

Malawi

## Administrator General Act

### Chapter 10:01

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1967/30/eng@2014-12-31

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PDF created on 21 September 2023 at 14:54.

*Collection last checked for updates: 31 December 2014.*

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Administrator General Act  
Contents

- 1. Short title ..... 1
- 2. Incorporation of Administrator General ..... 1
- 3. Appointment of Administrator General ..... 1
- 4. District Commissioner to act as agent of Administrator General ..... 2
- 5. Administrator General or his agents not liable for acts done in performance of their duties ..... 2
- 6. Protection of certain property ..... 2
- 7. Cases in which Administrator General may apply for administrations ..... 2
- 8. Administrator General may be appointed executor ..... 3
- 9. Notice of applications ..... 3
- 10. Grant to Administrator General may be revoked and grant made to other person ..... 3
- 11. Administrator General to make inventory and keep accounts ..... 3
- 12. Court may appoint persons to receive minor's share ..... 3
- 13. Unclaimed and small balances ..... 3
- 14. Liability of the Governments ..... 4
- 15. Fees of Administrator General ..... 4
- 16. Minister may make Rules ..... 4
- 17. Transitional ..... 4

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## Administrator General Act

### Chapter 10:01

Assented to on 6 November 1967

Commenced on 6 November 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 to incorporate the Administrator General and to provide for the Official Administration of the Estates of deceased persons and other Trusts and for matters incidental thereto**

#### **1. Short title**

This Act may be cited as the Administrator General Act.

#### **2. Incorporation of Administrator General**

- (1) There shall be appointed in the public service an officer to be designated as Administrator General and such other officers subordinate to him may be required to carry out the functions and duties of the Administrator General.
- (2) The Administrator General and his successors in office shall be a body corporate under the name of Administrator General (hereinafter in this section referred to as “the Corporation”).
- (3) The Corporation may sue and be sued in its own name and shall have perpetual succession and a common seal:  
  
Provided that until such time as a common seal for the Corporation can be provided the Corporation may use such seal or stamp as may be approved by the Minister.
- (4) The Corporation may acquire, hold and enjoy property of every description and may convey, assign, mortgage, charge, devise or otherwise dispose of or deal with any property vested in the Corporation upon such terms as to the Corporation seems fit, and may do all such other acts and things as bodies corporate may lawfully do, including acting as a trust corporation, and as guardian *ad litem* or next friend of any person under a disability.
- (5) The seal of the Corporation may be affixed to any document on the authority of the officer for the time being discharging the duties of the office of Administrator General who shall sign every document to which the seal is affixed and such signature shall be sufficient evidence that the seal was duly and properly affixed.
- (6) A notice published in the *Gazette* of the appointment of any person to hold or act in the office of Administrator General shall be conclusive evidence that such person was duly so appointed.

*[30 of 1994]*

#### **3. Appointment of Administrator General**

*[repealed by Act [No. 30 of 1994](#)]*

#### 4. District Commissioner to act as agent of Administrator General

Every District Commissioner shall at the request of the Administrator General, act as his agent for the purposes of this Act:

Provided that nothing herein contained shall affect the Administrator General's power to appoint such other agents as he thinks fit.

#### 5. Administrator General or his agents not liable for acts done in performance of their duties

Neither the Administrator General nor any of his agents shall be personally liable to any person in respect of goods or chattels in the possession at the time of his death of any person whose estate shall be administered by the Administrator General which shall be sold by the Administrator General or such agents unless the Administrator General or agent shall know or have actual notice before the sale that such goods or chattels were not in fact the property of the person whose estate is being administered by him, and generally neither the Administrator General nor any agent shall be liable for any act done by him *bona fide* in the supposed and the intended performance of his duties unless it shall be shown that such act was done not only illegally, but willfully or with gross negligence:

Provided always that in case of any sale by the Administrator General or any agent of goods or chattels belonging in fact to any third person the amount realized by such sale shall be paid over to the owner upon proof by him of such ownership unless the same shall have already been applied in payment of the debts of the deceased or shall have been distributed in the ordinary course of administration whilst the Administrator General or agent was in ignorance and without actual notice of the claim of such person to the goods or chattels sold.

#### 6. Protection of certain property

(1) Where any person has died and—

- (a) it is not known to the District Commissioner of the District in which he died that he has left any widow, other relative or executor who can properly administer his estate; or
- (b) it appears advisable to the Administrator General or to such District Commissioner for the protection of the property of the deceased person,

the District Commissioner may take into his custody, without any grant or order of court, all the property of which the deceased was possessed and shall forthwith report the death and particulars of the property to the Administrator General.

(2) A District Commissioner who takes custody of any property under subsection (1) shall dispose of such property in accordance with the directions of the Administrator General.

#### 7. Cases in which Administrator General may apply for administrations

Where—

- (a) the Administrator General has received a report from a District Commissioner under [section 6](#); or
- (b) it otherwise comes to the knowledge of the Administrator General that a person has died and that no person has obtained a grant of probate or letters of administration to his estate,

the Administrator General may apply to the court for a grant of letters of administration, with or without a will annexed, to the estate of the deceased and the Court may make such a grant:

Provided that—

- (i) no such grant shall be made by the Court until after the expiration of 3 months from the death of the deceased if the Court considers it likely that a person may apply for a grant to whom the Court would, but for this section, make a grant;
- (ii) the Administrator General shall not apply to a Local Court for any grant.

## **8. Administrator General may be appointed executor**

Any person may appoint the Administrator General to be executor of his will:

Provided that nothing in this section shall deprive the Administrator General of his right to renounce probate of any will.

## **9. Notice of applications**

The Administrator General shall cause notice of his intention to apply for letters of administration under [section 7](#) to be published in the *Gazette* at least fourteen days before making the application and the cost of such publication shall in every case be deemed to be a testamentary expense and be payable out of the estate of the deceased whether such estate be administered by the Administrator General or any other person:

Provided that nothing in this section shall be construed to limit in anyway the powers of the Court to order the sale of perishable property or to make any other order for the interim protection of any estate.

## **10. Grant to Administrator General may be revoked and grant made to other person**

At any time after a grant of letters of administration to the Administrator General under this Act, any person to whom the High Court might have committed administration if no such grant had been made may apply to the High Court for revocation of such grant and for the grant to himself of probate or letters of administration; but no such application shall be made until seven days after notice of intention to make it shall have been given to the Administrator General. Upon such application the High Court, after hearing the Administrator General if he appears, may revoke the grant to the Administrator General and grant probate or letters of administration to the applicant subject to such limitations and conditions as it may think fit.

## **11. Administrator General to make inventory and keep accounts**

The Administrator General shall make a complete inventory of every estate of which administration is committed to him, and shall keep an account of all receipts, payments and dealings with every such estate.

## **12. Court may appoint persons to receive minor's share**

Where any person entitled to a share under the will or in the distribution of the estate of a deceased person whose estate is being administered by the Administrator General is a minor, the High Court may, upon the application of the Administrator General, appoint the father or mother of such minor or some other suitable person to receive the share of such minor on his behalf and upon such appointment being made the Administrator General may pay the share of such minor to such person on behalf of such minor and the receipt of such person shall be a full and complete discharge to the Administrator General so far as regards such share.

## **13. Unclaimed and small balances**

- (1) If after payment of all claims which have been made and admitted or established against an estate being administered by the Administrator General there remains in the hands of the Administrator General a balance to which no person has established a claim, the Administrator General shall publish a notice in the *Gazette* notifying the fact that such balance remains in his hands and calling upon all persons having any claim thereto to send in such claim to him.

- (2) After the expiration of two years from the publication of any such notice the Administrator General shall pay any balance as to which no claim shall have been established into the Consolidated Fund and upon such payment all claims of any person whatsoever thereto shall become extinguished:

Provided that nothing herein contained shall prejudice or affect legal proceedings in respect of any such claim which shall have been instituted before the expiration of the said period of two years.

- (3) Where the cost of distribution of any balance of an estate in the hands of the Administrator General would exceed the amount of such balance, the Administrator General may pay that balance into the Consolidated Fund and thereupon all claims of any person thereto or to any share therein shall become extinguished.

#### **14. Liability of the Governments**

The Government shall be liable to make good all sums required to discharge any liability which the Administrator General, if he were an individual, would be personally liable to discharge and any sums so paid by the Government shall be a charge on the Consolidated Fund.

#### **15. Fees of Administrator General**

- (1) There shall be payable to the Administrator General out of every estate administered by him such fees as the Minister may by Rule prescribe.
- (2) The Administrator General shall be entitled to recover from the estate any payments properly made by him or his agents in respect of any estate in his or their charge.
- (3) The fees and reimbursements authorized by this section shall be a first charge on the estate after payment of funeral expenses, and shall be paid into the Consolidated Fund.

#### **16. Minister may make Rules**

The Minister may make Rules for the better carrying out of the purposes and provisions of this Act.

#### **17. Transitional**

- (1) Notwithstanding the repeal of the Administrator General's Ordinance, all Rules made thereunder shall, until revoked, remain in full force and effect as if they had been made under this Act.
- (2) The Corporation sole incorporated by this Act shall be deemed the successor to the corporation incorporated under the Administrator General's Ordinance (now repealed) and all property, rights, obligations and liabilities which immediately before the coming into operation of this Act were held for, vested in, belonged to or were obligations or liabilities of the Administrator General incorporated by the said Ordinance shall upon the coming into operation of this Act vest in or, as the case may be, be held for, belong to or be the obligations or liabilities of the Administrator General incorporated by this Act.

*[24 of 1921]*