur—

(*a*) in the address in Malawi at which he carries on the business to which the licence relates; or

(*b*) in any information supplied or in connection with his application for his licence, being information prescribed.

(4) If at any time while a company is licensed under this Part, any person becomes or ceases to be director or officer of the company, the company shall, within seven (7) days after the event, notify the Registrar in writing of the name and address of the person.

(5) The Registrar may, by directives made under this Act, require a person licensed under this Part to furnish the Registrar with additional information by way of periodic reports or otherwise.

(6) A person who neglects or fails to give any information as required by this section commits an offence.

(7) If a company neglects or fails to give any information as required by subsection (6), then in addition to the offence in subsection (6), the director or officer concerned commits an offence.

Renewal of Licence

25.—(1) A licensed broker or dealer, investment adviser, portfolio manager, securities representative and securities market intermediary may, two (2) months prior to the expiry of the licence make an application for renewal of the licence, to the Registrar in a form prescribed by the Registrar under the Financial Services Act.

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(2) An application under subsection (1) shall be accompanied by a fee in a form specified by the Registrar.

Deposits by brokers, etc

26.—(1) Every licensed broker, dealer and securities market intermediary shall deposit with the Registrar or a licensed stock exchange such amount as may be prescribed.

(2) Any licensed broker, dealer, investment adviser, portfolio manager or securities market intermediary that neglects or fails to comply with subsection (1), or is in arrears with respect to any deposit required under subsection (1), shall be liable to pay interest on the amount of the outstanding deposit at such rate as the Registrar may by directive prescribe.

(3) Any deposit or interest payable under this section shall be a debt due to the Registrar and may be recovered by a suit in any court of competent jurisdiction.

PART V—REGISTRATION OF SECURITIES

Securities to be registered

27.—(1) If a registration statement in the prescribed form relating to a security, signed by the issuer of the security or its representative and accompanied by the prescribed fee, has been filed with and approved by the Registrar, the Registrar may register the security.

(2) If—

(*a*) any security of a public company is publicly traded, or directly or indirectly promoted or advertised or offered for sale to the public; and

(*b*) the security has not been registered under this section, and is not exempted from the requirements of this section by the further provisions of this section, the issuer of the security commits an offence.

(3) For the purposes of this section, a security shall be deemed as being publicly traded if such security is traded on a stock exchange in Malawi.

(4) This section shall not apply to—

(*a*) any securities issued by the Government of Malawi or the Reserve Bank of Malawi;

(*b*) any security which is listed on a stock exchange in Malawi on the date of commencement of this Act; or

(*c*) any security which the Registrar has determined to be exempted from the requirements of this section, if the granting of such exemption is consistent with the purposes of this Act and the protection of investors.

Prospectus

28.—(1) No person shall sell, offer to sell or enter into a contract to sell any security required to be registered under section 27 unless such sale, offer or contract is preceded or accompanied by a prospectus containing the information required to be contained therein under section 168 of the Companies Act. Cap. 46:03

(2) This section shall not apply to any directly negotiated private transaction with any person—

(*a*) who possesses such knowledge and experience in financial and investment matters as to be able to assess the merits and risks of such security; and

(*b*) to whom has been provided such information concerning the security and its issuer as the person or his securities representative reasonably may have requested.

Registration statement

29.—(1) The Registrar may, by written notice or directive, specify the content of any registration statement required under section 27.

(2) A security which is in effect under section 27 may, by order of the Registrar, be suspended from effectiveness if it appears to the Registrar, upon his own motion or upon petition by any person, that any registration statement or prospectus with respect to such security—

(*a*) is false or misleading in any material respect;

(*b*) contains any untrue statement of a material fact; or

(*c*) fails to comply in any material respect with the provisions of this Act or section 168 of the Companies Act. Cap. 46:03

(3) The registration of any security which is suspended from effectiveness by the Registrar under subsection (2) shall, for purposes of section 27, not be in effect, and the issuer of the security commits an offence.

Reports of issuers

30.—(1) Any issuer of a security in respect of which a registration statement is in effect under section 28 shall—

(*a*) file with the Registrar annual, quarterly or current reports as may be required by the Registrar in such manner and containing such information as the Registrar may specify;

(*b*) simultaneously file with any stock exchange on which such securities are traded the reports specified in paragraph (*a*); and

(*c*) disseminate to shareholders, within ten (10) business days after the filing with the Registrar thereof, the reports specified in paragraph (*a*).

(2) Any issuer of a security which is registered under section 27 may make written application to de-register the security on the ground that it no longer is, or no longer should be deemed, a publicly-traded security and shall, as part of its application, state all facts supporting the application.

(3) The Registrar may by order de-register a security which is the subject of an application under subsection (2) if the Registrar finds that the facts stated in the application, or other facts known to the Registrar, support the application and that the de-registration of the security is otherwise in the public interest.

Reporting of information by issuer

31.—(1) An issuer of any security registered under section 27 shall inform and keep the public informed, of all matters which affect the value of the security immediately upon their becoming known to the directors of the issuer, by placing an advertisement in a newspaper of general circulation and by reporting to the Registrar and to any stock exchange on which the securities are listed.

(2) The Registrar may prescribe further requirements to be met by the issuers of registered securities under subsection (1).

(3) An issuer of securities that neglects or fails to comply with this section or regulations made or directives issued for the purposes of this section commits an offence.

Acquisition of beneficial ownership of publicly-traded securities

32.—(1) Any person who acquires beneficial ownership of five per cent (5%) or more of any class of equity security which is publicly-traded, or issued by an issuer which is the issuer of a publicly-traded security, shall report—

(*a*) the identity, residence, background and ownership of the acquiring person; and

(*b*) the amount, purpose and details of such acquisition,

to the Registrar and any stock exchange where the security, or the equity securities of the issuer, is or are publicly traded, within five (5) business days after the acquisition.

(2) The Registrar may, by notice published in the *Gazette*, exempt from the application of this section, any transaction or classes of transactions which the Registrar determines are of a nature or kind

which are not effected for the purpose of controlling or influencing or changing the control of any issue or are otherwise consistent with the purposes of this Act and the protection of investors.

Regulation of proxy solicitation and tender offers Act No. 26 of 2010

33.—(1) Without limiting the powers of the Registrar under the Financial Services Act to issue directives, the Registrar may prescribe the manner, form, and content of any solicitation by any issuer of any proxy, or consent or authorization in respect of any security which is publicly-traded or units issued by any collective investment scheme approved under Part IX.

(2) The Registrar may prescribe conditions governing the making of tender offers for, or requests or invitation for tenders of, any class of publicly-traded security, including requirements governing—

(*a*) the manner and timing of tender offers or requests for tenders; and

(*b*) the form and content of any statement with respect to a tender offer or request for tenders, and similar matters.

(3) No person shall—

(*a*) make any untrue statement of a material fact or omit to state any material fact, necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(*b*) engage in any fraudulent, deceptive or manipulative acts or practices, in connection with any solicitation of any proxy or consent, or any tender offer, request or invitation for tender, with respect to a publicly-traded security issued by a collective investment scheme authorised or security issued by a collective investment scheme approved under Part IX.

(4) Any person who contravenes subsection (3) commits an offence.

Compliance with the Companies Act Cap. 46:03

34.—(1) Unless otherwise specified in this Act, the requirements of Part IX of the Companies Act shall apply to the offer and sale of any security under this Act.

(2) Nothing in this Part shall relieve any issuer or other person from its obligation to comply with any requirement of the Companies Act, nor shall any issuer or other person be relieved of any liability or penalty provided in the Companies Act, except where this Act specifically provides otherwise. Cap. 46:03

(3) In the case of any conflict or inconsistency between this Act and the Companies Act, the requirements of this Act shall govern. Cap. 46:03

PART VI—CONDUCT OF SECURITIES BUSINESS

Unlawful transactions

35.—(1) No licensed broker or dealer who is a member of a stock exchange shall effect any transaction in any security which is listed or traded on the listed stock exchange, except in compliance with directives prescribed by the Registrar or rules of such stock exchange.

(2) Any broker or dealer who contravenes this section commits an offence.

Capital and financial requirements

36.—(1) Every broker, dealer, investment adviser, portfolio manager, securities market intermediary, operator of a collective investment scheme and any other person licensed under this Act shall maintain, at all times, such capital, liquid assets and reserves in such manner and in such amounts as the Registrar may, specify.

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(2) Without derogation from the generality of subsection (1) and without limiting the power of the Registrar under the Financial Services Act to issue directives, the Registrar may issue directives pertaining to capital, liquid assets and reserves requirements under subsection (1) which are absolute or which vary according to facts and circumstances, or different classes of licensed brokers, dealers, investment advisers, portfolio managers, securities market intermediaries, operators of collective investment schemes or any other licensees taking into account—

(*a*) the character and extent of the business in which the licensee is engaged;

(*b*) whether the licensee holds or maintains custody of customer funds or securities;

(*c*) whether the licensee engages in the clearance and settlement of securities transactions;

(*d*) the types of assets, liabilities and financial resources of the licensee; and

(*e*) whether the licensee is an external licensee or conducts business outside of Malawi.

(3) Every licensed broker, dealer, investment adviser, portfolio manager, securities market intermediary and any other person who holds or maintains custody of customer funds or securities shall comply with directives as may be specified by the Registrar pertaining to—

(*a*) the safekeeping of customer funds and securities;

(*b*) the separation of the funds and securities from those of the licensee and other customers;

(*c*) the lending or pledging of customer funds and securities;

(*d*) the prompt transmission of customer funds and securities; and

(*e*) the form and content of books records and accounts reflecting or relating to the holding or maintenance of customer funds and securities.

(4) Every broker, dealer, investment adviser, portfolio manager, operator of a collective investment scheme, securities market intermediary and any other person who at any time knows, or in the exercise of reasonable efforts should know, that it is not in compliance with any regulations or directives specified under this section shall promptly notify the Registrar and its customers in writing of such non-compliance.

(5) No regulation or directive adopted under this section shall impose any requirement or obligation on any broker, dealer, investment adviser, portfolio manager, operator of collective investment schemes, securities market intermediary or class of broker, dealer, investment adviser, portfolio manager, securities market intermediary, operator of a collective investment scheme or any other person licensed under this Act which is discriminatory or acts as a burden on competition, unless such requirement or obligation is determined by the Registrar to be manifestly necessary to carry out the purposes of this Act.

Code of conduct regarding securities business

37.—(1) Every licensed broker, dealer, investment adviser, portfolio manager and any securities market intermediary shall—

(*a*) subject to the requirements of this Act, deal with its customers fairly and justly and adhere to just and equitable principles of trading in all its business activities;

(*b*) prior to effecting any transaction with or for, or recommending any transaction to, a customer, make inquiries of the knowledge in financial and investment matters, background, financial conditions and investment objectives of the customer to determine whether such transaction is suitable for that customer and whether the customer understands the risks of such transaction;

(*c*) charge a customer only such commissions, mark-ups, mark-downs or fees as are fair and reasonable under the circumstances of the transaction;

(*d*) prior to effecting a transaction with, or recommending a transaction to, a customer, disclose to the customer any material interest which the licensee, or person associated with the licensee,

has in such transaction, including any beneficial ownership or other interest in any security which is the subject of the transaction;

(*e*) take reasonable steps to ensure that all transactions effected for customers, whether by the licensee or a person acting at the direction of the licensee, are effected at the best price available for the customer under all the circumstances of that transaction, including the size thereof, the fees charged in relation thereto, and other relevant factors; and

(*f*) in the case of brokers and dealers, establish and adhere to written procedures reasonably designed to ensure that customer transactions are effected in fair sequence and are equitably allocated, and without giving preference to itself or any customer over another customer.

(2) No broker, dealer or investment adviser, portfolio manager or operator of collective investment scheme or securities market intermediary licensed under this Act shall, in connection with any securities transaction effected or recommended by the licensee—

(*a*) engage in any fraudulent, deceptive or manipulative device or any scheme to defraud, or any act, practice, or course of conduct which would act as a fraud or artifice upon any person;

(*b*) effect in a discretionary capacity or recommend transactions to any customer which are excessive in volume and number, given the financial situation or investment objectives of the customer;

(*c*) share or offer to share in the profit or loss of any customer in any securities transaction, or guarantee any profit or protection from loss of any transaction;

(*d*) effect or recommend any securities transaction which has the purpose or effect of creating a false or misleading appearance of the volume of trading in any security, or the market for a price of a security; or

(*e*) engage in any act or course of conduct prohibited under Part VII.

(3) Any person who contravenes subsection (2) commits an offence.

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(4) Without limiting the power of the Registrar under the Financial Services Act to issue directives, the Registrar may further specify or define the terms, conditions or requirements of this section, or specify additional rules of conduct with respect to the activities of persons licensed under this Act

Contract notes

38.—(1) Every broker and dealer shall, in respect of every contract for the purchase, or sale of securities entered into by him, whether as principal or agent, not later than the end of the next trading day after the contract was entered into, make out a contract note which contains such information as the Registrar may specify.

(2) Any contract note which seeks to exclude or disclaim any obligation required under this Act shall be void.

Compliance with directives of the Registrar

39. No broker, dealer, investment adviser, portfolio manager or securities market intermediary shall effect any transaction in any option, warrant, right or forward contract to buy or sell a security except in compliance with such directive as the Registrar may specify in the public interest and for protection of investors.

Short sales

40.—(1) A person who sells securities which he does not hold at or through a stock exchange commits an offence unless, at the time of sale he has, or, where he is selling as agent, his principal has, or he reasonably believes that he has, or, where he is selling as agent, that his principal has, a presently exercisable and unconditional right to vest the securities in the purchaser and has on deposit in the manner prescribed one hundred per cent (100%) collateral against the short sale, marked to market at the close of every trading day until the transaction is complete.

(2) For the purposes of subsection (1), "marked to market" means re-valued, for the purposes of the obligation of the seller, at the current market.

(3) A person who contravenes subsection (1) commits an offence.

(4) The Registrar may, by notice publish in the *Gazette*, exempt from the application of this section transactions or classes of transactions which he determines would not be inconsistent with the maintenance of fair and orderly securities markets and the protection of investors.

Trading outside stock exchange prohibited

41.—(1) No person shall trade in or otherwise deal in securities listed on a stock exchange except in compliance with the trading procedure adopted by the stock exchange:

Provided that—

(*a*) a person may gift such securities to a family member otherwise than in compliance with the trading procedure if prior approval is obtained from the Registrar;

(*b*) such securities may be transferred pursuant to an order of the court;

(*c*) such securities may be transmitted following the death of a person; or

(*d*) the Register may prescribe other instances when a person may trade in or otherwise deal in such securities.

(2) For the purpose of subsection (1), a "family member", in relation to a person, means a parent, spouse, child, brother or sister.

(3) The provisions of sub section (1) shall not apply to securities issued by the Government of Malawi.

Depositories, clearance and settlement Act No. 26 of 2010

42.—(1) Without limiting the powers of the Registrar under the Financial Services Act to issue directives, the Registrar may direct the licensing of depositories.

(2) The Registrar may specify requirements governing the clearance and settlement of securities transactions, including requirements pertaining to—

(*a*) financial and operational standards or persons engaged in clearance and settlement activities;

(*b*) maintenance and safeguarding of share certificates and other evidence of ownership;

(*c*) books, records and internal controls relating to the clearance and settlement of securities;

(*d*) operation of book-entry systems in Government and other securities;

(*e*) reporting of lost and stolen securities;

(*f*) standardization of settlement periods in different types of securities; and

(*g*) such other matters as the Registrar determines are necessary in the public interest and the protection of investors.

Accounts to be kept by licensees

43.—(1) Every licensed broker, dealer, investment adviser, portfolio manager, securities market intermediary and operator of collective investment scheme shall keep, or cause to be kept, such accounting and other records as sufficiently explain the transactions and financial position of all business of the licensee and enable true and fair profit and loss accounts and balance sheets to be prepared from time to time, as the Registrar may specify by directive or notice, and shall cause those records to be kept in such manner and form as to enable them to be conveniently and properly audited.

(2) Without limiting the generality of subsection (1), each licensed person referred to in subsection (1) shall maintain such books and records, and file such reports, in any manner and form, as the Registrar may specify.

(3) A person who contravenes this section commits an offence.

Investment advisory contracts

44.—(1) An investment adviser shall not enter into an investment advisory contract with any person in Malawi (in this section referred to as the "client)" or extend or renew the contract, or in any way perform the contract entered into, extended or renewed after the commencement of this Act, if the contract—

(*a*) provides for remuneration to be paid by the client to the investment adviser on the basis of a share of capital gains of the funds or any part of the funds of the client;

(*b*) does not include a provision to the effect that an assignment of the contract by the investment adviser shall be made only with the consent of the client; or

(*c*) does not include a provision to the effect that the investment adviser, if a company, will notify the client of any change in control of the company, prior to the change within a specified time which time shall not be less than thirty (30) days.

(2) Subsection (1) (*a*) shall not—

(*a*) prohibit an investment advisory contract which provides for remuneration based on the total assets held in the client's account averaged over a definite period or on definite dates, or taken on a definite date; or

(*b*) apply to an investment advisory contract with respect to participation in a collective investment scheme, as defined in Part IX, authorized by the Registrar under that Part, that provides for remuneration based on the asset value of the scheme or company under management averaged over a specified period and increasing or decreasing proportionately in accordance with the performance of the scheme or company over a specified period in relation to—

(i) the investment record of an appropriate index securities; or

(ii) such other measure of investment performance as the Registrar may approve in connection with its licensing of the collective investment scheme concerned or on the application of either party to a contract or intended contract.

(3) Any investment adviser who knowingly enters into any contract in contravention of this section commits an offence.

(4) Any contract entered into in contravention of this section shall, notwithstanding any provision of the contract, be voidable at the option of the client.

(5) For the purposes of this section, "investment advisory contract" means a contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account of a client.

PART VII—IMPORTER TRADING PRACTICES

False trading and manipulations

45.—(1) No person shall, directly or indirectly, create or cause to be created, or do anything with the intention of creating—

(*a*) a false or misleading appearance of the volume of trading in any securities on any stock exchange; or

(*b*) a false or misleading appearance of the market for, or the price of, any securities.

(2) No person shall, directly or indirectly, by means of the purchase or sale of any securities that does not involve a change in the beneficial ownership of the securities, or by any fictitious transaction or device, maintain, inflate, depress or cause fluctuations in the market price of any securities.

(3) A purchase or sale of securities by a person shall not, for the purposes of subsection (2), involve a change in the beneficial ownership of the securities after the purchase or sale.

(4) Any person who contravenes this section commits an offence.

Use of deceptive statements, etc., as inducements

46.—(1) No person shall, directly or indirectly, induce or attempt to induce another person to deal in securities—

(*a*) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive;

(*b*) by any dishonest concealment of material facts; or

(*c*) by recklessly or dishonestly making or publishing any statement, promise or forecast that is false or misleading.

(2) A person who contravenes subsection (1) commits an offence.

Fraudulent transactions

47.—(1) No person shall, directly or indirectly, in connection with any transaction with any other person involving the purchase or sale of securities—

(*a*) employ any devise, scheme or artifice to defraud the other person;

(*b*) engage in any fraudulent, deceptive or manipulative device to defraud the other person; or

(*c*) engage in any act, practice or course of business which operates as a fraud or deception or is likely to operate as a fraud or deception on the other person.

(2) Any person who contravenes subsection (1) commits an offence.

False or misleading statements in connextion with sale of securities

48.—(1) No person shall, directly or indirectly, for the purpose of inducing the sale or purchase of the securities of any issuer, make with respect to the securities, or with respect to the operations or the past or future performance of the issuer—

(*a*) any statement which is at the time and in light of the circumstances in which it is made, false or misleading with respect to any material fact, and which he knows or has reasonable grounds to believe to be false or misleading; or

(*b*) any statement which is, by reason of the omission of a material fact, rendered false or misleading and which he knows or has reasonable grounds to believe is rendered false or misleading by reason of omission of the fact.

(2) Any person who contravenes subsection (1) commits an offence.

Insider trading

49.—(1) No person to whom this section applies shall, directly or indirectly, purchase or sell, or counsel or procure another person to purchase or sell, securities of an issuer concerning which he has knowledge that—

(*a*) is not publicly available; and

(*b*) would, if it were publicly available, materially affect the price of the security.

(2) Any person who contravenes subsection (1) commits an offence.

(3) This section applies to—

(*a*) any director, officer or employee of a relevant company;

(*b*) any person associated in a professional capacity with a relevant company; and

(*c*) any person who knowingly obtains such information from any of the persons mentioned in paragraph (*a*) or (*b*).

(4) In subsection (3), "relevant company" means—

(*a*) the issuer of the securities;

(*b*) a company that controls the issuer of the securities; or

(*c*) a company under the common control with the issuer of the securities.

PART VIII—SECURITIES STABILIZATION FUND

Establishment of the Securities Stabilization Fund

50.—(1) There is hereby established a fund to be known as the Securities Stabilization Fund (in this Act otherwise referred to as the "Stabilization Fund").

(2) The Stabilization Fund shall consist of—

(*a*) such moneys recovered by way of penalties by the Registrar in furtherance of the powers vested in him by this Act or under the Financial Services Act; and

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(*b*) all other moneys otherwise accruing to the Stabilization Fund as the Registrar may determine.

Establishment of the Stabilization Fund Committee

51.—(1) There is hereby established a committee, to be known as the Stabilization Fund Committee, which shall be responsible for the administration of the Stabilization Fund and for the settlement of claims against the Fund.

(2) The Committee shall consist of—

(*a*) a person nominated by the Bankers Association of Malawi, and appointed by the Minister;

(*b*) a person nominated by a stock exchange in Malawi, and appointed by the Minister;

(*c*) a person nominated by the Malawi Law Society, and appointed by the Minister; and

(*d*) a person nominated by the Malawi Chamber of Commerce and Industry, and appointed by the Minister; and

(*e*) a person nominated by the Registrar, and appointed by the Minister.

(3) Members of the Stabilization Fund Committee shall elect one of their number to be the Chairman of the Committee.

(4) The Stabilization Fund Committee may, subject to this Act, regulate its own procedure.

Purpose of the Stabilization Fund

52.—(1) The Stabilization Fund shall be held and applied, on such terms and conditions as the Registrar may determine, for the purpose of compensating persons who suffer pecuniary loss occasioned by any default of a licensed investment broker, dealer, investment adviser, portfolio manager, operator of a collective investment scheme or any other licensee in the course of, or in connection with any dealing in securities, being a loss in relation to

any money, securities or other property which, in the course or in connection with the business of any licensee, was entrusted to or received by the licensee or any such employee for and on behalf of the person.

Disbursement from the Stabilization Fund

53. Subject to this Part, there shall be paid out of the Stabilization Fund when required and in such order as the Stabilization Fund Committee considers proper—

(*a*) the amount of all claims, including costs, allowed by the Stabilization Fund Committee;

(*b*) all legal and other expenses incurred in investigating or defending claims under this Act or incurred in relation to the Stabilization Fund or in the exercise by the Stabilization Fund Committee of the rights, powers and authorities vested in it by this Act in relation to the Stabilization Fund;

(*c*) all premiums payable in respect of contract of insurance or indemnity entered into by the Stabilization Fund Committee;

(*d*) the expenses incurred or involved in the administration of the Stabilization Fund; and

(*e*) all other moneys lawfully payable out of the Stabilization Fund in accordance with the provisions of this Act.

Directives on management of Stabilization Fund

54. Without limiting the power of the Registrar under the Financial Services Act to issue directives, the Registrar may issue directives providing guidance on such matters and things as are necessary or expedient to be prescribed for or with respect to the administration, management and application of the Stabilization Fund.

Liability of the Stabilization Fund to be limited

55. Payment from the Stabilization Fund shall be limited, in respect of each licensee in default, to such amount as the Registrar may issue.

Recovery of fund disbursements from defaulters

56. Any disbursement from the Stabilization Fund shall be accountable to the default of any licensed person in debt due to the Stabilization Fund and shall be recoverable by suit of the Registrar in any court of competent jurisdiction.

PART IX—COLLECTIVE INVESTMENT SCHEMES

Prohibition against operating as a collective investment scheme

57.—(1) No person shall operate a collective investment scheme unless the person is licensed to operate a collective investment scheme.

(2) Without limiting the ordinary meaning of the word "operate", a person operates a collective investment scheme if the person—

(*a*) establishes or administers the collective investment scheme;

(*b*) induces or attempts to induce a person to be a member of the collective investment scheme or to make payments by way of investment in the collective investment scheme; or

(*c*) accepts or makes payments in connection with the collective investment scheme otherwise than as a member.

(3) Any person who contravenes subsection (1) commits an offence.

Application for licence under this part Act No. 26 of 2010

58.—(1) An applicant for a licence to operate a collective investment scheme shall submit an application in writing in a form prescribed by the Financial Services Act and containing such information as the Registrar may specify.

(2) Any application under subsection (1) shall be accompanied by a fee prescribed by the Registrar.

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(3) A person may be licensed under the Financial Services Act as an operator in respect of a collective investment scheme of a class specified in the licence.

(4) A licence under subsection (1) may be granted subject to such terms and conditions as the Registrar considers necessary or desirable for the protection of investors.

Revocation or suspension of licence under this part

59. The Registrar shall cancel or suspend the licence granted to an operator of a collective investment scheme, where the Registrar is satisfied that the licensee—

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(*a*) has acted in breach of any provision of this Act or the Financial Services Act;

(*b*) has ceased to be of good financial standing;

(*c*) is guilty of malpractice or irregularity in the management of its affairs; or

(*d*) has been dismissed by the trustee of a unit trust.

Approval of schemes

60. Every collective investment scheme operated by a licensed collective investment scheme operator, in the case of a unit trust, shall be approved by the Registrar.

Transitional provisions in respect of schemes

61.—(1) Any operator of a collective investment scheme duly authorized under any written law shall be required to obtain approval of the scheme from the Registrar within six (6) months of the date of commencement of this Act and the operator of the

collective investment scheme shall be required to apply and obtain a licence under the Financial Services Act within six months (6) of the date of commencement of this Act. Act No. 26 of 2010

(2) Any person described in subsection (1) who fails to bring himself into compliance with this Act within the time prescribed in subsection (1) shall be in contravention of the requirements of this Act and shall be subject to such actions, remedies and penalties, and the operator of the collective investment scheme shall be prescribed by this Act or under the Financial Services Act with respect to the contravention. Act No. 26 of 2010

Directives on collective investment schemes Act No. 26 of 2010

62.—(1) Without limiting the powers of the Registrar under the Financial Services Act to issue directives, the Registrar may issue directives with respect to—

(*a*) criteria for and conditions of any licences for the purposes of this Part;

(*b*) establishment and operation of a collective investment scheme;

(*c*) promotion, marketing and distribution of shares, securities or units representing the interest of participants in a collective investment scheme;

(*d*) the management and administration of collective investment schemes;

(*e*) the provision by any corporate or individual trustee, or custodial and operation services, or any other services, for or in connection with collective investment schemes;

(*f*) any fee, remuneration or reward payable or obtainable for any services referred to in paragraph (*e*);

(*g*) books, accounts and records to be kept by collective investment schemes; and

(*h*) any other matter affecting the organization or operations of the collective investment scheme which the Registrar determines is necessary in the public interest or the protection of investors.

(2) Without limiting the generality of subsection (1), and without limiting the powers of the Registrar under the Financial Services Act to issue directives, the directives issued for the purposes of subsection (1) with respect to any aspect of or matter concerning a collective investment scheme may be made to differ according to whether the collective investment scheme is operated by a unit trust or by an open-ended investment company or another kind of investment company. Act No. ... of 2010

Restrictions on promotions

63.—(1) No person shall—

(*a*) issue or cause to be issued any invitation or advertisement—

(i) inviting persons to become or offer to become participants in a collective investment scheme that is not approved under this Part; or

(ii) containing information calculated to lead directly or indirectly to persons' becoming or offering to become participants in a collective investment scheme that is not approved under this Part; and

(*b*) advise or procure any person to become or offer to become a participant in a collective investment scheme that is not approved under this Part.

(2) Any person who contravenes subsection (1) commits an offence.

(3) In addition to the requirement of this Part, any collective investment scheme which is organized and approved under this Part shall be subject to the requirements of Parts II, V, VI, VII, VIII, X and XI, and to any other requirements of law, including but not limited to the Companies Act.

Cap. 46:03

(4) In case of any conflict between the requirements of this Part and any other written law, the provisions of this Part shall prevail.

PART X—POWERS OF INTERVENTION

Administrative and monetary penalties

64. In addition to other remedies available under this Act or any other written law—

(*a*) the Registrar may impose an administrative penalty under the Financial Services Act and also impose monetary penalty on the person who contravenes Part VII in an amount not exceeding three (3) times the amount of profit or gain obtained by the person with respect to the contravention; or

Act No. 26 of 2010

(*b*) a court may, on convicting a person for an offence against this section, in addition to any other penalty, impose a monetary penalty on the person who contravenes Part VII in an amount not exceeding three (3) times the amount of profit or gain obtained by the person with respect to the contravention.

Restrictions on assets

65.—(1) The Registrar may, as regards any assets, whether within or without Malawi, if they are the assets of a person licensed under Part IV, by notice in writing—

(*a*) prohibit the person so licensed from disposing of the assets or prohibit him from dealing with them in a manner specified in the notice; or

(*b*) require the person so licensed to deal with the assets in, and only in, a manner specified in the notice.

Maintenance of assets in Malawi

66.—(1) The Registrar may, by notice in writing, require a person licensed under Part IV to maintain in Malawi assets of such value as appears to the Registrar to be desirable with a view to ensuring that the licensed person will be able to meet his liabilities in respect of the business to which the licence relates.

(2) The Registrar may direct that, for the purpose of any requirement under subsection (1), assets of any specified class or description shall not be taken into account.

PART XI—MISCELLANEOUS PROVISIONS

Registrar's powers to issue directives Act No. 26 of 2010

67.—(1) Without limiting the powers of the Registrar under the Financial Services Act to issue directives, the Registrar may issue directives with respect to any matter which by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), directives may be issued with respect to—

(*a*) conduct of business by licensed brokers, dealers, investment advisers, portfolio managers and securities market intermediaries, operators of collective investment schemes and securities representatives;

(*b*) matters incidental to the licensing of any person under this Act;

(*c*) class of persons in relation to whom, and the manner and circumstances in which, licensed brokers, dealers and their securities representatives may purchase or sell securities;

(*d*) types of securities which licensed brokers, dealers and their securities representatives may purchase or sell;

(*e*) class of persons in relation to whom, and the manner and circumstances in which, licensed investment advisers or securities representatives may conduct their business;

(*f*) amount of deposit required to be made for the purposes of section 26 and the application of deposits under the section;

(*g*) the exhibition, by persons licensed under Part IV, of their licences at their places of business;

(*h*) the correction of any errors in any register or record kept under this Act;

(*i*) particulars of any books, accounts, reports or records prepared or maintained for the purposes of this Act;

(*j*) lodgement by persons licensed under this Act of annual financial statements;

(*k*) lodgement of reports of auditors and the information to be contained in such reports;

(*l*) remuneration of any inspector appointed, and the costs of any inspection or audit carried out, for the purposes of this Act;

(*m*) forms to be used for the purposes of this Act, and the manner in which applications are to be made for licences;

(*n*) regulating or prohibiting the advertising of securities otherwise than by way of prospectus;

(*o*) maintenance of the confidentiality of clients or persons licensed under Part IV;

(*p*) information and the matters to be displayed on business stationery of persons licensed under this Act;

(*q*) regulating or prohibiting transactions with related persons;

(*r*) the extension of margin facilities to clients of persons licensed under Part IV;

(*s*) further defining or clarifying terms used in this Act;

(*t*) insurance by persons licensed under Part IV against negligence or default;

(*u*) issue of duplicate licences in case of loss or destruction of the original licences; and

(*v*) any other purpose which furthers the purposes of this Act and is in the public interest.

Guidance notes, etc.

68. In addition to the other powers granted to the Registrar, the Registrar may issue such guidelines, bulletins or other regulatory statements as the Registrar may consider necessary or desirable for the proper administration of this Act.

General offences and penalties

69.—(1) Any person who contravenes a provision of this Act for which no offence is specifically provided commits an offence.

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(2) The provisions of the Financial Services Act governing imposition of penalties shall apply to any person who commits an offence under this Act for which no penalty is specifically provided.

70.—(1) The Capital Market Development Act is hereby repealed. Repeal and savings Cap. 46:06

(2) Notwithstanding the repeal of the Capital Market Development Act—

(*a*) any applications pending before any stock exchange under any provision of the repealed Act shall continue to be pending and shall be processed as if such applications were made under this Act;

(*b*) any court exercising jurisdiction conferred by the repealed Act, may continue to exercise its functions in relation to any matter pending or part-heard before it, and its decision shall be given effect and shall be binding on parties to any appeal or other proceedings, as if the repealed Act were still in force;

(*c*) any investigation or proceeding commenced under the repealed Act and not concluded at the commencement of this Act may be continued by the Registrar; and

(*d*) any subsidiary legislation made under the repealed Act shall, unless inconsistent with this Act, continue in force until revoked, as is made or issued under this Act.

(3) On and from the commencement of this Act, there shall be transferred to, and there shall vest in or subsist against the Registrar by virtue of this Act, without further assurance or action, all powers, rights and obligations that immediately before the commencement of this Act, were the powers, rights and obligations of the Reserve Bank of Malawi under the Capital Market Development Act, Cap. 46:06 repealed by subsection (1).

SCHEDULE (s. 7)

REQUIREMENTS TO BE MET BY APPLICANTS FOR STOCK EXCHANGE LICENCE

1. Trading in securities may be conducted only by brokers and dealers who are members of a stock exchange licensed under and meeting the standards prescribed in or under this Act.

2. A stock exchange may be licensed by filing with the Registrar an application for licensing in such form and manner an application in writing in a form and manner under the Financial Services Act and containing such information as the Registrar may specify.

3. A stock exchange shall not be registered unless the Registrar determines that it meets the requirements of Part III and that—

(*a*) it is so organized that it has the capability to carry out the purposes of this Act and to ensure compliance by its members and its employees with the provisions of this Act and with its own rules;

(*b*) its rules are designed to—

(i) promote development of the capital markets;

(ii) prevent fraudulent and manipulative acts and practices;

(iii) remove impediments to, and perfect the mechanism of, a free and open market; and

(iv) generally protect investors and the public interest;

(*c*) its rules are not designed to permit, and do not permit, discrimination between customers, issuers of securities, brokers, dealers, market makers and underwriters;

(*d*) its rules provide that its members and persons associated with the members, shall, for contravening those rules, the provisions of this Act, be appropriately disciplined by expulsion, suspension, limitation of activities and functions, or by suspending or barring them from being associated with the organization or a member thereof, or by any other fitting sanctions;

(*e*) its rules provide a fair procedure for the discipline of its members and persons associated with it or with its members; and

(*f*) its rules do not impose any undue burden in furtherance of the purposes of this Act.

4.—(1) A stock exchange shall take steps necessary to ensure compliance with the requirements of this Act, with its own rules and with the requirements of any other relevant written law.

(2) A stock exchange shall adopt all measures necessary to provide a fair, orderly, transparent, and properly regulated and disciplined market for the benefits of the public and investors, and as a minimum, shall have—

(*a*) rules establishing the manner in which business is to be transacted by its members;

(*b*) rules designed to ensure that the capital market functions for the benefit of investors and not solely for the special benefit or advantage of its members;

(*c*) rules establishing the rights and obligations between members and their customers, including rules for members acting in a fiduciary capacity and for members acting as agents;

(*d*) rules establishing trading procedures and requirements and record-keeping to provide for an adequate audit trail;

(*e*) rules establishing priority, parity and precedence among orders designed to ensure proper treatment of all orders;

(*f*) rules designed to ensure that all buying and selling interest is brought together and exposed sufficiently to lead to efficient pricing, and that transactions by investors obtain the best execution;

(*g*) rules establishing whether and in what circumstances members may trade for their own account and requiring disclosure of this fact, with the objective of ensuring that the self-regulatory trading system operates as a public market for the benefit of investors;

(*h*) rules establishing the obligations of those acting as market-makers;

(*i*) rules establishing trading procedures for less actively traded securities;

(*j*) rules establishing procedures to ensure efficient, prompt and orderly clearance, settlement and payment of transactions, including but not limited to—

(i) requirements that members must clear, settle and pay transactions among themselves independent of the obligations to or of their customers;

(ii) requirements, if determined appropriate by the stock exchange, that members must receive from customers securities and payments before executing transactions; and

(iii) rules regulating transfer of ownership securities;

(*k*) rules designed to foster fair, honest, orderly and transparent markets, protect investors, promote high standards of commercial honour and fair principles of trade and conduct, and prevent manipulative, deceptive and fraudulent acts, practices and course of conduct by any person, and acts, practices and courses of conduct by any person determined by the stock exchange to be improper or contrary to the purposes of this Act;

(*l*) rules providing effective and fair procedures and standards under which members and their associated persons shall be appropriately disciplined, by expulsion, suspension, limitation of activities and functions, and other fitting sanctions in case of contravention of its own rules, any of the provisions of this Act or the regulations made or directives issued under this Act;

(*m*) rules providing for suspension or cancellation of trading;

(*n*) rules establishing the obligations of the issuers of publicly traded securities to provide disclosure of material information to investors, brokers, dealers, market makers, underwriters, investment advisers and portfolio advisers and portfolio managers and the market in general; and

(*o*) rules establishing the duties of its members to obtain and disseminate information provided by issuers securities.

5.—(1) A stock exchange shall file with the Registrar, in accordance with such requirements as may be prescribed by or under the Act, copies of any proposed rules or any proposed change in the rules of the organization.

(2) In the case of change in the rules, the submission to the Registrar shall be accompanied with a statement of the basis and purpose of each proposed change and an explanation of how the proposed change furthers the purposes and meets the requirements of this Act, all in sufficient detail to permit the Registrar to reach a finding on each proposed change.

(3) No proposed change of the rules of a stock exchange shall take effect unless approved by the Registrar.

6. For a secondary market transaction in securities fees and other charges may be payable in accordance with a minimum and maximum scale which shall be determined by the stock exchange and approved by the Registrar and which shall be appropriate to the stage of development of the capital market and the provision of adequate compensation to brokers or dealers:

Provided the stock exchange and the Registrar shall not have authority to fix a Registrar, fees or charges for underwriting or similar services or for public offering.

7. Officials and personnel of a stock exchange shall maintain secrecy regarding any information which they have obtained as a result of the performance of their functions or otherwise, and shall not use the knowledge of such information for themselves personally or for others, whether in any way related or totally unrelated to the capital markets.

Passed in Parliament this eighteenth day of June, two thousand and ten.

M. M. KATOPOLA
Clerk of Parliament