GOVERNMENT NOTICE NO. 24

FINANCIAL SERVICES ACT

(CAP. 44:05)

FINANCIAL SERVICES (DISCLOSURE REQUIREMENTS FOR CREDIT PRODUCTS) DIRECTIVE, 2018

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

PART I—PRELIMINARY

Citation

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

Interpretation

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

"Act" means the Financial Services Act; Cap. 44:05

"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;

"lending institution" means any financial institution authorized to grant loans or credit according to the law in force;

"financial consumer" means a natural person, acting alone, within a group or representing a group, that purchases or uses financial product or service or may be intending to use, a financial service for personal, domestic or household purposes; or in connection with a business of a micro, small and medium enterprises as may be specified by the Registrar from time to time by way of directives;

"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 stored information;

"financial intermediary" means any third person, natural or legal entity, engaged in marketing, offering, or selling of a financial product or service provided by a financial institution, and in preparation, conclusion and administration of agreements and contractual rights related to that product or service; and

"a cooling off period" means a right of a consumer to withdraw from a credit contract, without any penalty within ten (10) working days after signing a credit contract provided that the financial consumer shall not access the funds during the cooling off period.

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

PART II—OBJECTIVES

Objectives

3. The objectives of this Directive are to—

(*a*) prescribe minimum disclosure requirements for credit products and services;

(*b*) ensure fair treatment of financial consumers; and

(*c*) enhance the ability of financial consumers to compare financial products and services for purposes of making informed decisions.

PART III—BOARD AND MANAGEMENT

Board and management responsibilities

4.—(1) The Board of Directors and management of each lending financial institution shall be responsible for adherence and compliance with the requirements of this Directive.

(2) A lending institution shall have a formal written disclosure policy on credit products and services approved by the Board.

(3) The disclosure policy shall address the institution's approach for determining what disclosures to make and internal controls over the disclosure process.

(4) The Board shall ensure at all times that—

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

(*b*) there is full, timely and accurate disclosure of all relevant information on credit.

(5) Management of a lending institution shall ensure that—

(*a*) the disclosure policy is readily available to all employees responsible for marketing and distribution of a credit product; and

(*b*) employees engaged in advising customers possess relevant qualifications, knowledge and experience required for the position.

PART IV—MINIMUM DISCLOSURE CONTENT

Disclosure content

5.—(1) A lending financial institution shall disclose to a financial consumer all the credit related information necessary for the financial consumer to make an informed decision.

(2) A lending financial institution, before entering into a contract with a financial consumer shall—

(*a*) fully explain to the consumer the important aspects of the financial service; and

(*b*) explain, in detail, the important aspects of the contract, including the associated transaction costs, possible gains and risks.

(3) A financial consumer has a right to obtain from a financial institution, information relating to his contractual relationship with the financial institution in a manner and within the terms specified by the contract.

(4) The information in subparagraph (3) above may be in writing or other durable medium and shall be free of charge.

(5) Upon substantial amendment or renewal thereof of a prior contract, a lending institution shall provide the financial consumer with all relevant and related information necessary to make an informed decision.

(6) A financial institution shall disclose to a financial consumer that credit referencing is part of the credit approval process.

Information about financial institution

6.—(1) A lending financial institution shall—

(*a*) disclose its official trade name, address of its principal office and other office or branch, if applicable, to the financial consumer prior to granting a credit product; and

(*b*) in all of its advertising disclose its regulated status and, where required, contact details of the Registrar.

(2) A financial institution shall disclose its regulatory status in all its financial consumer agreements.

Minimum disclosure

7.—(1) A lending financial institution shall, at a minimum, disclose to a customer the following information prior to signing a contract—

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

(*b*) type of credit;

(*c*) the total value of credit;

(*d*) the conditions for use and disbursement of the credit;

(*e*) the duration of the contract and maturity date;

(*f*) minimum and maximum repayment periods, available and implications to the financial consumer;

(*g*) the effective interest rate at the approval stage of a loan;

(*h*) the nominal interest rate, whether variable or fixed, as well as the periods, conditions and procedures of its change;

(*i*) method for calculating interest on the credit;

(*j*) the repayment schedule and total amount to be repaid at the end of the contract;

(*k*) if applicable, the cost of using a card or other payment means for the use of credit and payments, and other costs associated with payment transactions;

(*l*) any additional cost that is obligatory to obtain the credit;

(*m*) if a guarantee or collateral is required, information on collateral charging, discharging and repossession process;

(*n*) discharge shall be at the cost of the institution;

(*o*) a list of pre-qualified insurers and associated costs from which the financial consumer must choose his preferred insurer or other ancillary service if required, provided that the provider is duly licensed by the Registrar;

(*p*) the right of a financial consumer to withdraw from the contract, without any penalty within ten (10) working days after signing a credit contract provided that—

(i) the financial consumer shall not access the funds during the cooling off period; and

(ii) where a consumer account is credited, the account may accrue interest but no other penalty in the event that the consumer decides to cancel the contract after the cooling off period;

(*q*) the right to repay the credit ahead of schedule (early credit repayment) without any penalty charge;

(*r*) penalty conditions and penalty interest in case of late payments, and penalties in case of non-compliance with other contract terms;

(*s*) period of validity of the pre-contract information for the financial consumer;

(*t*) the right to obtain a draft credit contract free of charge;

(*u*) the method and time of informing the financial consumer in case of changes in the conditions, such as interest rates of the contract;

(*v*) notice requirements in relation to enforcement of a credit contract;

(*w*) complaints handling procedure; and

(*x*) any other information which the Registrar may determine from time to time.

(2) For purposes of this Directive, effective interest rate at the approval stage means—

$$\frac{\text{Total interest \& Other Charges}}{\text{Loan amount}} \times \frac{\text{Periods in a year}}{\text{Periods in Loan Terms}}$$

State reasons

8. Where a lending financial institution refuses a credit application, the financial institution shall communicate in writing to the customer the basis for the refusal.

PART V—FORM AND TIME OF DISCLOSURE

Disclosure form

9.—(1) A lending financial institution shall ensure that the disclosures made under this Directive are in—

(*a*) plain language, comprehensible to the financial consumer with minimum use of technical words or terms of art;

(*b*) a written form with a minimum font size of 12, on paper or any other durable medium available and accessible to the financial consumer if requested; and

(*c*) the official language of Malawi, where possible and mandatory information shall be disclosed in a financial consumer's preferred language.

(2) The disclosure made under this Directive shall be—

(*a*) concise, legible and conspicuously displayed; and

(*b*) in the format set out in the First Schedule.

(3) A financial consumer and a lending financial institution shall sign the Key Facts Statement at the credit approval stage.

(4) When provided in an electronic form, the Key Facts Statement may be signed electronically or the lending institution and the financial consumer may sign a protocol to confirm that the Key Facts Statement was provided to the consumer.

Guarantor

10.—(1) Where applicable, a financial institution shall also disclose information in paragraph 8 (1) above to a guarantor of a loan.

(2) Prior to a person acting as a guarantor, a financial institution shall in writing—

(*a*) advise the person of the quantum and nature of his potential liabilities; and

(*b*) advise the person to seek independent legal advice before acting as a personal guarantor at his cost.

Statement of loan accounts

11.—(1) A financial institution shall provide, at no cost, to the financial consumer with statements of loan account, including balance changes, payments, disbursements and costs.

(2) For purposes of subparagraph (1), the financial consumer and the lending financial institution shall agree on the frequency and the mode of communicating to the consumer the loan account statement.

Liability for damages

12. A financial institution, which by breaching any provision under this Directive causes harm to a financial consumer, shall bear liability for the damages.

Monetary penalties

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

(*a*) for financial institutions, up to fifty million Kwacha (K50,000,000); and

(*b*) for natural persons who are members of the board of directors or management, up to ten million Kwacha (K10,000,000).

(2) In addition, a penalty of fifty thousand Kwacha (K50,000) may be imposed on the institution for each subsequent day for which the violation continues after being notified as stipulated.

(3) With respect to a bank, the penalty in 13(1) (*a*) and (*c*) above shall be debited from the concerned bank's main account maintained at the Reserve Bank of Malawi and the bank shall be notified in writing prior to debiting the account.

(4) Where a person does not maintain an account with the Reserve Bank of Malawi, such person will be required to make good of the penalty through a bank certified cheque payable to the Reserve Bank of Malawi within ten working days after being notified by the Registrar.

Administrative penalties

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

FIRST SCHEDULE

KEY FACTS STATEMENT FOR FINANCIAL CONSUMER CREDIT

INSTRUCTIONS

Carefully review the Key Fact Statement before agreeing and signing a loan contract

You have the right to get a copy of the full loan agreement.

SECTION I—KEY TERMS

LOAN SUMMARY		*COST OF CREDIT*		*REPAYMENT SCHEDULE*	
1. Amount of Loan *Amount you are borrowing*	MWK.....	4. Interest Rate *Interest you will be charged on the loan*	Rate ..... MWK.....	8. Date First Payment is Due 9. Number of Payments	MWK..../.../... .....
2. Duration of Loan Agreement	.....	5. Other Fees and Charges *See details in Section III*	MWK.....	10. Payment Frequency	.....
3. Amount Received *Amount you actually receive from the lender*	MWK.....	6. Effective Interest Rate *Total Cost of Credit as a comparable annual percentage* ..... %	7. Total Cost of Credit *All costs for the loan, including interest and fees* MWK.....	11. Total Amount to be Repaid *Includes capital, interest, and recurring fees*	MWK.....

1. Amount of Loan		7. Total Cost of Credit		11. TOTAL AMOUNT YOU WILL PAY
Amount you are borrowing	+	*All costs for the loan, including interest and fees*	=	*Total amount you pay after making all payments*
MWK.....		MWK.....		MWK.....

SECTION II—RISKS TO YOU

1 Late or missing payments may be reported to a credit reference bureau and may severely affect your credit history and ability to re-borrow.

2 Your interest rate will change based on changes in the Reserve Bank of Malawi's Base Lending Rate. This change may *affect* the duration of your loan and your repayment amount. *

SECTION III—UPFRONT AND RECURRING FEES

UPFRONT FEES		*UPFRONT FEES*		*RECURRING FEES*	
Arrangement fee	MWK_____	Collateral assessment and charging fees	MWK_____	Credit life insurance	MWK_____ per _____
Documentation fee	MWK_____	Drawdown fee	MWK_____	Management fee	MWK_____ per _____
Others (*list all*):	MWK_____				

TOTAL UPFRONT AND RECURRING FEES AND CHARGES (EXCLUDING INTEREST) MWK_____

SECTION IV—IMPORTANT TERMS AND CONDITIONS TO KNOW

LATE PAYMENT PENALTIES		TERMS AND CONDITIONS		TERMS AND CONDITIONS	
Late fees if payment more than [ ] days late:	MWK.....	Cash deposit/ mandatory savings:	MWK.....	Variable interest rate applies	
Default interest if payment is more than [ ] days late	.....% per	COLLATERAL: you are committing the following as collateral:	_____	Other:_____	_____ _____
REFUND PROCESS BY FIS _____		Early/Prolonged deductions			
		Compensation rate	.....%		
		Total to be refunded	MWK.....		

SECTION V—YOUR RIGHTS AND OBLIGATIONS

1 You have a right to a ten-days cooling off period after signing a loan agreement provided that you do not access the funds. During the cooling off-period, you can cancel the loan agreement at no cost.

2 You are required to make payments on your loan according to your loan agreement and to notify your credit provider of any important changes in your situation

3 Do you want to pay off your loan early? You can do so without any penalties or fees.

4 Any questions or complaints for your institution? Call [TELEPHONE], email [EMAIL ADDRESS], or write to [MAILING ADDRESS] to contact your financial institution regarding your question or complaint.

5 Unsatisfied with your institution's response to your question or complaint? Contact the Registrar of Financial Institutions for help at [+265(0) 1820299/444] or [], write to [ADDRESS], or visit [WEBSITE].

SECTION VI—REPAYMENT SCHEDULE

Payment Number	*Payment Due Date*	*Payment Amount*	*Principal*	*Interest and Other Fees and*	*Remaining Balance Charges*
1					
2					
3					
4					
5					
6					
7					

Payment Number	*Payment Due Date*	*Payment Amount*	*Principal*	*Interest and Other Fees and*	*Remaining Balance Charges*
8					
9					
10					
11					
12					
TOTAL					

** This information is not final until signed by all parties, and does not replace the loan agreement.**

CERTIFIED CORRECT:

_____
Credit provider representative

I ACKNOWLEDGE RECEIPT OF THIS STATEMENT PRIOR TO SIGNING THE LOAN AGREEMENT:

_____
Borrower

I ACKNOWLEDGE RECEIPT OF THIS STATEMENT PRIOR TO SIGNING THE GUARANTEE:

_____
Guarantor (if applicable)

Name of Borrower:.....

Application No: ..... Date prepared:.....

SECOND SCHEDULE

KEY FACTS STATEMENT FOR FINANCIAL CONSUMER OVERDRAFTS

INSTRUCTIONS

Carefully review the Key Fact Statement before agreeing and signing an overdraft contract

You have the right to get a copy of the full Overdraft agreement.

SECTION I—KEY TERMS

OVERDRAFT SUMMARY		COST OF OVERDRAFT		REPAYMENT	
2. Maximum Amount for the Overdraft (OD's) facility	MWK.....	4. Interest Rate to be charged on draw down amount	Rate.....	9. Due Date for Drawdown Amount plus interest	..../..../....
(Maximum Drawdown Amount)		5. Overdraft Renewal Fees *Fees to be Charged when renewing the Overdraft Facility*	MWK.....		..../..../....
					.....

OVERDRAFT SUMMARY		COST OF OVERDRAFT		REPAYMENT	
2. OD's Validity Period	_____	6. Other Fees and	MWK..... Charges (if any)		

SECTION II—OTHER IMPORTANT TERMS AND CONDITIONS TO KNOW

1. Interest rate on drawdown amount will change based on changes in the Reserve Bank of Malawi's Base Lending Rate.
2. If you have a complaint, please contact your financial institution for a resolution.
3. Unsatisfied with your institution's response to your question or complaint? Contact the Reserve Bank of Malawi for help at [+265 (0) 1820 444/299] or [], write to [10 Hannover Avenue, PO Box 565, BLANTYRE], or visit [www.rbm.mw].
4. This information is not final until signed by all parties, and does not replace the loan agreement.

CERTIFIED CORRECT:

I ACKNOWLEDGE RECEIPT OF THIS STATEMENT PRIOR TO SIGNING THE OVERDRAFT AGREEMENT:

....

Credit provider representative *Borrower*

Name of Institution:.....

Full Name of Account Holder:.....

Date prepared:.....

THIRD SCHEDULE

Asked to be a guarantor?

Read the following information carefully!

1. Risks—

   (*a*) as a guarantor you take on a serious risk that you may become responsible for somebody else's debts;

   (*b*) you must seek independent legal and financial advice before committing yourself as a guarantor;

   (*c*) if the borrower cannot (or does not) pay the debt for which you agreed to be a guarantor you will be responsible for paying the debt;

   (*d*) a guarantor does not give a mere character reference, a guarantor promises to pay for unpaid debts. Therefore, if the borrower defaults, the lender is entitled to come after the guarantor; and

   (*e*) as a guarantor, you may be flagged as such in a credit reference bureau, which may limit your chances to successfully apply for your own credit.

2. Considerations—

   (*a*) do not consent to be a guarantor if you cannot afford to pay the debt or if paying the debt would cause you some financial problems;

   (*b*) think whose debt you guarantee for and why you have been requested to become a guarantor (is the person credible, can he actually afford to take on a credit, is the credit suitable for that person, is the reason for taking the credit justifiable); and

   (*c*) what happens if you are asked to repay the debt? Would it affect your financial situation? To what extent? Would other aspects of your life be affected?

3. Prevention—

   If you decide to be a guarantor, try to minimize risks—

   (*a*) limit your liability–you should not guarantee for all the debtor's obligations, limit the guarantee to a precisely defined amount of credit;

   (*b*) ask for relevant documentation–you should know details about the debt you guarantee for (ask for the credit agreement, key fact statements and all related documents, you may also ask the borrower to provide you with information about his financial situation); and

   (*c*) make sure that both the creditor and the borrower inform you in a timely manner whenever your interests may be concerned.

4. Power of Attorney

   In the event that you wish to use a power of attorney and offer the borrower property to be used as collateral, ensure that—

   (*a*) you understand the meaning of the transaction;

   (*b*) the power of attorney is valid; and

   (*c*) you are certain that the borrower will not default on the loan, as defaulting may result in the lender possessing and selling your property to recover the loan.

Date:..... Signature:.....

Made this 3rd day of April, 2018.

D. KABAMBE, PhD
Registrar of Financial Institutions

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