

Malawi

Bankers' Books Evidence Act

Chapter 4:05

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Bankers' Books Evidence Act
Contents

1. Short title 1

2. Interpretation 1

3. Mode of proof of entries in bankers' books 1

4. Proof that book is a banker's book 1

5. Verification of copy 2

6. Case in which banker, etc., not compellable to produce books 2

7. Court or judge may order inspection, etc. 2

8. Costs 2

9. Warrant to investigate 2

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Bankers' Books Evidence Act

Chapter 4:05

Assented to on 29 December 1966

Commenced on 10 January 1967

[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 with respect to Evidence in Relation to Bankers' Books

1. Short title

This Act may be cited as the Bankers' Books Evidence Act.

2. Interpretation

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

“**court**” means the court, judge, arbitrator or person before whom a legal proceeding is held or taken;

“**judge**” means a judge of the High Court;

“**legal proceeding**” includes any civil or criminal proceeding, inquiry or arbitration in which evidence is or may be given.

(2) In this Act, the expressions “bank” and “banker” mean any person carrying on banking business within the meaning of the Banking Act and duly registered under that Act, also any savings bank operated by a registered commercial bank, and also any post office savings bank.

[Cap. 44:01]

(3) The fact of any such bank having been duly registered may be proved in any legal proceeding by the affidavit of a partner or officer of the bank, or by the production of a copy of the *Gazette* containing a copy of a statement of assets and liabilities under section 24 of the Banking Act; the fact that any such bank is a post office savings bank may be proved by a certificate purporting to be under the hand of the Postmaster-General or of an officer of the Post Office.

(4) Expressions in this Act relating to “bankers' books” include loose-leaf records and records produced by mechanical or electronic means, ledgers, day books, cash books, account books, and all other books used in the ordinary business of the bank.

3. Mode of proof of entries in bankers' books

Subject to this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions and accounts therein recorded.

4. Proof that book is a banker's book

A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.

Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner for oaths, or person authorized to take affidavits.

5. Verification of copy

- (1) A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the original and is correct.
- (2) Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any commissioner for oaths, or person authorized to take affidavits.

6. Case in which banker, etc., not compellable to produce books

A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of a judge made for special cause.

7. Court or judge may order inspection, etc.

On the application of any party to a legal proceeding a court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before it is to be obeyed, unless the court or judge otherwise directs.

8. Costs

The costs of any application to a court or judge under or for the purposes of this Act, and the costs of anything done or to be done under an order of a court or judge made under or for the purposes of this Act shall be in the discretion of the court or judge, who may order the same or any part thereof to be paid to any party by the bank where the same have been occasioned by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank was a party to the proceedings.

9. Warrant to investigate

- (1) Where a judge or magistrate is satisfied by evidence on oath, that in fact, or according to reasonable suspicion, the inspection of any banker's book is necessary or desirable for the purpose of any investigation into the commission of an offence, the judge or magistrate concerned may, by warrant, authorize a police officer or other person named therein to investigate the account of any specified person in any banker's book, and such warrant shall be sufficient authority for the production of any such banker's book as may be required for scrutiny by the officer or person named in the warrant, and such officer or person may take copies of any relevant entry or matter in such banker's book.
- (2) Any person who fails to produce any such banker's book to the police officer or other person executing a warrant issued under this section, or to permit such officer or person to scrutinize the book or to take copies of any relevant entry or matter therein shall be liable to a fine of £50.