GOVERNMENT NOTICE NO. 30

FINANCIAL SERVICES ACT

(ACT NO. 26 OF 2010)

FINANCIAL SERVICES (LARGE EXPOSURES AND CREDIT CONCENTRATION LIMITS FOR BANKS) DIRECTIVE, 2015

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation
2. Interpretation

PART II—OBJECTIVES

3. Objectives

PART III—REGULATORY REQUIREMENTS

4. Policies and procedures
5. Record keeping
6. Limitations
7. Requests to Registrar
8. Reporting

PART IV—ENFORCEMENT

9. Monetary penalties
10. Administrative penalties

PART V—REVOCATION

11. Revocation

Schedule- Prescribed form for a bank seeking the Registrar's approval for a large exposure and credit concentration to exceed limitation.

IN EXERCISE of the powers conferred by section 34 of the Financial Services Act, 2010, I, CHARLES S. R. CHUKA, Registrar of Financial Institutions, make the following Directive—

PART I—PRELIMINARY

Citation

1. This Directive may be cited as the Financial Services (Large Exposure and Credit Concentration for Banks) Directive, 2015.

Interpretation

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

"bank" has the meaning ascribed to that term in the Banking Act, 2009; Act No. 10 of 2010

"banking business'" has the meaning ascribed to that term in the Banking Act, 2009; Act No. 10 of 2010

"banking group" means a group of companies where—

(*a*) one company is a bank domiciled in Malawi; and

(*b*) the holding company is a bank or a non-financial company domiciled in Malawi;

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

(*a*) share capital, paid-up;

(*b*) share premium;

(*c*) retained profits for prior years;

(*d*) sixty percent (60%) of after-tax profit including that of current year-to-date, and in the case of a loss, 100%;

Less: investment in unconsolidated financial institutions.

"credit concentration" means a credit facility to a single customer which represents twenty five percent (25%) or more of the core capital of a bank;

Act No. 10 of 2010

"credit facility" has the meaning ascribed to that term in the Banking Act, 2009;

"eligible collateral" includes the following—

(*a*) cash including gold;

(*b*) Government securities or paper issued by an AAA or AA rated counterparty; or

(*c*) eligible Government guarantee.

"eligible guarantee" means a guarantee that is issued by—

Cap 37:02

(*a*) the Government in compliance with section 63 of the Public Finance Management Act;

(*b*) a sovereign country with a sovereign rating approved by the Registrar;

(*c*) an international bank with an external credit rating of AAA to AA issued by an external credit assessment institution acceptable to the Registrar;

(*d*) a multilateral development bank or institution; or

(*e*) a third party entity that—

(i) represents a direct claim on a guarantor;

(ii) is denominated in the same domestic currency as the exposure or strong convertible currency;

(iii) clearly and incontrovertibly defines the extent of the guarantee's cover of a specific exposure;

(iv) is irrevocable and non-cancelable by the guarantor, except for non-payment of the credit protection contract;

(v) has no clause in the contract that would allow the guarantor to unilaterally cancel the guarantee, increase the effective cost of the guarantee, or delay payment under the

guarantee for any reason including the need to be funded in a budget;

(vi) has, as the only condition for its enforcement, the obligor's failure to meet an obligation to the bank; and

(vii) is executed so that neither the guarantor nor any other person is in a position to challenge the legal rights of the bank in calling the guarantee.

"exposure" means the total amount of a party's or group of related parties' obligation to a bank comprising—

(*a*) credit facilities;

(*b*) equity securities;

(*c*) debt securities;

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

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

(*f*) other exposures as the Registrar may consider appropriate;

"group of related debtors" has the meaning ascribed to that term in the Banking Act, 2009; Act No. 10 of 2010

"group of related parties" means two or more persons holding exposures from a bank, whether on a joint or separate basis, which are mutually associated and meet any of the following criteria—

(*a*) the parties are a "group of related debtors" as defined in the Banking Act, 2009; Act No. 10 of 2010

(*b*) the persons have common management or common directors;

(*c*) cross guarantees exist between or among the parties;

(*d*) a direct or indirect financial interdependency exists between the parties which cannot be substituted in the short term; or

(*e*) the parties belong to the same banking group; and

"large exposure" means an exposure, direct or indirect, of a bank to any person or group of related parties, which equals or exceeds, ten percent (10%) of core capital of the bank.

PART II—OBJECTIVES

Objectives

3. The objectives of this Directive are to ensure that—

(*a*) banks follow sound credit diversification practices;

(*b*) credit is not concentrated in a few borrowers resulting in denial of credit to smaller entities with viable credit needs;

(*c*) losses incurred by any single borrower or group of related debtors are not so large as to impair the viability and soundness of a bank; and

(*d*) a borrower or group of related debtors does not become so large as to receive preferential treatment at the expense of ordinary borrowers.

PART III—REGULATORY REQUIREMENTS

Policies and procedures

4.—(1) The board of directors of a bank shall—

(*a*) adopt and ensure that senior management of the bank, implements a written policy as part of the bank's overall written credit policy, covering large exposures and credit concentrations;

(*b*) adopt processes for monitoring compliance with the credit policy; and

(*c*) ensure that the credit policy is reviewed annually.

(2) The policy in subsection (1) shall—

(*a*) address concentrations of risk arising from individual and total large exposures and credit concentrations; and

(*b*) impose strict and binding limits on large exposures and credit concentrations to groups of related debtors, which do not exceed the limitations contained in this Directive.

Act No. 10 of 2010

(4) If two or more persons are deemed to be a group of related debtors, the exposures of all persons in that group shall be combined for purposes of applying the limitations in this Directive and the Banking Act, 2009.

(5) The bank's board of directors shall approve in advance, the credit concentration of a bank:

Provided that in the case of large exposures, the board of directors may delegate approval authority to executive officers of the bank and ratify the approval at a later stage.

Record keeping

5. A bank shall maintain adequate records to identify—

(*a*) all large exposures, including those of groups of related debtors; and

(*b*) other concentrations within a loan portfolio indicating the sector and geographical location.

Limitation

6.—(1) A credit concentration shall not exceed twenty five percent (25%) of a bank's core capital.

(2) The aggregate of a bank's large exposure and credit concentrations shall not exceed four hundred percent (400%) of its core capital.

Requests to the Registrar

7.—(1) A bank may hold a credit concentration which exceeds the limitation of paragraph 6(1) with prior written approval of the Registrar:

Provided that the concentration shall be reduced to an amount equal to, or less than, twenty five percent (25%) of the bank's core capital within twelve (12) months.

(2) The Registrar shall not grant approval in sub paragraph (1) unless the bank has submitted evidence to the effect that syndication of the credit facility with other banks has failed.

(3) A bank shall submit a request for prior written permission of the Registrar under paragraph 7 (1), in the form specified in the Schedule hereto.

(4) The Registrar may request a bank to submit additional information, if, in his opinion, the information which the bank submits, is insufficient to enable the Registrar make a decision.

(6) The Registrar shall make a decision on the request in subparagraph (3) and notify the bank of its decision in writing, within ten(10) days of receipt of all information required under this paragraph.

(7) Failure by the bank to provide the Registrar with all required information in a timely manner in any case, not later than ten(10) days, may result in the Registrar turning down the request.

(8) A bank shall only be exempted from seeking approval from the Registrar with respect to holding a credit concentration exceeding twenty five percent (25%) of its core capital if the credit facility—

(*a*) is in respect of exports from Malawi;

(*b*) is secured by an eligible Government guarantee or Government paper;

(*c*) is cash collaterized; or

(*d*) is of a trade related finance nature including self-liquidating pre-export and export financing supported by cash covered Letters of Credit.

(9) A bank shall be exempted from syndicating with other banks with respect to the credit facilities in sub-paragraph (8).

(10) Notwithstanding sub paragraph (8)(*d*), all trade related finance facilities including self-liquidating pre-export and export financing, that exceed twenty five percent (25%) of the bank's core capital, and are not supported by eligible collateral, shall require prior approval of the Registrar.

Reporting

8. A bank shall submit a report to the Registrar at the end of each quarter in the format prescribed by the Registrar, showing all credit concentrations and large exposures in line with the requirements of the Financial Services (Submission of Information by Banks) Directive, 2012.

PART IV—ENFORCEMENT

Monetary Penalties

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

(*a*) for banks, up to fifty million kwacha (K50,000,000.00); and

(*b*) for natural persons who are members of the board of directors or senior management, up to ten million kwacha(K10,000,000.00).

(2) With respect to banks, the Registrar shall—

(*a*) debit the penalty in subparagraph (1) (*a*) from the main account of the bank maintained at the Reserve Bank of Malawi; and

(*b*) notify the bank in writing prior to debiting the account.

(3) With respect to natural persons, or where the bank does not maintain an account with the Reserve Bank, the natural person or the bank shall pay the penalty through a bank certified cheque payable to the Reserve Bank, within ten(10) working days after being notified by the Registrar.

Administrative penalties

Act No. 10 of 2010

10. In addition to the monetary penalties imposed in paragraph 9 (1), the Registrar may impose directions, administrative penalties and enforcement action as provided for under the Act and the Banking Act, 2009.

PART V—REVOCATION

Revocation

11. The Financial Services (Large Exposures and Credit Concentration Limits for Banks) Directive, 2012 is hereby revoked.

SCHEDULE

PRESCRIBED FORM FOR A BANK SEEKING THE REGISTRAR'S APPROVAL FOR A LARGE EXPOSURE AND CREDIT CONCENTRATION TO EXCEED THE LIMITATION OF PARAGRAPH 6(1) OF THIS DIRECTIVE.

The following information shall be presented by a bank in the order requested and be accompanied by supporting documentation—

1. Date of submission of request.
2. Name of bank.
3. Amount of core capital.
4. Obligor, including group of related debtors.
5. Details of the proposed credit concentration. If the credit concentrations will be comprised of more than one individual exposure, provide the following details on each separate exposure as well as on the total large exposure—
   (*a*) amount;
   (*b*) obligor or group of related debtors;
   (*c*) type of exposure; and
   (*d*) terms and conditions, including the repayment or liquidation schedule or terms of amortization.
6. The proposed credit concentration as a percentage of core capital.
7. The bank's aggregate exposures, including the proposed credit concentration, presented as an amount and percentage of the core capital.
8. The specific purpose of the proposed credit concentration.

   Description of collateral, including—
   (*a*) the amount and method and source of the determination of value;
   (*b*) the percentage of the exposure covered by the collateral; and
   (*c*) the method by which the bank's interest in the collateral will be perfected.

9. Reason for the request for Registrar's permission to exceed the limitation on credit concentration.

10. A copy of the analysis performed by the bank showing that the proposedcredit concentration meets the bank's credit-granting standards. The analysis shall be based on the obligor's current audited financial statements or latest management accounts verified by the bank's internal auditor.

11. A specific plan, including methods and time frames, to reduce the proposed credit concentration to a level that does not exceed the limitation of the directive within twelve (12) months. The plan may include amortization of the proposed exposure and a reasonable estimate of growth in the bank's capital base.

12. Submission of an official resolution of the board of directors approving the credit concentration and authorizing the executive officer to submit the subject request to the Registrar.

13. The written request to the Registrar shall be signed by the executive officer of the bank.

Made this 29th day of July, 2015.

C. S. R. CHUKA
Registrar of Financial Institutions

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