

Malawi

Kamuzu National Foundation Trust Act

Chapter 33:03

Legislation as at 31 December 2014

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Kamuzu National Foundation Trust Act

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Kamuzu National Foundation Trust Act

Chapter 33:03

Commenced on 31 December 1971

[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 the establishment of a fund entitled the Kamuzu National Foundation Trust; to provide for the appointment of Trustees thereof and for the vesting of the property constituting such fund in such Trustees; to provide for the incorporation of such Trustees as a body corporate under the name, the Trustees of the Kamuzu National Foundation Trust; to provide for the terms and conditions of the trusts under which such fund shall be held and administered by such Trustees; and further to provide for matters incidental to or connected with the forgoing

1. Short title

This Act may be cited as the Kamuzu National Foundation Trust Act.

2. Interpretation

In this Act unless the context otherwise requires—

“**alternate Trustee**” means an alternate Trustee appointed in accordance with [section 5](#) (2),

“**objects**” means the objects of the Trust declared by [section 6](#);

“**Trust**” means the fund known as the Kamuzu National Foundation Trust established by [section 3](#);

“**Trust capital**” means such moneys as are transferred to and vested in the Trustees for the purposes of the Trust by virtue of section 11, together with all moneys or other property, real or personal, received by the Trustees in their capacity as such, whether by gift, devise or bequest, or purchased or otherwise acquired by, or vested in, the Trustees for the benefit of the Trust, other than Trust income not accumulated;

“**Trust income**” means any interest, rents, dividends or other annual or periodic earnings from the investment or use of the Trust capital;

“**Trustee**” means a Trustee appointed in accordance with [section 5](#)(1);

“**the Trustees**” means the Trustees of the Kamuzu National Foundation Trust constituted and incorporated pursuant to [section 4](#).

3. Establishment and property of Trust

- (1) There is hereby established a fund to be known as the Kamuzu National Foundation Trust (hereinafter referred to as the “Trust”) which shall vest in, be held and administered by Trustees pursuant to this Act upon and subject to the trusts and for the advancement and furtherance of the objects in this Act hereinafter declared.
- (2) The property of the Trust shall consist of—
 - (a) such sums of money as may be paid to the Trustees for the benefit of the Trust from moneys appropriated therefor by Parliament;

- (b) such sums of money or other property, real or personal, as may be purchased, acquired or received by, or transferred to or vested in the Trustees, in their capacity as such, whether by way of gift, devise, bequest, purchase or otherwise howsoever;
- (c) such sums of money or other property, real or personal as may accrue to the Trustees in the exercise of their powers under this Act;
- (d) such sums of money or other property, real or personal, as may be transferred to the Trustees for the benefit of the Trust by or under this or any other written law.

4. Trustees of the Trust

There is hereby constituted the Trustees of the Kamuzu National Foundation Trust, which shall by that name be a body corporate with perpetual succession and a common seal capable of suing and being sued and, subject to the provisions of this Act, of doing such acts and performing such deeds as a body corporate may lawfully do or perform.

5. The Trustees

- (1) The Trustees of the Kamuzu National Foundation Trust shall be appointed by the President and shall consist of—
 - (a) one person to represent the Malawi Army;
 - (b) one person to represent the Malawi Police;
 - (c) one person to represent the Malawi Congress Party;
 - (d) one person to represent commercial and industrial interests in Malawi;
 - (e) one person to represent banking institutions in Malawi of whom shall be designated by the President as Chairman of the said Trustees and another of whom shall be so designated as the Vice-Chairman thereof. In the absence or incapacity of the Chairman the Vice-Chairman shall act in his stead.
- (2) The President shall, upon the appointment of a Trustee pursuant to subsection (1), appoint from the same category an alternate Trustee.
- (3) An alternate Trustee appointed pursuant to subsection (2)—
 - (i) shall act as a Trustee only when the Trustee to whom he is alternate is unable to exercise his functions as Trustee by reason of illness, absence from Malawi or other grave cause;
 - (ii) when acting as a Trustee shall have all the powers and be subject to all the duties of a Trustee.
- (4) Alternate Trustees may, when not acting under the provisions of subsection (3), attend meetings of the Trustees as observers only, but shall have no voice in the proceedings of, and no voting powers at, any such meeting.
- (5) No person shall be appointed a Trustee or alternate Trustee who—
 - (a) is an undischarged bankrupt;
 - (b) has, within three years last past, for an offence under any written law, been sentenced to a term of imprisonment of not less than six months save as an alternative to, or in default of, the payment of a fine;
 - (c) has, within seven years last past, been convicted of an offence involving fraud or dishonesty.
- (6) The office of Trustee or of alternate Trustee shall be vacated—
 - (a) upon his death;

- (b) upon his ceasing to reside in Malawi;
 - (c) upon the happening of any event which would render him ineligible for appointment as provided by subsection (5);
 - (d) upon his resignation as Trustee or alternate Trustee;
 - (e) upon his removal by the President.
- (7) When the office of Trustee or of alternate Trustee is vacated pursuant to subsection (6), the President shall appoint a new Trustee, or alternate Trustee, as the case may be, from the category from which the said former Trustee or alternate Trustee was originally appointed.
- (8) Trustees or alternate Trustees shall not be entitled to any remuneration for their services as Trustees or as alternate Trustees.
- (9) Meetings of the Trustees shall be held once every four months at such places and times as the Chairman may determine and shall be convened by notice in writing given by the Chairman, and shall be presided over by him.

[9 of 1986]

- (10) A quorum of the Trustees shall consist of the Chairman and two other trustees, or, in the absence of the Chairman, the Vice-Chairman and two other Trustees.
- (11) At every meeting of the Trustees the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.
- (12) If any Trustee or his spouse, or any company of which he or she is a director or major shareholder, or any partner of such Trustee or his spouse, has or acquires any pecuniary interest, direct or indirect, in any matter in which his private interests conflict with his duties as a Trustee and which is the subject of consideration by the Trustees, or if he or his spouse is related by consanguinity or affinity with any person whose application for assistance is being considered by the Trustees, he shall, as soon as he becomes aware of such interest in such matter, or of such relationship to such person, disclose the facts relating thereto to the Chairman and the President, and shall not, save with the written approval of the President, take part in the consideration of, or vote on, any question before the Trustees, which relates to such matter or person:

For the purposes of this subsection the expression of “major shareholder” means any person who, at the relevant time, in his own right or in the right of any other person, has the power to exercise or control not less than ten *per centum* of the voting rights in the relevant company, whether by reason of share holdings, debenture holdings, proxy or otherwise.

5A. Secretary

The President shall appoint a person to be a Secretary to the Trust.

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6. Objects of the Trust

The objects of the Trust shall be—

- (a) the grant of financial, medical, educational and other aid, assistance and relief to disabled, needy or incapacitated members, of all ranks, of the Malawi Army or of the Malawi Police or to the wives, widows or dependants of such persons;
- (b) the grant of financial, medical, educational and other aid, assistance and relief to disabled citizens of Malawi generally;
- (c) the grant of financial, medical or other aid or assistance to such educational or charitable purposes as the President may, from time to time, direct.

7. Powers of the Trustees

The Trustees shall have power to hold the Trust upon and subject to the trusts by this Act declared, and shall have power to enter into any transaction or to do any act, which in their opinion will tend to the advancement of the objects of the Trust as declared by [section 6](#), or which is incidental or contributory thereto, and, without prejudice to the generality of the foregoing, shall have power to—

- (a) receive upon trust any gift of any property, real or personal, whether generally or subject to any special trust for the advancement of any specific object within the objects declared by [section 6](#);
- (b) receive upon trust from any executor or administrator with the will annexed any devise or bequest, whether generally or subject to any special trust for the advancement of any specific object within the objects declared by [section 6](#);
- (c) receive, purchase, take on lease or otherwise acquire, real or personal property whether generally or subject, to any special trust for the advancement of any specific object within any of the objects declared by [section 6](#);
- (d) solicit, from any source whether within or outside Malawi, contributions, whether of money or other property, real or personal, to the Trust;
- (e) borrow or otherwise raise money;
- (f) invest any moneys of the Trust which are not immediately required for its objects, and in this regard the Trustees shall, have power to make such wider range investments as fall within Part II of the Schedule to the Trustee Act:

[Cap. 5:02]

- (g) construct, maintain or alter any buildings, drainage or other works;
- (h) manufacture, buy, sell, supply, distribute and deal in goods of any kind;
- (i) subject to the approval of the President employ administrative or executive staff and other servants or agents for the management and administration of the affairs of the Trust and to make provision for the salaries, wages, commissions and other conditions of service of such persons including pensions, gratuities and other superannuation benefits;
- (j) establish or maintain or assist in establishing or maintaining or give financial or other support any institution, society or association whose objects are similar to the objects declared by [section 6](#) or any of them;
- (k) provide scholarships, bursaries, or other financial aid for the advancement of any of the objects declared by [section 6](#).

8. Trustees' power to use Trust income

- (1) In administering the Trust, the Trustees shall apply so much of the Trust income as they deem necessary for the furtherance of the objects of the Trust declared by [section 6](#).
- (2) Subject to the provisions of [section 9](#), in the event of there being any surplus Trust income at the end of any financial year, the Trustees may, in their absolute discretion, allow such surplus to be carried over, as Trust income, to the succeeding financial year or may transfer the same to Trust capital.
- (3) Save as provided by [section 9](#), the Trustees shall not reduce the Trust capital.

9. Trustees' power to use Trust capital

The Trustees, in their absolute discretion, shall have power to make, for the furtherance of any of the objects declared by [section 6](#), advancement from the Trust capital:

Provided that, at no time, shall any such advancement be made which would reduce such Trust capital below the value of one hundred thousand Kwacha (K 100,000):

And further provided that if upon any revaluation of the Trust capital at the end of any financial year the said capital is shown to be reduced below the value of one hundred thousand Kwacha (K100,000) the Trustees shall thereafter accumulate not less than one half of the Trust income during the course of the next succeeding financial years and shall apply such accumulation towards the said Trust capital until such time as the said Trust capital has, on further revaluation, been shown to have reached the value of one hundred thousand Kwacha (K100,000).

10. Exemptions from taxation

- (1) Any written law to the contrary notwithstanding—
 - (a) no duty imposed under any written law for the time being in force relating to customs or excise shall be levied, charged, collected or paid in respect of any goods imported into, or manufactured or produced within, Malawi by or on behalf of the Trustees;
 - (b) the income of the Trust from whatever source shall be exempt from any tax payable under any written law for the time being in force relating to taxes on income or profits.
- (2) Where any testator devises or bequeaths any property, real or personal, for the Trust, generally, or subject to any special trust for the advancement of any of the objects declared by [section 6](#) the value of the property so devised or bequeathed shall be deducted in determining the principal value of the property of such testator for the purposes of estate duty in accordance with the Estate Duty Act as if such devise or bequest were a debt allowable under section 12 of the said Act, and the said devise or bequest shall be payable into the said Trust free of any estate duty under the said Act.

[Cap. 43:02]