(i) altering credit-granting standards, collateral requirements, collection efforts or any other policies of an institution;

(ii) providing preferential rates, terms or conditions on deposits or credits;

(iii) providing products or services that are not available to the general public;

(iv) approving credit facilities without the Board of director's approval;

(v) covering trading losses; and

(vi) waiving fees;

(*b*) impose strict and binding limits on exposures to an insider or a related party which do not exceed the limitations of this Directive;

(*c*) prohibit an insider or a related party who has an interest in a credit facility or other transaction with the institution from being involved in the administration, assessment, or decision-making process involved with the transaction; and

(*d*) require that transactions with an insider or a related party, and any deviations from the Board approved policy on an insider or a related party, are reported to the Board of directors on a regular basis.

Made this 14th day of June, 2019

DALITSO KABAMBE, PHD
Registrar of Financial Institutions

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

GOVERNMENT NOTICE NO. 29

FINANCIAL SERVICES ACT

(Cap 44:05)

FINANCIAL SERVICES (RECORD KEEPING REQUIREMENTS FOR MICROFINANCE SERVICE PROVIDERS) DIRECTIVE, 2019

ARRANGEMENT OF PARAGRAPHS

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IN EXERCISE of the powers conferred by section 34 (2) (*k*) of the Financial Services Act, I, Dr. DALITSO KABAMBE, Registrar of Financial Institutions, make the following Directive—

PART I—PRELIMINARY

Citation

1. This Directive may be cited as the Financial Services (Record Keeping Requirementsfor Microfinance Service Providers) Directive, 2019.

Application

2. This Directive applies to—

(*a*) microcredit agencies; and

(*b*) microfinance institutions.

PART II—OBJECTIVE

Objective

3. The objectives of this Directive are to ensure—

(*a*) implementation of effective information management practices that enables microcredit agencies and microfinance institutions manage records in a manner that can be easily reconstructed; and

(*b*) the protection of information held by microcredit agencies and microfinance institutions.

PART III—RECORD KEEPING

Record keeping policy

4.—(1) The Board of directors of a microcredit agency or microfinance institution shall adopt and ensure implementation, by its management, of a written policy on record keeping.

(2) The written policy shall—

(*a*) take into account the requirements stipulated in this Directive; and

(*b*) be reviewed at least once every two years, or, as and when the policy has proven not to be in tandem with prevailing circumstances to ensure that the policy remains appropriate and prudent.

Records to be kept

5.—(1) A microcredit agency or a microfinance institution shall keep a record of—

(*a*) a customer's account;

(*b*) terms and conditions of contract with a customer, including the customer's signature and acceptance that the contract is legally binding and aligned to financial transparency;

(*c*) transactions carried out by a customer;

(*d*) customer claim settlement and refund procedures;

(*e*) customer complaints;

(*f*) correspondence relating to the transactions that enables a transaction to be readily reconstructed at any time by the Registrar; and

(*g*) any other transaction that the microcredit agency or microfinance institution carries out in the course of its business.

(2) Subject to sub-paragraph (1), the records shall be—

(*a*) sufficient to enable a transaction to be readily reconstructed at any time;

(*b*) stored electronically or in printed form;

(*c*) in a form that can be printed or submitted electronically upon demand; and

(*d*) maintained in a manner that will enable the microcredit agency or a microfinance institution to comply immediately with requests for information from the Registrar.

Supporting methodologies

6. A microcredit agency or a microfinance institution shall establish key methodologies, mechanisms and tools to support its record keeping and these shall include—

(*a*) identifying, establishing, implementing and maintaining repositories in which information resources of business value are stored or preserved in electronic format; and

(*b*) establishing, using and maintaining classification structures to facilitate storage, search and retrieval of information resources of business value in all formats to comply with information requests from all stakeholders including the Registrar.

Back-up

7. A microcredit agency or a microfinance institution shall ensure that appropriate backup and recovery procedures are in place for all records.

Protection of customer records

8. A microcredit agency or a microfinance institution shall protect customer records by—

(*a*) identifying and documenting the risk profile of information resources taking into account access to information, security of information and the protection of personal information; and

(*b*) responding to and mitigating documented risks to the protection of records of a customer.

Inspection

9. The records referred to in paragraph 5 (1) shall be subject to inspection from time to time and without notice, by the Registrar.

Record keeping period and disposition of information

10.—(1) A microcredit agency or a microfinance institution shall preserve and retain the records referred to in paragraph 5 (1) and information required to be kept under this Directive for a period of at least seven years.

(2) Subject to subparagraph (1), the microcredit agency or a microfinance institution shall develop and implement a documented disposition process for all records and ensure that the disposition process is performed after the lapse of the seven-year period.

Dormant accounts

11.—(1) A deposit taking microfinance institution shall classify an account as a dormant account,in respect of which a depositor has not for twelve months after the last deposit transaction in his account, increased or decreased the amount of the deposit or other record for the crediting of interest, concerning such deposit.

(2) A deposit taking microfinance institution shall, as soon as practicable, transfer a dormant account to a separate register of dormant accounts maintained in the books of the deposit taking microfinance institution.

(3) The deposit taking microfinance institution shall give a notice of the transfer of a dormant account to a depositor at his last known address or through a notice published in at least one newspaper of nation-wide circulation in Malawi.

(4) The deposit taking microfinance institution shall cease to charge service fees or any other form of fees or charges on the dormant account transferred in subparagraph (2) after a period of one year from the date of the transfer and such an account shall not earn interest.

(5) The deposit taking microfinance institution shall presume any deposit, including interest, in respect of which the depositor has not for seven years after the last deposit transaction in his account increased or decreased the amount of the deposit or presented other record for the crediting of interest, or corresponded with the deposit taking microfinance institution concerning such deposit, to have been abandoned.

(6) The deposit taking microfinance institution shall report the deposits presumed to have been abandoned under subparagraph (5) to the Registrar and shall pay such deposits to the Reserve Bank of Malawi as if they were unclaimed or undistributed funds.

(7) The deposit taking microfinance institution shall, upon paying the abandoned deposits to the Reserve Bank of Malawi, be relieved of all liability for any claim in respect thereof to the extent of the value of such deposit.

(8) Any person claiming to be entitled to any abandoned deposit and providing evidence of the entitlement to the satisfaction of a competent court shall have the abandoned deposit returned to him by the Registrar.

Compliance with AML/CFT requirements

12.—(1) A microcredit agency or a microfinance institution shall comply with the legal and regulatory framework governing anti-money laundering and countering financing of terrorism activities issued by the relevant authorities from time to time.

(2) Subject to subparagraph (1) microcredit agency or a microfinance institution shall—

(*a*) verify the identity of a customer by using reliable and independent source documents, data or information;

(*b*) be responsible for identification and verification measures, where the microcredit agency or a microfinance institution relies on an intermediary or third party to undertake its obligations to introduce business to it;

(*c*) not commence business relations or perform the transaction if satisfactory evidence of the identity of a customer is not produced, or obtained;

(*d*) submit a suspicious transaction report to the Financial Intelligence Authority within three days and shall not proceed any further with the transactions, unless directed by the Financial Intelligence Authority; and

(*e*) establish and maintain records for customers.

Part V—Enforcement

Monetory penalties

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

(*a*) for an institution, up to fifty million Kwacha; and

(*b*) for a natural person who are members of the Board of directors or management, up to ten million Kwacha.

(2) A microcredit agency or a microfinance institution or natural person shall pay the respective penalties imposed under subparagraph (1) through a bank certified cheque payable to the Reserve Bank of Malawi within ten working days after being notified of the violation.

(3) In addition to the monetary penalties imposed in paragraph 14 (1), the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act.

Made this 14th day of June, 2019.

Dalitso Kabambe, PhD
Registrar of Financial Institutions

(File no. FIN/PFSPD/03/04)