GOVERNMENT NOTICE NO. 28

FINANCIAL SERVICES ACT

(Cap 44:05)

FINANCIAL SERVICES (TRANSACTIONS OF PRUDENTIALLY REGULATED MICROFINANCE INSTITUTIONS WITH RELATED PARTIES) DIRECTIVE, 2019

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SCHEDULE—Policy on transactions with insiders and related parties

IN EXERCISE of the powers conferred by section 34 (2) (*z*) 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 (Transactions of Prudentially Regulated Microfinance Institutions with Related Parties) Directive, 2019.

Interpretation

2. In this Directive unless the context otherwise requires—

"arm's length basis" means where a transaction between related parties is conducted upon terms no more favourable than those which would be offered under prevailing conditions to persons other than related parties;

"microfinance services" has the same meaning as defined in the Microfinance Act; Cap. 46:08

"collateral" means security on a credit facility that is sufficient to partly or fully protect the financial institution from loss;

"core capital (tier 1)" means the sum of—

(*a*) issued and fully-paid shares;

(*b*) share premium;

(*c*) retained earnings;

(*d*) fifty percent of current year to-date after tax profit or one hundred percent of loss;

(*e*) capital grants; and

(*f*) any other distributable reserves, less investments in unconsolidated subsidiaries;

"credit facility or credit" means any asset or off-balance sheet item that contains credit risk, including loans, overdrafts, advances and all of the following—

(*a*) financing by means of factoring;

(*b*) leasing;

(*c*) hire purchase;

(*d*) accepting of trade and other bills;

(*e*) discounting of such bills and notes;

(*f*) the opening or confirming of documentary credit;

(*g*) the issue of other letters of standby, credit, guarantee or surety;

(*h*) the undertaking to pay on account of another person; and

(*i*) such other similar undertakings as may be prescribed by Registrar from time to time;

"exposure" means the amount of exposure of a microfinance institution has in relation to a person or group of inter-related persons which is calculated as the sum of the following—

(*a*) credits;

(*b*) investment in equities;

(*c*) debt securities;

(*d*) securitized assets and other transactions with recourse; and

(*e*) contingent liabilities, such as commitments to extend credit;

"insider" includes a principal shareholder, member of the Board of directors, executive officer and senior management official; and

Cap. 46:03 "subsidiary" has the meaning ascribed to that term in the Companies Act.

Application 3. This Directive shall apply to—

(*a*) deposit taking microfinance institutions; and

(*b*) non–deposit taking microfinance institutions which are prudentially regulated in terms of the Microfinance (Non Deposit Taking Microfinance Institutions) Directive, 2018.

Part II—Objectives

Objectives

4. The objectives of this Directive are to—

(*a*) promote good practices with regard to the granting of credit to related parties;

(*b*) ensure that all transactions between a microfinance institution and its insiders or related parties are done on an arm's-length basis; and

(*c*) promote public confidence in the microfinance institution by ensuring that undue favouritism is not extended to insiders or related parties.

Part III—Offences and Penalties

Conditions and restructions on insider lending and ralated parties

5.—(1) A microfinance institution shall extend a credit facility to an insider or to a related party on an arm's length basis.

(2) A microfinance institution's exposure to an insider or to a related party shall not exceed ten percent of its core capital.

(3) The aggregate of the microfinance institution's exposures to insider or related party shall not exceed twenty five percent of the microfinance institution's core capital.

(4) Sub-paragraph (1) shall not apply to a credit facility that a microfinance institution may grant to its employees as part of their terms and conditions of employment that equally apply to all officers and employees.

(5) The microfinance institution shall not grant any credit facility to an insider or to a related party while another credit facility to the insider or to a related party is non-performing.

(6) The microfinance institution shall not purchase a non-performing credit facility or other low quality asset from an insider or a related party.

(7) Placement of the microfinance institution to any of its affiliated entities in Malawi shall be considered as an insider or related party transaction and shall be subject to the provisions of this Directive.

(8) An exposure to an insider or related party that exceeds the limitations of this Directive or made in violation of the requirements of this Directive shall be deducted from the core capital of the microfinance institution for purposes of determining capital adequacy.

Board responsibilities

6. The Board of directors of a microfinance institution shall—

(*a*) develop, adopt and ensure implementation of a written policy on transactions with an insider or a related party that includes the provisions set out in the Schedule hereto;

(*b*) approve all transactions, including credit facilities, between the microfinance institution and its insider or related party:

Provided that a director who has an interest in the transaction shall not participate in the consideration and decision process of the Board; and

(*c*) ensure that a credit facility or a transaction with an insider or a related party is monitored independent of the insider or related party.

Disclosures

7.—(1) A director or manager of a microfinance institution who is a party to or has an interest in an existing or prospective credit facility or other transaction with the microfinance institution, shall—

(*a*) disclose in writing to the Board of directors at the earliest opportunity the nature and extent of the interest;

(*b*) leave any meeting at which the credit facility or other transaction is discussed; and

(*c*) refrain from voting on any matter related to the credit facility or other transaction:

Provided that the interest, if so disclosed, shall not disqualify a director from constituting a quorum.

(2) The microfinance institution shall disclose all its credit facilities to an insider or a related party in line with the Registrar's Directive.

Record keeping

8. A microfinance institution shall at all times maintain adequate records with regard to all credit facilities to an insider or a related party.

Monetory penalties

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

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

(*b*) for an individual who is a member of the Board of directors or management, up to ten million Kwacha.

(2) A microfinance institution or an individual 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.

Administrative penalties

Cap.46:08

10. In addition to the monetary penalty imposed in paragraph 9 (1), the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act.

SCHEDULE (par. 6 (a))

POLICY ON TRANSACTIONS WITH INSIDERS AND RELATED PARTIES

This policy on transactions with an insider or a related party shall—

(*a*) require that all transactions with an insider or a related party is handled on an arm's-length basis. Prohibited preferential treatment includes—

(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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