

## COLLECTIVE INVESTMENT SCHEMES

IN EXERCISE of the powers conferred by sections 35, 42 and 54 of the Capital Market Development Act, the Reserve Bank of Malawi, with the approval of the Minister of Finance, has made the following Regulations:-

### 1. Citation

These Regulations may be cited as the Capital Market Development (Establishment and Operation of Collective Investment Schemes) Regulations, 1997.

### 2. Interpretation

(1) In these Regulations, unless the context otherwise requires:-

"Act" means the Capital Market Development Act, 1990.

"affiliated person" means any person who, with respect to a second person, is:

- (i) an officer, director, trustee or general manager of the second person;
- (ii) an investment adviser to the second person if such second person is a collective investment scheme;
- (iii) an owner, directly or indirectly, of ten (10) percent or more of the outstanding voting securities of such second person;
- (iv) any attorney or accountant to the second person if such person is a collective investment scheme;
- (v) an officer, director, trustee or general manager, or any immediate family member, of that second person if such second person is an affiliated person; or
- (vi) any person who, since the beginning of the last two completed calendar years has had a material business relationship with such second person, if such second person is a 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 person which issues or proposes to issue any security, and which

- (i) is or holds itself out as being primarily engaged in the business of investing, reinvesting, holding, owning or trading of securities, or
- (ii) is or holds itself out as being engaged in such business, and owns securities (excluding securities of majority owned subsidiaries which themselves are not collective investment schemes) exceeding fifty (50) percent of the scheme's total assets.

"director" shall mean a director or trustee of a collective investment scheme, or person exercising substantially similar functions of a director or trustee thereof.

"diversified" when used with respect to any type of collective investment scheme, means any such scheme where not more than ten (10) percent of the total value of its assets is invested in securities of any issuer (excluding Government securities).

"independent director" shall mean, with respect to a collective investment scheme, any director or trustee thereof, who is an affiliated person of such collective investment scheme solely by reason of his position as a director or trustee thereof.

"non-diversified", when used with respect to any type of collective investment scheme, means any such scheme which is not diversified.

"open-end investment scheme" means any collective investment scheme which offers for sale on a continuous basis or has outstanding any security which is redeemable at the holder's option.

"stakeholder" shall mean a shareholder or unit holder of a collective investment scheme's stock, shares equity securities or units.

"statutory disqualification" means a disqualification of a person if that person:

- (a) has been convicted of a crime involving fraud, dishonesty or moral turpitude;
- (b) is subject to an order or direction, entered by consent or otherwise, of any Malawi or external regulatory authority or self-regulatory authority suspending or barring such person from conducting any securities, commodity trading, financial institutions, insurance or pension scheme business, which order or direction still is in effect, or
- (c) has associated with him any person subject to a statutory disqualification.

"statutory restriction" mean restriction of a person if that person:

- (a) has been adjudicated a bankrupt,
- (b) has been adjudicated or found in Malawi or elsewhere to have violated, or caused the violation of, any securities, commodities trading, banking, financial services, insurance or pension scheme law, which adjudication or finding still is in effect;
- (c) has stipulated or consented to the entry of any order of finding with respect to a violation described in subparagraph (b); or
- (d) has associated with him any person subject to a statutory restriction.

"unit trust" means a collective investment scheme which is organized under a declaration of trust or similar instrument, has no board of directors, and issues redeemable securities representing a fractional undivided interest in a portfolio of securities.

(2) Unless otherwise specified in these Regulations, any other terms used in these Regulations shall have the meaning assigned to them in the Act, if a meaning is so assigned.

### **3. Unlawful Activities**

(1) It shall be unlawful for any collective investment scheme, directly or indirectly, to offer for sale, solicit the purchase of, or otherwise induce or attempt to induce to purchase or sell, any security of which it is the issuer, unless such collective investment scheme has been authorized by the Bank.

(2) It shall be unlawful for any collective investment scheme organized under the laws of Malawi, or which is an external company authorized to conduct business in Malawi, directly or indirectly, to offer for sale, solicit the purchase of, or otherwise induce or attempt to induce any person to purchase or sell, any security of which it is the issuer, unless such collective investment scheme has been authorized by the Bank.

### **4. Application for Authorization**

(1) An application for authorization to establish, or to operate as, a collective investment scheme shall contain the following information:-

- (a) the name of the scheme;
- (b) the legal form of organization for the scheme;
- (c) a description of whether the scheme is proposed to be (i) open-end, (ii) closed-end, or (iii) a unit trust, and whether the scheme is proposed to be diversified or non-diversified;

(d) a description of the fundamental investment policies of the scheme and the investment portfolio practices of the same;

(e) a description of the securities to be issued by the scheme, including: (i) the type of securities; (ii) any voting rights with respect thereto; (iii) how such securities may be purchased or sold; (iv) whether such securities are transferable or redeemable; and (v) any restrictions on transferability or redeemability;

(f) full biological and financial information on each officer, director or trustee of the scheme;

(g) whether any organizer, promoter, officer, director or trustee of the scheme is or has been subject to a statutory disqualification or a statutory restriction;

(h) the name of the person or persons authorized to provide investment advice to the schemes or act as the scheme's principal underwriter, and, with respect to such person or persons, all information, with respect to their officers, directors, and managing officials, specified in paragraphs (f) and (g) above;

(i) the names, domiciles and professional qualifications of attorneys and auditors appointed to provide services to the collective investment scheme;

(j) in the case of an open-end scheme or unit trust, a detailed description of the methods which will be used by the scheme to compute the net asset value of securities issued by it; and how, and how often, shares may be purchased or redeemed;

(k) in the case of a closed-end scheme, the proposed public offering price of its shares, and the name of the securities exchange where such shares will be listed and traded;

(l) a detailed description of all sales, service fees and other charges charged to the shareholders of the scheme; and

(m) such other information as the Bank, by notice or directive, may specify.

(2) The application shall be accompanied by such fees as the Bank may, by notice or direction, specify.

(3) The Bank may require additional information as it considers relevant for its consideration of the application either from the applicant or from any other source, and authorization shall not be given until the Bank receives such additional information or unless it decides to dispense with it.

(4) In reviewing any application under these Regulations, the Bank shall consider the facts and circumstances contained in the application and any other relevant information, in determining whether granting authorization hereunder is in the public interest and consistent with the protection of the investing public. Among other things, the Bank may consider:

(a) whether the information supplied in the application is accurate and complete, and makes full disclosure of all relevant facts;

(b) the identity, background and integrity of the scheme's affiliates and promoters;

(c) the financial expertise, experience and resources available to the scheme and its affiliated persons;

(d) whether the scheme's affiliated persons and promoters are fit and proper persons to organize and operate or provide services to the scheme;

(e) whether the scheme and its affiliated persons are capable of complying, and will comply, with the requirements of the Act and these Regulations; and

(f) whether the authorization of the scheme is in the interests of investors and the investing public.

(5) If the Bank is satisfied, on the basis of its review under subsection (4), that the scheme should be authorized to conduct business, the Bank shall issue an order to such effect. Such authorization shall be deemed a license issued to such scheme within the Act.

## **5. Revocation of Authorization**

(1) The Bank, upon written notice to a collective investment scheme, may suspend or revoke any authorization granted under Regulation 4 if the Bank determines that:-

(a) the collective investment scheme, or any director, officer, trustee, investment adviser or principal underwriter of the scheme, becomes subject to a statutory disqualification;

(b) the collective investment scheme, or any director, officer, trustee, investment adviser or principal underwriter of the scheme, is subject to a statutory restriction;

(c) the collective investment scheme, or any director, officer, trustee, investment adviser or principal underwriter of the scheme, is found to have violated, or caused the violation of, any provision of this Act or the regulations thereunder;

(d) the collective investment scheme is unable to meet its liabilities and other debt obligations as they come due;

(e) in the case of an open-end collective investment scheme, the scheme is unable to satisfy, in a timely manner, stakeholder redemption requests; or

(f) 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 which is subject to an order under subsection (1) shall promptly cease the offer and sale of its securities; and shall not redeem any outstanding security, or satisfy any indebtedness or obligation, without the prior consent of the Bank.

(3) In addition to or in lieu of any order issued under subsection (1), the Bank, in its discretion, may by order direct the scheme or any affiliated person thereof to take such corrective or remedial action as the Bank determines is necessary to rectify those matters which constitute grounds for action under subsection (1).

(4) In the case of any collective scheme which is subject to an order issued under subsection (1), the bank may appoint a receiver or liquidator in accordance with the requirements of the Bankruptcy Act or Companies Act.

(5) Either upon application by a collective investment scheme subject to an order under subsection (1), or on its own motion, if the Bank determines that the resumed operation of the scheme is in the interest of the public and the protection of investors, and that the scheme and its affiliated persons will comply in all material respects with the Act and the regulations thereunder, the Bank may by order permit the scheme to resume operations under such terms and investors.

## **6. Prospectuses Required**

(1) Subject to Regulations 3 and 4, no collective investment scheme shall offer for sell any securities of which it is the issuer, unless such scheme shall have complied with the Act with regard to requirements for prospectuses under the Companies Act.

(2) The Bank may grant permission to an open-end collective investment scheme for continuous offering of the instruments referred to in subregulation (1) on the basis of a prospectus issued in compliance with the Act, for public placement or public subscription during a predetermined period of not more than twelve months.

## **7. Disclosure of Information to the Market**

Every collective investment scheme shall promptly disclosure to the Bank, its stakeholders and the public any material information with regard to the development, composition, value and profitability of its investments at the time such information becomes known, by means of written notice timely delivered to such persons or, in lieu of such notice in the case of stakeholders, by publication in a newspaper of general circulation in Malawi; provided, however, that a collective investment scheme shall not be obliged to make disclosures on purchases and sales of portfolio investments before finalizing such transactions if the collective investment scheme has good reason to believe that such disclosure might be harmful of its interests and those of its stakeholders.

## **8. Management of Collective Investment Schemes**

(1) Every collective investment scheme shall be under the management of a board of directors at least a majority of which shall not be affiliated persons; provided, however, that a unit trust shall be under the management of a trustee which shall not be an affiliated person.

(2) A majority of the directors of every open-end or closed-end collective investment scheme shall, at any time, have been approved by vote of the stakeholders holding at least a majority of the scheme's outstanding securities; provided, however, that, if due to death, incapacity, resignation or removal, replacement directors are appointed by the scheme's existing directors, the appointment of such replacement directors shall be subject to stakeholder approval at the next annual meeting.

(3) Every director, manager or executive officer of a collective investment scheme shall disclose in writing to the Bank any existing to 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 with the collective investment scheme, within five (5) days of his appointment to his position, or becoming aware of such conflict.

(4) No director, manager or executive officer of a collective investment scheme shall 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, sale, borrowing or lending of investments or assets; provided, however, that such official may receive usual and customary remuneration from the collective investment scheme for his services.

## **9. Capital Structure of Collective Investment Schemes**

(1) No collective scheme shall, without the approval of the Bank:-

(a) issue or incur any indebtedness in an amount which exceeds, when combined with all other indebtedness of the collective investment scheme, more than twenty-five (25) percent of the stakeholders' capital of the scheme;

(b) pledge, alienate, assign or permit the encumbrance of, its assets in an amount exceeding ten (10) percent of the total assets of the collective investment scheme; or

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

(2) The Bank, in reviewing any request or application for approval of any transactions described in subsection (1), shall consider the relative risks and benefits of such transaction, its fairness to the shareholders of the collective investment scheme and whether the transaction would or reasonably might pose a material financial risk to the scheme. The Bank may approve, conditionally approve or deny any such application or request, and may specify the terms and conditions of any approval or conditional approval.

(3) The Bank may specify, by notice or direction, the form and content any application or request for approval of a transaction described in subsection (1).

## **10. Restrictions on Issuance of Securities by Collective Investment Schemes**

No collective investment scheme shall:-

(a) issue or sell any of its securities for other than cash or readily marketable, fully-valued securities or other liquid assets:

(b) issue or sell any of its securities on credit or margin extended by it or any affiliated person thereof;

(c) issue any class of security which has dividend, voting liquidation or redemption rights, which are in any fashion different or superior than any other class of security of that issuer;

(d) in the case of an open-end scheme or unit trust, issue or sell of any of its securities at other than the most recently - computed net asset value thereof; provided, however, that the scheme may charge any sales commission or selling expense that is described in the prospectus for such a scheme;

## **11. Contracts of Collective Investment Schemes**

(1) No collective investment scheme shall:-

(a) retain as investment adviser or principal underwriter any person except pursuant to a written contract which (i) precisely sets forth the compensation to be paid to such investment adviser or underwriter, and (ii) continues in existence for not more than two years following its execution, unless such contract is approved not later than two years after its execution and thereafter at least once every two years by vote of the majority of the scheme's directors and by a vote of the majority of the scheme's independent directors.

(b) without the approval of the Bank, assign or permit an assignment of any contract with an investment adviser;

(c) retain as investment adviser any person which is not licensed as an investment adviser under the Act, or retain as principal underwriter any person which is not licensed as a dealer 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 scheme's directors.

(2) All contracts subject to this Regulation, including any amendments thereto, shall be filed with the Bank within thirty (30) days following the execution thereof.

## 12. Transactions with Affiliated Persons

(1) No collective investment scheme shall, without the advance approval of the Bank:-

(a) purchase or sell securities or other property from or to any affiliated person;

(b) borrow from, or extend credit in any form to, any affiliated person;

(c) Guarantee the obligations of any affiliated person; or

(d) enter into any transaction in which an affiliated person also is a participant.

(2) The Bank, in reviewing any request or applications to approve any transaction described in subsection (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.

(3) The Bank may specify, by notice or direction, the form and content of any application or request for approval of a transaction described in subsection (1).

## 13. Activities of Open-End Collective Investment Schemes

(1) Every open-end collective investment scheme shall:-

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

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

(c) compute the net asset value of its shares 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 scheme's directors, all other securities and assets.

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

(3) Every 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 seventy-five (75) percent of its assets in cash and readily marketable securities and assets.

#### **14. Activities of Closed-End Collective Investment Schemes**

(1) Without the prior approval of the Bank, no closed-end collective investment scheme shall, directly, issue or cause to be issued shares which are not listed for trading on the Malawi Stock Exchange or other regulated securities exchange organized and regulated under the laws of a country which is geographically contiguous to Malawi.

(2) No closed-end collective investment scheme, and no affiliated person of such a scheme, shall, directly or indirectly, purchase or repurchase its shares except at the last quoted sales price for such shares on the Malawi Stock Exchange or other securities exchange described in subsection (1).

#### **15. Activities of All Collective Investment Schemes**

(1) Without the prior approval of the Bank and stakeholders holding at least sixty-six and two-thirds (66 2/3) percent of its outstanding shares or units, no collective investment scheme shall:-

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

(2) Every collective investment scheme shall file with the Bank a copy of any circular, advertisement, or other sales literature at least ten (10) days in advance of the first publication, mailing or use thereof. No sales literature may be used if the Bank, in its discretion, directs that such literature not be used.

(3) No collective investment shall impose or assess any sales or service charge with respect to the purchase or redemption of its shares which is:-

- (a) not fully clearly disclosed in the prospectus for that scheme required under section 6 of the Regulations; 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.

(4) No collective investment scheme shall purchase or sell any security or asset which is not in accordance with its classification as a diversified or nondiversified scheme, or its fundamental investment policies.

## **16. Fraudulent Activities; Anti-Pyramiding Rules**

No collective investment, or any affiliated person in the representation or conduct of the business of such scheme, shall directly or indirectly:-

(1) Engage in any fraudulent, manipulative or deceptive act, practice or course of conduct; 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, not misleading; or engage in any act, practice or course of conduct which operates or would operate as a fraud or deceit upon any person.

(2) Purchase any security issued by another collective investment scheme in an amount which (i) exceeds ten (10) percent of the total assets of the purchasing collective investment scheme, or (ii) exceeds ten (10) percent of the outstanding securities of the collective investment scheme whose shares are purchased;

(3) Purchase securities issued by other collective investment schemes which in the aggregate, exceed ten (10) percent of the total assets of the purchasing collective investment scheme;

(4) Promise or guarantee to its investors:-

(a) any specific rate of return or profit; or

(b) any rate of return or profit which is extravagant or otherwise excessive in light of the relevant facts and circumstances; or

(5) Make or pay any dividend or other income distribution other than from the collective investment scheme's undistributed net income determined in accordance with established accounting practices in Malawi.

(6) Represent, state or imply, in any manner, directly or indirectly, that any authorization granted by the Bank under these Regulations constitutes an endorsement or recommendation by the Bank of such scheme, or any activities conducted by such scheme; provided, however, that a collective investment scheme disclose the fact that it has received authorization to conduct business under section 4 of these Regulations.

## **17. Fundamental Transactions**

(1) Every collective investment scheme shall obtain prior written approval of the Bank for the following matters:-

(a) any amalgamation with any other collective investment scheme;

(b) any material change in its memorandum or articles of association, statute or statutes, trust deed or deeds;

(c) any takeover of assets and liabilities of another collective investment scheme;

(d) any major changes in the nature of the collective investment scheme or in its legal status; and

(e) any liquidation of the collective investment scheme.

(2)The Bank in reviewing any request or approval for any transaction described in subsection (1), shall consider whether such transaction is in the best interests of its stakeholders and in the public interest. The Bank may approve, deny or conditionally approve any application or request, and specify such terms and conditions of any approval or conditional approval as are consistent with the protection of stakeholders.

(3)Every collective investment scheme shall give thirty (30) days prior written notice to the Bank of the following matters:-

(a)the appointment of any director, officer, general manager or trustee; or

(b)the appointment or replacement of its auditors, and in the case of a replacement, a statement of the reasons therefore.

(4)The Bank may specify, by notice or direction, the form and content of any application, request or notice submitted under subsection (1) or (3).

## **18. Reports and Financial Statements**

(1) A collective investment scheme shall prepare at least half yearly summary financial statements, consisting of a balance sheet and a profit and loss account, which shall:-

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

(b) be made freely available to its participants.

(2) A collective investment scheme shall cause to be prepared within six (6) months after the end of each of its financial year, its annual accounts consisting of a balance sheet and a profit and loss account 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) any balance of investments existing as at the end of the financial year and the valuation thereof, with a statement added explaining the 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 balance sheet.

(4)The annual accounts of a collective investment scheme, including the report of its auditors, shall be open for inspection by its stakeholders during normal hours, and copies thereof, for which a reasonable fee may be charged by the institution, shall be made available to its participants.

(5)A copy of the annual accounts of every collective investment scheme, including the auditors report, shall be submitted to the Bank immediately upon the expiry of six (6) months after the end of every financial year of the institution.

## **19. Safe-Keeping and Custody of Assets**

(1) Every collective investment scheme authorized under these Regulations shall place or maintain custody of its portfolio securities and other assets with a bank or a financial institution licensed and subject to regulation by the Bank under the Banking Act, 1989 (cap. 44:01), pursuant to a written contract between the scheme and the financial institution.

(2) Any contract described in subsection (1) shall, at a minimum:-

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

(b) require that securities and assets 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 and assets of the collective investment scheme;

(d) prohibit the assignment, pledge, hypothecation or disposition of the collective investment scheme's securities and assets except upon the directive, and for the account, of the scheme;

(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 and assets of the collective investment scheme;

(f) require that an annual audit of the books and records of the bank or financial institution relating to the securities and assets of the collective investment scheme, and a physical inventory of the same, be conducted by a duly qualified and licensed auditor; and

(g) permit inspection or examination by the Bank or any duly appointed inspector or other employer of the book, records and accounts of the bank or financial institution relating to the securities and assets of the collective investment scheme.

(3) No person acting or purporting to act on behalf of a collective investment scheme shall have access to, or the power to transfer, dispose, encumber or alienate in any manner, the securities and assets of a collective investment scheme unless such person has been authorized to so act on behalf of the scheme by appropriate resolution of the scheme's board of directors.

(4) Every collective investment scheme, through its board of directors, shall adopt policies and procedures adequate to ensure that: (i) securities and assets of the scheme are transferred, disposed of, pledged or alienated only upon proper and verified authorization and instruction, and will not be diverted, misapplied or misappropriated; and (ii) all transactions in the securities and assets of the scheme are promptly recorded and are subject to full and complete audit.

(5) A collective investment scheme shall carry and maintain insurance, in the form of a fidelity bond or comparable coverage, against unlawful acts or other misconduct or negligence with respect to every director, officer and trustee of the scheme, and every employee of a collective investment scheme who has access to the securities and assets of the scheme. Such insurance 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, however, that the Bank may direct the directors of the scheme to increase or modify such insurance coverage as the Bank determines is necessary for the protection of the scheme's stakeholders.

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

## **20. Meetings of Stakeholders**

(1) Every 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.

(2) Part VI of the Companies Act shall apply to the holding and conduct of annual general meetings of every collective investment scheme, and the rights of stakeholders shall be deemed identical to the rights under Part VI of that Act of members and shareholders in a company.

(3) The Bank may, as it considers appropriate and in the interests of the stakeholders thereof, exempt a collective investment scheme, either generally or in respect of any financial year, from complying with the requirements of subsection (1) or (2) and in such event the Bank may approve alternative procedures for an annual general meeting of such scheme.

## **21. Distributions of Income**

A collective investment scheme which has as a fundamental investment policy income maximization shall distribute the income earned on investments to its participants within six (6) months after the end of its financial year, provided, however, that the Bank may upon application by a collective investment scheme and if it determines that retention of earnings by the scheme would be in the interest of its stakeholders, exempt the collective investment scheme from complying with this section with respect to the income earned in a particular financial year.

## **22. Directors, Officers and Other Key Officials**

(1) No collective investment scheme shall appoint or retain as a director, officer, trustee, employee, investment adviser, principal underwriter, auditor or attorney thereof any person which is subject to a statutory disqualification.

(2) Without the prior consent of the Bank, no collective investment scheme shall appoint or retain as a director, officer, employee, investment adviser, principal underwriter, auditor or attorney thereof any person which is subject to statutory restriction.

(3) If a director, officer, trustee, employee, investment adviser, principal underwriter, auditor or attorney of a collective investment scheme, having in his capacity as such acquired any non-public information which may substantially affect the value of participation in the scheme, purchases or sells any such participation without disclosing the information to the seller or purchaser thereof, the purchase or sale shall be voidable at the option of the purchaser or seller within twelve (12) months after the date of the agreement to purchase or to sell.

## **23. Liability for Offences**

(1) Any violation of these Regulations shall constitute a violation of the Act, and shall be subject to the remedies and penalties specified therein with respect to such violations.

(2) Without limiting the authority of the Bank to take any other action, any violation of these Regulations specifically shall constitute a violation of the Act and shall be subject to the penalties prescribed therein.

(3) Nothing in this regulation shall derogate from any other right or remedy which may be available to the Bank or any person under any law in force in Malawi.

#### **24. Repeal of 1992 Regulations**

The Capital Market Development (Establishment and Operation of Investment Institutions) Regulations, 1992 hereby are repealed.

Made by the Reserve Bank of Malawi on the .....day of ..... 1997.

Governor

Approved this on ..... day of .....1997.

Minister of Finance