

Grant Kabango: Financial services laws for lawyers

Keynote address by Dr Grant Kabango, Deputy Governor (Supervision of Financial Institution) of the Reserve Bank of Malawi, at the seminar on “Financial services laws for lawyers”, Zomba, 22 June 2012.

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The President of the Malawi Law Society, Mr John Gift Mwakhwawa; The General Counsel and Bank Secretary, Mr Samuel Malitoni; Distinguished participants;

Ladies and gentlemen;

It is indeed an honour for me to address this distinguished gathering whose main purpose is to provide an opportunity to the Malawi Law Society to be acquainted with the financial services laws in particular, the Financial Services Act 2010, the Banking Act 2010, the Pensions Act 2010, the Securities Act 2010 and the Insurance Act 2010.

This seminar will also afford the Reserve Bank of Malawi an opportunity to highlight areas that are likely to be controversial in the financial sector, leading to litigation in the High Court and subordinate courts.

Distinguished ladies and gentlemen,

As a way of background the legal and regulatory reforms project started way back in 2002. Under the auspices of World Bank and the Malawi Government, FIRST Initiative, a consultancy firm, was engaged to carry out an assessment of the financial system in Malawi in 2004 to 2005 through the Financial Sector Regulatory Reforms Programme. The assessment concluded that the financial sector in Malawi was relatively underdeveloped and that there was need to institute measures to deepen and broaden the sector so that it should contribute more to economic growth of the country. The report also noted the financial sector to be bank-centric with very low penetration of non-bank financial products. In view of these findings, the report identified the following as challenges and requirements for the RBM and Government relating to the financial system:

- The need to introduce measures to enhance penetration of financial services in the country particularly non-bank financial products;
- The need to introduce measures to increase overall mobilisation of savings particularly contractual savings which are long term in nature and can therefore be channelled into productive investments;
- The need to find ways to increase the use of markets relative to financial institutions;
- The need to find means of increasing the diversity of financial products available for diversification of risks.

Distinguished participants;

As a way of dealing with the above challenges, the RBM and Government came up with a policy drive to develop a vibrant non-bank financial sector alongside the existing banking industry to add a degree of resilience to the financial system. This was basically achieved through the introduction of comprehensive regulatory reforms for the financial sector which involved the modernization of existing legal frameworks such as the Banking Act, Insurance Act and Securities Act; and development of new laws for those sectors which were not regulated by the RBM, for example, the pensions, microfinance and financial cooperatives.

The central feature of the reforms was to consolidate the supervisory responsibility for the financial sector in a single agency and bring Malawi in line with international best practice. This would create a platform for effective financial sector supervision from which the financial institutions can better contribute to the growth and development of the country. On its part, the RBM restructured its regulatory and supervisory function in 2005 in a bid to prepare and improve its capacity to supervise and regulate the whole financial system in Malawi. This was done by splitting the function into two distinct departments namely, Bank Supervision and Supervision of Non-Bank Financial Institutions Departments. The latter was split again in 2010 into Pensions and Insurance Supervision Department and Capital Market and Microfinance Supervision Department. It is envisaged that the two departments will be split again in future to recognize the distinct characteristics of the different sectors being supervised.

Distinguished ladies and gentlemen;

The importance of a vibrant financial sector with a strong legal framework cannot be overemphasized. Financial institutions play a major role in the economic growth of any country. Deposit taking, lending, payment and settlement activities of financial intermediaries have placed banks and other financial institutions at the centre of economic activity of any country. In addition, other sectors of the financial services industry such as life insurers, pension fund schemes, and equity markets broaden and offer depth to the financial system, by providing infrastructure for pooling long term national savings and re-channelling them into productive investments necessary for growth. General insurers on the other hand provide risk transfer mechanism that allows big projects to be undertaken in a country without fear of risk. The RBM, in its efforts to facilitate strong and stable growth of these financial institutions, apart from the laws that have been enacted, has organised this Seminar with the aim to assist legal practitioners understand issues relevant to the financial services industry. This will also help in reviewing the legal framework as the legal practitioners share experiences and bring to light issues that need attention.

Thus, given the overall importance of financial institutions in the development activities of any country, governments worldwide regard the financial sector as an industry with strong public policy implications, whereby the development and stability of the industry are treated as matters of paramount importance. This is so because it is well recognised that financial sector and economic development in any country go hand in hand and that the collapse of the sector can have serious negative effects on both the socio-economic and political state of any country. It is therefore important that the financial sector be backed by a strong legal framework. This is even important realising the economies are susceptible to crises as experienced in the recent global financial crisis. A robust legal and regulatory structure can act as a bulwark against the backdrop of the crisis, providing clarity and confidence for market players and consumers alike.

Distinguished ladies and gentlemen,

It is pleasing to note that from 2010 to-date, Parliament has passed the following Acts:

- Financial Services Act
- Banking Act;
- Reserve Bank of Malawi (Amendment) Act;
- Microfinance Act;
- Insurance Act
- Securities Act
- Credit Reference Bureau Act

- Financial Cooperatives Act and
- Pension Act.

Of all these Acts, I wish to draw your attention to the Financial Services Act. This is an umbrella law for the financial services industry which is interlinked with all other individual sector laws cited above. It consolidates the supervisory responsibility for the whole financial sector to the Reserve Bank of Malawi Governor, as Registrar of Financial Institutions. It also incorporates more detailed requirements for licensing of all financial institutions in order to be in tandem with current standards. Therefore, as we look at sector laws, we should always be mindful of the provisions of the Financial Services Act, which is an all encompassing law.

Distinguished participants;

You may recall that the process of enactment of some of these laws was not always a smooth one, often faced with objections from various stakeholders of some provisions. As such, the Reserve Bank of Malawi is fully cognisant of the fact that the implementation of these financial services laws shall in some instances be met with resistance, thus giving rise to legal suits. It is in this regard that we believe that a seminar of this kind is very important and timely, as it will give you lawyers an opportunity to familiarise yourselves with these laws and take note of possible litigious areas.

Looking at the seminar programme, I am very optimistic that the objectives of this seminar will indeed be achieved. Let me ask all distinguished participants to be fully involved in this seminar so that at the end of the day, we shall all benefit from the presentations and discussions that will be made. It is the belief of the Reserve Bank that this is just the beginning of such consultations with the Malawi Law Society and other stakeholders in the financial sector, as we try to strengthen the financial sector, for the good of our nation.

Ladies and gentlemen

Finally, I would like to thank Management of Sunbird Ku Chawe Inn for providing excellent facilities for this seminar.

Once again, the Reserve Bank of Malawi warmly welcomes all distinguished participants to this seminar. I wish you very fruitful deliberations.

Mr. President, ladies and gentlemen

Thank you for your attention and may God bless you all.