

**GOVERNMENT NOTICE NO. 23  
CAPITAL MARKET DEVELOPMENT ACT**

**(No 17 of 1990)  
CAPITAL MARKET DEVELOPMENT  
(ESTABLISHMENT AND OPERATION OF INVESTMENT INSTITUTIONS)  
REGULATIONS, 1992**

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In EXERCISE of the powers conferred by sections 35 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 Markets Development (Establishment and Operation of Investment Institutions) Regulations.

**2. Interpretation**

In these Regulations, unless the context otherwise requires:

“investment institution” means an institution for which a licence under section 35 is required, namely, an investment company, a mutual fund, an investment trust, a unit trust or other collective investment scheme established in Malawi for, or in fact engaged in, collective investment and management of securities and investment portfolios and includes any other entity to which, in the opinion of the Bank, section 35 is intended to apply.

**3. Application**

(1) An application for a licence to establish, or to operate as, an investment institution shall contain the following information

- (a) name of the institution

(b) description of the legal status of the institution, and for this purpose the applicant shall submit with the application copies of the memorandum and articles of association of the institution, its statute or statutes, trust deed or deeds, management contract or contracts or other document establishing the institution or conferring it the legal status necessary for its operations as an investment institution;

(c) names and the curriculum vitae of trustees, directors, managers and executive officers;

(d) names of auditors;

(e) nature, tradability and transferability of the instruments to be issued by the institution in order to attract funds for investment;

(f) system for computation of offer and bid prices of instruments preferred to under paragraph (e);

(g) restrictions, if any on the nature, type and magnitude of eligible investments;

(h) system of valuation of the investments of the institution;

(i) system of distribution of income to participants; and

(j) nature and frequency of regular reporting to the Bank and to the market

(2) 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 a licence shall not be issued until the Bank receives such additional information or unless it decides to dispense with it.

#### **4. Summary of objectives of an investment institution**

(1) When submitting an application for a license, the applicant shall together with the application, submit a summary describing the objectives intended to be achieved by the institution in terms of, but not limited to-

(a) capital growth

(b) capital gains; and

(c) income maximisation

and every prospectus of that investment institution for public placement or subscription shall contain a similar description of objectives.

#### **5. Prospectuses required**

(1) Subject to subregulation (2) no investment institution shall, in order to attract funds for investment, offer shares, certificates of participation, units or similar securities for public placement or public subscription unless such institution shall have complied with section 24 of the Act with regard to requirements for prospectus under the companies Act.

(2) The Bank may grant permission to an investment institution for continuous offering of the instruments referred to in sub-regulation (1) on the basis of a prospectus, issued in compliance with subscription during a predetermined period of not more than twelve months.

#### **6. Disclosure of information to the market**

Every investment institution shall promptly disclose to the market any material information with regard to development, composition, value and profitability of its investments at the time such information becomes known.

Provided that an investment institution shall not be obliged to make disclosures on purchases and sales of investments before finalizing such transaction if the investment has good reason to believe that such disclosure might be harmful to its interests.

## **7. Management of investment institution**

(1) Subject to subregulation (2), every investment institution shall be managed by at least one executive officer, whether or not a director who shall have no other employment or business relationship than with the institution.

(2) The Bank may grant exemption from subregulation (1) if it is satisfied that the independence of judgement of an executive officer will not be impaired by such other employment or relationship.

(3) Every trustee, director, manager and executive officer of an investment institution shall disclose to the Bank any existing or potential conflict of interest which he is aware, or he ought reasonably to be aware, that might arise between his interest and the interests of the investment institution during the tenure of his office with the investment institution.

(4) No trustee, director, manager or executive officer of an investment institution 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 of his close relatives for entering into any contract of purchase or sale of investments, except as normal remuneration paid by the investment institution for his service.

## **8. Management agreements to be subject to approval of the Bank**

(1) Every investment institution entering into a management agreement with a company, partnership or any other person or association of persons shall apply to the Bank for approval of such agreement by the Bank.

(2) In considering an application for approval of a management agreement, the Bank may conduct investigations to ascertain--

- (a) the professional competence, qualifications and experience of the managers;
- (b) the viability and rationality of the contract in relation to the income generating capacity of the investment institution;
- (c) the financial position of the investment institution;
- (d) the adequacy of the contract with regard to the interests of participants in the investment institution;
- (e) the public interest and the interest of the national economy;
- (f) the reputation of the managers; and
- (g) any other matter which the Bank considers appropriate.

## **9. Other matters requiring prior approval of the Bank**

Every investment institution shall obtain prior approval of the Bank for the following matters-

- (a) appointment of directors, executive officers, trustees and trust corporations;
- (b) appointment of auditors
- (c) amalgamation with other investment institutions;
- (d) changes in its memorandum or articles of association statute or statutes, trust deed or deeds and management contract or contracts;
- (e) takeover of assets and liabilities of other investment institutions;
- (f) major changes in the nature of the investment institution or its legal status; and
- (g) liquidation

## **10. Financial Statement**

(1) An investment institution 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 investment institution as of the end of the reporting period; and
- (b) be made freely available to its participant.

(2) An investment institution shall cause to be prepared within six months after the end of its financial year, its annual accounts consisting of a balance sheet and a profit and loss accounts as of the end of that financial year, together with any notes on such documents.

(3) The annual accounts of an investment institution shall contain a listing of investments, specifying-

- (a) investments acquired in that financial year
- (b) investments disposed in that 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 the accounts shall provide 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 an investment institution, including the report of its auditors, shall be open for inspection by its participants during normal office 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 investment institution, including the auditors report, shall be submitted to the Bank immediately upon the expiry of six months after the end of every financial year of the institution.

## **11. Annual general meetings**

(1) Every investment institution shall in each financial year hold a general meeting of its participants 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 investment institution, and the rights of participants and unit holders shall be deemed identical to the rights under part VI of that Act of members and shareholders in the company.

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

## **12. Distribution of income participants**

An investment institution which has as its objective or one of its objectives income maximization shall distribute the income earned on investment to its participants within six months after the end of its financial year:

Provided that the Bank may upon application by an investment institution and if it considers that retention of earnings by the institution would be in the interest of its participants, exempt the

institution from complying with subregulation (1) with respect to the income earned in particular financial year.

### **13. Voidable purchases and voidable sales**

(1) if a trustee, a director, a manager, an executive officer or any other officer of an investment institution, having in his capacity as such acquired any special information which may substantially affect the value of participations in the institution, purchases or sells any such participation without disclosing the information to the seller or purchases thereof, the purchase or sale shall be voidable at the option of the purchaser or seller within twelve months after the date of agreement to purchase or to sell.

(2) Nothing in subregulation (1) shall derogate from any other right or remedy which may be available under any law in force in Malawi.

Made by the Reserve bank of Malawi on the 15th day of November 1991.

H. J LESSHAFFT  
Governor

Approved this 4<sup>th</sup> day of December, 1991

L.J CHIMANGO  
Minister of Finance

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