

Malawi

Statutory Bodies (Control of Contracts) Act Chapter 18:07

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Statutory Bodies (Control of Contracts) Act
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Malawi

Statutory Bodies (Control of Contracts) Act Chapter 18:07

Assented to on 26 August 1966

Commenced on 22 June 1966

[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 make provision for the control in the public interest of contracts entered into by statutory bodies and for matters connected therewith

1. Short title

This Act may be cited as the Statutory Bodies (Control of Contracts) Act.

2. Interpretation

(1) Interpretation (1) In this Act, unless the context otherwise requires—

“**Appropriate Minister**”, in relation to any statutory body, means the Minister for the time being charged by the President with responsibility for that body for the purposes of this Act;

“**contract**” means a contract for the supply of goods or services or for the construction of any building or other works, whether such contract is made or intended to be made within or outside Malawi;

“**Council of Inquiry**” means a Council of Inquiry established by the Minister under [section 8](#);

“**Existing contract**” means any contract made between a statutory body and any other person which has been entered into at the date of the making by the Minister of an Order for the holding of an inquiry into that contract or into the class of contract to which it belongs;

“**Statutory body**” includes—

(a) all local authorities, and all co-operative societies incorporated under the Cooperative Societies Act;

[Cap. 47:02]

(b) every other corporation, board, council or other body of persons, whether corporate or unincorporate, whether established or incorporated within or outside Malawi, the name or description of which is specified in the Schedule.

(2) The Minister may from time to time by notice published in the *Gazette* amend the Schedule by the addition of the name of any other body whether established or incorporated within or outside Malawi.

(3) In considering the public interest under any of the provisions of this Act, account shall be taken of the national economic interests of Malawi as a whole, including its future economic development, and of the financial welfare of the statutory body concerned.

[4 of 1981]

3. Power of appropriate minister to issue orders

- (1) Where the appropriate Minister is satisfied that it is in the public interest that a statutory body should not enter into a contract or class of contract without his prior approval he may issue an Order in accordance with subsection (2).
- (2) An Order under subsection (1) shall specify—
 - (a) the statutory body or bodies; and
 - (b) the contract or class of contract,to which [section 4](#) shall apply.
- (3) Every Order issued under this section shall be published in the *Gazette* and shall take effect from the date of publication.

4. Duties of statutory bodies in respect of future contracts

- (1) A statutory body in respect of which an Order issued under [section 3](#) has been published in the *Gazette* shall not enter into any contract referred to in such Order either specifically or by reference to a class of contract without the prior approval in writing of the appropriate Minister.
- (2) A statutory body which desires to enter into a contract which requires the prior written approval of the appropriate Minister shall apply to such Minister for approval and shall furnish such information and documents relating to the subject matter and circumstances of the desired contract as that Minister shall require.

5. Approval of contracts

- (1) Upon receiving information under [section 4](#) (2), the appropriate Minister may, if satisfied that it is in the public interest so to do, approve the making of a contract.
- (2) The appropriate Minister may, to the extent that he is satisfied that it is in the public interest so to do, attach conditions to his approval of the making of any contract for which his written approval is required, which conditions may relate to the parties to or the period or other terms of the contract, and shall be expressed in writing.

6. Power of appropriate Minister to require information

The appropriate Minister may require any statutory body to furnish him with such information relating to its requirements with regard to the supply of goods or services as he considers desirable to enable him to carry out his functions under this Act.

7. Consequences of entering into contract without approval

- (1) Where a contract which under this Act requires the prior written approval of the appropriate Minister is entered into by a statutory body without such approval, such contract shall not be enforceable against the statutory body by any of the parties thereto, nor shall any goods or services supplied to the statutory body in pursuance of such contract be the subject of any claim in any court.
- (2) Every member of the council, or of the board of management or other authority responsible for the conduct of the affairs of a statutory body shall, if such statutory body enters into a contract for which the appropriate Minister's written approval is required without having obtained such approval, be guilty of an offence unless he satisfies the court that he was in no way responsible for the making of the contract.

- (3) A person guilty of an offence under subsection (2) shall be liable to a fine of K2,000 or to imprisonment for two years.

8. Establishment of Councils of Inquiry

- (1) The Minister may at any time by an Order under his hand and published in the *Gazette* establish such Councils of Inquiry as he may deem necessary for the purposes of this Act.
- (2) An Order establishing a Council of Inquiry in accordance with this section shall specify—
 - (a) the area or areas in which the Council shall exercise the powers conferred upon it by or under this Act;
 - (b) the persons who shall be members of the Council;
 - (c) the chairman of the Council; and
 - (d) the contracts or classes of contract in respect of which the Council shall exercise its functions.
- (3) Every Council of Inquiry shall consist of not less than three members, including the chairman.

9. Functions of Council of Inquiry

The functions of a Council of Inquiry shall be—

- (a) to make a full and impartial inquiry into any contract referred to the Council by the appropriate Minister, including all the circumstances surrounding the making of the contract, the negotiations preceding it, and the procedure followed by the statutory body in relation to the contract;
- (b) to conduct the inquiry in accordance with the directions, if any, contained in the Order appointing the Council or otherwise given by the appropriate Minister;
- (c) to furnish to the appropriate Minister a report in writing of the result of the inquiry together with a record of the proceedings of the inquiry and the conclusions arrived at by the Council; and
- (d) to make recommendations to the appropriate Minister in relation to the contract concerned.

10. Power of appropriate Minister to direct an inquiry

- (1) Where a statutory body has entered into an existing contract the appropriate Minister may, either of his own motion or as a result of representations made to him by any person, require the statutory body or any other party to the contract to furnish to him such documents or information relating to the contract as the appropriate Minister may deem necessary.
- (2) Where after consideration of any representations or documents in relation to the contract the appropriate Minister considers it in the public interest so to do, he may refer the existing contract to a Council of Inquiry established under this Act for investigation.
- (3) When referring a contract to a Council of Inquiry for investigation the appropriate Minister may give to the Council such directions in relation to the conduct of the investigation, the scope of the inquiry, and the matters to be reported on by the Council, as he may deem necessary.

11. Scope of inquiry

Where an existing contract is referred to a Council of Inquiry by the appropriate Minister under [section 10](#), the Council of Inquiry shall investigate the circumstances in which the contract was entered into, and in particular shall inquire into—

- (a) whether tenders for the contract were invited and if so, whether the tenders were adequately advertised;

- (b) whether the goods or services were necessary and proper for the purposes of the statutory body or whether they or any of them could have been supplied by any other person upon more advantageous terms and with due regard to the public interest;
- (c) where the existing contract provides for the supply of goods or performance of services over a period of time at a fixed price or rate of remuneration whether the length of that period and the price or rate of remuneration could reasonably have been considered to be in the public interest at the time when the contract was entered into;
- (d) whether the further performance or continuance of the contract is desirable having regard to the public interest, and having due regard to the importance of maintaining confidence in the inviolability of contracts;
- (e) whether the existing contract should be terminated and, if so, on what date and on what terms as to compensation or damages; and
- (f) such other matters as the appropriate Minister may direct.

12. Matters to be included in report of Council of Inquiry

The report of the Council of Inquiry to be furnished to the appropriate Minister in relation to an existing contract shall contain the committee's conclusions on the matters referred to in [section 11](#) (a) to (f) inclusive and, in particular, shall express an opinion on the desirability or otherwise of the contract in the public interest, and the report shall include recommendations as to whether or not the contract should be terminated, varied or be continued, subject if necessary to terms and conditions to be imposed by the Minister, and in the latter event the report shall include the advice of the Council as to the terms and conditions, if any, which the appropriate Minister should impose.

13. Powers of appropriate Minister on receipt of report

- (1) Upon receipt of a report from the Council of Inquiry the appropriate Minister, after consideration of the report, and after making such further inquiries, if any, as he may deem fit, may make an Order terminating or varying the contract, or imposing conditions in relation to its future performance. The Order may include a direction for payment of compensation to or by the statutory body concerned by or to any of the other parties to the contract or for the repayment of all or any part of any moneys paid pursuant to the contract by or to such statutory body to or by any of the other parties to the contract.
- (2) Where an Order made by the appropriate Minister under subsection (1) contains a direction for the payment of compensation, or the repayment of moneys, the amount of the compensation or the moneys, as the case may be, specified in the Order shall be recoverable as a civil debt in any court having jurisdiction.
- (3) The appropriate Minister may by an Order made under subsection (1) prohibit the performance in Malawi of the contract concerned or any part thereof; and such Order may be enforced by the High Court as though it were an injunction granted by that Court.

14. Penalty for violation of condition in Order

Any person who violates a condition in an Order made under [section 13](#) shall be liable to a fine of K2,000 or to imprisonment for two years.

15. Application of certain sections of the Commissions of Inquiry Act to Councils of Inquiry

Sections 9, 10, 11, 12, 13 and 15 of the Commissions of Inquiry Act shall apply to a Council of Inquiry and the members thereof as though the Council and the members had been appointed a Commission and Commissioners, respectively under that Act.

[Cap. 18:01]

16. Regulations

- (1) The Minister may make such regulations as he may deem expedient to give force or effect to this Act or for its better administration.
- (2) Without derogation from the generality of subsection (1), regulations may provide for the following matters—
 - (a) prescribing the forms of Orders to be made by the Minister in appointing a Council of Inquiry under [section 8](#);
 - (b) prescribing the forms of Orders to be made by the appropriate Minister after consideration of the report of a Council of Inquiry in accordance with [section 13](#);
 - (c) prescribing the forms of directions to a Council of Inquiry to hold an inquiry under [section 10](#); and
 - (d) prescribing and regulating all such matters as are required to be prescribed by this Act, or as may conveniently be prescribed for its better implementation.

Schedule (Section 2)

Statutory bodies to which Section 4 of the Act applies

Agricultural Development and Marketing Corporation

Air Malawi Limited

Blantyre Water Board

Board of Censors

Central Tender Board

Chichewa Board

Copyright Society of Malawi

Development of Malawian Traders Trust

Kasungu Flue-Cured Tobacco Authority

Lilongwe Water Board

Malawi Accountancy Board

Malawi Book Service

Malawi Bureau of Standards

Malawi Broadcasting Corporation

Malawi College of Accountancy

Malawi Council for the Handicapped
Malawi Dairy Industries
Malawi Development Corporation
Malawi Export Promotion Council
Malawi Housing Corporation
Malawi Institute of Education
Malawi Institute of Management
Malawi National Council of Sports
Malawi National Examinations Board
Malawi Railway Holdings Company
Malawi Railways Limited
Medical Council of Malawi
Mining Investment and Development Corporation
National Celebrations Council
National Coffee Authority
National Herbarium and Botanic Gardens of Malawi
National Family Welfare Council of Malawi
National Library Service
National Road Safety Council
Nurses and Midwives Council
Petroleum Control Commission
Pharmacy, Medicines and Poisons Board
Reserve Bank of Malawi
Smallholder Coffee Authority
Smallholder Sugar Authority
Smallholder Tea Authority
Tobacco Control Commission
Tree Nut Authority
University of Malawi

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