

GOVERNMENT NOTICE NO. 10

FINANCIAL CRIMES ACT

(CAP 7:07)

FINANCIAL CRIMES (MONEY LAUNDERING) REGULATIONS, 2020

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IN EXERCISE of the powers conferred by Section 144 of the Financial Crimes Act, I, JOSEPH MWANAMVEKA, Minister of Finance, Economic Planning and Development, make the following Regulations—

Citation 1. These Regulations may be cited as the Financial Crimes (Money Laundering) Regulations, 2020.

Interpretation 2. In these Regulations, unless the context otherwise requires—

“agent” means any person who provides money or value transfer services under the direction of or by contract with a legally registered or licensed remitter, or reporting institution;

“AML/CFT” stands for Anti-money laundering and Combating Terrorist Financing;

“Authority” means the Financial Intelligence Authority, established under section 3 of the Act;

“beneficiary” means an individual, institution, trustee, or estate which receives or may become eligible to receive benefits under an insurance policy, retirement plan, annuity, trust or other form of contract;

“beneficiary financial institution” means, in relation to wire transfers, the financial institution which receives the wire transfer from the ordering financial institution directly or through an intermediary financial institution and makes the funds available to the beneficiary;

“casino” means a person licensed as such under section 14 of the Gaming Act;

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“competent court” for the purposes of these Regulations means a court of the grade of Senior Resident Magistrate and above;

“compliance programme” means a programme which is established by a reporting institution to ensure it is in compliance with the Act and its subsidiary legislation;

“designated person” means a person or entity, legal or otherwise designated by the United Nations Security Council Resolution 1267 (1999) and its successor resolutions and UN Special Recommendation 1373 (2001) and includes persons designated under the Financial Crimes (Terrorist Financing and Proliferation) Regulations of 2017;

“electronic banking” includes the provision of retail and wholesale banking products and services through electronic channels;

“electronic funds transfer” means transmission of funds whether domestic or cross border through any electronic, magnetic or optical device, telephone instrument or computer;

“forcibly displaced persons” includes refugees, asylum seekers or persons in similar situations;

“funds” refers to assets of every kind, whether corporeal or incorporeal, tangible or intangible, moveable or immovable, however acquired, and legal documents and instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, whether situated in Malawi or elsewhere;

“host country” means a country in which a Malawian reporting institution has a branch or a subsidiary;

“intermediary financial institution” means, in relation to a wire transfer, a financial institution in a serial or cover payment chain that receives and transmits a wire transfer on behalf of the ordering financial institution and the beneficiary financial institution, or another intermediary financial institution;

“international electronic funds transfer” means any electronic funds transfer where the originator and beneficiary institutions are located in different jurisdictions;

“legal arrangement” means an express trusts or other similar legal arrangements capable of holding property, making investments or establishing a business relationship with a reporting institution;

“legal person” means any entities other than natural persons that can establish a permanent customer relationship with a reporting or otherwise own property. This can include companies, corporates, foundations, partnerships, or associations and other relevantly similar entities;

“money or value transfer service” means a service that accepts cash, cheques, or other monetary instruments or other stores of value in one location and pays a corresponding sum in cash or other form to a beneficiary in another location by means of communication, message, and transfer or through a clearing network to which the money or value transfer service belongs;

“occasional transaction” means a transaction other than that concluded in the course of a business relationship;

“originator” means an account holder, or where there is no account, a person that places an order with the reporting institution to perform an electronic funds transfer;

“source of funds” means the specific activity which has generated the funds to establish the business relationship or to undertake a transaction between a reporting institution and the customer;

“source of wealth” means the origin of the customer’s overall wealth and includes business, employment, inheritance, investments, donations; and

“trustee” means a person having nominal title to property that he holds for the benefit of one or more others known as beneficiaries and includes a personal representative.

Risk based
approach

3.—(1) Every reporting institution shall apply a risk-based approach in identifying its customers in accordance with section 21 of the Act.

(2) In applying the requirements of sub-regulation (1), every reporting institution shall ensure that the results of the risk assessment are consistent with national risk assessment of money laundering and terrorist financing or other relevant assessments done by supervisory authorities.

(3) Where a reporting institution identifies lower risks, the reporting institution may decide to allow simplified measures for customer due diligence provided that enhanced due diligence shall be applied where there is suspicion of money laundering, terrorist financing or other financial crime.

(4) Every reporting institution shall ensure that the results of the institution’s risk assessment are communicated to all departments or sections of the institution.

Establishing
Identity of

4.—(1) Subject to section 16(1) of the Act, a reporting institution shall carry out customer due diligence when—

(a) establishing a continuing business relationship;

(b) in the absence of a continuing business relationship, conducts a transaction the amount of two million and five hundred thousand Kwacha (K2, 500, 000);

(c) in the absence of a continuing business relationship, carrying out several transactions within fourteen days, which appear to be linked and when consolidated, add up to the amount prescribed under Regulation 28 or more;

(d) carrying out foreign exchange transaction exceeding the equivalent of the amount prescribed under Regulation 28;

(e) carrying out a one-off domestic or international electronic funds transfer for any amount;

(f) carrying out a domestic transaction exceeding the amount prescribed under Regulation 28;

(g) there is a suspicion of money laundering or terrorist financing, irrespective of any exemptions or threshold that are referred to elsewhere in these Regulations; and

(h) the reporting institution has doubts about the veracity or adequacy of previously obtained customer identification data.

(2) Where a reporting institution discovers that a business relationship has been established or a single transaction has been conducted using a fictitious, false or incorrect name, the institution shall report the transaction to the Authority for specific direction.

(3) Where a reporting institution is unable to carry out customer due diligence, the reporting institution shall—

(a) not open the account, commence business relations or perform the transaction;

(b) terminate the business relationship;

(c) submit a suspicious transaction report to the Authority within three days; and

(d) not proceed any further with the transaction, unless directed to do so by the Authority.

(4) Where a reporting institution forms a suspicion of money laundering or terrorist financing and reasonably believes that performing customer due diligence will tip-off the customer, the reporting institution shall—

(a) not perform the required customer due diligence; and

(b) submit a suspicious transaction report to the Authority within three working days.

(5) A reporting institution may apply simplified customer identification requirements for—

(a) a customer that is identified as low risk in the national risk assessment or risk assessments by supervisory authorities and competent authorities;

(c) a customer that is identified as low risk by the reporting institution; and

(d) other forms of low risk categories of customers, beneficial owners, beneficiaries or business relationships as established through risk assessments.

(6) Notwithstanding the provisions of sub-Regulation (5), a reporting institution shall not apply simplified customer identification requirements where there is a suspicion of money laundering or terrorist financing.

(7) A reporting institution that established business relationship with a customer before the Act came into force shall take reasonable measures using a risk-based approach to identify the existing customer where—

(a) a transaction takes place that involves a significant change from normal transactions conducted by a customer;

(b) customer documentation standards change substantially;

(c) there is a material change in the way that the account is operated; and

(d) the reporting institution becomes aware that it lacks sufficient information about the existing customer.

(8) In the case of legal persons, legal arrangements and trusts, a reporting institution shall take reasonable measures to identify the beneficial owner.

(9) For purposes of this Regulation, “customer due diligence” includes—

(a) identifying a customer and verifying the customer’s identity on the basis of documents, data or information obtained from a reliable and independent source;

(b) identifying, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures, on a risk-based approach, to verify his identity so that the reporting institution is satisfied that it knows who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the legal person, trust or legal arrangement; and

(c) obtaining information on the purpose and intended nature of a business relationship.

5.—(1) A reporting institution shall identify a natural person who is a citizen of Malawi by obtaining from that person the following particulars—

(a) full names;

(b) identity document;

(c) physical address including street names and plot numbers, or a detailed description of the location named where the physical address is not available;

(d) village, traditional authority and district of origin;

(e) postal address, e-mail address and telephone contacts whichever is applicable;

(f) occupation or source of funds and wealth including, where appropriate, a detailed description of the nature of business activities the customer is involved in;

(g) expected level of monthly income;

(h) nature and detailed description of the location of business activities or place of employment whichever is applicable; and

(i) purpose and intended nature of the business relationship.

(2) If the natural person referred to in sub-Regulation (1) is, for whatever reason, acting on behalf of or assisting another person, the reporting institution shall also obtain from, or in respect of that other person, the particulars referred to in sub-Regulation (1).

(3) For purposes of this Regulation, the identity document referred to in sub-Regulation (1)(b) shall be prescribed by the Minister by notice published in the *Gazette*.

6.—(1) A reporting institution shall identify a natural person who is a citizen of another country by obtaining from that person the following particulars—

Information concerning foreign nationals

(a) full names;

(b) nationality;

(c) passport details, such as passport number, date of birth, and place of issuance, date of issuance and expiry date of the passport;

(d) physical address including street names, and plot numbers, or a detailed description of the location named in Malawi where the physical address is not available;

(e) residential address and contact information of country of origin or residence, whichever is applicable;

(f) postal address, e-mail address and telephone contacts in Malawi, whichever is applicable;

(g) occupation, source of funds and expected level of monthly and annual income;

(h) nature and location of business activities, if any;

(i) nature of permit allowing them to reside in Malawi; and

(j) purpose and intended nature of the business relationship.

(2) Where the person referred to in Sub-Regulation (1) is unable to provide a permit allowing them to reside in Malawi, the reporting institution may rely on any documentation issued by the authority responsible for immigration matters provided that:

the person provides a permit within ninety (90) days after the relationship is established.

(3) If the natural person referred to in sub-Regulation (1) is, for whatever reason, acting on behalf of or assisting another person, the reporting institution shall also obtain from, or in respect of that other person, the particulars referred to in sub-Regulation (1).

(4) If the natural person referred to in sub-Regulation (1) is a forcibly displaced person, for whatever reason, the reporting institution shall also obtain the particulars referred to in sub-Regulation (1).

Information concerning politically exposed persons

7.—(1) A reporting institution shall have appropriate risk management systems to determine whether a customer or beneficial owner is a politically exposed person.

(2) In addition to the requirements in sub-Regulation (1) as well as Regulations (5) and (6), the reporting institution shall—

(a) obtain approval from senior management of the institution before establishing or continuing the business relationship with the customer or beneficial owner;

(b) conduct enhanced ongoing monitoring of the business relationship;

(c) take reasonable measures to establish the source of wealth and source of funds of the politically exposed person; and

(d) take reasonable measures to identify family members and close associates of the politically exposed persons.

(3) Where an existing client or beneficiary is subsequently found to be or becomes a politically exposed person, an authorised officer of the reporting institution shall seek senior management approval to continue the business relationship.

(4) For the purpose of deciding whether a person is a close associate of a person referred to in sub-Regulation (1), a reporting institution need only have regard to information which is in its possession or is publicly known.

Information concerning legal persons

8.—(1) A reporting institution shall obtain from a person or an agent acting or purporting to act on behalf of a legal person registered in Malawi with which it is establishing a business relationship or concluding a single transaction the following details—

(a) registered name of the legal entity;

(b) registration certificate bearing the stamp and signature of the Registrar of Companies indicating the number which the legal entity is incorporated or registered;

(c) documents regulating the power to bind the entity;

(d) registration certificate issued by an appropriate regulatory body;

(e) the registered address, including physical address of the legal entity;

(f) names of persons having a senior management position in the legal entity;

(g) the name under which the legal entity conducts business, if this is different from its registered name;

(h) the address from which the legal entity operates, or if it operates from multiple addresses, the address of the office seeking to establish a business relationship or to enter into a single transaction with the reporting institution;

(i) detailed description of the nature of business activities the legal entity is involved in;

(j) intended purpose and nature of the business relationship;

(k) source and amount of capital used to establish the legal entity;
and

(l) expected monthly and annual turnover.

(2) In addition to the requirements of sub-Regulation (1), in the case of company, the reporting institution shall, pursuant to Regulations 5(1), 6, 7, obtain the full particulars and details of—

(a) each natural person, partnership, company or trust who controls ten percent (10%) or more of the voting rights at the general meeting of the company;

(b) where the natural person referred to in Sub-Regulation (2)(a) does not exert control through ownership interests, the natural persons exercising control of the legal person through other means;

(c) where no natural person is identified under 8(2)(a) and (b), senior management of the company;

(d) each director of the company; and

(e) each natural person who purports to be authorised to establish business relationship or to enter into a transaction with the reporting institution on behalf of the company.

(3) In addition to the requirements of sub-Regulation (1), in the case of partnership, a reporting institution shall pursuant to Regulations 5(1), 6 and 7, obtain the full particulars and details of—

(a) every partner;

(b) senior management; and

(c) each natural person who purports to be authorised to establish business relationship or to enter into a transaction with the reporting institution on behalf of the partnership.

(4) In the case of a trust, a reporting institution shall, pursuant to Regulations 5(1), 6 and 7, obtain the full particulars and details of —

(a) every trustee and settlor of the trust;

(b) senior management of the trust;

(c) each natural person who purports to be authorised to establish business relationship or to enter into a transaction with the reporting institution on behalf of the trust; and

(d) each beneficiary of the trust referred to by name in the trust deed or other founding instruments in terms of which the trust is created and details of how the beneficiaries of the trust are to be determined.

(5) In the case of an entity registered under any other written law, a reporting institution shall pursuant to Regulations 5(1), 6 and 7, obtain the full particulars and details of—

(a) senior management of the entity;

(b) the person in whose name the entity is registered; and

(c) each natural person who purports to be authorised to establish business relationship or to enter into a transaction with the reporting institution on behalf of the entity.

(6) A reporting institution shall require a client to submit updates of such changes in the particulars submitted under this regulation that occur in the course of the business relationship.

Information
concerning
foreign
companies

9. A reporting institution shall obtain from a natural person acting or purporting to act on behalf of a foreign company with which it is establishing a business relationship or conducting a single transaction, information on—

(a) name under which the company is incorporated;

(b) certificate of incorporation or registration indicating the number under which the company is incorporated;

(c) documents regulating the power to bind the entity;

(d) physical address under which it is incorporated;

(e) where applicable, the name under which the company conducts business in the country where it is incorporated, if this is different from the name under which it is incorporated;

(f) the address from which it operates in the country where it is incorporated, or if it operates from multiple addresses, the address of its head office;

(g) name under which the company conducts business in Malawi;

(h) the address from which the company operates in Malawi, or if it operates from multiple addresses the address of the office seeking to establish a business relationship or to enter into a single transaction with the reporting institution;

(i) source and amount of capital used to establish the company in Malawi;

(j) expected monthly and annual income including, a detailed description of the nature of business activities the customer is involved in;

(k) government authorisation allowing the foreign company to operate in Malawi;

(l) pursuant to Regulations 4(1), 5(1) and 6, obtain the full particulars and details of—

- (i) the head of the company in respect of its affairs in Malawi;
- (ii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the reporting institution on behalf of the foreign company;
- (iii) each legal person controlling ten per cent (10%) or more of the voting rights in the foreign company; or
- (iv) each natural person who is the ultimate beneficiary of the legal entity controlling ten per cent (10%) or more of the voting rights of the foreign company;
- (m) reference letter from the company's bankers in its country of registration; and
- (n) intended purpose and nature of the business relationship.

PART III—VERIFYING IDENTITIES

10.—(1) A reporting institution shall verify the identity of a customer or beneficial owner, based on the identification documents submitted under part II of these Regulations in accordance with a Notice issued by the Minister and published in the *Gazette*, before or during the course of establishing a business relationship or conducting transactions for occasional customers:

Verification
of identity of
customer

Provided that the reporting institution keeps evidence of the original identification document submitted.

(2) Where a reporting institution establishes a business relationship prior to verification, it shall do so in line with a risk based approach which should include a limitation on the number, type and amount of transactions that can be performed:

Provided that the transactions do not exceed the threshold prescribed by Notice published in the *Gazette* and that high risk transactions shall not be permitted.

(3) In the absence of a risk management system, a reporting institution shall not be permitted to enter into a business relationship before verifying the identity of a customer or beneficial owner.

(4) A reporting institution shall not enter into business relationship with any person or entity which it has verified to be a designated person.

11.—(1) A reporting institution shall independently verify the particulars and details referred to in Regulation 5(1) and (2) in respect of a natural person who is a citizen or a resident in Malawi as prescribed by the Minister by notice published in the *Gazette*.

Verification
of Malawi
citizens and
residents

(2) A reporting institution shall verify the source of fund of a customer by obtaining—

- (a) letter from his employers, stating the current monthly salary;
- (b) current payslip;
- (c) audited financial statements;

- (d) tax returns; or
- (e) customer business premises visitation report.

(3) A reporting institution shall verify proof of residency of a customer, using a riskbased approach, by obtaining—

- (a) current utility bills;
- (b) current city rates bills;
- (c) current lease agreement;
- (d) current tenancy agreement, or
- (e) customer business premises visitation report

Verification
of foreign
nationals

12.—(1) A reporting institution shall independently verify particulars and details referred to in Regulation 6(1) and (2) in respect of foreign nationals by confirming the information given by the person, with the individual's bank in his country of origin or residence.

(2) Where it is not practical to contact the person's bank in his country of origin or residence, the reporting institution shall use any other information obtained from any other independent and reliable sources, while taking into account the risk posed by—

- (a) the jurisdiction of origin or residence of the foreign national;
- (b) nature of business of the foreign national; and
- (c) products and services offered by the reporting institution to the foreign national.

(3) Where it is not practical to contact an individual's bank in his country of origin or residence, the reporting institution shall—

- (a) establish a business relationship for a period of ninety (90) days and shall not allow international electronic funds transfers until a permit granted by the authority responsible for immigration is submitted by the individual; and
- (b) pursuant to sub-regulation 3 (a), where a permit has not been granted, the relationship shall be suspended until a permit is duly granted by the authority responsible for immigration.

(4) In case of forcibly displaced persons, a reporting institution shall require a government recognised identification document, including a United Nations High Commissioner for Refugees (UNHCR) identity card.

Verification
of trusts

13.—(1) A reporting institution shall verify particulars obtained in respect of a Trust in terms of Regulation 8 (1) and (4) by—

- (a) comparing the registration certificate, trust deed, the incorporation certificate issued under the Trustees Incorporation Act, or other founding document in terms of which the trust is created with documents submitted to the office of the Registrar of Companies;

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- (b) independently verifying information with regard to the trustees, founders, and beneficiaries or other persons who purport to be authorised to establish a business relationship or enter into a transaction with the

reporting institution on behalf of the legal entity in line with Regulations 11 and 12;

physically verifying the place of business of the trust and contact information provided where this is applicable; and

(c) verifying with the bank where a foreign trust holds an account as to the authenticity of registration documents.

(2) Where it is not practical to verify the particulars of a trust in the manner described in sub-Regulation (1), a reporting institution shall use any other information obtained from any other independent and reliable source while taking into account the risk posed by the—

(a) jurisdiction where the trust is registered;

(b) nature and business of the trust; or

(c) products and services offered by the reporting institution to the trust

14.—(1) A reporting institution shall verify the particulars obtained in respect of a local legal entity other than a trust, in terms of Regulation 8(1), (2), (3) and (5) by—

Verification
of other legal
arrangements
other than a
Trust

(a) comparing the details on the registration certificate, and all other registration documents submitted by the legal entity with those held by the Registrar of Companies;

(b) comparing the details on the registration certificate issued by an appropriate regulatory body, and all other registration documents submitted by the legal entity with those held by the regulatory body;

(c) physically verifying the head office or other place of business of the entity and contact details provided; and

(d) independently verifying information with regard to beneficial owners, directors, senior management, partners or other persons who purport to be authorised to establish a business relationship or enter into a transaction with the reporting institution on behalf of the legal entity in line with Regulations 11 and 12.

(2) Where it is not practical to verify the particulars of a legal entity according to sub-Regulation (1), a reporting institution shall use any other information obtained from any other independent and reliable source, while taking into account the risk posed by—

(a) the nature and business of the legal entity; and

(b) products and services offered to the legal entity by the reporting institution.

15.—(1) A reporting institution shall verify the particulars obtained in respect of a foreign company in terms of Regulation 9 by—

Verification
of foreign
companies

(a) verifying with a bank which holds an account of the company the details about the incorporation or registration of the company;

(b) physically verifying the place of business in Malawi; and

(c) independently verifying information with regard to directors, senior management, shareholders, partners or other persons who purport to be authorized to establish a business relationship or enter into a transaction with the reporting institution on behalf of the legal entity under Regulation 9.

(2) Where it is not practical to verify the particulars of the company in the manner described in sub regulation (1), a reporting institution shall use any other information obtained from any other independent and reliable source, taking into account the risk posed by—

(a) the jurisdiction where the company is registered or incorporated;

(b) nature of business of the foreign company; and

(c) products and services offered by the reporting institution to the foreign company.

Authority of an agent

16.—(1) When a natural person is seeking to establish relationship or to conclude a single transaction with a reporting institution on behalf of another natural person or legal person, a reporting institution shall, in addition to the other steps as may be applicable under regulations 5 to 15, obtain information which provides proof of that person's authority to act in such a manner.

(2) A reporting institution shall verify the information obtained pursuant to sub-Regulation (1), by comparing the particulars of the natural person or legal person, partnership or trust referred to in sub-regulation (1) with information obtained by the institution in accordance with regulations 11, 12, 13, 14 or 15, as may be applicable.

Customer due diligence by casinos

17.—(1) A casino shall establish and verify the identity of all customers—

(a) to whom a casino makes facilities for gaming available—

(i) before entry to any premises where such facilities are provided; or

(ii) where the facilities are for remote gaming, before access is given to such facilities;

(b) who, in the course of any period of 24 hours—

(i) purchase from, or exchange with, the casino chips with a total value equivalent to or exceeding MK2,000,000.00 (two million kwacha);

(ii) pay the casino an amount equivalent to or exceeding MK2,000,000.00 (two million kwacha) for the use of gaming machines; or

(iii) pay to, or stake with, the casino an amount equivalent to or exceeding MK2,000,000.00 (two million kwacha) in connection with facilities for remote gaming.

(2) The identification and verification referred to in sub-regulation (1) shall be conducted in accordance with regulations 4, 5, 6, 11, and 12.

(3) A casino shall put in place appropriate procedures to monitor and record—

- (a) total value of chips purchased from or exchanged with the casino;
- (b) total money paid for the use of gaming machines; or
- (c) total money paid or staked in connection with facilities for remote gaming, by each customer.

PART IV—OTHER OBLIGATIONS OF REPORTING INSTITUTIONS

18.—(1) A reporting institution shall develop a written risk-based customer acceptance policy for an ongoing business relationship or single transaction and update it on an annual basis or whenever there are new developments, whichever comes earlier.

Customer
Acceptance
Policy

(2) The board of a reporting institution shall approve the customer acceptance policy.

(3) A reporting institution shall have procedures and guidelines explaining the customer acceptance policy which shall form part of the training programme of the institution.

19.—(1) A reporting institution shall keep original records specified in section 22 (1) of the Act.

Record
keeping

(2) A reporting institution shall keep all records in soft or hard copy or both soft and hard copy and it shall ensure that appropriate backup and recovery procedures are in place.

(3) Where a reporting institution keeps records in soft copy, it shall ensure that it complies with section 15 of the Electronic Transactions and Cyber Security Act.

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(4) The period for keeping records shall be seven years beginning on—

(a) in the case of the records specified in section 22 (1) (a) of the Act, the date on which—

- (i) the occasional transaction is completed;
- (ii) the business relationship ends; or

(iii) in the case of the records specified in section 22 (1) (b) of the Act, where the records relate to a particular transaction, the date on which the transaction is completed;

(b) in the case of the records specified in Section 22 (1) (c) and (d) of the Act, the date on which—

- (i) the reports are filed with the Authority; or
- (ii) the investigation is closed; and

(c) for all other records, the date on which the business relationship ends.

(5) A reporting institution shall take reasonable steps, in respect of an existing business relationship, to maintain the correctness of records obtained in compliance with regulations 5 to 15 by undertaking—

(a) an annual review of the existing records for high risk categories of customers or business relationships; and

(b) at most, three-year review of the existing records for all other risk categories of customers or business relationships.

Electronic
Funds
transfer

20.—(1) A financial institution shall ensure implementation of exchange control requirements in the electronic transfer of funds.

(2) A financial institution shall include accurate and complete originator and beneficiary information and other related messages when conducting domestic and international electronic funds transfers and such information shall remain with the transferor related message through the payment chain.

(3) For purposes of this Regulation—

“originator information” includes name of the originator, address of the originator, identity number, an account number of the originator or unique transaction reference number and other related messages that are sent; and

“beneficiary information” includes name of the beneficiary, address of the beneficiary, an account number of the beneficiary, Society for Worldwide International Financial Telecommunication code and other related messages that are sent.

(4) For all electronic funds transfers, a financial institution shall verify the identity of the originator or beneficiary, whichever is applicable, in accordance with regulations 5 to 15.

(5) An intermediary financial institution shall retain all originator and beneficiary information that accompanies a wire transfer.

(6) Intermediary and beneficiary financial institutions shall use a risk-based approach to determine when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information and to determine appropriate follow-up action.

(7) Beneficiary financial institutions shall take reasonable measures, which may include post-event monitoring or real-time monitoring where feasible, to identify cross-border electronic funds transfers that lack the required originator information or beneficiary information.

(8) A financial institution shall ensure that where several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries, the batch file should contain complete and accurate originator information, and full beneficiary information that is fully traceable.

(9) A financial institution shall monitor and report to the Authority electronic funds transfers which do not contain complete originator and beneficiary information:

Provided that the financial institution shall not execute such electronic funds transfers.

(10) A financial institution shall restrict or terminate a business relationship with a financial institution that persistently fails to include complete originator and beneficiary information in its electronic funds transfer.

(1i) This Regulation shall apply to money or value transfer service providers.

21. A financial institution shall report electronic funds transfers to the Authority in accordance with section 33 of the Act Provided that, in the case of—

Thresholds
for reporting
electronic
funds
transfers

(a) local mobile money transfer reports or any similar local transfers, only for each transfer in excess of three hundred thousand Kwacha (K300,000.00) in accordance;

(b) domestic electronic funds transfers by financial institutions; and

(c) international funds transfers by financial institutions.

22.—(1) A financial institution shall, in relation to correspondent banking and other similar business relationships,—

Correspon-
dent and
respondent
institutions

(a) identify and verify the correspondent institution or a respondent institution, whichever is applicable;

(b) gather sufficient information about the nature of the business of the correspondent institution or respondent institution;

(c) determine from publicly available information, the reputation of the institution and the quality of supervision to which the correspondent or a respondent institution is subject to;

(d) assess the adequacy and effectiveness of the anti-money laundering and terrorist financing controls of the correspondent or a respondent institution and document the findings;

(e) obtain the approval from the senior management of the financial institution before establishing a new correspondent or a respondent relationship;

(f) obtain documents or agreements signed by senior management of the correspondent and respondent institutions outlining respective responsibilities of each institution; and

(g) obtain certification from the correspondent or a respondent institution certifying that—

(i) in line with Regulation 23(1), it carries due diligence on other correspondent or respondent institutions it provides similar services to; or

(ii) the correspondent or a respondent institution does not provide similar services to shell banks.

(2) A reporting institution shall take into consideration the risk posed by

the jurisdiction in which a correspondent or respondent bank is located in considering entering into a business relationship.

intermediaries

23.—(1) Where a reporting institution chooses to rely on an intermediary or a third party to undertake obligations under Parts II and III of these Regulations or to introduce business, the institution shall, in addition to the requirements under Section 17 of the Act—

(a) enter into an agreement with the third party outlining the roles and responsibilities of each party;

(b) immediately obtain the information and documents required under Parts II and III of these Regulations;

(c) ensure that copies of identification and other relevant documents required under Parts II and III of these Regulations are well kept and that will be available to competent authorities or the Authority within a reasonable time acceptable to the requesting authority;

(d) satisfy itself that the third party or intermediary is regulated and supervised for, and has measures in place to comply with the requirements set out in Parts II and III of these Regulations;

(e) in the case of third parties that are outside Malawi, a reporting institution shall confirm whether countries in which such third parties are domiciled have effective systems to deter money laundering and terrorist financing; and

(f) reporting institutions which rely on third parties or intermediaries shall ultimately be responsible for customer identification and verification.

(2) Notwithstanding the requirements in sub-regulation (1), a financial institution shall not rely on the third party for ongoing monitoring of the business relationship of its customers.

Monitoring transactions

24.—(1) A reporting institution shall conduct ongoing monitoring on its customers and develop risk based systems and procedures for purposes of ongoing monitoring.

(2) For purposes of this Regulation “ongoing monitoring of a business relationship” includes—

(a) scrutiny of transactions undertaken throughout the course of the relationship including, where necessary, the source of funds, to ensure that the transactions are consistent with the reporting institution’s knowledge of the customer, his business and risk profile; and

(b) keeping the documents, data or information obtained for the purpose of applying customer due diligence up-to-date.

(3) A reporting institution shall take reasonable measures to verify the purpose of any financial transaction.

(4) A reporting institution shall have automated or manual system that will trigger action in the event that thresholds established by a reporting institution for purposes of monitoring are exceeded.

25. Pursuant to the requirement under section 21 of the Act relating to putting in place measures to prevent or mitigate money laundering and terrorist financing commensurate with risks identified for products, service or delivery channels, a reporting institution shall—

New technologies

(a) take reasonable steps to prevent the use of new technologies, new products and services or other systems being used for money laundering or terrorist financing schemes;

(b) identify and assess the money laundering or terrorist financing risks that may arise in relation to the development of new products and business practices including new delivery mechanisms and the use of new or developing technologies for both new and pre-existing products; and

(c) take appropriate measures to manage and mitigate the risks in Sub-paragraph (b).

26.—(1) A reporting institution registered in Malawi which has branches and subsidiaries outside Malawi shall—

Foreign Branches and subsidiaries

(a) ensure that its branches and subsidiaries observe anti-money laundering measures consistent with the Act and these Regulations; and

(b) where the minimum requirements of the host country are lower than those applicable in Malawi, ensure that the branches and subsidiaries apply the higher standards.

(2) A reporting institution shall inform the Authority and supervisory authorities when a branch or subsidiary outside Malawi is unable to observe appropriate anti-money laundering measures.

PART V—REPORTING REQUIREMENTS

27. A reporting institution shall submit to the Authority and supervisory authority compliance reports by 31st January of each calendar year or as may be required by the Authority.

Compliance Reports

28.—(1) In accordance with section 33 of the Act, a reporting institution shall submit to the Authority the following reports of which transactions value or aggregate value is at least five million Kwacha (K5,000,000) —

Large currency transactions and other reports

(a) large currency transaction report in a format specified in the First Schedule hereto;

(b) large Currency Transaction report (LCTR) in instances where the Authority is requesting for more information in a format specified in the Second Schedule hereto; and

(c) electronic funds transfer reports.

(2) The reports in sub-regulation (1) shall be submitted within such a period as guided by the Authority.

29.—(1) A reporting institution shall submit a Suspicious Transaction Report (STR) to the Authority pursuant to section 23 of the Act, in a format specified in the Third Schedule hereto, and in the case of designated non-financial businesses and professions, in accordance with the Fourth Schedule hereto.

Suspicious transaction reporting

(2) A report made by a supervisory authority or external auditor under section 37 of the Act shall contain such information as specified by the Authority.

(3) In pursuance of section 37 of the Act, a supervisory authority or external auditor shall not investigate a matter after filing an STR with the Authority unless otherwise directed by the Authority.

PART VI—COMPLIANCE PROGRAMME

Additional responsibilities of a compliance officer

30.—(1) In addition to responsibilities under the Act, a compliance officer shall —

(a) take action on suspicious disclosures from officers and employees of the reporting institution as soon as practicable so as not to delay the reporting of such disclosures;

(b) apply internal risk management procedures on the disclosed suspicious transaction;

(c) report the suspicious transactions upon applying the measures in sub-paragraph (b) to the Authority; and

(d) allocate responsibilities and accountability to ensure that staff duties related to the establishment and verification of identities are complied with.

(2) The compliance officer shall have access to the requisite board committee of the institution on AML/CFT compliance matters.

(3) A reporting institution shall subject the appointment of a compliance officer to approval by the Authority or supervisory authority for reporting institutions under their purview.

(4) A reporting institution shall within 7 days communicate the removal of a compliance officer and grounds for such removal to the Authority and supervisory authority.

(5) An internal auditor and a chief executive officer of a reporting institution shall not qualify for appointment as a compliance officer.

(6) The compliance officer shall carry out his functions independently and shall be free from undue influence regarding reporting of suspicious transactions.

Elements of Compliance programme

31.—(1) Each reporting institution shall develop and implement internal rules and other procedures to combat money laundering and terrorist financing.

(2) The internal rules in sub-regulation (1) shall include provisions for—

(a) programmes to assess risks related to money laundering and terrorist financing;

(b) the formulation of control policy on issues of—

(i) timing of reports;

(ii) degree of control;

- (iii) areas to be controlled;
- (iv) responsibilities;
- (v) follow ups; or
- (vi) administrative penalties to combat money laundering and terrorist financing;
- (c) ongoing monitoring of a business relationship;
- (d) enhanced due diligence with respect to persons carrying high risk businesses;
- (e) training of employees, including the anti-money laundering reporting officer, in the recognition and handling of suspicious or unusual transactions;
- (f) independent audit of the compliance programme;
- (g) other matters as guided by the Authority and Supervisory authority; and
- (h) management of the reporting institution in respect of compliance with the Act, these Regulations and the internal rules on record keeping.

32. A reporting institution shall develop internal rules related to the establishment and verification of identity which shall—

Identification
and
verification
requirement
programme

(a) provide for the necessary processes and working methods which will cause the required particulars related to the identities of parties to a business relationship or single transaction to be obtained on each occasion when a business relationship is established or a single transaction is concluded with the institution;

(b) provide for steps to be taken by the relevant staff members aimed at the verification of the required particulars related to the identity of parties to a business relationship or single transaction;

(c) provide for the responsibility of the management of the reporting institution in respect of compliance with the Act, these Regulations and the internal rules;

(d) allocate responsibilities and accountability to ensure that staff duties related to the establishment and verification of identities are complied with; and

(e) take into account any guidelines related to the verification of identity which may apply to that reporting institution.

33. Each reporting institution shall make internal rules related to record keeping which shall provide for systems, processes and working methods to ensure that—

Record
keeping
requirements
of a
compliance
programme

(a) relevant staff members of the reporting institution obtain the information of which record shall be kept on each occasion when a business relationship is established or a transaction is concluded with the reporting institution;

(b) accuracy and integrity of those records are maintained for the entire period for which the records are to be kept;

(c) access that may be required or authorized under the Act by the relevant staff members to those records can be obtained without hindrance; and

(d) guidelines related to the keeping of records which may apply to that reporting institution are taken into account.

Report of suspicious or unusual transactions

34. Each reporting institution shall make internal rules related to reporting of suspicious or unusual transactions which shall provide for—

(a) systems, processes and working methods which will cause a suspicious or an unusual transaction to be reported without delay;

(b) systems, processes and working methods to enable staff to recognize potentially suspicious or unusual transactions;

(c) the responsibility of the management of the institution in respect of compliance with the Act, these Regulations and the internal rules;

(d) allocate responsibility to ensure that staff duties related to the reporting of suspicious or unusual transactions are complied with;

(e) take into account any directives related to reporting suspicious or unusual transactions which may apply to that institution; and

(f) ensure that records of suspicious or unusual transactions which must be retained for investigations are emphasized.

Access to information by compliance officer

35. A reporting institution shall ensure that the compliance officer of the reporting institution has access to all information that may be of assistance to the compliance officer in the execution of his duties.

Discipline process for noncompliance

36. A reporting institution shall—

(a) provide for disciplinary steps against the relevant staff members for non-compliance with the Act, these Regulations and the internal rules; and

(b) submit a report of the disciplinary action taken on the member of staff for the non-compliance in Sub-regulation (a).

Independent assessment of compliance programme

37. External auditors shall review and provide independent assessments of the AML/CFT compliance programmes of reporting institutions.

PART VII—CROSS-BORDER DECLARATIONS

Cross border transactions

38.—(1) In accordance with section 55 of the Act, an authorized officer shall report to the Authority, any cross-border currency transfer whether into or out of Malawi amounting to at least USD 5,000.

(2) The report in sub-Regulation (1) shall be submitted without delay and in any case within 12 hours.

(3) The report in sub-Regulation (1) shall be submitted in a format as prescribed in the Authority.

PART VIII—MONETARY PENALTIES

39.—(1) In accordance with sections 34 and 144 of the Act, the Authority or supervisory authority may impose monetary penalties as provided in the Fifth Schedule hereto, for breach of these Regulations of—

Administra-
tive
penalties

(a) up to one hundred million Kwacha (K100,000,000) for reporting institutions; and

(b) for natural persons who are members of the board of directors or senior management of reporting institution, up to ten million Kwacha (K10,000,000).

(2) When determining an appropriate monetary penalty, the Authority or the supervisory authority shall consider the following factors—

(a) nature, duration, seriousness including breach of other relevant laws and extent of the non-compliance;

(b) person who committed the violation;

(c) extent to which the violations occurred intentionally, negligently or recklessly;

(d) extent to which the board, executive or senior management knew, or ought to have known, that a violation was occurring or would occur;

(e) concealment of the violation;

(f) whether the person acted in good faith or cooperated with the investigation of the violation;

(g) whether the reporting institution or person has previously failed to comply with provisions of the Act;

(h) steps taken by the reporting institution or person to remedy the breach and to prevent a recurrence of the non-compliance; and

(i) steps taken or to be taken against the reporting institution or person by—

(i) another supervisory body;

(ii) a self-regulatory body of which the reporting institution or person is a member; or

(iii) any other relevant factor, including mitigating factors.

(3) Before imposing a monetary penalty, the Authority or supervisory authority shall give the reporting institution or person reasonable notice of up to ten working days in writing stating—

(a) nature of the alleged non-compliance;

(b) intention to impose a monetary penalty;

(c) amount or particulars of the intended monetary penalties; and

(d) that the reporting institution or person may, in writing, within a period specified in the notice, make representations as to why the monetary penalties should not be imposed.

PART C—INFORMATION OF PERSON OR ENTITY CONCERNING WHOM REPORTS IS MADE

Suspect Information Unavailable;

- 1. Surname or Name of Entity:* 2. Initial:*
- 3. Full Address:*
- 4. Phone Number:* 5. Fax Number:*
- 6. Occupation:*
- 7. Nationality:* 8. Country of Residence :
- 9. Type of Identifier:* passport..... Driver's Licence..... National Identity Card.....
Other (specify):
- 10. Identity Number:*
- 11. Is there any other relationship with the customer/ client?* Yes..... No.....
If yes please refer to Section H.

PART D—INFORMATION OF PERSON CONDUCTING TRANSACTION

If transaction was conducted by person referred to in Part B – DO NOT COMPLETE PART D)

A person on behalf of the person or entity referred to in Part B- (COMPLETE PART D)

- 1. Surname:* 2. Initial:*
- 3. Full Address:*
- 4. Phone Number:* 5. Fax Number:*
- 6. Occupation:* 7. Nationality:*
- 8. Country of Residence :
- 9. Type of Identifier:* passport..... Driver's Licence..... National Identity Card.....
Other (specify):
- 10. Identity Number:*

PART E—REPORTING INSTITUTION INFORMATION

- 1. Name of Institution :*
- 2. Full Address:*
- 3. Phone Number:* 4. Fax Number:*

- 5. Branch Office(s) where suspicious activity occurred:*
- 6. Reporting Officer's Name:*
- Title:* Signature:*

PART F—DETAILS OF SUSPICIOUS ACTIVITY

Please describe clearly and completely the events which led to the conclusion that the particular activity is suspicious.

PART G—DETAILS OF ACTION TAKEN

Please describe what action was taken by you as a result of the suspicious transaction(s).

PART H—CHECKLIST

NOTE THAT THESE ARE DOCUMENTS THAT HAVE TO BE ATTACHED AND ALSO FROM TO HAVE BEEN FILLED

- Is the Form completed in full? (all mandatory parts have been filled);.....
- Identity of subject;.....
- Bank statements of subject
- Account opening documentation (including but not limited to KYC/KYB documents).....
- Details of Related parties to the subject (all details for related parties to the subject have to be disclosed)
- Details of Impact of suspicious activity;.....
- Details of other reports made on the subject to Law Enforcement Agencies (if any);.....
- Details of any other relationship of the client/ customer to reporting institution. Example would be if subject is a Finance Director of the reporting institution.....
- Other Relevant Information.....

FOURTH SCHEDULE

Reg. 29(1)

Suspicious Transaction Report [DNFBPs]

Report Number;

Date of Report:
(dd-mm-yyyy)

Use this form if you are a reporting entity or person and you have reason to suspect that a transaction is related to money laundering or financing of terrorism

Send Completed Form by courier or encrypted email to:

(WHEN COMPLETING THE FORM REFER TO THE LATEST FIA STR GUIDELINES)

The Director General
Financial Intelligence Authority
Private Bag B441

Capital City
Lilongwe 3
MALAWI

All fields of the report marked with an asterisk (*)
MUST be completed.

Email: reports@fia.gov.mw

PART H—SUSPICIOUS ACTIVITY INFORMATION

- 1. Description of transaction: Money Laundering Bribery Fraud
 Counterfeit Cheque

- (Please tick)* Misuse of Position Terrorist Financing Tax Evasion
 Identity Theft Cyber Crime Embezzlement
 Electronic Funds Transfer

Other (specify).....

- 2. Date or Date range of suspicious activity: *

From..... TO.....
(dd-mm-yyyy) (dd-mm-yyyy)

- 3. Amount of money involved in the transaction (s) (in Kwacha value):*.....

- 4. Branch/Office/Location (s) where suspicious activity occurred:.....

- 5. Purpose of transaction:

- 6. Name of ultimate beneficiary.....

- 7. Identity of beneficiary (ID type & Number)

- 8. Address of beneficiary.....

- 9. Details of transaction: Cash Cheque Property Swap (Please tick)

Other (specify).....

- 10. Has the suspicious activity been reported to any law enforcement agency?

Yes No

If Yes, please tick contacted law enforcer below:

- Police Anti-Corruption Bureau Director of Public Prosecution
 Malawi Revenue Authority

Other (specify)

(Attach report made to the other agency)

- 11. Name of person contacted at the law enforcement agency.....

- 12. Contacts of person contacted at the law enforcement agency:.....

PART B—INFORMATION ABOUT HOW THE TRANSACTION WAS INITIATED

- 1. Type of service offered: * Cash out Outgoing electronic funds transfer
 Purchase of Jewelry Purchase of traveler's cheques Conducted currency exchange
 Purchase of money order Real estate purchase/deposit
 Deposit to an account Purchase of bank draft Purchase of precious metals
 Purchase of precious stones Purchase of diamonds Securities purchase/deposit
 Life insurance policy purchase/deposit
 Other (specify)

DETAILS OF ASSET(S) INVOLVED IN THE TRANSACTION

- 2. Type of Asset(s):* Plo Dwelling House Commercial Block Farm
 Jewelry Motor Vehicle
 Other (specify)
- 3. Name of Title Holder:
- 4. Registration number (If applicable):..... 5. Location of asset(s):.....
- 6. Brief description of asset(s):*
- 7. Estimated value asset(s):*

PART C—INFORMATION ON PERSON INVOLVED IN THE TRANSACTION FOR SERVICES OTHER THAN PROPERTY TRANSACTIONS

- 1. Full Name: *
- 2. Telephone Number: *
- 3. Address: *
- 4. Occupation:..... 5. Nationality: *
- 6. Type of Identity: * Passport Drivers License National ID
 Other (specify)(Please tick)
- 7. Identity number: *
1.
2.
8.
9.

PART H--REPORTING INSTITUTION INFORMATION

- 13. Name of the Institution: *
- 14. Full Address: *
- 15. Telephone Number: *

16. Fax:*.....

17. Which one of the following types of reporting entities best describes you?*

- Casino, Lottery or Gambling House
- Dealer in Precious Metals, Stones and bullion
- Accountant
- Safe deposit or custody service provider
- Trust or company service provider
- Legal practitioner
- Notary
- Accountant
- Estate Agent

18. Name of Reporting Officer:*.....

19. Contact No. of Reporting Officer:..... Signature:*.....

PART E—DETAILS OF SUSPICIOUS ACTIVITY

Please describe clearly and completely the events which led to the conclusion that the particular activity is suspicious.

PART H—DETAILS OF ACTION TAKEN

Please describe what action was taken by you as a result of the suspicious transaction(s)

PART G—CHECKLIST

Note that these are documents that have to be attached and also form to have been filled

- Is the form completed in full? (All mandatory parts have been filled)
- Identity of subject
- Copies of sale agreement
- Agent's receipts
- Details of individuals related to the subject. (All details for related parties to the subject have to be disclosed)
- Details of other reports made on the subject to Law Enforcement Agencies (if any)
- Details of other reports made on the subject to the FIA (if any)
- Other Relevant Information

FIFTH SCHEDULE

(reg. 39)

PART H—MONETARY PENALTIES FOR OTHER FINANCIAL INSTITUTIONS

The following penalties shall apply to other financial institutions excluding banks and insurers –

Categorization of Penalties

Penalties for financial institutions have been divided into four categories (A, B, C, and D) as follows—

CATEGORY	LEVEL 1 PENALTY (MK'000)	LEVEL 2 PENALTY (MK'000)	LEVEL 3 PENALTY (MK'000)	LEVEL 4 PENALTY (MK'000)	LEVEL 5 PENALTY (MK'000)	LEVEL 6 PENALTY (MK'000)	LEVEL 7 PENALTY (MK'000)	LEVEL 8 PENALTY (MK'000)
A	—	1,000	5,000	10,000	20,000	30,000	50,000	100,000
B	500	1,000	3,000	8,000	15,000	25,000	40,000	100,000
C	250	500	2,000	5,000	15,000	20,000	30,000	100,000
D	100	200	500	1,000	2,500	5,000	7,500	10,000

The following guidelines have been used to determine the seriousness of offences and therefore the category of penalties—

Category A: Violations by the Board;

Category B: Violations by Executive Officers or Senior Management Officials;

Category C: Violations by the financial institution at any a level other than the Board or Senior Management; and

Category D: Violations by natural persons who are members of the Board or Senior Management and will be charged in individual capacity.

For categories A, B and C, the penalties will be imposed on the institution. Notwithstanding that the Act and the Regulations place all compliance obligations on the reporting institution itself, in deciding which category a violation falls under, the Authority or supervisory authority shall determine the responsible person/authority for compliance with the provision of the Act or Regulation.

GENERAL NOTES

1. Repeat violations will bear penalties at the next level. A violation will be considered a repeat offence when it meets the following conditions, among others—
 - (a) if it remains unresolved until next review, submission or after deadline as directed by the Authority or supervisory authority; or
 - (b) if it is resolved and recurs within a period of 12 months.
2. Multiple offences of the same provision within the Act or Regulation shall only be penalised once.
3. The imposition of penalties shall not preclude the Authority or supervisory authority from taking or imposing any other supervisory action as mandated by the law.
4. Repeat violation after maximum penalty in each category, shall attract other enforcement actions as stipulated in the law.

PENALTIES PER PROVISION AND REGULATION

The table below shows penalties per provision and regulation.

<i>Description of violation</i>	<i>Provision</i>	<i>Category/Level</i>	<i>Penalty K t</i>
Failure by a financial institution to comply with the requirements for identification of a Malawian citizen	Regulation 5	C1	250,000 00
Failure by a financial institution to comply with the requirements for identification of a foreign national	Regulation 6	C2	500,000 00
Failure by a financial institution to comply with the requirements for identification of a Politically Exposed Person	Regulation 7	B3	3,000,000 00
Failure by a financial institution to comply with the requirements for identification of a local legal entity or a legal arrangement	Regulation 8	C1	250,000 00
Failure by a financial institution to comply with the requirements for identification of a local legal entity or a legal arrangement other than a trust	Regulation 11	C2	500,000 00

<i>Description of violation</i>	<i>Provision</i>	<i>Category /Level</i>	<i>Penalty K i</i>
Failure by a financial institution to comply with the requirements for identification of a foreign company	Regulation 9	C2	500,000 00
Failure by a financial institution to verify a designated person when a list of designated persons is circulated or when opening an account or conducting a transaction	Regulation 10 (4)	C4	5,000,000 00
Failure by a financial institution to comply with the requirements of verification of the identity of a Malawian citizen	Regulation 11	C2	500,000 00
Failure by a financial institution to comply with the requirements of verification of the identity of a foreign national	Regulation 12	C3	2,000,000 00
Failure by a financial institution to comply with the requirements of verification of the identity of a Trust	Regulation 13	C3	2,000,000 00
Failure by a financial institution to verify the identity of a beneficial owner	Regulation 10(1)(2)	C3	2,000,000 00
Failure by insurance companies to identify and verify beneficiaries	Section 18(1) (2) (3)	C2	500,000 00
Failure by insurance companies to apply enhanced measures to identify and verify identity of the beneficial owner of higher risk legal entities	Section 18(4)	C3	2,000,000 00
Failure by a financial institution to comply with the requirement of verification of the identity of a foreign company	Regulation 15	C3	2,000,000 00
Failure by a financial institution to comply with the requirement of identification and verification of a person's authority to act on behalf of another	Regulation 16	C2	500,000 00
Failure by a financial institution to operate or maintain an account in true name of account holder.	Section 20(1), (2)	C4	5,000,000 00

OTHER DUE DILLIGENCE OBLIGATIONS

<i>Description of violation</i>	<i>Provision</i>	<i>Category /Level</i>	<i>Penalty K t</i>
Failure by a Financial institution to maintain records for the minimum period of 7 years	Regulation 19	B3	3,000,000 00
Failure by a financial institution to comply with the requirement to maintain records in a manner that enables Authority, law enforcement agency, Supervisory Authorities or Competent Authority to reconstruct the transaction	Section 22(1)(b)	B3	3,000,000 00
Failure by a financial institution to provide a record of a transaction or any other information requested by the Authority, law enforcement agency, Supervisory Authorities or Competent Authority within the time specified by the Authority or the Competent Authority	Section 22(5)	B2	1,000,000 00
Failure by financial institution to comply with the requirements relating to correspondent banking	Regulation 22	B3	3,000,000 00
Failure by a financial institution to comply with any of the requirements relating to intermediaries or third parties	Regulation 23	C2	500,000 00
Failure by a financial institution to comply with the requirements relating to shell banks	Section 30 (2)	B5	15,000,000 00
Failure by a financial institution to comply with new technology requirements	Regulation 25	B2	1,000,000 00
Failure by a financial institution to comply with the requirement of appointing a Compliance Officer	Regulation 28, Section 27 (1)(a)	A2	1,000,000 00
Failure by the financial institution to train and make its employees aware of policies, procedures, audit systems relating to money laundering	Section 27 (1)(b)(vii), Section 27 (1)(c)	B1	500,000 00
Failure by the financial institution to screen persons before hiring them.	Section 27 (1)(b)(viii)	B1	1,000,000 00

<i>Description of violation</i>	<i>Provision</i>	<i>Category /Level</i>	<i>Penalty K t</i>
Failure by the financial institution to establish an audit function to test Anti Money Laundering procedures and systems.	Section 27 (1)(d)	A2	1,000,000 00
Failure by the financial institution to establish a customer acceptance policy.	Regulation 18	A3	5,000,000 00
Failure by the financial institution to conduct risk assessment and develop risk based systems and procedures	Section 27 (1)(b)(i) Section 21	B2	1,000,000 00
Failure by the financial institution to ascertain the purpose of a transaction and source of funds and their ultimate destination.	Regulation 24	B1	500,000 00
Failure by the financial institution to provide for disciplinary steps against members of staff for noncompliance with the Act, these regulations and own internal rules.	Regulation 36	B1	500,000 00
Failure by the financial institution to ensure that the Compliance Officer has access to all information that may be of assistance in the execution of his duties.	Regulation 35	B2	1,000,000 00
Failure by the financial institution to establish procedure for conducting enhanced due diligence on specified and high risk customers.	Regulation 32	B3	3,000,000 00
Failure by the financial institutions to establish programme to identify persons on relevant sanctions list.	Section 27(1) (b)(ix)	B3	3,000,000 00
Failure by the financial institution to ensure that foreign branches or subsidiaries observe minimum requirements of money laundering measures of Malawi.	Regulation 26	B2	1,000,000 00
Failure by a financial institution to identify or report a suspicious transaction.	Regulation 29 Section 23	B3	3,000,000 00
Failure by a financial institution to report large currency transactions, domestic and international electronic funds transfers.	Section 33	C1	250,000 00

<i>Description of violation</i>	<i>Provision</i>	<i>Category /Level</i>	<i>Penalty K t</i>
Failure by a financial institution to retain particulars of originator and beneficiary of the electronic funds transfer transaction.	Regulation 20(2), Section 28	C2	500,000 00
Failure by a financial institution to freeze an account of a designated person.	Section 28 (5)	B5	15,000,000 00
Failure by a financial institution to submit a Compliance Report within the required period.	Regulation 27; Section 36(4)(c)	C1	250,000 00
Failure by a person to comply with confidentiality requirements of suspicious transaction reports and other information.	Section 24	D4	1,000,000 00
Failure by a financial institution to comply with confidentiality requirements of suspicious transaction reports and other information.	Section 24	C3	2,000,000 00
Failure by a financial institution to monitor transactions and conduct on going due diligence on business relationships and transactions.	Regulation 24, Section 29	C3	2,000,000 00
Failure by a financial institution to implement group wide programmes of foreign branches, subsidiaries or head office against money laundering and terrorist financing and handling of proceeds of crime.	Section 31	A2	1,000,000 00

**MONETARY PENALTIES FOR DESIGNATED NON-FINANCIAL BUSINESSES
AND PROFESSIONS (DNFBPs)**

(Regulation 35)

Categorization of Penalties

The penalties have been divided into four categories (A, B, C, and D). The penalties are therefore defined as per table below:

<i>CATEGORY</i>	<i>LEVEL 1 PENALTY (MK'000)</i>	<i>LEVEL 2 PENALTY (MK'000)</i>	<i>LEVEL 3 PENALTY (MK'000)</i>	<i>LEVEL 4 PENALTY (MK'000)</i>	<i>LEVEL 5 PENALTY (MK'000)</i>	<i>LEVEL 6 PENALTY (MK'000)</i>	<i>LEVEL 7 PENALTY (MK'000)</i>	<i>LEVEL 8 PENALTY (MK'000)</i>	<i>LEVEL 9 PENALTY (MK'000)</i>	<i>LEVEL 10 PENALTY (MK'000)</i>
A	-	300	550	1,000	5,000	10,000	20,000	30,000	50,000	100,000
B	200	250	400	850	3,000	8,000	15,000	25,000	40,000	100,000
C	100	150	200	500	2,000	5,000	15,000	20,000	30,000	100,000
D	50	75	100	200	500	1,000	2,500	5,000	7,500	10,000

The following guidelines have been used to determine the seriousness of offences and therefore the category of penalties—

1. Category A: Violations by the Board;
2. Category B: Violations by Executive Officers or Senior Management Officials;
3. Category C: Violations by the DNFBPs at any a level other than the Board or Senior Management; and
4. Category D: Violations by natural persons who are members of the Board or Senior Management and will be charged in individual capacity.

For categories A, B and C, the penalties will be imposed on the institution. Notwithstanding that the Act and the Regulations place all compliance obligations on the reporting institution itself, in deciding which category a violation falls under, the Authority or supervisory authority shall determine the responsible person/authority for compliance with the provision of the Act or Regulation.

General notes

1. Repeat violations will bear penalties at the next level. A violation will be considered a repeat offence when it meets the following conditions, among others:
 - (a) if it remains unresolved until next review, submission or after deadline as directed by the Authority or supervisory authority; or
 - (b) if it is resolved and recurs within a period of 12 months.
2. Multiple offences of the same provision within the Act or Regulation shall only be penalised once.
3. The imposition of penalties shall not preclude the Authority or supervisory authority from taking or imposing any other supervisory action as mandated by the law.
4. Repeat violation after maximum penalty in each category, shall attract other enforcement actions as stipulated in the law.

PENALTIES PER PROVISION AND REGULATION

The table below shows penalties per provision and regulation.

<i>Description of violation</i>	<i>Provision in the law</i>	<i>Category /Level</i>	<i>Penalty (MK)</i>
Failure by a financial institution to comply with the requirements for identification of a Malawian citizen	Regulation 5	C1	250,000.00
Failure by a financial institution to comply with the requirement of identification of a foreign national	Regulation 6	C2	500,000.00
Failure by a financial institution to comply with the requirement of identification of a Politically Exposed Person	Regulation 7	B3	3,000,000.00

<i>Description of violation</i>	<i>Provision in the law</i>	<i>Category /Level</i>	<i>Penalty (MK)</i>
Failure by a financial institution to comply with the requirement of identification of a local legal entity or a legal arrangement	Regulation 8	C1	250,000.00
Failure by a financial institution to comply with the requirement of verification of a local legal entity or a legal arrangement other than a trust	Regulation 11	C2	500,000.00
Failure by a financial institution to comply with the requirement of identification of a foreign company	Regulation 9	C2	500,000.00
Failure by a financial institution to verify a designated person when a list of designated persons is circulated or when opening an account or conducting a transaction	Regulation 10 (4)	C4	5,000,000.00
Failure by a Financial institution to comply with the requirement of identification of the identity of a Malawian citizen	Regulation 5	C1	250,000.00
Failure by a Financial institution to comply with the requirement of verification of the identity of a Malawian citizen	Regulation 11	C2	500,000.00
Failure by a Financial institution to comply with the requirement of verification of the identity of a foreign national	Regulation 12	C3	2,000,000.00
Failure by a Financial institution to comply with the requirement of verification of the identity of a Trust	Regulation 13	C3	2,000,000.00
Failure by a financial institution to verify the identity of a beneficial owner	Regulation 10(1),(2)	C3	2,000,000.00
Failure by insurance companies to identify and verify beneficiaries	Section 18(1) (2) (3)	C2	500,000.00
Failure by insurance companies to apply enhanced measures to identify and verify identity of the beneficial owner of higher risk legal entities	Section 18(4)	C3	2,000,000.00
Failure by a Financial institution to comply with the requirement of verification of the identity of a foreign company	Regulation 15	C3	2,000,000.00

<i>Description of violation</i>	<i>Provision in the law</i>	<i>Category /Level</i>	<i>Penalty (MK)</i>
Failure by a Financial institution to comply with the requirement of identification and verification of a person's authority to act on behalf of another	Regulation 16	C2	500,000.00
Failure by a Financial institution to operate or maintain an account in true name of account holder.	Section 20(1), (2)	C4	5,000,000.00

OTHER DUE DILLIGENCE OBLIGATIONS

Failure by a Financial institution to maintain records for the minimum period of 7 years	Regulation 19	B3	3000,000.00
Failure by a Financial institution to comply with the requirement to maintain records in a manner that enables Authority, law enforcement agency, Supervisory Authorities or Competent Authority to reconstruct the transaction	Section 22(1)(b)	B3	3,000,000.00
Failure by a financial institution to provide a record of a transaction or any other information requested by the Authority, law enforcement agency, Supervisory Authorities or Competent Authority within the time specified by the Authority or the Competent Authority	Section 22(5)	B2	1,000,000.00
Failure by financial institution to comply with the requirements relating to correspondent banking	Regulation 22	B3	3,000,000.00
Failure by a Financial institution to comply with any of the requirements relating to intermediaries or third parties	Regulation 23	C2	500,000.00
Failure by a financial institution to comply with the requirements relating to shell banks	Section 30 (2)	B5	15,000,000.00
Failure by a financial institution to comply with new technology requirements	Regulation 25	B2	1,000,000.00
Failure by a financial institution to comply with the requirement of appointing a Compliance Officer	Regulation 28, Section 27 (1)(a)	A2 / B1	1,000,000.00
Failure by the financial Institution to train and make its employees aware of policies, procedures, audit systems relating to money laundering.	Section 27 (1)(b)(vii), Section 27(1)(c)	B1	500,000.00

<i>Description of violation</i>	<i>Provision in the law</i>	<i>Category /Level</i>	<i>Penalty (MK)</i>
Failure by the Financial Institution to screen persons before hiring them.	Section 27 (1)(b)(viii)	B1	500,000.00
Failure by the Financial Institution to establish an audit function to test Anti Money Laundering procedures and systems.	Section 27(1)(d)	A2 / B2	1,000,000.00
Failure by the Financial Institution to establish a customer acceptance policy.	Regulation 18	A3 / B2	5,000,000.00
Failure by the Financial Institution to conduct risk assessment and develop risk based systems and procedures.	Section (27)(1)(b)(i) Section 21	B2	1,000,000.00
Failure by the Financial Institution to ascertain the purpose of a transaction and source of funds and their ultimate destination.	Regulation 24	B1	500,000.00
Failure by the Financial Institution to provide for disciplinary steps against members of staff for noncompliance with the Act, these regulations and own internal rules.	Regulation 36	B1	500,000.00
Failure by the Financial Institution to ensure that the Compliance Officer has access to all information that may be of assistance in the execution of his duties.	Regulation 35	B2	1,000,000.00
Failure by the Financial Institution to establish procedure for conducting enhanced due diligence on specified and high risk customers.	Regulation 32	B3	3,000,000.00
Failure by the Financial Institutions to establish programme to identify persons on relevant sanctions list.	Section 27(1)(b)(ix)	B3	3,000,000.00
Failure by the Financial Institution to ensure that foreign branches or subsidiaries observe minimum requirements of money laundering measures of Malawi.	Regulation 26	B2	1,000,000.00
Failure by a Financial institution to identify or report a suspicious transaction.	Regulation 29, Section 23	B3	3,000,000.00
Failure by a financial institution to report large currency transactions, domestic and international electronic funds transfers.	Section 33	C1	250,000.00

<i>Description of violation</i>	<i>Provision in the law</i>	<i>Category /Level</i>	<i>Penalty (MK)</i>
Failure by financial institution to retain particulars of originator and beneficiary of the electronic funds transfer transaction.	Regulation 20(2), Section 28	C2	500,000.00
Failure by financial institution to freeze an account of a designated person.	Section 28(5)	B5	15,000,000.00
Failure by financial institution to submit a Compliance Report within the required Regulation 27; period.	Section 36(4)(c)	C1	250,000.00
Failure by a person to comply with confidentiality requirements of suspicious transaction reports and other information.	Section 24	D4	1,000,000.00
Failure by a financial institution to comply with confidentiality requirements of suspicious transaction reports and other information.	Section 24	C3	2,000,000.00
Failure by a financial institution to monitor transactions and conduct on going due diligence on business relationships and transactions.	Regulation 24, Section 29	C3	2,000,000.00
Failure by a financial institution to implement group wide programmes of foreign branches, subsidiaries or head office against money laundering and terrorist financing and handling of proceeds of crime.	Section 31	A2 / B2	1,000,000.00

PART C—MONETARY PENALTIES FOR BANKS AND INSURERS

(Insurers for underwriting all classes of Insurance business)

Categorization of Penalties

Penalties for banks and insurers have been divided into four categories (A, B, C, and D) as follows—

<i>CATEGORY</i>	<i>LEVEL 1 PENALTY (MK'000)</i>	<i>LEVEL 2 PENALTY (MK'000)</i>	<i>LEVEL 3 PENALTY (MK'000)</i>	<i>LEVEL 4 PENALTY (MK'000)</i>	<i>LEVEL 5 PENALTY (MK'000)</i>	<i>LEVEL 6 PENALTY (MK'000)</i>
A	—	30,000	40,000	50,000	60,000	100,000
B	10,000	20,000	30,000	45,000	60,000	100,000
C	10,000	20,000	30,000	45,000	60,000	100,000
D	1,000	2,000	3,000	4,000	5,000	10,000

The following guidelines have been used to determine the seriousness of offences and therefore the category of penalties—

Category A: Violations by the Board;

Category B: Violations by Executive Officers or Senior Management Officials;

Category C: Violations by the financial institution at any a level other than the Board or Senior Management; and

Category D: Violations by natural persons who are members of the Board or Senior Management and will be charged in individual capacity.

For categories A, B and C, the penalties will be imposed on the institution. Notwithstanding that the Act and the Regulations place all compliance obligations on the reporting institution itself, in deciding which category a violation falls under, the Authority or supervisory authority shall determine the responsible person/authority for compliance with the provision of the Act or Regulation.

GENERAL NOTES

1. Repeat violations will bear penalties at the next level. A violation will be considered a repeat offence when it meets the following conditions, among others—
 - (a) if it remains unresolved until next review, submission or after deadline as directed by the Authority or supervisory authority; or
 - (b) if it is resolved and recurs within a period of 12 months.
2. Multiple offences of the same provision within the Act or Regulation shall only be penalised once.
3. The imposition of penalties shall not preclude the Authority or supervisory authority from taking or imposing any other supervisory action as mandated by the law.
4. Repeat violation after maximum penalty in each category, shall attract other enforcement actions as stipulated in the law.

PENALTIES PER PROVISION AND REGULATION

The table below shows penalties per provision and regulation.

<i>Description of violation</i>	<i>Provision</i>	<i>Category /Level</i>	<i>Penalty (MK)</i>
Failure by a financial institution to comply with the requirements for identification of a Malawian citizen	Regulation 5	C1	10,000,000 00
Failure by a financial institution to comply with the requirements for identification of a foreign national	Regulation 6	C2	20,000,000 00
Failure by a financial institution to comply with the requirements for identification of a Politically Exposed Person	Regulation 7	C3	30,000,000 00

<i>Description of violation</i>	<i>Provision</i>	<i>Category /Level</i>	<i>Penalty (MK)</i>
Failure by a financial institution to comply with the requirements for identification of a local legal entity or a legal arrangement	Regulation 8	C1	10,000,000 00
Failure by a financial institution to comply with the requirements for identification of a local legal entity or a legal arrangement other than a trust	Regulation 11	C2	20,000,000 00
Failure by a financial institution to comply with the requirements for identification of a foreign company	Regulation 9	C2	20,000,000 00
Failure by a financial institution to verify a designated person when a list of designated persons is circulated or when opening an account or conducting a transaction	Regulation 10 (4)	C4	45,000,000 00
Failure by a financial institution to comply with the requirements of verification of the identity of a Malawian citizen	Regulation 11	C2	20,000,000 00
Failure by a financial institution to comply with the requirements of verification of the identity of a foreign national	Regulation 12	C3	30,000,000 00
Failure by a financial institution to comply with the requirements of verification of the identity of a Trust	Regulation 13	C3	30,000,000 00
Failure by a financial institution to verify the identity of a beneficial owner	Regulation 10(1),(2)	C3	30,000,000 00
Failure by insurance companies to identify and verify beneficiaries	Section 18(1) (2) (3)	C2	20,000,000 00
Failure by insurance companies to apply enhanced measures to identify and verify identity of the beneficial owner of higher risk legal entities	Section 18(4)	C3	30,000,000 00
Failure by a financial institution to comply with the requirement of verification of the identity of a foreign company	Regulation 15	C3	30,000,000 00
Failure by a financial institution to comply with the requirement of identification and verification of a person's authority to act on behalf of another	Regulation 16	C2	20,000,000 00

<i>Description of violation</i>	<i>Provision</i>	<i>Category /Level</i>	<i>Penalty (MK)</i>
Failure by a Financial institution to operate or maintain an account in true name of account holder.	Section 20(1), (2)	C4	45,000,000 00

OTHER DUE DILLIGENCE OBLIGATIONS

Failure by a financial institution to maintain records for the minimum period of 7 years	Regulation 19	B3	30,000,000 00
Failure by a financial institution to comply with the requirement to maintain records in a manner that enables Authority, law enforcement agency, Supervisory Authorities or Competent Authority to reconstruct the transaction	Section 22(1)(b)	B3	30,000,000 00
Failure by a financial institution to provide a record of a transaction or any other information requested by the Authority, law enforcement agency, Supervisory Authorities or Competent Authority within the time specified by the Authority or the Competent Authority	Section 22(5)	B2	20,000,000 00
Failure by financial institution to comply with the requirements relating to correspondent banking	Regulation 22	B3	30,000,000 00
Failure by a financial institution to comply with any of the requirements relating to intermediaries or third parties	Regulation 23	C2	30,000,000 00
Failure by a financial institution to comply with the requirements of the FCA relating to shell banks	Section 30 (2)	B5	60,000,000 00
Failure by a financial with new technology requirements institution to comply	Regulation 25	B2	20,000,000 00
Failure by a financial institution to comply with the requirement of appointing a Compliance Officer	Section 27(1)(a)	A3	40,000,000 00
Failure by the financial institution to train and make its employees aware of policies, procedures, audit systems relating to money laundering	Section 27 (1)(b)(vii), Section 27 (1)(c)	B2	20,000,000 00
Failure by the financial institution to screen persons before hiring them	Section 27 (1)(b)(viii)	B1	10,000,000 00

<i>Description of violation</i>	<i>Provision</i>	<i>Category /Level</i>	<i>Penalty (MK)</i>
Failure by the financial institution to establish an audit function to test Anti Money Laundering procedures and systems.	Section 27 (1)(d)	A2	30,000,000 00
Failure by the financial institution to establish a customer acceptance policy.	Regulation 18	A3	40,000,000 00
Failure by the financial institution to conduct risk assessment and develop risk based systems and procedures	Section 27 (1)(b)(i) Section 21 Regulation 3	B3	30,000,000 00
Failure by the financial institution to ascertain the purpose of a transaction and source of funds and their ultimate destination.	Regulation 24	B3	30,000,000 00
Failure by the financial institution to provide for disciplinary steps against members of staff for noncompliance with the Act, these regulations and own internal rules.	Regulation 36	B1	10,000,000 00
Failure by the financial institution to ensure that the Compliance Officer has access to all information that may be of assistance in the execution of his duties.	Regulation 35	B2	20,000,000 00
Failure by the financial institution to establish procedure for conducting enhanced due diligence on specified and high risk customers.	Regulation 32	B3	30,000,000 00
Failure by the financial institutions to establish programme to identify persons on relevant sanctions list.	Section 271 (b)(ix)	B4	45,000,000 00
Failure by the financial institution to ensure that foreign branches or subsidiaries observe minimum requirements of money laundering measures of Malawi.	Regulation 26	B2	20,000,000 00
Failure by a financial institution to identify or report a suspicious transaction.	Regulation 29 Section 23	C3	30,000,000 00
Failure by a financial institution to report large currency transactions, domestic and international electronic funds transfers.	Section 33	C1	10,000,000 00

<i>Description of violation</i>	<i>Provision</i>	<i>Category /Level</i>	<i>Penalty (MK)</i>
Failure by financial institution to retain particulars of originator and beneficiary of the electronic funds transfer transaction.	Regulation 20, Section 28	C2	20,000,000 00
Failure by financial institution to freeze an account of a designated person.	Section 28 (5)	B5	60,000,000 00
Failure by financial institution to submit a Compliance Report within the required period.	Regulation 27; Section 36 (4)(c)	C1	10,000,000 00
Failure by a person to comply with confidentiality requirements of suspicious transaction reports and other information.	Section 24	D5	5,000,000 00
Failure by a financial institution to comply with confidentiality requirements of suspicious transaction reports and other information.	Section 24	C3	30,000,000 00
Failure by a financial institution to monitor transactions and conduct on going due diligence on business relationships and transactions.	Regulation 24, Section 29	C3	30,000,000 00
Failure by a financial institution to implement group wide programmes of foreign branches, subsidiaries or head office against money laundering and terrorist financing and handling of proceeds of crime.	Section 31	A2	30,000,000 00

Made this 28th day of February, 2020.

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J. MWANAMVEKHA
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Planning and Development