

LAWS OF MALAWI

70 *Money Laundering, Proceeds of Serious Crime*
Cap. 8:07 *and Terrorist Financing*

[Subsidiary] *Money Laundering, Proceeds of Serious Crime and Terrorist Financing Regulations*

SUBSIDIARY LEGISLATION

G.N. 39/2011 **MONEY LAUNDERING, PROCEEDS OF SERIOUS CRIME**
AND TERRORIST FINANCING REGULATIONS
under s. 105

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PART I
PRELIMINARY

1. These Regulations may be cited as the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Regulations. Citation

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

“Act” means the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act;

“account” has the meaning attributed to that term in section 2 of the Act;

“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 financial institution;

“AML/CFT” means anti-money laundering/combating the financing of terrorism;

“auditor” a qualified accountant who inspects the accounting records and practices, including a financial institution’s compliance to the

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Act, these Regulations, and its own policies and procedures on AML/CFT;

“beneficial owner” has the meaning attributed to that term in section 2 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;

“business relationship” means an arrangement between a customer and a financial institution for the purpose of facilitating transactions on a regular basis;

“client” has the same meaning as customer under these Regulations;

“competent authority” has the meaning attributed to that term in section 2 of the Act;

“Compliance officer” means a senior officer of a financial institution who ensures that the financial institution is in compliance with the Act and these Regulations;

“compliance programme” means a programme which is established by a financial institution to ensure it is in compliance with the Act and these Regulations;

“correspondent banking” means the provision of banking services by a local bank to another local bank or foreign bank;

“cross border wire transfer” means any wire transfer where the originator and beneficiary institutions are located in different jurisdictions;

“currency” has the same meaning attributed to that term in section 2 of the Act;

“customer” has the same meaning attributed to that term in section 2 of the Act;

“designated person” means a person or entity, legal or otherwise, designated by the Al-Qaida and Taliban Sanctions Committee pursuant to Special Recommendation 1267 (1999) or that person or entity designated and accepted, as appropriate, by Malawi pursuant to Special Recommendation 1373 (2001);

“electronic banking” includes the provision of retail and small value banking products and services through electronic channels as well as large value electronic payments and other wholesale banking services delivered electronically;

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

- “financial institution” has the meaning attributed to that term in section 2 of the Act;
- “FIU” means the Financial Intelligence Unit, established under section 11 of the Act;
- “internet” includes all related web-enabling technologies and open telecommunication networks ranging from direct dial-up connections, the public World Wide Web, and virtue private networks;
- “host country” means a country in which a Malawian financial institution has a branch or a subsidiary;
- “legal persons” means corporate bodies, foundations, partnerships or associations, or any similar body that can establish a permanent customer relationship with a deposit taking institution or otherwise own property;
- “money or value transfer service” means a financial service that accepts cash, cheques, 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 a transaction concluded in the course of a business relationship;
- “originator” is the account holder, or where there is no account, the person (natural or legal) that places the order with the financial institution to perform the wire transfer;
- “payable-through accounts” means correspondent accounts that are used directly by third parties to transact business on their behalf;
- “private banking” means the provision of exclusive executive banking services to high net worth private individuals as may be determined by individual banks;
- “public official”, has the same meaning attributed to that term in section 2 of the Act;
- “respondent bank” means a bank in receipt of banking services from a correspondent bank;
- “senior management”, in respect of a Malawian or foreign legal entity, means the natural person who is the principal executive officer of the entity, by whatever name he may be designated and whether or not he is a director of that company;
- “shell bank” means a bank that has no physical presence in the country

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in which it is incorporated and licensed, and which is unaffiliated with a regulated financial service group that is subject to effective consolidated supervision;

“SWIFT” means Society for Worldwide Interbank Financial Telecommunication.

PART II

IDENTIFYING INFORMATION

Establishing
identity

3.—(1) A financial institution shall establish the identity of every customer when—

- (a) establishing a continuing business relationship;
- (b) in the absence of a continuing business relationship, conducts any transaction exceeding K500,000;
- (c) carrying out several transactions within fourteen days, which appear to be linked and when consolidated, add up to K500,000;
- (d) carrying out an electronic funds transfer;
- (e) there is a suspicion of money laundering or terrorist financing, irrespective of any exemptions or threshold that are referred to elsewhere in these Regulations, or
- (f) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

(2) A financial institution shall not establish or maintain a business relationship or conduct a single transaction with a customer if it has reasonable grounds to believe that the customer is entering into that business relationship or conducts a single transaction under a fictitious, false or incorrect name.

(3) Where a financial institution discovers that a business relationship has been established or the single transaction has been conducted using a fictitious, false or incorrect name, it shall report such to the FIU for specific direction.

(4) A financial institution shall use a risk based approach to identify—

- (a) non-resident customers;
- (b) private banking customers;
- (c) legal entities;
- (d) public officials;
- (e) a customer who has been refused banking services by another institution; and
- (f) other forms of high risk categories of customers, beneficial owners, beneficiaries, or business relationships.

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

- (a) financial institutions that are subject to these Regulations;
- (b) public companies that are subject to regulatory disclosure requirements;
- (c) customers whose average monthly income does not exceed K50,000;
- (d) customers whose average monthly withdrawals do not exceed K50,000; and
- (e) other forms of low risk categories of customers, beneficial owners, beneficiaries or business relationships.

(6) Notwithstanding the provisions of subregulation (5) above, simplified or reduced customer identification requirements shall not be applied where there is suspicion of money laundering or terrorist financing.

(7) A financial institution that established business relations with a customer before the Act came into force shall take reasonable measures using a risk based approach to identify the existing customer within eighteen months from the date these Regulations came into force, in the following circumstances—

- (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 financial institution becomes aware that it lacks sufficient information about an existing customer.

(8) In the case of legal persons and trusts, a financial institution shall take reasonable measures to identify the natural person that ultimately—

- (a) owns, controls or manages the customer; or
- (b) benefits from the customer.

(9) Where a financial institution has failed to obtain satisfactory evidence of the identity of a customer in accordance with regulations 3 to 8, it shall—

- (a) not open the account, commence business relationship or perform the transaction unless advised otherwise by the FIU;
- (b) suspend or close the account unless advised otherwise by the FIU; and
- (c) submit a suspicious transaction report to the FIU in respect of the attempted transaction.

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Information
concerning
Malaŵian
citizens

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4.—(1) A financial institution shall identify a natural person who is a citizen of Malaŵi by obtaining from that person the following particulars—

- (a) his full names;
- (b) his national identity card, passport or driving licence, indicating the person's date of birth;
- (c) his physical address including street names and plot numbers, or a detailed description of the location named in Malaŵi where the physical address is not available;
- (d) his village, traditional authority and district of origin where applicable;
- (e) his postal address, e-mail address and telephone contacts where applicable;
- (f) his occupation or source of income and expected level of monthly income;
- (g) nature and detailed description of the location of business activities or place of employment, whichever is applicable; and
- (h) purpose and intended nature of the business relationship.

(2) If the natural person referred to in subregulation (1) is, for whatever reason, acting on behalf of or assisting another person, the financial institution shall also obtain from, or in respect of that other person, the particular's referred to in subregulation (1).

Information
concerning
foreign
nationals

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

- (a) his full names;
- (b) his nationality;
- (c) his passport details, including passport number, date of birth, and place of issuance of the passport;
- (d) his physical address including street names and plot numbers, or a detailed description of the location named in Malaŵi where the physical address is not available;
- (e) his residential address and contact information of country of origin or residence, whichever is applicable;
- (f) his postal address, e-mail address and telephone contacts in Malaŵi where applicable;
- (g) his occupation or source of income and expected level of monthly income and annual income;
- (h) nature and location of business activities, if any;
- (i) nature of permit allowing them to reside in Malaŵi; and
- (j) purpose and intended nature of the business relationship.

(2) If the natural person referred to in subregulation (1) is, for whatever reason, acting on behalf of or assisting another person, the

financial institution shall also obtain from, or in respect of that other person, the particulars referred to in subregulation (1).

6.—(1) A financial institution shall have appropriate risk management systems to determine whether the customer or beneficial owner is a public official.

Information
concerning
public officials

(2) In addition to the requirements in subregulation (1) as well as regulations (4) and (5), the financial institution shall—

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

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

(c) take reasonable measures to establish the source of wealth or funds of the public official.

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

Information
concerning
legal entities

(a) the registered name of the legal entity;

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

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

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

(e) where applicable, the name under which the legal entity conducts business, if this is different from its registered name; and

(f) the address from which the legal entity operates, or if it operates from multiple addresses—

(i) the address of the office seeking to establish a business relationship or to enter into a single transaction with the financial institution; and

(ii) expected monthly and annual turnover.

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

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

(i) expected monthly and annual turnover.

(2) In addition to the requirements of subregulation (1), in the case of a company, the financial institution shall, pursuant to regulations 4 (1), 5 (1) and 6, obtain the full particulars and details of—

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- (a) senior management of the company;
- (b) each director of the company;
- (c) each natural person, partnership, company or trust controlling fifteen per cent or more of the voting rights at the general meeting of the company; and
- (d) each natural person who purports to be authorized to establish a business relationship or to enter into a transaction with the financial institution on behalf of the company.

(3) In addition to the requirements of subregulation (1), in the case of a partnership, a financial institution shall, pursuant to regulations 4 (1), 5 (1) and 6, obtain the full particulars and details of—

- (a) every partner;
- (b) senior management; and
- (c) each natural person who purports to be authorized to establish a business relationship or to enter into a transaction with the financial institution on behalf of the partnership.

(4) In the case of a trust, a financial institution must, pursuant to regulations 4 (1), 5 (1) and 6, 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 authorized to establish a business relationship or to enter into a transaction with the financial institution on behalf of the trust; and
- (d) each beneficiary of the trust referred to by name in the trust deed or other founding instrument 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 the Business Names Registration Act, a financial institution must, pursuant to regulations 4 (1), 5 (1) and 6, 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 authorized to establish a business relationship or to enter into a transaction with the financial institution on behalf of the entity.

Information concerning foreign companies

8.—(1) A financial institution shall obtain from the 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—

- (a) the name under which it is incorporated;
- (b) the certificate of incorporation or registration indicating the number under which it is incorporated;
- (c) provisions regulating the power to bind the entity;
- (d) the address where it is situated for purposes of its incorporation;
- (e) where applicable the name under which it 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) the name under which it conducts business in Malaŵi;
- (h) the address from which it operates in Malaŵi, 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 financial institution;
- (i) source and amount of capital used to establish the company in Malaŵi;
- (j) expected monthly and annual income;
- (k) government authorization allowing the foreign company to operate in Malaŵi;
- (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 Malaŵi;
 - (ii) each natural person who purports to be authorized to establish a business relationship or to enter into a transaction with the financial institution on behalf of the foreign company;
 - (iii) each natural or legal person controlling fifteen per cent or more of the voting rights in the foreign company;
- (m) reference letter from its bankers in its country of registration; and
- (n) purpose and intended nature of the business relationship.

PART III

VERIFYING IDENTITIES

9.—(1) A financial institution must verify the identity of a customer or beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers: Verification of identity

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Provided that the financial institution keeps evidence of the original identification document.

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

Provided that in the absence of risk management systems a financial institution is not permitted to enter into a business relationship before verifying the identity.

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

Verification of
Malawi citizen
and residents

10. A financial institution shall independently verify the particulars and details referred to in regulation 4 (1) and (2) in respect of a natural person who is a citizen or a resident in Malawi, where practical but not limited to, by obtaining—

- (a) a letter from his employers, stating the current monthly salary;
- (b) current payslip;
- (c) utility bills;
- (d) city rates bills;
- (e) lease agreement; or
- (f) tenancy agreement.

Verification of
foreign
nationals

11.—(1) A financial institution must independently verify particulars and details referred to in regulation 5 (1) and (2) in respect of foreign nationals by confirming the information given with the individual's bank in his country of origin or residence.

(2) Where it is not practical to contact the individual's bank in his country of origin or residence, the financial 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 offered by the financial institution to the foreign national.

Verification of
Trusts

12.—(1) A financial institution shall verify the particulars obtained in respect of a trust in terms of regulation 7 (1) and (4) by—

- (a) comparing the registration certificate, trust deed, the authorization given under the Trustees Incorporation Act for the trust to operate in Malawi or other rounding document in terms of

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which the trust is created with documents held with the office of the Registrar of Companies;

(b) independently verifying information with regard to the trustee, founders, and beneficiaries or other persons who purport to be authorized to establish a business relationship or enter into a transaction with the financial institution on behalf of the legal entity in line with regulations 10 and 11;

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

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

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

(a) the jurisdiction where the trust is registered;

(b) the nature and business of the trust; and

(c) products offered by the financial institution to the trust.

13.—(1) A financial institution shall verify the particulars obtained in respect of a legal entity other than a trust, in terms of regulation 7 (1), (2), (3) and (5) by—

Verification
of other legal
entities

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

(b) physically verifying the head office or other place of business of the entity and contact details provided; 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 financial institution on behalf of the legal entity in line with regulations 10 and 11.

(2) Where it is not practical to verify the particulars of a legal entity in the manner described in subregulation (1), a financial 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 offered to the legal entity by the financial institution.

14.—(1) A financial institution shall verify the particulars obtained in respect of a foreign company in terms of regulation 8 by—

Verification
of foreign
companies

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- (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 Malaŵi; 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 financial institution on behalf of the legal entity in line with regulations 10 and 11.

(2) Where it is not practical to verify the particulars of the company in the manner described in subregulation (1), a financial 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 offered by the financial institution to the foreign company.

Person acting
on authority of
another

15.—(1) When a natural person is seeking to establish a business relationship or to conclude a single transaction with a financial institution on behalf of another natural person, a legal person, partnership or trust, the institution shall, in addition to the other steps as may be applicable in terms of regulations 4 to 14, obtain information which provides proof of that person's authority to act in such manner.

(2) A financial institution shall verify the information obtained in terms of subregulation (1), by comparing the particulars of the natural person or legal person, partnership or trust referred to in subregulation (1) with information obtained by the institution in accordance with regulations 10, 11, 12, 13 or 14, as may be applicable.

PART IV

OTHER DUE DILIGENCE OBLIGATIONS

Customer
acceptance
policy

16.—(1) A financial institution shall develop and update on a regular basis a written risk based Customer Acceptance Policy for ongoing business relationship or single transaction.

(2) The board of a financial institution shall approve the Customer Acceptance Policy.

(3) A financial institution shall have procedures and guidelines explaining the Customer Acceptance Policy which forms part of the training programme of the institution.

Record
keeping

17.—(1) A financial institution shall keep all records in soft and hard copy and it shall ensure that appropriate backup and recovery procedures are in place.

(2) A financial institution shall take reasonable steps, in respect an of existing business relationship, to maintain the correctness of records compliance with regulations 4 to 15, by undertaking a two-year review of existing records, particularly for higher risk categories of customers or business relationships.

18.—(1) A financial institution shall meet exchange control requirements to transfer money, which include— Electronic funds transfer

(a) accurate originator information (name of the originator, address of the originator, an account number of the originator and other related messages that are sent); and

(b) accurate beneficiary information (name of the beneficiary, address of the beneficiary, an account number of the beneficiary, SWIFT code and other related messages that are sent),

and the information should remain with the fund transfer or related message through the payment chain.

(2) For all electronic funds transfers, a financial institution shall verify the identity of the originator and beneficiary in accordance with regulations 4 to 13.

(3) A financial institution shall ensure that an intermediary institution in the payment chain provides all originator and beneficiary information that accompanies an electronic funds transfer.

(4) A financial institution shall monitor and report to the FIU suspicious electronic funds transfers which do not contain complete originator and beneficiary information.

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

19.—(1) In relation to correspondent banking and other similar business relationships, a financial institution shall, in accordance with these Regulations— Correspondent institutions

(a) adequately 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;

(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;

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

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

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

(i) in line with regulation 21 (1), it carries due diligence on other correspondent or respondent institutions it provides similar services; and

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

(3) A financial 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 relationship.

Intermediaries

20.—(1) Where a financial institution chooses to rely on an intermediary or third party to undertake its obligations under Parts II and III of these Regulations or to introduce business it shall—

(a) enter into an agreement with that 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 FIU within three working days of their request;

(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 financial institution shall confirm whether countries in which such third parties are domiciled have effective systems to deter money laundering and terrorist financing; and

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

Shell banks

21. A financial institution shall not enter into or continue correspondent banking relationships with a shell bank, or a respondent financial institution that permit their account to be used by shell banks.

Monitoring transactions

22.—(1) A financial institution shall conduct ongoing due diligence on their customers and develop risk based systems and procedures.

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(2) A financial institution shall take reasonable measures to ascertain the purpose of any transaction including deposits in excess of K1,000,000 or its equivalent in foreign currency, its origin and its ultimate destination.

(3) A financial institution shall report to the FIU and monitor any transaction involving a numbered account.

(4) A financial institution shall have automated or manual system that will trigger action in the event that all thresholds referred to in these Regulations are exceeded.

23. A financial institution shall take reasonable steps to prevent the use of new technologies for money laundering or terrorist financing schemes.

New technologies

PART V

REPORTING REQUIREMENTS

24. Senior management of a financial institution shall, by the 31st day of January of each calendar year, or as may be required from time to time, submit to the FIU Compliance Reports in accordance with the Act, these Regulations and their AML/CFT internal rules.

Annual Compliance Report

25. In accordance with section 28 of the Act, a financial institution shall submit the following reports to the FIU—

Large currency transaction reporting

(a) a Weekly Transaction Report in a format specified in the First Schedule; or

First Schedule

(b) a Large Currency Transaction Report (LCTR) in a format specified in the Second Schedule.

Second Schedule

26.—(1) In accordance with section 28 of the Act, a financial institution shall submit a Suspicious Transaction Report (STR) to the FIU when—

Suspicious transaction reporting

(a) it suspects or has reasonable grounds to suspect that funds involved in a transaction are related to money laundering, terrorist financing or are proceeds of any criminal activity;

(b) it has reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorist acts, terrorist organizations or those who finance terrorism; or

(c) an attempted or proposed transaction fails.

(2) A report made under sections 28 and 29 of the Act shall be made in a format specified in the Third Schedule.

Third Schedule

(3) In pursuance of section 29 of the Act, an auditor shall not investigate the matter after filing an STR with the FIU unless otherwise approved by the FIU.

PART VI

COMPLIANCE OFFICER

Compliance programmes

27.—(1) In addition to responsibilities provided in the Act, a Compliance officer shall ensure that—

(a) he is informed of all suspicious activities available to the financial institution and take action on suspicious disclosures from officer and employees of the financial institution as soon as practical so as not to delay the reporting of such disclosures;

(b) when a disclosure is made he must apply internal risk management procedures on suspicious transaction;

(c) he shall report disclosures deemed suspicious by the criteria in subregulation (b) above to the FIU;

(d) officers and employees of the financial institution are aware of the laws on money laundering and terrorist financing, as well as the audit systems adopted by the financial institution; and

(e) in liaison with human resource department, persons are screened before hiring them as employees.

(2) The appointment or removal of the Compliance Officer shall be communicated to the FIU and the Supervisory Authority within seven working days.

(3) An Internal Auditor and a Chief Executive shall not qualify as Compliance Officers, except in the case where the Chief Executive is a sole proprietorship.

PART VII

MISCELLANEOUS

Foreign branches and subsidiaries

28.—(1) A financial institution shall ensure that its foreign branches and subsidiaries observe AML/CFT measures consistent with the Act, and these Regulations.

(2) If the minimum requirements of the host country are lower than those applicable in Malaŵi, financial institutions shall ensure that their branches and subsidiaries apply the higher standards.

(3) A financial institution shall inform the FIU and Supervisory Authorities when their foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.

Issuance of guidelines

29.—(1) The FIU may, from time to time, issue and revise existing guidelines for the operation of the Act and these Regulations.

(2) The guidelines may prescribe particulars or matter, including forms, deemed necessary or expedient for the operation, or use in the operation of these Regulations.

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FIRST SCHEDULE

reg. 25 (a)

LARGE CURRENCY TRANSACTION WEEKLY REPORT

| <i>Full name of person conducting transaction</i> | <i>Currency</i> | <i>Transaction Amount</i> | <i>Transaction Date</i> | <i>Buying/Selling</i> |
|---|-----------------|---------------------------|-------------------------|-----------------------|
| | | | | |
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| | | | | |
| | | | | |

Compliance Office Code:

Compliance Officer Signature:

Date:

SECOND SCHEDULE

reg. 25 (b)

LARGE CURRENCY TRANSACTION REPORT

sections 28 and 29

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

1. Report Number:* 2. Report Date:*

3. PLEASE TICK APPROPRIATE BOX—

(a) Large Currency Transaction Report;

(b) Amendments to prior report (specify previous report number).

PART A

FINANCIAL INSTITUTION INFORMATION

4. Name of the Institution:*

5. Full Address:*

6. Phone Number: 7. Fax Number:*

8. Entity's type of business:* Bank Discount House Leasing Company

Other (specify):

(PLEASE TICK APPROPRIATE BOX)

[Subsidiary]

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- 9. Full Name of the Contact Person:*
- 10. Designation of the Contact Person:*
- 11. Telephone Number of the Contact Person:*
- 12. E-mail Address of the Contact Person:*
- 13. Signature of the Contact Person:*
- 14. Date of Signature:*

PART B

IDENTITY OF INDIVIDUAL FROM WHOM THE CASH WAS RECEIVED

- 1. Surname or Name of Entity:* 2. Initial:*
- 3. Full Address:*
- 4. Phone Number:* 5. Fax Number:*
- 6. Occupation/Type of Business:*
- 7. Country:*
- 8. Type of Identifier:* Passport Driver's Licence National Identity Card
 Other (specify):
- 9. Identity Number:

PART C

PERSON ON WHOM BEHALF THIS TRANSACTION WAS CONDUCTED

If transaction was conducted by person referred to in Part B—(DO NOT COMPLETE PART C).

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

PART D

DESCRIPTION OF TRANSACTION

- 1. Date or Date range of Suspicious Activity:
* From: To:
(dd-mm-yyyy) (dd-mm-yyyy)

2. Amount of Transaction:*
3. Equivalent in Kwacha:*

(PLEASE TICK APPROPRIATE BOX)

4. Type of Funds:* Cash Cheque Credit Card Bank Draft
 Electronic Funds Transfer Travelers Cheque
 Other (specify):
- Type of Transaction:* Exchange of Cash Debt obligation paid
 Bail received by court clerks Intangible property purchased
 Business services provided Real property purchased
 Personal property purchased Being transported
 Other (specify):
5. Has a law enforcement institution been advised ?* Yes No
 If Yes, please tick contacted law enforcer below:
 Police Anti-Corruption Bureau Director of Public Prosecution
 MalaWi Revenue Authority Other (specify):
6. Full name of person contacted at the law enforcement institution:

7. Telephone Number of person contacted at the law enforcement institution:

PART E

ACCOUNTS INVOLVED IN THE TRANSACTION

1. Account Number:*
2. Name of branch or office where accounts were held:*
3. Address of branch or office:*
4. Telephone Number of branch or office:*
5. Type of Account:*
6. Name(s) of Account Holder:*
7. Date Account Opened:*
8. Status of the Account:* Active Inactive Dormant
 Closed
9. Date Account closed:
10. Closed by:* Customer Institution
11. Highest amount paid **into** the account in the past six months from reporting date:*
12. Highest amount paid **out** of the account in the past six months from reporting date:*
13. Balance in the account on the date of the report:*

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PART F

DETAILS OF THE LARGE CURRENCY TRANSACTION

Please describe clearly and completely the events which led to the forming of the conclusion that the particular transaction is suspicious and state the reasons for this conclusion, indicating the amounts and currencies involved.

PART G

DETAILS OF ACTION TAKEN

Please describe what action was or will be taken by you as a result of the large currency transaction.

PART H

LIST OF AVAILABLE DOCUMENTS

Please provide a list of all documents that could serve as evidence of the large currency transaction being reported.

reg. 25 (2)

THIRD SCHEDULE

SUSPICIOUS TRANSACTION REPORT

Report Number: Report Date:

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 the completed Form by registered mail or deliver by hand to—

The Director
Financial Intelligent Unit
RBM Building, Convention Drive
Private Bag B441, Capital City
Lilongwe 3
Malawi
or Fax: (265) 1 770 827.

ALWAYS COMPLETE ENTIRE REPORT

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

15. FIU Reference Number:*

16. PLEASE TICK APPROPRIATE Box—

(a) [] Suspicious Transaction (b) [] Amendments to prior report

PART A

SUSPICIOUS ACTIVITY INFORMATION

17. Characterization of transaction: Money Laundering Bribery
 Cheque Fraud Commercial Loan Fraud Identity Theft
 Computer Intrusion Consumer Loan Fraud Counterfeit
 Cheque
 Credit Card Fraud Embezzlement False Statement
 Misuse of Position Mortgage Loan Fraud Terrorist
 Financing
 Mysterious Disappearance Electronic Funds Transfer Fraud

(PLEASE TICK APPROPRIATE BOX)

 Tax Evasion Other (specify):*

18. Date or Date range of Suspicious Activity:

* From: To:

(dd-mm-yyyy) (dd-mm-yyyy)

19. Amount of transaction(s) in Kwacha value:*

20. Purpose of transaction:*

Origin of transaction:*

Ultimate destination of transaction:*

Identity and address of any ultimate beneficiary:*

21. Type of funds:
-
- Cash
-
- Cheque
-
- Credit Card
-
- Bank
-
- Draft

 Electronic Funds Transfer Travellers Cheque Other (specify):*

22. Has the suspicious activity had a material impact on, or otherwise
-
- affected the financial soundness of the institution?
-
- Yes
-
- No

If Yes, please refer to Part H

23. Has a law enforcement institution been advised?
-
- Yes
-
- No

If Yes, please tick contacted law enforcer below:

 Police Anti-Corruption Bureau Director of Public
Prosecutions Malawi Revenue Authority Other (specify):*

24. Name of person contacted at the law enforcement institution:

*

25. Telephone Number of person contacted at the law enforcement
-
- institution:*

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PART B

ACCOUNT INVOLVED IN THE TRANSACTION

- 14. Account Number(s):*
 - 15. Name of branch or office where account(s) were held:*
 - 16. Address of branch or office:*
 - 17. Type of Account:*
 - Name(s) of Account Holder:*
 - Date account opened:*
 - 18. Status of the account(s):* Active Inactive Dormant
 Closed
- (PLEASE TICK APPROPRIATE BOX)
- 19. If Closed, by: Customer Institution.
 Date closed:*
 - 20. Highest amount paid *into* the account in the past six months from
 reporting date:*
 *.....
 - 21. Highest amount paid *out* of the account in the past six Months from
 reporting date:*
 *.....
 - 22. Balance in the account on the date of the report:*

PART C

INFORMATION OF PERSON OR ENTITY CONCERNING WHOM REPORT IS MADE

Suspect Information Unavailable:

- 9. Surname or Name of Entity:* 10. Initial:
- 11. Full Address:*
-
- 12. Phone Number:* 13. Fax Number:*
- 14. Occupation:*
- 15. Nationality:*..... 16. Country of Residence:*
- 17. Type of Identity:* Passport Driver's Licence National
 ID Card Other (specify):
- 18. Identity Number:*

19. 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:*

(PLEASE TICK APPROPRIATE BOX)

20. Type of Identity:* Passport Driver's Licence National ID Card Other (specify):

21. Identity Number:* PART A

PART E

REPORTING INSTITUTION INFORMATION

- 1. Name of the 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.

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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 FORM 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.
- _____