

Malawi

## African Development Bank Act

Chapter 40:04

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1968/16/eng@2014-12-31

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PDF created on 21 September 2023 at 15:13.

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

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African Development Bank Act  
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# Malawi

## African Development Bank Act

### Chapter 40:04

Commenced on 26 July 1968

*[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 Malawi's accession to the African Development Bank Agreement, to provide for the carrying out of Malawi's obligations arising under the agreement and for matters related thereto or connected therewith**

WHEREAS at the Conference of African Finance Ministers held at Khartoum in the Sudan in July and August, 1963, there were drawn up Articles of an Agreement (hereinafter referred to as the Bank Agreement which term shall include all subsequent amendments to the Bank Agreement) for the establishment and operation of the African Development Bank (hereinafter referred to as the Bank):

AND WHEREAS on the 25th July, 1966, Malawi acceded to the Bank Agreement and acquired full membership status in the Bank with effect from the 1st August, 1966:

AND WHEREAS Malawi's instrument of accession has been deposited with the Secretary General of the United Nations and Malawi has paid to the Bank the first two instalments of its paid-up subscription totalling \$150, 000.

NOW, THEREFORE BE IT ENACTED by the Parliament of Malawi as follows—

#### 1. Short title

This Act may be cited as the African Development Bank Act.

#### 2. Malawi's accession to the Bank Agreement

The accession of Malawi to the Bank Agreement is hereby ratified, and the payment of the first two instalments of Malawi's paid-up subscription as set out in the First Schedule is approved.

#### 3. Financial provision

- (1) There shall be charged on and paid out of the Consolidated Fund without further appropriation than this Act all payments required to be made from time to time by the Government to the Bank under the terms of the Bank Agreement and in accordance with the resolution of the Board of Governors of the Bank relating to the membership of Malawi in the Bank.
- (2) The payments referred to in subsection (1) include payments of the instalments of Malawi's paid-up subscription to the Bank, as set out in the First Schedule and all administrative costs arising out of such payments to the Bank.

#### 4. Certain provisions of the Bank Agreement to have force of law

The provisions of the Bank Agreement set out in the Second Schedule shall have the force of law in Malawi:

Provided that nothing in the Bank Agreement shall be construed as—

- (a) entitling the Bank to import goods free of customs duty without any restrictions on their subsequent sale in Malawi;

- (b) conferring on the Bank any exemption from duties or taxes which form part of the price of goods sold;
- (c) conferring on the Bank exemption from taxes or duties which are in fact no more than charges for services rendered.

### First Schedule (Sections 2 and 3)

#### Instalments of Malawi's paid-up subscription

	U.S. Dollars
First Instalment (already paid) 5% .....	50,000
Second Instalment (already paid) 10% August, 1967 .....	100,000
Third Instalment 15% payable August, 1968 .....	150,000
Fourth Instalment 20% payable August, 1969 .....	200,000
Fifth Instalment 25% payable August, 1970 .....	250,000
Sixth Instalment 25% payable August, 1971 .....	250,000
TOTAL .....	\$1,000,000

### Second Schedule (Section 4)

Provisions of the Bank Agreement which are to have the force of law in Malawi.

#### Article 23 – General powers

In addition to the powers provided elsewhere in this Agreement, the Bank shall have power to—

- (a) borrow funds in member countries or elsewhere, and in that connexion to furnish such collateral or other security as it shall determine, provided always that:
  - (i) before making a sale of its obligations in the market of a member, the Bank shall have obtained its approval;
  - (ii) where the obligations of the Bank are to be denominated in the currency of a member, the Bank shall have obtained its approval; and

- (iii) where the funds to be borrowed are to be included in its ordinary capital resources, the Bank shall have obtained, where appropriate, the approval of the members referred to in subparagraphs (i) and (ii) of this paragraph that the proceeds may be exchanged for any other currency without any restrictions;
- (b) buy and sell securities the Bank has issued or guaranteed or in which it has invested, provided always that it shall have obtained the approval of any member in whose territory the securities are to be bought or sold;
- (c) guarantee or underwrite securities in which it has invested in order to facilitate their sale;
- (d) invest funds not needed in its operations in such obligations as it may determine and invest funds held by the Bank for pensions or similar purposes in marketable securities;
- (e) undertake activities incidental to its operations such as, among others, the promotion of consortia for financing which serves the purpose of the Bank and comes within its functions;
- (f)
  - (i) provide all technical advice and assistance which serve its purpose and come within its functions; and
  - (ii) where expenditure incurred by such a service is not re-imbursed, charge the net income of the Bank therewith and, in the first five years of its operations, use up to one per cent, of its paid-up capital on such expenditure; provided always that the total expenditure of the Bank on such services in each year of that period does not exceed one-fifth of that percentage; and
- (g) exercise such other powers as shall be necessary or desirable in furtherance of its purpose and functions, consistent with the provisions of this Agreement.

#### **Article 24 – Special borrowing powers**

- (1) The Bank may request any member to loan amounts of its currency to the Bank in order to finance expenditure in respect of goods or services produced in the territory of that member for the purpose of a project to be carried out in the territory of another member.
- (2) Unless the member concerned invokes economic and financial difficulties which, in its opinion, are likely to be provoked or aggravated by the granting of such a loan to the Bank, that member shall comply with the request of the Bank. The loan shall be made for a period to be agreed with the Bank, which shall be in relation to the duration of the project which the proceeds of that loan are designed to finance.
- (3) Unless the member agrees otherwise, the aggregate amount outstanding in respect of its loans made to the Bank pursuant to this Article shall not, at any time, exceed the equivalent of the amount of its subscription to the capital stock of the Bank.
- (4) Loans to the Bank made pursuant to this Article shall bear interest, payable by the Bank to the lending member, at a rate which shall correspond to the average rate of interest paid by the Bank on its borrowings for Special Funds during a period of one year preceding the conclusion of the loan agreement. This rate shall in no event exceed a maximum rate which the Board of Governors shall determine from time to time.
- (5) The Bank shall repay the loan and pay the interest due in respect thereof, in the currency of the lending member or in a currency acceptable to the latter.
- (6) All resources obtained by the Bank by virtue of the provisions of this Article shall constitute a Special Fund.

## Article 27 – Use of currencies

- (1) Members may not maintain or impose any restrictions on the holding or use by the Bank or by any recipient from the Bank, for payments anywhere, of the following—
  - (a) gold or convertible currencies received by the Bank in payment of subscriptions to the capital stock of the Bank from its members;
  - (b) currencies of members purchased with the gold or convertible currencies referred to in the preceding subparagraph;
  - (c) currencies obtained by the Bank by borrowing, pursuant to paragraph (2) of Article 23 of this Agreement, for inclusion in its ordinary capital resources;
  - (d) gold or currencies received by the Bank in payment on account of principal, interest, dividends or other charges in respect of loans or investments made out of any of the funds referred to in subparagraphs (a) to (c) or in payment of commissions or fees in respect of guarantees issued by the Bank; and
  - (e) currencies, other than its own, received by a member from the Bank in distribution of the net income of the Bank in accordance with Article 42 of this Agreement.
- (2) Members may not maintain or impose any restrictions on the holding or use by the Bank, or by any recipient from the Bank, for payments anywhere, of currency of a member received by the Bank which does not come within the provisions of the preceding paragraph, unless—
  - (a) that member declares that it desires the use of such currency to be restricted to payments for goods or services produced in its territory; or
  - (b) such currency forms part of the special resources of the Bank and its use is subject to special rules and regulations.
- (3) Members may not maintain or impose any restrictions on the holding or use by the Bank, for making amortization or anticipatory payments or for repurchasing—in whole or in part—its obligations, of currencies received by the Bank in repayment of direct loans made out of its ordinary capital resources.
- (4) The Bank shall not use gold or currencies which it holds for the purchase of other currencies of its members except—
  - (a) in order to meet its existing obligations; or
  - (b) pursuant to a decision of the Board of Directors adopted by a two-thirds majority of the total voting power of the members.

## Article 28 – Maintenance of value of the currency holdings of the Bank

- (1) Whenever the par value of the currency of a member is reduced in terms of the unit of account defined in paragraph (1)(b) of Article 5 of this Agreement, or its foreign exchange value has, in the opinion of the Bank, depreciated to a significant extent, that member shall pay to the Bank within a reasonable time an amount of its currency required to maintain the value of all such currency held by the Bank, excepting currency derived by the Bank from its borrowing.
- (2) Whenever the par value of the currency of a member is increased in terms of the said unit of account, or its foreign exchange value has, in the opinion of the Bank, appreciated to a significant extent, the Bank shall pay to that member within a reasonable time an amount of that currency required to adjust the value of all such currency held by the Bank, excepting currency derived by the Bank from its borrowing.
- (3) The Bank may waive the provisions of this Article where a uniform proportionate change in the par value of the currencies of all its members takes place.

### **Article 51 – Status of Bank**

In the territory of each member the Bank shall possess full juridical personality and, in particular, full capacity—

- (a) to contract;
- (b) to acquire and dispose of immovable and movable property; and
- (c) to institute legal proceedings.

### **Article 52 – Position of Bank with regard to judicial proceedings**

- (1) The Bank shall enjoy immunity from every form of legal process except in cases arising out of the exercise of its borrowing powers when it may be sued only in a court of competent jurisdiction in the territory of a member in which the Bank has its principal office, or in the territory of a member or non-member State where it 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.
- (2) The property and assets of the Bank shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

### **Article 53 – Immunity of assets and archives of Bank**

- (1) Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.
- (2) The archives of the Bank and, in general, all documents belonging to it, or held by it, shall be inviolable, wherever located.

### **Article 54 – Freedom of Bank assets from restriction**

To the extent necessary to carry out the purpose and functions of the Bank and subject to the provisions of this Agreement, all property and other assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.

### **Article 55 – Privilege for communications of Bank**

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

### **Article 56 – Personal immunities and privileges**

- (1) All governors, directors, alternates, officers and employees of the Bank—
  - (i) shall be immune from legal process with respect to acts performed by them in their official capacity;
  - (ii) where they are not 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 regulations as are accorded by members to the representatives, officials and employees of comparable rank of other members; and
  - (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.

- (2) Experts and consultants performing missions for the Bank shall be accorded such immunities and privileges as are, in the opinion of the Bank, necessary for the independent exercise of their functions during the period of their mission, including the time spent on journeys in connexion therewith.

### **Article 57 – Exemption of Bank from taxation**

- (1) The Bank, its property, other assets, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation relating to the payment, withholding or collection of any tax or duty.
- (2) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to directors, alternates, officers and other professional staff of the Bank.
- (3) No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held—
  - (i) which discriminates against such obligation or security solely because it is issued by the Bank; 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 Bank.
- (4) No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held—
  - (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
  - (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

### **Article 59 – Application of immunities, exemptions and privileges**

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Bank. The Board of Directors may waive, to such extent and upon such conditions as it may determine, the immunities and exemptions provided in Articles 52, 54, 56 and 57 of this Agreement in cases where its action would, in its opinion, further the interests of the Bank. The President shall have the right and the duty to waive the immunity of any official in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank.

*[Please note: numbering as in original.]*