



RESERVE BANK OF MALAWI

DIRECTIVE

No. DO3-06/DAS

DIRECTIVE ON NEW DIRECTORS, AUDIT COMMITTEE MEMBERS, AND SENIOR MANAGEMENT OFFICIALS

Arrangement of Sections

PART I

Preliminary

SECTION

1. Short Title
2. Authorization
3. Application
4. Interpretations

PART II

Statement of Policy

SECTION

1. Objectives
2. Rationale

PART III

Requirements

SECTION

Requirements

PART IV

Fit and Proper Standards

SECTION

- 1 Eligibility to Serve
- 2 Reputation, Competence and Expertise
- 3 Capacity to Comply with Provisions of the Banking Act

PART V

Remedial Measures and Administrative Sanctions

SECTION

- 1 Remedial Measures
- 2 Administrative Sanctions

PART VI

Effective Date

Annex 1: Form of Request to the Reserve Bank and Information Requirements

**DIRECTIVE ON NEW DIRECTORS, AUDIT COMMITTEE MEMBERS,
AND SENIOR MANAGEMENT OFFICIALS**

PART 1: PRELIMINARY

- Sec 1: Short Title-** Directors and Managers Requirements
- Sec 2: Authorization-** This directive is issued by the Reserve Bank of Malawi pursuant to its authority set forth in Sections 14(1) and 26 of the Banking Act (1989), for the purpose of implementing the provisions of Sections 6(1), 25(a), 25(j) (ii), and 45 of the Banking Act.
- Sec 3: Application-** This directive applies to all banks and other financial institutions licensed under the Banking Act (licensed institutions).
- Sec 4: Interpretation-** In this Directive unless the context otherwise requires
- 4.1** **‘Audit Committee’** means a permanent committee of the board of directors of a licensed institution consisting of at least three members, the majority of whom are not senior management officials or employees of the licensed institution.
- 4.2** **‘Banking Act’** means the Banking Act, 1989, of Malawi.
- 4.3** **‘Board of Directors’** means the highest body of authority in a licensed institution responsible for strategically guiding the licensed institution, effectively monitoring management, and properly accounting to shareholders.
- 4.4** **‘Credit’** means any asset or off-balance-sheet item that contains credit risk, including loans and participations, overdrafts, advances and all of the following “credit facilities” listed in Section 2 of the Banking Act: financing by means of factoring, leasing, hire purchase, accepting of trade and other bills, discounting of such bills and notes, the opening or confirming of documentary credit, the issue of other letters of standby, credit, guarantee or surety, the undertaking to pay on account of another person, and other similar undertakings.
- 4.5** **‘Director’** means any person, by whatever name called, who performs or is empowered to perform, substantially the same functions for the licensed institution as those performed by the director of a company, whether or not the person receives compensation.
- 4.6** **‘Executive Officer’** means an officer at the most senior level of the management of a licensed institution (whether or not he/she is a director) who effectively manages that licensed institution.
- 4.7** **‘Home Country Supervisor’** means the competent authority that supervises institutions engaged in banking business in the country where the head office of a foreign bank is located.

- 4.8** **‘Licensed Institution’** means a bank or other financial institution holding a valid license, issued by the Reserve Bank, authorizing it to engage in banking taking business in Malawi.
- 4.9** **‘Principal Shareholder’** means a person who holds (directly or indirectly): (1) Ten percent (10%) or more of either the equity or the voting rights of the licensed institution; or (2) Such other interest in the licensed institution that enables the person to exercise significant influence over its management or activity.
- 4.10** **‘Related Person’** means includes all of the following:
- 1) Person who is related to an “Insider” (Principal Shareholder, member of the Board of Directors and/or Audit Committee, Executive Officer, or Senior Management Official) of a licensed institution by marriage or consanguinity to the second degree;
 - 2) Juridical person in which an insider has a business interest, including as a partner, director, manager or guarantor;
 - 3) Individual person for whom an insider is a guarantor;
 - 4) Subsidiary of the licensed institution or of an insider;
 - 5) Company or undertaking in which at least a 10% interest is held by the licensed institution or by an insider;
 - 6) Parent company of the licensed institution or of an insider;
 - 7) Company that is under common control with the licensed institution or of an insider;
 - 8) Company that holds at least a 10% interest of another company in which the licensed institution or an insider holds at least a 10% interest;
 - 9) Company that has common management and/or common directors with the licensed institution, an insider, or another related person of the licensed institution; and
 - 10) Political campaign committee that is controlled by an insider or related person or that the funds or services of which will benefit an insider or related person.
- 4.11** **‘Reserve Bank’** means the Reserve Bank of Malawi established under the Reserve Bank of Malawi Act, 1989.
- 4.12** **‘Senior Management Official’** means any person who is an officer of a licensed institution, including the “executive officer,” vice-president(s), chief accountant, chief lending officer, chief treasury officer (or their equivalents), and any other person who, alone or together with one or more others, has the authority to enter into commitments for the account of the licensed institution.

PART 2: STATEMENT OF POLICY

Sec. 1 Objectives

- 1) To help ensure banks are managed by competent personnel both at board and management levels;
- 2) To promote self-discipline in the management of banks.

Sec. 2: Rationale

- 1) A key aspect of licensing process is an evaluation of the competence, integrity and qualification of proposed management, including the board of directors to ensure that a licensed institution is professionally managed and hence promote public confidence and help ensure the safety of depositors' funds.
- 2) As the supervisory authority, it is the responsibility of the Reserve Bank to ensure that corporate governance principles are followed in the management of banks and financial institutions so as to be in line with international best practice on corporate governance.

PART 3: REQUIREMENTS

- 3.1. No person shall serve as a director and/or audit committee member, or senior management official of a licensed institution without the prior written approval of the Reserve Bank.
- 3.2. A licensed institution's request for the prior written approval of the Reserve Bank for a proposed new director and/or audit committee member, or senior management official shall be made in writing in the form prescribed in the annex to this directive.
- 3.3. The Reserve Bank may request additional or supplemental information if, in the opinion of the Reserve Bank, the basic information submitted with a request is incomplete or insufficient. Failure to provide the Reserve Bank with all required information in a timely manner will result in the Reserve bank returning the request without consideration.
- 3.4. Within 30 days from the date that the Reserve Bank receives all information required and sufficient for making a decision, the Reserve Bank shall render a decision on a request for a proposed new director and/or audit committee member, or senior management official and shall notify the licensed institution of its decision in writing.
- 3.5. The Reserve Bank shall approve a new director and/or audit committee member, or senior management official if that person is deemed to be fit and proper to hold such position. A person shall be considered to be fit and proper if her/she meets the Reserve Bank's prescribed standards regarding:
 - Eligibility to serve;
 - Reputation, competence, and expertise to conduct banking business; and
 - Capacity to comply with the provisions of the Banking Act.

PART 4: FIT AND PROPER STANDARDS

Sec. 1 Eligibility to serve. In Malawi or elsewhere:

1. The person has not been adjudged or otherwise declared insolvent or bankrupt and has not been by law discharged from insolvency or bankruptcy.

2. The person has not made an assignment to, made an arrangement or composition with, or suspended payment to, creditors which has not been rescinded or set aside.
3. The person has not been convicted of an offense involving dishonesty or fraud including forgery, perjury, money laundering, or any similar offense.
4. The person has not been:
 - removed from office at a licensed institution by the Reserve Bank pursuant to Section 31(1)(c) of the Banking Act (or by the home country supervisor pursuant to the home country banking law);
 - removed by a court of competent jurisdiction from an office of trust on account of misconduct in the exercise of his/her duties in that office; or
 - disqualified or suspended from practicing any profession on the grounds of professional misconduct.
5. The person does not serve as a director and/or audit committee member of, nor is the person employed (directly or indirectly) by, another licensed institution.

Sec .2: Reputation, competence, and expertise to conduct banking business.

1. The person is not a minor or other person under legal disability.
2. The person enjoys a good professional reputation and his/her background evidences integrity, uprightness, and honesty.
3. The person's education, qualifications, technical knowledge, and professional experience are appropriate for:
 - The relevant office; and
 - The nature, scale, and risk of the current and planned operations of the licensed institution.
4. The person's employment history is favorable and there is no evidence of significant problems at his/her previous employments.
5. The person has never been a principal shareholder, director, audit committee member, or senior management official of a bank or other financial institution:
 - That is/was subject to formal remedial measures for operating in an unlawful or unsound manner;
 - For which solvency or liquidity are/was threatened;
 - For which a management advisor, receiver, conservator, liquidator, or similar official has been appointed; or
 - That has had its license revoked or which has otherwise been wound-up.
6. There is no evidence that the person has conducted any other business in an unlawful or unsound manner.
7. The person's financial condition is satisfactory with no evidence of significant financial problems.

8. The person has never been responsible for a loss suffered by a licensed institution in Malawi or elsewhere.
9. For senior management officials, the person is a resident of Malawi.
10. For directors and audit committee members, the person:
 - Is a resident of Malawi, unless at least one other director or audit committee member, as applicable, is a resident of Malawi; and
 - Appears reasonably able to regularly attend meetings of the board of directors or audit committee, as applicable.
11. The person is not:
 - A member of Cabinet or Parliament;
 - An office-holder in a political party at a district, regional, or national level;
 - A director, officer, or employee of the Reserve Bank; or
 - A salaried employee of Government.

Sec 3: Capacity to comply with the provisions of the Banking Act.

1. There is no evidence that the person has, with respect to a licensed institution in Malawi or elsewhere:
 - Failed to take all reasonable steps to secure compliance by the licensed institution with the Banking Act (or home country banking law) or any directive issued by the Reserve Bank (or home country supervisor);
 - Failed to take all reasonable steps to ensure the accuracy, completeness and correctness of any statement submitted under the Banking Act (or home country banking law);
 - Failed to supply any information required under the Banking Act (or home country banking law) or by the Reserve Bank (or home country supervisor); or
 - Obstructed, or endeavored to obstruct, an inspection by an officer or other duly appointed person of the Reserve Bank (or home country supervisor).
2. There is no evidence that the person has solicited, received, or consented or agreed to receive any gift, commission, money, property, or object of value for his/her own personal benefit (or for the benefit of any of his/her “related persons”) for permitting or procuring any credit from the licensed institution.
3. There is no evidence that the person, as a director, senior management official, or employee of a licensed institution permitted any transaction, including the opening of an account, when he/she knew, or had reason to suspect, that any of the funds involved in the transaction were obtained as the result (direct or indirect) of illegal activity in Malawi or elsewhere, or that otherwise did not comply with Section 49 of the Banking Act.
4. The person has disclosed all material interests in credits and other transactions with the licensed institution.

5. The person (directly or indirectly, alone or acting in concert with others) does not have credits from the licensed institution that exceed the limitations of the *Directive on Transactions with Insiders and Related Persons*.
6. There is no evidence the person supplied false or misleading information in the request.
7. There is no evidence that the person's service would not be in the interest of the national economy, the public, or the depositors or creditors of the licensed institution.

PART 5: REMEDIAL MEASURES AND ADMINISTRATIVE SANCTIONS

Sec 1: Remedial Measures

When the Reserve Bank determines that a bank has not complied with requirements of this directive, it may impose remedial measures as specified under Section 31 of the Banking Act.

Sec 2: Administrative Sanctions

In addition to the remedial measures available to it as given above in Part 5 Section 5.1, the Reserve Bank may impose any or all of the following administrative sanctions with regards to a bank that has a capital deficiency by failing to meet the capital requirements of this directive:

- 1) Prohibition from declaring and/or paying dividends;
- 2) Suspension of the establishment of new branches and/or expansion into new banking or financial activities;
- 3) Suspension of access to credit facilities of the Reserve Bank;
- 4) Suspension of lending operations;
- 5) Suspension of the opening of letters of credit;
- 6) Suspension of the acceptance of new deposits;
- 7) Suspension of acquisition of fixed assets.

PART 6: EFFECTIVE DATE

The Effective Date of this Directive shall be 13th March 2006.

Questions relating to this directive should be addressed to the Bank Supervision Department of the Reserve Bank.

V. Mbewe
GOVERNOR

ANNEX
DIRECTIVE ON NEW DIRECTORS, AUDIT COMMITTEE MEMBERS,
AND SENIOR MANAGEMENT OFFICIALS

Form of Request to the Reserve Bank and Information Requirements

Form of Request

The original and two signed official copies of the request shall be submitted to the Reserve Bank. The following information should be presented in the order requested. Copies of documents should be appropriately labeled.

Information Requirements

The following information is required of all persons proposed to be directors and senior management officials of licensed institutions.

If a person already serves on a licensed institution's board of directors and is now proposed to become a member of its audit committee, or if a person already serves as a senior management official of a licensed institution and is now proposed to become a director, then that person must either: (1) provide a written affirmation to the Reserve Bank that there have been no material changes to the information submitted by the person when he/she first received Reserve Bank approval to serve on the board of directors or as a senior management official; or (2) provide current information on all material changes to the information submitted by the person that have occurred subsequent to when the person first received Reserve Bank approval to serve on the board of directors or as a senior management official, *and* affirm that there have been no material changes in the person's response to all other requests for information.

1. Name of licensed institution.
2. Name of contact person for the request; address and telephone number in Malawi.
3. Name and address.
4. Country identification or passport number and data.
5. Date and place of birth.
6. Amount, type, and percentage of shareholding, if any, in the licensed institution.
7. Proposed position with the licensed institution: director and/or audit committee member, or senior management official. Specify title and provide a position description. If senior management official, then provide functional responsibilities.
8. Education, qualifications, professional experience, and employment history included in a detailed *curriculum vitae*.
9. Signed financial statements (balance sheet and income statement) for the three years immediately preceding the request, including the interim period if available.
10. History of ownership of 10% or more of the stock or holding a position as a director, audit committee member, or senior management official in any bank or other financial

institution located anywhere in the world. State whether, during such time period, the bank or financial institution:

- Was subject to formal remedial measures for operating in an unlawful or unsound manner;
 - Was threatened with insolvency or illiquidity;
 - Had appointed a management advisor, receiver, conservator, liquidator, or similar official; or
 - Had its license revoked or has otherwise been wound-up.
11. Membership in companies, partnerships, professional or trade associations, and groups of persons acting in concert whether or not organized or registered as a formal business concern: Name, address, type of entity, and description of activities.
 12. A list of all “Related Persons” who will be so designated, pursuant to the *Directive on Transactions with Insiders and Related Persons*, if the person becomes a director and/or audit committee or senior management official of the licensed institution.
 13. A list of all credits and other transactions (direct and indirect, alone or acting in concert with others) with the licensed institution.
 14. Provide complete details of all of the following legal proceedings with which the proposed director, audit committee member, or senior management official has been a party, including date, location, and disposition.

Litigation. Is the person engaged or expecting to be engaged in litigation, in Malawi or elsewhere, which may have a material impact on the person’s financial condition?

Discipline. Has the person ever been censured, prosecuted, warned as to conduct, disciplined, disqualified or suspended from practicing a profession, removed from office, publicly criticized, or made subject to a court order at the instigation of any governmental body appointed under any Malawi enactment, by a professional organization, or the substantial equivalent thereof elsewhere?

Conviction. Has the person ever been convicted of any offense, or been served a petition for an administrative order, or the substantial equivalent thereof, in Malawi or elsewhere?

Investigation. Is the person, or has the person ever been, subject to an investigation in Malawi or elsewhere by, or at the instigation of, any governmental department or agency, professional association, or other regulatory body?

Judgment. Has the person ever failed to satisfy within one year a judgment of debt under a court order in Malawi or elsewhere?

Fraud. Has the person ever been adjudged by a court, in Malawi or elsewhere, to be civilly liable for fraud, malfeasance, forgery, perjury, money laundering, or any other misconduct?

Bankruptcy. Has the person ever been adjudged bankrupt by a court in Malawi or elsewhere? Has a bankruptcy petition ever been served on the person? Has the person made any compromise arrangement or otherwise failed to satisfy creditors in full?

Receivership. Has a receiver or an administrator been appointed for any of the person's property, or has the substantial equivalent of any such receiver been appointed in any other jurisdiction? If so, provide details including whether the receiver or equivalent thereof is still acting under the appointment.

Winding-Up. Has any body corporate, partnership, or unincorporated institution with which the person was associated as a principal shareholder, director, audit committee member, or senior management official, in Malawi or elsewhere, been wound-up, made subject to an administration order, otherwise made any compromise or arrangement with its creditors, or ceased trading either while the person was associated with it or within one year after the person ceased to be associated with it or has anything analogous to any of these events occurred under the laws of any other jurisdiction?

15. An official resolution of the board of directors authorizing the submission of the subject request to the Reserve Bank.

For directors and/or audit committee members:

16. Proposed membership on permanent committees of the board of directors.
17. A certified copy of the decision taken by the general meeting of shareholders or directors of the licensed institution on the appointment of the person to the board of directors which specifically states that the appointment is subject to the written approval of the Reserve Bank and the person will not act in said capacity until the Reserve Bank's written approval of the request has been issued.

For senior management officials:

18. Copies of any employment contracts.
19. A certified copy of the minutes of the meeting of the board of directors demonstrating that the board of directors has thoroughly evaluated the proposed new senior management official according to the "fit and proper" standards prescribed by the Reserve Bank in its *Directive on New Directors, Audit Committee Members, and Senior Management Officials* and has determined that the person is "fit and proper" for the position as a senior management official of the licensed institution.