

Malawi

International Finance Corporation and the International Development Association Agreements Act Chapter 40:03

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International Finance Corporation and the International Development Association Agreements Act
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Malawi

International Finance Corporation and the International Development Association Agreements Act Chapter 40:03

Commenced on 26 February 1965

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for acceptance by Malawi of the international agreements for the establishment and operation of the International Finance Corporation and the International Development Association and to provide for matters related thereto or connected therewith

WHEREAS on the 11th day of April, 1955, and on the 26th day of January, 1960, respectively, the Executive Directors of the International Bank for Reconstruction and Development approved Articles of the following respective Agreements, that is to say—

(a) an agreement (hereafter in this Act referred to as “the Finance Corporation Agreement”), which term shall be taken to include all subsequent amendments thereof, for the establishment and operation of an international body to be known as the International Finance Corporation (hereafter in this Act referred to as “the Corporation”); and

(b) an agreement (hereafter in this Act referred to as “the Development Association Agreement”), which term shall be taken to include all subsequent amendments thereof, for the establishment and operation of an international body to be called the International Development Association (hereafter in this Act referred to as “the Association”):

AND WHEREAS copies of the text of the articles of the Finance Corporation Agreement and the Development Association Agreement have been laid before the National Assembly:

AND WHEREAS it is expedient that Malawi becomes a member of the Corporation and of the Association and that provision be made for acceptance by Malawi of the Finance Corporation Agreement and the Development Association Agreement and for carrying out the obligations of Malawi thereunder:

NOW, THEREFORE, be it enacted by the Parliament of Malawi—

1. Short title

This Act may be cited as the International Finance Corporation and the International Development Association Agreements Act.

2. Interpretation

In this Act, unless the context otherwise requires, “Minister” means the Minister for the time being responsible for the administration of the Act.

3. Acceptance of Agreements

The Minister, or such person as may be authorized by him in that behalf in writing shall be empowered on behalf of the Government of Malawi—

- (a) to sign the Articles of the Finance Corporation Agreement and the Articles of the Development Association Agreement respectively; and

- (b) to deposit with the International Bank for Reconstruction and Development instruments of acceptance of the Finance Corporation Agreement and of the Development Association Agreement stating that the Government of Malawi accepts in accordance with its law the respective Agreements and the terms and conditions prescribed under the Resolution of the Board of Governors of the Corporation relating to membership of Malawi in the Corporation and under the Resolution of the Board of Governors of the Association relating to membership of Malawi in the Association as the terms upon which the Government of Malawi shall be admitted to membership of the Corporation and of the Association.

4. Financial and other provisions

- (1) There shall be charged on and paid out of the Consolidated Fund without further appropriation than this Act—
 - (a) all payments required to be made from time to time to the Corporation under the Finance Corporation Agreement and the Resolution of the Board of Governors of the Corporation relating to membership of Malawi in the Corporation; and
 - (b) all payments required to be made from time to time to the Association under the Development Association Agreement and the Resolution of the Board of Governors of the Association relating to membership of Malawi in the Association.
- (2) The Minister may, on behalf of the Government, create and issue to the Association such non-interest-bearing and non-negotiable notes or other obligations as are provided for by section 2(e) of Article II of the Development Association Agreement, and any payments in respect of any such notes or obligations so created and issued shall be charged on and paid out of the Consolidated Fund.
- (3) For the purpose of providing any sums required for making any payments under this section, the Minister may, on behalf of the Government, raise loans by the creation and issue of securities bearing such rates of interest and subject to such conditions as to repayment, redemption or otherwise as he may think fit and the principal and interest of such securities and the charges and expenses incurred in connection with their issue shall be charged on and paid out of the Consolidated Fund.
- (4) Any moneys received by the Government from the Corporation or the Association or raised under subsection (3) shall be paid into and form part of the Consolidated Fund and shall be available in any manner in which moneys from that Fund are available.
- (5) The provisions of the Finance Corporation Agreement and the Development Association Agreement set out in the Schedule to this Act shall have the force of law in Malawi:

Provided that nothing in section 9 of Article VI of the Finance Corporation Agreement or in section 9 of Article VIII of the Development Association Agreement shall be construed as—

- (a) entitling the Corporation or the Association to import goods free of customs duty without any restrictions on their subsequent sale in the country to which they were imported;
- (b) conferring on the Corporation or the Association any exemption from duties or taxes which form part of the price of goods sold; or
- (c) conferring on the Corporation or the Association exemption from taxes or duties which are in fact no more than charges for services rendered.

5. Reserve Bank of Malawi authorized to act as depository

The Reserve Bank of Malawi shall become a depository of the Corporation in application of section 9 of Article IV of the Finance Corporation Agreement, and a depository of the Association in application of section 9 of Article VI of the Development Association Agreement.

6. Regulations

The Minister may make such regulations as he may deem necessary or expedient to carry out the obligations of Malawi under the Finance Corporation Agreement, the Development Association Agreement and the Resolutions in accordance with those Agreements on Malawi's membership in the Corporation and the Association.

Schedule (Section 4 (5))

Provisions of agreements which are to have the force of law

The Finance Corporation Agreement

Article VI – Status, immunities and privileges

Section 2. Status of the Corporation

The Corporation shall possess full juridical personality, and in particular, the capacity—

- (i) to contract;
- (ii) to acquire and dispose of immovable and movable property;
- (iii) to institute legal proceedings.

Section 3. Position of the Corporation with regard to judicial process

Actions may be brought against the Corporation only in a court of competent jurisdiction in the territories of a member in which the Corporation has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Corporation shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Corporation.

Section 4. Immunity of assets from seizure

Property and assets of the Corporation, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Section 5. Immunity of archives

The archives of the Corporation shall be inviolable.

Section 6. Freedom of assets from restrictions

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of Article III, section 5, and the other provisions of this Agreement, all property and assets of the Corporation shall be free from restrictions, regulations, controls and moratoria of any nature.

Section 7. Privilege for communications

The official communications of the Corporation shall be accorded by each member the same treatment that it accords to the official communications of other members.

Section 8. Immunities and privileges of officers and employees.

All Governors, Directors, Alternates, officers and employees of the Corporation—

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity;
- (ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Section 9. Immunities from taxation

- (a) The Corporation, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all Customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty.
- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Corporation to Directors, Alternates, officials or employees of the Corporation who are not local citizens, local subjects or other local nationals.
- (c) No taxation of any kind shall be levied on any obligation or security issued by the Corporation (including any dividend or interest thereon) by whomsoever held—
 - (i) which discriminates against such obligation or security solely because it is issued by the Corporation; or
 - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Corporation.
- (d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Corporation (including any dividend or interest thereon) by whomsoever held—
 - (i) which discriminates against such obligation or security solely because it is guaranteed by the Corporation; or
 - (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Corporation.

The Development Association Agreement

Article VIII – Status, immunities and privileges

Section 2. Status of the Association

The Association shall possess full juridical personality and, in particular, the capacity—

- (i) to contract;
- (ii) to acquire and dispose of immovable and movable property;
- (iii) to institute legal proceedings.

Section 3. Position of the Association with regard to judicial process

Actions may be brought against the Association only in a court of competent jurisdiction in the territories of a member in which the Association has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Association shall,

wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Association.

Section 4. Immunity of assets from seizure

Property and assets of the Association, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

Section 5. Immunity of archives

The archives of the Association shall be inviolable.

Section 6. Freedom of assets from restrictions

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Association shall be free from restrictions, regulations, controls and moratoria of any nature.

Section 7. Privilege for communications

The official communications of the Association shall be accorded by each member the same treatment that it accords to the official communications of other members.

Section 8. Immunities and privileges of officers and employees

All Governors, Executive Directors, Alternates, officers and employees of the Association—

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Association waives this immunity;
- (ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Section 9. Immunities from taxation

- (a) The Association, its assets, property income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all Customs duties. The Association shall also be immune from liability for the collection or payment of any tax or duty.
- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Association to Executive Directors, Alternates, officials or employees of the Association who are not local citizens, local subjects or other local nationals.
- (c) No taxation of any kind shall be levied on any obligation or security issued by the Association (including any dividend or interest thereon) by whomsoever held—
 - (i) which discriminates against such obligation or security solely because it is issued by the Association; or
 - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Association.
- (d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Association (including any dividend or interest thereon) by whomsoever held—
 - (i) which discriminates against such obligation or security solely because it is guaranteed by the Association; or

- (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Association.