

GOVERNMENT NOTICE NO. 3

BANKING ACT

(No. 10 of 2010)

FOREIGN CURRENCY LENDING RATIO DIRECTIVE (NO. DO2-2010/FCLR)

ARRANGEMENT OF PARAGRAPHS

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IN EXERCISE of the powers conferred by sections 11 and 38 of the Banking Act, No. 10 of 2010, the Registrar issues the following Directives—

1. This Directive may be cited as the Foreign Currency Lending Directive, 2010 (NO. DO2-2010/FCLR). Citation
2. In this directive, unless the context otherwise requires— Interpretation
 - “Bank” has the same meaning as in Banking Act, No 10 of 2010;
 - “Banking Institution” means a bank, a leasing company or a discount house licensed by the Registrar;
 - “Board of Directors” means the highest body of authority in a banking institution responsible for strategically guiding the banking institution, effectively monitoring management, and properly accounting to shareholders;
 - “Executive Officer” means an officer at the most senior level of the management of a banking institution (whether or not he/she is a director) who effectively manages the institution;
 - “Foreign Currency Deposit” means any deposit of a customer which is denominated in a currency other than the Malawi Kwacha;
 - “FCDA” means Foreign Currency Denominated Account;
 - “Registrar” means the Registrar of Financial Institutions who is the Governor of the Reserve Bank of Malawi;
3. This directive applies to all banking institutions licensed by the Registrar under section 21 of the Financial Services Act, No 26 of 2010 which accept foreign currency deposits. Application
4. The objective of this Directive is to provide a consistent and uniform mechanism whereby the Registrar may— Objectives
 - (a) implement monetary policy objectives to protect the external value of national currency; and

(b) ensure adherence to prudential liquidity standards by individual licensed institutions.

Foreign
Currency
Lending Ratio

5. Each banking institution shall lend in foreign currency to borrowers engaged in foreign exchange generating activities and services—

(a) up to a maximum of 69.5 per cent of the preceding months' average FCDA balances; and

(b) out of the remaining 30.5 per cent—

(i) 15.5 percent shall be deposited with the Reserve Bank of Malawi as stipulated in the revised Liquidity Reserve Requirement Directive; and

(ii) the other 15.0 per cent will be accounted for by each institution in a manner that it deems appropriate.

Responsibility

6.—(1) Each Executive Officer shall ensure that his/her banking institution has met the prescribed ratio as specified in paragraph 6 above.

(2) Each Executive Officer shall be responsible for full, timely and accurate reporting of all foreign currency lending information.

Basis for
computing
the Foreign
Currency
Lending Ratio

7.—(1) The basis for computing the required foreign currency lending ratio shall be the averages of daily balances of FCDA liabilities.

(2) The averages are to be computed using totals as at close of business for each working day of the month and sample form for such computation is attached as Appendix 1.

Monthly
submission of
computations

8. The banking institution shall—

(a) after 10 days of the following month submit to the Registrar information showing the details of foreign currency denominated deposits and loans used in arriving at its lending ratio;

(b) submit details of its lending in foreign currency in the format as specified in Appendix 2; and

(c) maintain records of all foreign currency loans at its Head Office to enable verification at any time through on-site inspections by the Reserve Bank of Malawi Examiners.

Penalties

9.—(1) Any banking institution that fails to meet the requirements of this Directive shall be liable to a penalty of 10.0 per cent of the amount of the non compliance.

(2) The banking institution shall be notified of the non compliance in writing by the Registrar and be given an opportunity to be heard.

(3) The penalty stipulated under subparagraph (1) above shall be converted into Malawi Kwacha using an exchange rate ruling at the reporting date of non compliance.

(4) In addition to imposing a penalty in (1) above, the subject banking institution shall be required to normalise the non compliance within a period stipulated by the Registrar. A penalty of 10 per cent of the amount of violation shall be imposed on a banking institution for each subsequent day for which the violation continues after being notified in writing by the Registrar.

(5) The penalties stipulated in (1) and (4) above shall be collected by debiting the main account of the concerned banking institution maintained with the Reserve Bank of Malawi. The banking institution shall be notified in writing of the penalty amount before the debit is effected.

(6) Where a banking institution does not maintain an account with the Reserve Bank of Malawi, the Executive Officer(s) of the subject institution shall be notified in writing of the penalty and be instructed to make good of the charge within 15 working days from the date of notification.

(7) The monetary penalties stipulated above shall be reviewed by the Registrar from time to time. In addition, the Registrar reserves the right to waive or apply the penalties either in full or in part as he may deem appropriate.

10. In addition to penalties prescribed in paragraph 10 above, the Registrar may take any or all of the following actions against a banking institution, its Board of Directors or Executive Officer(s)— Administrative sanctions

- (a) imposition of remedial measures as stipulated under Section 26 of the Banking Act;
- (b) prohibition from declaring/paying dividends;
- (c) prohibition from establishing new branches;
- (d) prohibition from declaring or paying bonuses, salary incentives or other discretionary compensation to directors or executive officers;
- (e) prohibition from access to Reserve Bank of Malawi credit facilities;
- (f) prohibition from lending or engaging in new activities or from expanding existing activities; and
- (g) prohibition from acquiring additional fixed assets.

APPENDIX I

Daily Total for the month of:

<i>Day of Month</i>	<i>Total FCDA Holdings</i>
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

