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C. S. R. CHUKA
*Registrar of Financial
Institutions*

GOVERNMENT NOTICE NO. 27

FINANCIAL ACT, 2010

(ACT No. 26 OF 2010)

FINANCIAL SERVICES (ESTABLISHMENT AND OPERATIONS OF
COLLECTIVE INVESTMENT SCHEMES) DIRECTIVE, 2015

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IN EXERCISE of the powers conferred by section 21(5) of the Financial Services Act, 2010, I, CHARLES S. R. CHUKA, Registrar of Financial Institutions, issue the following Directive—

PART I—PRELIMINARY

1. This Directive may be cited as the Financial Services (Establishment and Operations of Collective Investment Schemes) Directive, 2015. Citation

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

“affiliated person” means any person who, with respect to a collective investment scheme, is—

(a) a director, trustee or chief executive officer of the collective investment scheme;

(b) an investment adviser or portfolio manager to the collective investment scheme;

(c) an owner, directly or indirectly, of five (5) percent or more of the outstanding voting securities of the collective investment scheme;

(d) an attorney or accountant to the collective investment scheme;

(e) director, trustee or chief executive officer or any immediate family member of an affiliated person; or

(f) any person who, since the beginning of the last two (2) completed calendar years, has had a material business relationship with the collective investment scheme;

“closed-end investment scheme” means any collective investment scheme which is not an open-end investment scheme;

“collective investment scheme” means any arrangement made with respect to 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 (excluding securities held in majority owned subsidiaries, which themselves are not collective investment schemes) of properties;

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

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

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“corporate body” means a company incorporated under the Companies Act;

“director” refers to a director of an operator of a collective investment scheme or trustee of a collective investment scheme, or a person exercising substantially similar functions;

“distribution account” means an account which has been set up by the trustee to hold income for distribution to unit holders;

“licensed operator” refers to a licensed operator of a collective investment scheme;

“open-end investment scheme” means any collective investment scheme which offers for sale on a continuous basis or has outstanding any securities or units which are redeemable at the option of the holder;

“operator of a collective investment scheme” means a corporate body that—

(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

(c) makes payments by way of investment in the collective investment scheme;

“property” means all the assets for the time being held or deemed to be held by the trustee on behalf of the unit trust, and subject to the provisions of the trust deed, but does not include any amounts standing to the credit of the distribution account of a corporate body, and in the case of any other collective investment scheme, the assets owned by a corporate body and which are the subject of the collective investment scheme;

“shareholders’ funds” means total assets minus total liabilities;

“stakeholder” means a shareholder or unit holder of stock, shares, or units of collective investment scheme; and

“unit trust” means a collective investment scheme which is organized under a trust deed or similar instrument, and issues redeemable units representing a fractional undivided interest in a portfolio of securities.

PART II—OBJECTIVES

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| 3. The objectives of this Directive are to— | Objectives |
| (a) ensure that collective investment schemes comply with the provisions of the Act; | |
| (b) protect the interests of investors and the public; and | |
| (c) ensure maintenance of professional standards in the management of collective investment schemes. | |
| 4. The Board of an operator of a collective investment scheme shall ensure that the structure of the scheme comprises a trustee, custodian, fund manager and an auditor. | Responsibility of the Board |
| 5. An operator of a collective investment scheme shall be a prudentially regulated financial institution within the meaning of the term as provided for in section 2 of the Financial Services Act, 2010. | Prudentially regulated financial institution |

PART III—LICENSING REQUIREMENTS

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| 6.—(1) Only a company incorporated under the Companies Act shall be eligible to apply for a licence under this Directive. | Eligibility and application |
| (2) An application for a licence under subparagraph (1) shall be— | |
| (a) made in the prescribed form set out in the First Schedule hereto; and | |
| (b) accompanied by a non-refundable applicable fee of five hundred thousand Kwacha (K500,000.00). | |
| (3) The Registrar shall approve any amendment, proposed by an applicant, to any documentation submitted in support of an application for a license under subparagraph (2). | |
| 7.—(1) The Registrar shall communicate to an applicant the outcome of the application within sixty (60) days of receipt of a complete application. | Grant or denial of a licence |
| (2) Where the Registrar approves an application for a licence, he shall issue a licence to the applicant in the form set out in the the Second Schedule hereto. | |
| (3) The licence shall automatically expire if the operator of the collective investment scheme fails to commence business within a period of twelve months, following the granting of the licence. | |
| (4) Where the Registrar has not granted an application for a licence, he shall communicate in writing to the applicant, the reasons for the decision. | |
| (5) Where the applicant is not satisfied with the reasons provided under subparagraph (4), he may appeal to the Appeals Committee within twenty one (21) working days of receiving the communication. | |
| 8.—(1) The minimum start-up capital for a collective investment scheme shall be fifty million kwacha (K50,000,000.00). | Start up capital |

(2) Borrowed funds as start-up capital shall generally be discouraged.

(3) Where borrowed funds are used as part of start-up capital, the Registrar may on his sole discretion prescribe the maximum limit of borrowed funds to be used as start-up capital.

Revocation of
a licence

9.—(1) The Registrar, may, upon written notice to an operator of a collective investment scheme, suspend or revoke a licence granted under paragraph 7, if the Registrar determines that—

(a) any director or officer of the operator of a collective investment scheme becomes subject to a statutory disqualification or restriction;

(b) the operator of a collective investment scheme, or any director or officer thereof is found to have violated, or caused the violation of, any provision of the Act, the Securities Act, 2010, or this Directive;

(c) the operator of a collective investment scheme is unable to meet its liabilities and other debt obligations as they become due;

(d) in the case of an open-end collective investment scheme, the scheme is unable to satisfy, in accordance with the trust deed or articles of association, stakeholder redemption requests; or

(e) the securities or other assets of the collective investment scheme are being diverted, misapplied or misappropriated in any manner, or are not being properly safeguarded or protected.

(2) Any collective investment scheme whose licence has been suspended or revoked shall—

(a) promptly cease the offer and sale of its securities or units, in the case of a unit trust;

(b) not redeem any outstanding securities or units, in the case of a unit trust; or

(c) satisfy any indebtedness or obligation, without the prior consent of the Registrar.

(3) The Registrar may either upon application by an operator of a collective investment scheme or on his own motion, permit the operator of a collective investment scheme whose licence has been suspended or revoked under this paragraph, to resume operations if the Registrar is satisfied that—

(a) resumed operation of the scheme is in the interest of the public and the protection of investors; or

(b) the operator of the scheme and its affiliated persons have complied and will continue to comply with the Act, the Securities Act, 2010, and Directives made there under.

Prospectus
requirement

10.—(1) Subject to Part II, an operator of a collective investment scheme shall not offer for sale any securities of which it is the issuer, unless the scheme has issued a prospectus that complies with the Act, Securities Act, 2010, and relevant Directives issued thereunder.

(2) A licensed operator shall make full disclosure of charges to be levied and the salient features of the trust deed or articles of association, as may be appropriate.

(3) The Registrar may grant permission to an open-end collective investment scheme for continuous offering of the instruments referred to in subparagraph (1) on the basis of a prospectus, for public subscription during a predetermined period.

(4) Notwithstanding the provisions of subparagraph (3), a licensed operator shall review the prospectus on a continuous basis in order to take into account of material changes or any new matter.

PART IV—MANAGEMENT

11.—(1) A licensed operator shall ensure that its collective investment scheme is under the management of a board of directors, a majority of which shall not be affiliated persons, and in the case of a unit trust, it shall be under the management of a corporate body, the trustee of which shall not be an affiliated person in relation to the corporate body. Code of conduct

(2) A board of a licensed operator shall consist of at least five members.

(3) A majority of the directors of every open-end or closed-end collective investment scheme not being a unit trust shall, at any time, be approved by the vote of the stakeholders holding a majority of the outstanding securities of the scheme:

Provided that if due to death, incapacity, resignation or removal, replacement directors are appointed by the existing directors of the scheme, the appointment of the replacement directors shall be subject to stakeholder approval at the next annual meeting.

(4) Every director, manager or executive officer of an operator of a collective investment scheme shall disclose, in writing, to the Registrar any existing or potential conflict of interest which he is aware, or ought reasonably to be aware, which might arise between his interests and the interests of the collective investment scheme during the tenure of his office, prior to his appointment, or within five days of his becoming aware of such conflict.

(5) A director, manager or executive officer of an operator of a collective investment scheme shall not solicit, receive or consent to receive any gift, commission, money, property or object of value for his own personal benefit or that of any affiliated person of that official, for entering into any contract of purchase or sale of investments.

(6) An operator of a self-managed collective investment scheme which is a unit trust or a collective investment scheme which is managed by its own board of directors shall employ on a full time basis, at least two securities representatives, with minimum qualifications and experience provided for in the Third Schedule hereto.

(7) An operator of a collective investment scheme shall, immediately, report to the Registrar any fraud or malpractices being investigated or reported against their member, member of staff or their customer immediately on having knowledge of such information.

12.—(1) An operator of a collective investment scheme shall at all times maintain a minimum net capital of fifty million Kwacha (K50,000,000.00). Net capital

(2) In this paragraph, "net capital" means shareholders' funds adjusted as follows—

- (a) deducting the value of all unsecured loans;
- (b) deducting the value of all loans and amounts due from each director and members of immediate family, group and associated companies and employees;
- (c) deducting all debts doubtful of collection;
- (d) deducting all deferred expenses and intangible assets; and
- (e) deducting all contingent liabilities.

(3) An operator of a collective investment scheme shall not, without the approval of the Registrar—

(a) leverage by borrowing against securities or buying on margin, except in relation to securities with fixed or determinable future maturity date:

Provided that the percentage of such leverage shall be determined by the Registrar and shall not be more than fifteen per cent (15%) of the value of the property of the collective investment scheme;

(b) pledge, alienate, assign or permit the encumbrance of the property of the collective investment scheme; or

(c) issue more than one class of capital stock, shares or units.

(4) The Registrar, in reviewing any request or application for approval of any transaction described in subparagraph (3), shall consider—

- (a) the relative risks and benefits of such transaction;
- (b) its fairness to the shareholders of the collective investment scheme; and
- (c) whether the transaction would or reasonably might pose a material financial risk to the scheme.

(5) The Registrar may approve, with or without conditions, or deny any application or request, and may specify the terms and conditions of any approval.

(6) A licensed operator of a collective investment scheme shall review the net capital position, at least on a monthly basis, and in the event of a shortfall, regularize the capital position as soon as possible, and in any event within thirty (30) calendar days of the net capital falling below the required minimum net capital.

Restrictions on
securities by
collective
investment
schemes

13.—(1) An operator of a collective investment scheme shall not—

(a) issue or sell any of its securities, or units in the case of a unit trust, for anything other than cash;

(b) issue or sell any of its securities or units, in the case of a unit trust, on credit or margin; or

(c) in the case of an open-end scheme or unit trust, issue or sell any of its securities at a price other than the most recently computed net asset value thereof:

Provided that the scheme may charge any sales, commission or selling expense that is described in the prospectus of the scheme.

14.—(1) An operator of a collective investment scheme shall not—

Contracts of
collective
investment
schemes

(a) retain as investment adviser or portfolio manager, any person, except pursuant to a written contract which precisely sets forth the remuneration to be paid to the investment adviser or portfolio manager, and the contract shall be approved by the Registrar prior to its execution;

(b) assign or permit an assignment of any contract with an investment adviser or portfolio manager without the prior approval of the Registrar;

(c) retain as investment adviser or portfolio manager, any person who is not licensed as an investment adviser or portfolio manager under the Act; or

(d) retain any person to perform any services for the collective investment scheme, except pursuant to a written contract properly approved by the directors of the operator of the scheme.

(2) Particulars of contracts referred to in subparagraph (1) shall be disclosed in the annual report of the collective investment scheme.

15.—(1) An operator of a collective investment scheme shall, seek prior approval of the Registrar before—

Transactions
with affiliated
persons

(a) purchasing securities from any affiliated person;

(b) selling securities to any affiliated person;

(c) borrowing from, or extending credit in any form to, any affiliated person;

(d) guaranteeing the obligations of any affiliated person; or

(e) entering into any transaction with an affiliated person.

(2) The Registrar, in reviewing any request or applications to approve any transaction described in subparagraph (1), shall consider whether the terms of the proposed transaction—

(a) are fair to the collective investment scheme and its shareholders;

(b) are consistent with the business purposes and objectives of the collective investment scheme; and

(c) are otherwise in the public interest.

16.—(1) An open-end collective investment scheme shall—

Activities of
open-end
collective
investment
schemes

(a) compute and publish in a newspaper of general circulation in Malawi, the net asset value of shares issued by it or units in the case of a unit trust, on every business day on which shares or units thereof may be purchased or redeemed;

(b) purchase and redeem its shares or units only at the most recently-calculated net asset value thereof;

(c) compute the net asset value of its shares or units through the

employment of sound and accepted methods of valuation which are consistent with prevailing accounting practices in Malawi, which methods shall, at a minimum—

(i) value at current value portfolio securities or assets with respect to which market quotations are readily available, which in the case of a security traded on the Malawi Stock Exchange or other securities exchange, whether organized under the laws of Malawi or elsewhere, shall be the last reported sale price for that security; and

(ii) value at fair value, as determined in good faith by the directors of the Scheme, all other securities and assets, at least once every three years.

(2) An open-end collective investment scheme shall compute, every day on which its shares or units can be purchased or redeemed, changes in the number of outstanding shares or units thereof resulting from any purchases or redemptions of shares, or distributions with respect thereto, and expenses paid by such scheme.

(3) An open-end collective investment scheme shall maintain, at all times, adequate cash and liquid assets sufficient to satisfy reasonably foreseeable redemption demands, and in all cases shall maintain, at least five (5) percent of its assets in cash and cash equivalents.

(4) An operator of a collective investment scheme shall maintain an account for each customer containing at least the information set out in the Fourth Schedule hereto.

Activities of
closed-end
collective
investment
schemes

17. A closed-end collective investment scheme shall not issue or cause to be issued, shares or units which are not listed for trading on a licensed Stock Exchange in Malawi, without approval of the Registrar.

Activities of a
unit trust

18.—(1) An operator of a collective investment scheme managing property held by a trustee of a unit trust for the benefit of the unit holders shall not, without the prior written approval of the Registrar—

(a) engage in any other activity;

(b) purchase or sell securities in its own name; or

(c) have an equity interest in any company engaged in the business of broking or dealing in securities.

(2) Notwithstanding anything to the contrary in its trust deed, the services of an operator of a collective investment scheme may be terminated by the trustee in writing with the approval of the Registrar, upon the occurrence of any of the following events—

(a) if, for good and sufficient reason, after a due inquiry by a person appointed by the trustee and acceptable to the Registrar, the trustee is of the opinion that a change in such operator of a collective investment scheme is necessary in the interests of unit holders; or

(b) unit holders representing at least seventy-five percent (75%) of total units in issue excluding any units held by the operator of the

collective investment scheme deliver to the trustee or the Registrar as the case may be, a written request that the services of the operator of the collective investment scheme be terminated.

(3) The property of the unit trust shall be held in the name of the trustee on behalf of the unit trust.

(4) The trustee shall take reasonable care to ensure that the unit trust is managed by the operator of the collective investment scheme in accordance with the provisions of the Act, the Securities Act, 2010, this Directive, the trust deed and the prospectus.

(5) A person shall not interfere with the trustee in the performance of his functions.

(6) In the execution of his duties, a trustee shall—

(a) verify that in transactions involving the underlying assets of a unit trust, any consideration is remitted to it within time limits which are acceptable market practice, in the context of a particular transaction;

(b) verify that the income accruals of a portfolio are applied in accordance with any statutory provisions and the trust deed;

(c) enquire into and prepare a report on the administration of the unit trust by the operator of a collective investment scheme during each annual accounting period, in which it shall be stated whether the unit trust has been administered in accordance with the limitations imposed on the investment powers of the operator of the collective investment scheme, by the provisions of the Act, the Securities Act, 2010, this Directive and the trust deed;

(d) if the operator of the collective investment scheme does not comply with the limitations and provisions referred to in subparagraph (c), he shall state the reason for the non-compliance and outline the steps taken by the operator of a collective investment scheme to rectify the situation;

(e) send the report referred to in subparagraph (d), to the Registrar and to the operator of a collective investment scheme in good time, to enable the operator of the collective investment scheme to include a copy of the report in its annual report;

(f) ensure that—

(i) there is a legal separation of assets held under custody, and that the legal entitlement of investors to such assets is assured; and

(ii) appropriate internal control systems are maintained, and that records clearly identify the nature and value of all assets under custody, the ownership of each asset and the place where documents of title pertaining to each asset are kept;

(g) report to the operator of the collective investment scheme on any irregularity or undesirable practice concerning the administration of the unit trust of which it is aware, and if steps to rectify the irregularity or practice in question are not taken to the satisfaction of the trustee, it shall as soon as possible, report such irregularity or undesirable practice to the Registrar;

(h) satisfy itself that every income statement, financial position or other return prepared by the operator of the collective investment scheme fairly represents the assets and liabilities, as well as the income and distribution of income of the portfolio of the unit trust administered by the operator of the collective investment scheme;

(i) ensure that at the request of the trustee, every director or employee of the operator of the collective investment scheme submits to the trustee, any book or document or information relating to the administration of the unit trust by the operator of the collective investment scheme which is in his or her possession or at his or her disposal, and which the trustee may in his opinion consider necessary to perform its functions;

(j) annually perform a physical verification of the portfolio assets which shall be reconciled with the records maintained by the operator of the collective investment scheme and a report must be furnished to the Registrar; and

(k) a physical verification mentioned in subparagraph (j), may be carried out by external auditors.

(7) Subject to the provisions of subparagraph (9), the only payment to be made to the operator of the collective investment scheme by the trustee out of the trust property, shall be a fee for services rendered in accordance with the provisions of the trust deed, including any taxes or levies imposed by the Government.

(8) The operator of the collective investment scheme shall give to all unit holders not less than three months written notice of any revision of the fees.

(9) Notwithstanding the provisions of subparagraph (7), the following expenses may be paid by the trustee, out of the trust property—

(a) the costs of brokerage commissions involved in dealing with the trust property;

(b) taxation and other levies in respect of the trust property;

(c) expenses incurred in preparation and amendment of the trust deed;

(d) expenses incurred in arranging meetings of unit holders;

(e) trustees fees and disbursement of any expenses permitted by the trust deed;

(f) audit fees and expenses;

(g) licensing fees payable to the Registrar; and

(h) legal expenses incurred in safeguarding the trust property.

(10) All expenses referred to in subparagraph (9), shall be disclosed to unit holders.

(11) Suspension of dealing may be provided for only in exceptional circumstances with the permission of the Registrar and the trustee.

(12) The operator of the collective investment scheme shall maintain or cause to be maintained, a register of unit holders, and shall at all times, be up

to date and shall provide the following details in respect of unit holders—

- (a) the name and address of each unit holder; and
- (b) the number of units held by each unit holder.

(13) The operator of the collective investment scheme shall notify the Registrar, of where the register is kept, and the register shall be available for inspection by the Registrar or by any unit holder during normal working hours.

(14) An operator of a collective investment scheme shall not manage a unit portfolio, unless each separate unit portfolio it manages has received the prior written approval of the Registrar.

(15) An operator of a collective investment scheme shall invest a minimum of five percent of the value of each fund managed by it, subject to the maximum of fifty million Kwacha (K50,000,000.00).

(16) The operator of the collective investment scheme and the trustee shall retain records for up to a minimum period of seven (7) years.

(17) The operator of a collective investment scheme shall file with the Registrar, all sales and advertising material, at least a week before issuing new marketing material.

(18) Any transaction between the unit trust and the operator of a collective investment company or any affiliated person as principal shall be made only with the prior written consent of the trustee and all such transactions shall be disclosed in the annual report of the unit trust.

(19) A single broker or dealer shall not account for more than 50% in value of the collective investment scheme's transactions without the permission of the Registrar and if, following the permission of the Registrar, a dealer accounts for more than 50% in value of the transactions, this fact should be disclosed in the Annual Report.

(20) Upon dissolution, the trustee shall proceed to wind up the unit trust in accordance with the provisions of the trust deed.

19.—(1) A collective investment scheme shall not, without the prior approval of the Registrar and stakeholders holding at least two-thirds of its outstanding shares or units—

Changes in
shareholding
and
management

- (a) change from an open-end scheme to a closed-end scheme, or vice versa; or
- (b) change its fundamental investment policies.

(2) The articles of association of a corporate body or the trust deed in the case of a unit trust, may be altered with prior approval of the Registrar and the stakeholders, if the alteration—

- (a) is necessary to enable compliance with statutory requirements;
- (b) does not materially prejudice the interests of stakeholders and does not increase the costs and charges payable out of the property; or
- (c) is necessary to correct a manifest error.

(3) In all other cases, an alteration shall not be made without the approval of the Registrar and stakeholders holding among themselves at least two thirds outstanding shares or units.

(4) The Registrar shall determine the period of notice, if any, that shall be applied before the changes are to take effect.

(5) A collective investment scheme shall file with the Registrar a copy of any circular, advertisement, or other sales literature which shall contain information that is contained on the offer document, trust deed, annual reports and other documents filed with the Registrar, at least ten (10) days in advance of the first publication, mailing or use thereof, and no sales literature may be used if the Registrar, in his discretion, directs that such literature shall not be used.

(6) An operator of a collective investment shall not impose or assess any sales or service charges with respect to the purchase or redemption of its shares or units which is—

(a) not fully clearly disclosed in the prospectus for that scheme required under Part IV of the this Directive, or in the case of a unit trust, in the trust deed; or

(b) excessive under the facts and circumstances, taking into account the nature of the scheme's investment objectives and activities and the types of stakeholders to which it offers its shares for sale.

(7) An operator of a collective investment scheme shall in its annual report disclose to shareholders or unit holders, as the case may be, the composition of the securities portfolio managed by it, and the percentage of the fund invested in each security in the portfolio, and the investment policy and inclusion limits for each type of security.

(8) An operator of a collective investment scheme, not being a unit trust, shall in its annual report include a distribution schedule showing the total number of shareholders in each class and the percentage of shareholdings in each class and the names of the ten largest shareholders and their percentage shareholdings.

Fraudulent
activities and
anti-pyramiding
rules

20.—(1) An operator of a collective investment scheme, or any affiliated person in the representation or conduct of the business of such scheme, shall not directly or indirectly—

(a) engage in any fraudulent, manipulative or deceptive act, practice or course of conduct;

(b) seek to obtain money or securities by means of any misstatement of a material fact, or omission of any material fact necessary to make any statements, in the light of the circumstances under which they were made;

(c) engage in any act, practice or conduct which operates or would operate as a fraud or deceit upon any person;

(d) purchase any security issued by another collective investment scheme in an amount which—

- (i) exceeds ten percent (10%) of the total assets of the purchasing collective investment scheme; or
- (ii) exceeds ten percent (10%) of the outstanding securities of the collective investment scheme whose shares are purchased;
- (e) promise or guarantee to its investors—
 - (i) any specific rate of return or profit; or
 - (ii) any rate of return or profit which is extravagant or otherwise excessive in light of the relevant facts and circumstances;
- (f) make or pay any dividend or other income distribution other than from the undistributed net income determined in accordance with established accounting practices in Malawi; or
- (g) represent, state or imply, in any manner, directly or indirectly, that any licence granted by the Registrar constitutes an endorsement or recommendation by the Registrar of the scheme, or any activities conducted by such scheme:

Provided that an operator of a collective investment scheme shall disclose the fact that it has received a licence to conduct business under Part III.

21.—(1) An operator of a collective investment scheme shall obtain prior written approval of the Registrar in the following matters— Approvals

- (a) amalgamation with any other collective investment scheme;
- (b) takeover of assets and liabilities of another collective investment scheme;
- (c) major changes in the nature of the collective investment scheme or in its legal status; and
- (d) liquidation of the collective investment scheme.

(2) The Registrar, in reviewing any request or approval for any transaction described in subparagraph (1), shall consider whether such transaction is in the best interests of its stakeholders and in the public interest.

(3) The Registrar may approve, deny or conditionally approve any application or request, and specify such terms and conditions of any approval as are consistent with the protection of stakeholders.

(4) Every collective investment scheme shall give thirty (30) days written notice to the Registrar to seek approval in the following matters—

- (a) the appointment of any director, chief executive officer or trustee; or
- (b) the appointment or replacement of its auditors, and in the case of a replacement, a statement of the reasons therefor.

22.—(1) An operator of a collective investment scheme, not being a unit trust, shall— Reporting

- (a) on a monthly basis, prepare and submit to the Registrar, a call report and a statement of fund movement within ten (10) days of end of each calendar month in the format set in the Fifth Schedule hereto;

(b) in the case of a unit trust, prepare bi-annually a call report, consisting of a statement of financial position and income statement, which shall—

(i) inter alia, state the amount of income and the value of a unit participation in the collective investment scheme as at the end of the reporting period; and

(ii) be submitted to the Registrar and made freely available to its participants within six (6) weeks of the end of the half-year to which it relates.

(2) An operator of a collective investment scheme, not being a unit trust, and in the case of a unit trust, the unit trust accounts, shall cause to be prepared within three (3) months after the end of each financial year, its annual accounts plus fund accounts consisting of a statement of financial position and income statement and management letter, as of the end of that financial year, together with any notes on such documents.

(3) The annual accounts of a collective investment scheme shall contain a listing of investments, specifying—

(a) investments acquired in the financial year;

(b) investments disposed of in the financial year;

(c) the portfolio of investments existing as at the end of the financial year and the valuation thereof, with a statement added explaining the basis of valuation; and

(d) a computation of the value of a unit participation of shares or units, as the case may be, as of the end of the financial year, based on the financial position.

(4) A copy of the annual accounts of every operator of a collective investment scheme and in the case of a unit trust, the unit trust accounts, including the auditor's report, shall be submitted to the Registrar and its shareholders or unit holders within three (3) months after the end of every financial year of the institution.

(5) The annual accounts of an operator of a collective investment scheme other than a unit trust and in the case of a unit trust, the unit trust accounts, including the report of its auditors, shall be submitted to the Registrar and its shareholders within three (3) months after the end of every financial year of the institution.

Safe-keeping
and custody of
assets

23.—(1) An operator of collective investment scheme licensed under this Directive shall place or maintain custody of its portfolio of securities and in the case of a unit trust, the portfolio of securities held by the unit trust, with a bank or a financial institution licensed under the Act, pursuant to a written contract between the operator of the scheme and the financial institution.

(2) Any contract described in subparagraph (1) shall, at a minimum—

(a) require the identification and legal segregation of the portfolio of securities of the collective investment scheme, from the securities and assets of any other person;

(b) require that securities of the collective investment scheme be deposited in the vault of the bank or financial institution, or safeguarded in a manner which ensures comparable security;

(c) allow any director, officer or manager of the collective investment scheme to make physical inspections and examinations of the books and records of the bank or financial institution relating to the securities of the collective investment scheme;

(d) prohibit the assignment, pledge, hypothecation or disposition of the collective investment scheme's securities;

(e) prohibit the creation or imposition of any lien, security interest or similar right in favor of the bank or financial institution, or any affiliated person of the bank or financial institution, with respect to the securities of the collective investment scheme; and

(f) permit inspection or examination by the Registrar or any duly appointed inspector or other employee of the Registrar, of the books, records and accounts of the bank or financial institution relating to the securities of the collective investment scheme.

(3) An operator of a collective investment scheme shall carry and maintain insurance, in the form of a fidelity bond or comparable coverage, against loss from unlawful acts or other misconduct or negligence with respect to every director, officer and trustee of the scheme, and every employee of an operator of such collective investment scheme who has access to the securities and assets of the scheme.

(4) The insurance referred to in subparagraph (3) shall be in a form and amount as the directors of the scheme shall determine, is reasonable and appropriate under the facts and circumstances:

Provided that the Registrar may direct the directors of the scheme to increase or modify such insurance coverage, as the Registrar determines is necessary for the protection of the scheme's stakeholders.

(5) Securities of a collective investment scheme which are held in book entry form may be deposited, placed or maintained with a domestic or external securities depository, approved by the Registrar.

24.—(1) An operator of a collective investment scheme shall, in each financial year, hold a general meeting of its stakeholders, and shall describe the meeting as such in the notices calling it.

Meetings

(2) The Companies Act shall apply to the holding and conduct of annual general meetings of every collective investment scheme other than a unit trust, and the rights of stakeholders shall be identical to the rights of members and shareholders in a company, and in the case of a unit trust the provisions of the trust deed shall apply in relation to meetings of unit holders.

Act No. 15 of 2013

25.—(1) An operator of a collective investment scheme shall not appoint or retain a director, officer, trustee, employee, investment adviser, or auditor thereof any person who is subject to a statutory disqualification.

Directors

(2) An operator of a collective investment scheme shall not appoint or retain as a director, officer, employee, investment adviser or auditor any

person who is subject to a statutory restriction, without the prior consent of the Registrar.

PART V—ENFORCEMENT

Penalties

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

(a) failure to submit any report by the due date, a penalty of twenty thousand Kwacha (K20,000.00) and ten thousand Kwacha (K10,000.00) thereafter for each subsequent day that the operator of the investment scheme remains in default;

(b) failure to submit annual audited accounts, management letter and auditor's report by the due date, a penalty of one hundred thousand Kwacha (K100,000.00) and ten thousand Kwacha (K10,000.00) thereafter for each subsequent day that the licensed operator remains in default;

(c) A licensed operator who fails to meet other requirements of this Directive shall be liable to a penalty of up to ten million Kwacha (K10,000,000.00); and

(d) for natural persons who are members of the board of directors or management, a penalty of up to one million Kwacha (K1,000,000.00).

(2) The penalty in subparagraph (1), shall be paid through a bank certified cheque payable to the Reserve Bank within ten (10) working days after being notified of the violation.

Administrative penalties Act No. 20 of 2010

27. In addition to the monetary penalties imposed in paragraph 26, the Registrar may impose directions and administrative penalties as provided for under the Act, and the Securities Act, 2010.

FIRST SCHEDULE

(para. 6(2)(a))

APPLICATION BY A COMPANY FOR THE GRANT OF A LICENCE TO OPERATE A COLLECTIVE INVESTMENT SCHEME

All questions must be answered in full.

Application is hereby made for the grant of a licence to operate a Collective Investment Scheme under the Financial Services Act, 2010 and the following statements are made in respect thereof—

1. Name of company:
2. Date and Place of incorporation:
3. Registered office:
4. Mailing address:
5. E-mail address:
6. Website address:
7. Physical address (location of business):

may lead to such a judgment or finding?

.....
(If so, please provide details)

- (c) contravened any written law designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management of companies or against financial loss due to the conduct of discharged or un-discharged bankrupts?

.....
(If so, please provide details)

- (d) had a receiver or manager been appointed in respect of any of the assets of the applicant?

.....
(If so, please provide details)

- (e) had a petition presented in a court for its winding up?

.....
(If so, please provide details)

- (f) been subjected to any form of disciplinary proceedings or action by any professional or regulatory body?

.....
(If so, please provide details)

19. State the legal form of the Collective Investment Scheme:

- (a) Mutual Fund
- (b) Unit Trust
- (c) Investment Company
- (d) Other (please specify)

20. State the names and addresses of each of the following:

- (a) Fund Manager
- (b) Custodians
- (c) Trustees

21. Is the collective investment scheme to be open-ended or close-ended?

22. Please attach the following documents:

- (a) Copy of Certificate of Incorporation
- (b) Copy of the Memorandum and Articles of Association
- (c) Copy of the last audited financial statements
- (d) Licence application fee of five hundred thousand Kwacha (K500,000.00)

We the undersigned do hereby certify that:

1. All the information given in response to and in support of the questions in this application is true and correct to the best of our knowledge and belief.
2. This application is made in good faith with the purpose and intent that affairs of the

proposed Collective Investment Scheme will at all times be honestly conducted with good and sound business principles and in full compliance with all applicable laws and directives.

3. To the best of our knowledge and belief there are no other facts or information relevant to this application of which the Registrar should be made aware of, and we hereby pledge to promptly inform the Registrar of any material change to this application which may arise while it is being considered.

Dated this.....day of.....20.....

Signature.....

Name.....

Director

Signature.....

Name.....

Director

Signature.....

Name.....

Principal Officer

Notes:

1. All enquiries concerning the preparation, filing and status of this application shall be made to: The Director, Microfinance and Capital Markets Supervision, Reserve Bank of Malawi.
2. Upon completion the original and two duplicate copies of the application and all other attachments must be submitted to: The Director, Microfinance and Capital Markets Supervision, Reserve Bank of Malawi, P. O. Box 565, Blantyre, Malawi.
3. A non refundable licence application fee of five hundred thousand Kwacha (K500,000.00) payable to the Reserve Bank of Malawi must be included with the application.

SECOND SCHEDULE

(para 7(2))

LICENCE FORMAT

REGISTRAR OF FINANCIAL INSTITUTIONS

FINANCIAL SERVICES ACT, 2010

COLLECTIVE INVESTMENT SCHEME LICENCE

A LICENCE is hereby granted to.....of.....
to operate a collective investment scheme. This licence is issued subject to the provisions of the Financial Services Act 2010.

ISSUED THIS..... DAY OF 20.....

.....
REGISTRAR OF FINANCIAL INSTITUTIONS

THIRD SCHEDULE

(para 11(6))

QUALIFICATIONS AND EXPERIENCE FOR PERSONS WHO DEAL WITH CLIENTS

PART I—LOCAL QUALIFICATIONS

LOCAL QUALIFICATIONS	EXPERIENCE
Institute of Chartered Accountants in Malawi Technician Diploma	Four years
A business degree from a recognised University	One year
Institute of Chartered Accountants in Malawi Certificate	One year
Other qualifications evaluated by the Registrar on a Case by case basis	As may be determined by the Registrar

PART II—FOREIGN QUALIFICATION

FOREIGN QUALIFICATIONS	EXPERIENCE
Investment Advice certificate from the South African Institute of Financial Markets	One year
A business degree from a recognised University	One year
Registered persons examinations certificate from the South African Institute of Financial Markets	Two years
Association of Chartered Certified Accountants (ACCA) or Chartered Institute of Management Accountants (CIMA) certificate	One year
Chartered Financial Analyst (any level)	None
Other qualifications evaluated by the Registrar on a case by case basis	As may be determined by the Registrar

FOURTH SCHEDULE

(para. 16(4))

CUSTOMER ACCOUNT INFORMATION

Every operator of a collective investment scheme shall keep the following information in an account of a customer—

(a) individuals—

- (i) name and residential address (documentary proof such as utility bills must be submitted in support of residential address);
- (ii) telephone numbers and e-mail addresses;
- (iii) occupation (name and address of employer, if any);
- (iv) tax identification information, if available;
- (v) copy of passport or driving license or national identity and

- (vi) proof of source of funds; and
- (b) corporate entities—
 - (i) name and registered address;
 - (ii) telephone numbers;
 - (iii) names and designations of persons authorized to transact business;
 - (iv) copy of Certificate of Incorporation; and
 - (v) tax identification number.

FIFTH SCHEDULE

(para. 22(1)(a))

CALL REPORT

STATEMENT OF FINANCIAL POSITION FOR EQUITY AND LIABILITIES

1. SHAREHOLDER'S EQUITY:

- 1.1 Share Capital- Paid Up :
- 1.2 Share Premium Account :
- 1.3 Shareholders Advances :
- 1.4 Retained Earnings or Profits :
- 1.5 Capital Grant :
- 1.6 Total :
- :

2. NON CURRENT LIABILITIES

- 2.1 Deferred Tax :
- 2.1 Long Term Loans :
- 2.2 Other(specify) :
- 2.3 Total :
- :

3. TOTAL CAPITAL EMPLOYED

:

4. CURRENT LIABILITIES:

- 4.1 Creditors and Accruals :
- 4.2 Due to Group :
- 4.3 Taxation Payable :
- 4.4 Bank Overdraft :
- 4.5 Others (specify):
- 4.6 Total :
- :

5. TOTAL EQUITY AND LIABILITIES

.....

ASSETS

1. NON CURRENT ASSETS:

1.1 Land and Office Buildings :.....

1.2 Motor Vehicles and Equipment :.....

1.3 Deferred Tax :.....

1.4 Other Investments:.....

1.5 Other(specify) :.....

1.6 Total :.....

.....

2. CURRENT ASSETS:

2.1 Debtors and Prepayments :.....

2.2 Treasury Bills :.....

2.3 Local Registered Stocks :.....

2.4 Bank Balances and Cash:.....

2.5 Taxation Recoverable:.....

2.6 Equity Investments :.....

2.7 Due from Group :.....

2.8 Other Investments(Specify) :.....

2.9 Total :.....

.....

3. TOTAL ASSETS

.....

STATEMENT OF INCOME STATEMENT FOR

.....

1. INVESTMENT INCOME:

1.1 Trading Income :.....

1.2 Non Trading Income :.....

1.3 Interest Receivable :.....

1.4 Dividend Receivable :.....

1.5 Rent Receivable :.....

1.6 Operating Income :.....

1.7 Net Increase in Fair Value of Equity Investments :.....

1.8 Total :.....

.....

2. INVESTMENT EXPENDITURE

2.1 Staff Costs :.....

2.2	Administrative Costs :.....
2.3	Exchange Difference (Net) :.....
2.4	Management Fees :.....
2.5	Auditors Remuneration :.....
2.6	Loss or gain on Disposal of Equity Investments :.....
2.7	Director's Remuneration :.....
2.8	Depreciation :.....
2.9	Total :.....
	:.....
2.5	Profit Before Interest :.....
	:.....
2.6	Interest Expense :.....
	:.....
3.	PROFIT BEFORE TAXATION
	:.....
4.	Income Tax Expense :.....
	:.....
5.	NET PROFIT/LOSS FOR THE YEAR :.....
6.	Add: Retained Earnings from the Previous Year :.....
7.	Deduct: Dividends to Shareholders :.....
8.	RETAINED EARNINGS CLOSING:.....
	BALANCE :.....
	:.....

STATEMENT OF CASHFLOW

	:.....
1.	OPERATING ACTIVITIES :.....
1.2	Cash Receipts from Clients/Investments :.....
1.3	Cash Paid to Suppliers :.....
1.4	Cash Paid to Employees :.....
1.5	Cash Generated from Operations :.....
	:.....
1.6	Income Tax Recovered/(Paid) :.....
1.7	Interest Paid :.....
1.8	Cash Payments for Other Operating Expenses :.....
1.9	Net Cash from Operating Activities :.....
	:.....

2. INVESTING ACTIVITIES :.....
 2.1 Investment Income Received :.....
 2.2 Acquisition/Disposal of Investments (Net):.....

Made this 4th day of May, 2015..

C. S. R. CHUKA
*Registrar of Financial
 Institutions*

(FILE NO.EA/FSPU/1/1)

GOVERNMENT NOTICE NO. 28

FINANCIAL SERVICES ACT, 2010
 (ACT No 26 of 2010)

FINANCIAL SERVICES (ESTABLISHMENT AND OPERATIONS OF TRANSFER
 SECRETARIES) DIRECTIVE, 2015

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

PART I—PRELIMINARY

1. Citation

PART II—OBJECTIVES

2. Objectives

PART III—LICENSING

3. Application for licence
 4. Grant or denial of licence
 5. Renewal of licence
 6. General requirements
 7. Suspension or Revocation of Licence

PART IV—GENERAL REQUIREMENTS

8. General requirements
 9. Record keeping
 10. Provision of assistance to the Registrar
 11. Reporting obligations

PART V—ENFORCEMENT

12. Monetary penalties
 13. Administrative penalties

PART VI—REVOCATION

14. Revocation