

Malawi

## Public Finance Management Act Chapter 37:02

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# Malawi

## Public Finance Management Act Chapter 37:02

Commenced on 8 July 2003

*[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.]*

*[Repealed by [Public Finance Management Act, 2022 \(Act 4 of 2022\)](#) on 1 April 2022]*

**An Act to foster and enhance effective and responsible economic and financial management by Government, including adherence to policy objectives; to provide accompanying accountability arrangements together with compliance with those arrangements; to require the Government to produce statements of proposed budget policy, confirmation of adherence to fiscal discipline, economic and fiscal statements, including economic and fiscal forecasts and updates, and performance information, including comprehensive financial statements; and for matters connected therewith and incidental thereto**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Public Finance Management Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“**Appropriation Act**” means an Act of Parliament the principal purpose of which is the application of public moneys for such goods and services as are specified in the Act;

“**bank**” means—

- (a) a financial institution whose operations include the acceptance of deposits subject to withdrawal or transfer by cheque or other means of third party transfer; and
- (b) any financial institution in Malawi or outside Malawi in which any public money is deposited or kept in accordance with the provisions of this Act, and includes an international financial institution;

“**Cabinet**” means the Cabinet of Ministers appointed in accordance with section 92 of the Constitution;

“**chief executive**” means the head, however called, of a statutory body;

“**Consolidated Fund**” means the Consolidated Fund established by section 172 of the Constitution;

“**Controlling Officer**” means any person appointed by the President who is—

- (a) the head or principal person in-charge of a Ministry or Department; and
- (b) charged with a duty to, or who actually does collect, receive, disburse or deal in any way with any public money, or a person who is charged with the purchase, receipt, custody, or disposal of, or the accounting for, any public resources or public securities;

“**Estimates**” means the statements of the proposed public revenues and expenditure in any financial year as approved by the National Assembly through the passing of an Appropriation Act;

“**expenditure**” means the actual payment of moneys by Government, whether required or unrequired and whether for current or capital transactions;

“**financial statements**” means the financial statements required under Part IX and the Third Schedule;

“**financial year**” means—

- (a) in relation to the Government and Government financial statements, a period of twelve months ending on 30th June; and
- (b) in relation to a statutory body, the annual accounting period of the statutory body;

“**generally accepted accounting practice**” means—

- (a) standards and practices promulgated by the International Federation of Accountants as applicable to Governments and statutory bodies; or
- (b) if no standard or practice exists, then accounting principles or practices which have the authoritative support of the accounting profession in Malawi or in countries that maintain accounts and records and prepare financial statements similar to the Government of Malawi and its statutory bodies;

“**Government**” means the executive Government of Malawi established under Chapter VIII of the Constitution;

“**Government agency**” or “agency” means an office, entity or instrument of the Government, other than a Ministry, or statutory body;

“**grants**” means—

- (a) non-repayable receipts from other Governments, international institutions or domestic institutions or individuals; or
- (b) non-repayable payments made by the Government to other Governments, international institutions or domestic institutions or individuals;

“**imprestee**” means a person in whose hands any public money is placed for expenditure;

“**internal control**” includes the controls adopted to ensure that within Government—

- (a) revenue is properly assessed and collected;
- (b) expenditure is validly and correctly authorized;
- (c) revenue, expenditure, assets and liabilities are properly recorded and accounted for;
- (d) financial and operating information is accurate and reliable;
- (e) assets are safeguarded against loss or destruction;
- (f) public resources are employed and managed in an effective, economic and efficient manner;
- (g) there is no waste or extravagance with respect to public resources;
- (h) outcomes or provisions produced are consistent with those specified in an Appropriation Act;
- (i) relevant Government policies and legislation are being complied with; and
- (j) there is effective and efficient management of the financial resources of Government;

“**National Assembly**” or “Assembly” means the National Assembly established under Chapter VI of the Constitution;

“**National Audit Office**” means that part of the office of the Auditor General charged with the responsibility of audit;

“**officer**” includes an officer, a contract officer and an employee of the Public Service of Malawi;

“**outcomes**” mean the impacts or consequences for the people of Malawi of the outputs or activities of Government or the results of the outputs produced;

“**outputs**” means the goods and services that are produced by a Ministry or other person or body who receives an appropriation;

“**personal emoluments**” includes salaries, wages, fees, contract payments for the provision of personal services, and taxable allowances, but does not include any payment in the nature of reimbursement for expenses incurred;

“**public debt**” means all liabilities of the Executive Government and other branches of Government, but does not include liability where the Government is trustee for another person, or the liabilities of any statutory body;

“**public interest**” means something that is to the advantage, direct or indirect, of the people of Malawi;

“**public money**” means all money, other than trust money, received by the Government, including all revenue, grants, loans and other moneys, and all bonds, debentures, and any other securities received by, or on account of, or payable to, or belonging to, or deposited with the Government or any Ministry by—

- (a) any officer of Government in his capacity as such; or
- (b) any person on behalf of Government;

“**public resources**” means all real or personal property that belongs to or is owned or held by the State or held by any Ministry, agency or other person for and on behalf of the State or the Government;

“**public securities**” means securities representing the investment, or securing the payment, of any public money;

“**records**” means information recorded and kept by any means, and includes all books, accounts, rolls, files, vouchers, receipts, cheques, records, registers, papers, documents, photographic plates, microfilms photostatic negatives prints, tapes, disks, computer reels, diskettes and hard disk, perforated rolls, and any other type of written, printed, copied, magnetic tape, electronic data record or other information whatsoever, and all papers and other records relating to accounting operations and practice or information recorded and kept by any means;

“**revenue**” means all non-repayable Government receipts;

“**Secretary to the Treasury**” means the Principal Secretary having supervision for the time being of the Ministry of Finance;

“**State**” means the independent State of Malawi, established under the Constitution and includes the Government;

“**statutory body**” means a body of persons, whether corporate unincorporated, other than the Reserve Bank of Malawi, established by any written law, and includes a Council established under the Local Government Act, and any corporation or a subsidiary of a corporation where the Government, directly or indirectly—

- (a) controls the composition of any board of directors of the body; or
- (b) controls more than fifty per cent of the voting power of the body; or
- (c) holds more than fifty per cent of any of the issued share capital of the body either directly or through another agency or statutory body (excluding any part of it that carries no right to participate beyond a specific amount in a distribution of either profits or capital);

[Cap. 22: 01]

“**statutory expenditure**” means—

- (a) expenditure which is not subject to the vote of the National Assembly; and
- (b) expenditure charged on the Consolidated Fund under the provisions of the Constitution or charged on the Consolidated Fund or any other public fund or account by any other written law in which it is expressly stated to be statutory expenditure;

“**trading revenue**” means the revenue received from the supply of goods or services in a contestable environment;

“**transactions on behalf of the State**” or “payments on behalf of the State” means the categories of appropriations listed in [section 23](#) (3) (c), (d) and (e);

“**Treasury Instructions**” means Treasury Instructions issued under [section 92](#);

“**trust account**” means a trust account established under [section 41](#);

“**Trust Fund**” means the Trust Fund established under [section 41](#);

“**unclaimed money**” means unclaimed money defined under [section 44](#);

“**Vote**” means a sum of money authorized to be spent under [section 23](#) (2).

## Part II – Responsibility for financial management

### 3. General responsibilities of the Minister

- (1) The Minister is responsible to the Cabinet and to the National Assembly for—
  - (a) the preparation and presentation of economic and fiscal policy in accordance with this Act;
  - (b) ensuring adequate procedures, internal controls and guidelines exist for the use of public money and public resources; and
  - (c) the compliance by the Ministry of Finance with its responsibilities under this Act.
- (2) When submitting the draft Estimates to Cabinet the Minister shall provide—
  - (a) a detailed assessment of the economic and fiscal impact of the projected revenue in relation to the projected expenditure contained in the Budget Policy Statement required under [section 15](#); and
  - (b) where appropriate, details of options to change the draft Estimates including details of possible changes in Government expenditure and programmes to make them compatible with the Budget Policy Statement.

### 4. Specific responsibilities of the Minister

The Minister is responsible for—

- (a) the formulation of economic and fiscal policy of the Government of Malawi, and for the financial management of ongoing operational activities, both annually and for such longer periods as he considers appropriate, specifying agreed policies, outcomes and outputs to be achieved, and taking into account the views of prior policy consultations;
- (b) the preparation of the annual draft Estimates and such other Estimates as may be necessary and overseeing their implementation on behalf of the Government;
- (c) the supervision of the finances, assets and liabilities of the State so as to ensure that a full accounting is made to the National Assembly of all transactions involving public moneys or the disposition of public resources;

- (d) the oversight of the finances of statutory bodies; and
- (e) the publication in the *Gazette* and by whatever other means he considers appropriate, of information as to economic plans and projects approved by the National Assembly or Government and the progress made in their implementation.

## 5. Minister may delegate powers

- (1) Subject to subsection (2), the Minister may in writing delegate his powers under this Act where he is unable, for the time being, to exercise those powers.
- (2) The Minister shall not delegate any power under subsection (1) where this Act prohibits the power of delegation.
- (3) The responsibility of the Minister under this Act shall not be derogated merely by his having exercised his power of delegation under this section.

## 6. General responsibilities of Ministers

- (1) Each Minister of Government is responsible to Cabinet and the National Assembly for ensuring that Controlling Officers coming within the area of the assigned responsibilities of the Minister comply with their responsibilities under this Act for the effective and efficient financial management of all public money and public resources under their control.
- (2) Each Minister shall ensure that all estimates of revenue and expenditure provided from entities that comprise the assigned responsibilities of the Minister are realistic, practicable and fully consistent with the budget policy statement of the Government published under [section 15](#).
- (3) Each Minister shall ensure that the financial management of the public money and public resources that are allocated to the assigned responsibilities of the Minister in an Appropriation Act achieves the objectives and outputs approved for each vote.
- (4) Each Minister shall ensure compliance with all reporting responsibilities coming within the assigned area of responsibility of the Minister under this Act.

## 7. Secretary to the Treasury

- (1) There shall be the office of Secretary to the Treasury, who shall be the principal financial adviser to the Government and the administrative head of Treasury, responsible for the administration of this Act.
- (2) The Secretary to the Treasury shall report and is responsible to the Minister for compliance by Treasury with its obligations under this Act.

## 8. Specific responsibilities of the Secretary to the Treasury

In addition to the responsibilities of Controlling Officers set out in [section 10](#) (with the necessary modifications to paragraphs (k) and (o) in subsection (1)), the Secretary to the Treasury is responsible for—

- (a) providing economic, fiscal and financial advice to and assisting the Minister in presenting the draft Estimates, supplementary Estimates and periodic and annual financial statements for Government;
- (b) setting policies, practices and procedures for all financial management;
- (c) providing the information required by this Act in accordance with generally accepted accounting principles;
- (d) monitoring the accounting systems for Government;
- (e) coordinating and monitoring systems of financial management, internal control and reporting in all Government ministries;

- (f) exercising and maintaining control and direction of all matters relating to the financial management of the Government in accordance with Government policy as communicated by the Minister; and
- (g) collection of revenue owing to the State.

## 9. Secretary to the Treasury may delegate powers

- (1) Subject to subsection (2), and excepting his powers under Part VII, the Secretary to the Treasury may in writing delegate to a senior officer of Treasury his powers under this Act so as to ensure the effective and efficient operation of the Treasury, or where he is unable, for the time being, to exercise any powers under this Act.
- (2) The Secretary to the Treasury shall not delegate any power under subsection (1) where this Act prohibits the power of delegation.
- (3) The responsibilities of the Secretary to the Treasury under this Act shall not be derogated merely by his having exercised his power of delegation under this section.

## 10. Responsibilities of Controlling Officers

- (1) Each Controlling Officer is responsible for ensuring that, in relation to his Ministry—
  - (a) the provisions of this Act are complied with;
  - (b) advice on financial management is provided to the responsible Minister;
  - (c) all accounts and records relating to the functions and operations of the Ministry are properly maintained;
  - (d) all necessary precautions are taken to safeguard the collection and custody of public money;
  - (e) all expenditure, including salaries and other personal emoluments, is properly authorized and applied to the specific purposes for which it is appropriated;
  - (f) there is no over-expenditure or over-commitment of funds and a review is undertaken each month to ensure that there is no such over-expenditure or over-commitment;
  - (g) the collection of public moneys is according to approved plans and the Estimates;
  - (h) all expenditure is incurred with due regard to economy, efficiency and effectiveness and the avoidance of waste;
  - (i) all necessary precautions are taken to safeguard public resources;
  - (j) any tax, duty, fee, levy or other charge imposed by legislation for which the Ministry is responsible is collected promptly and to the fullest extent;
  - (k) any tax, duty, fee, levy or other charge imposed by legislation for which the Ministry is responsible is reviewed and reported upon in the format specified by the Secretary to the Treasury or in Treasury Instructions at least once in each year in order to establish—
    - (i) whether the level of such tax, duty, fee, levy or other charge is adequate; and
    - (ii) whether such tax, duty, fee, levy or other charge should be varied and, if so, by what amount;
  - (l) any proposal to charge for the supply of goods or services confirms that the charge is consistent with the economic and fiscal policy of the Government;
  - (m) any financial information required by any Standing Committee of the National Assembly is submitted to that Committee accurately and promptly;

- (n) estimates and forecasts in respect of collection and expenditure of public moneys are prepared in the format specified in Treasury Instructions;
  - (o) after the first six months of each financial year and at such other times as required by the Secretary to the Treasury he shall submit reports, as may be specified in Treasury Instructions, of the management of funds provided for the achievement of the outputs of the Ministry and the collection of revenues;
  - (p) an effective system of internal control is developed and maintained and, unless the Secretary to the Treasury approves otherwise in circumstances provided for in Treasury Instructions, an effective internal audit function is developed and maintained; and
  - (q) all officers in his Ministry are aware of their duties and responsibilities under this Act and any other written law for which the Ministry is responsible.
- (2) The responsibility of a Controlling Officer under subsection (1) is not derogated or reduced by reason of any delegation of functions by him to another person.
  - (3) Responsibilities other than those listed in subsection (1) may be conferred or imposed on a Controlling Officer by this or any other Act.
  - (4) A Controlling Officer in breach of his responsibilities under this section is liable to disciplinary action under [section 87](#).

## 11. Access to information

- (1) The Secretary to the Treasury has power—
  - (a) to obtain full and free access at all times to all accounts and records of Controlling Officers that relate, directly or indirectly, to—
    - (i) the collection, receipt, expenditure, issue or use of public money; and
    - (ii) the receipt, custody, disposal, issue or use of public resources,and to inspect and inquire into and call for any information arising from, those accounts and records; and
  - (b) where he has reason to believe that a Controlling Officer has been or may have been in breach of this Act, recommend to the Secretary of the Office of the President and Cabinet that the Controlling Officer be suspended from all financial duties and responsibilities, pending an investigation.
- (2) In the exercise of his powers under this section, the Secretary to the Treasury may appoint any person by writing under his hand to inquire into and report to him on any matter or matters specified in the instrument of appointment.

## Part III – Economic, fiscal and financial policy

### 12. Principles of responsible fiscal management

- (1) Subject to subsection (4), the Government shall pursue its policy objectives in accordance with the principles of responsible fiscal management specified in subsection (2).
- (2) The principles of responsible fiscal management are—
  - (a) managing total public debt at prudent levels so as to provide a buffer against factors that may impact adversely on the level of total public debt in the future;
  - (b) ensuring that within any borrowing programme the total overall expenditures of the State in each financial year is in the public interest and designed to achieve long-term fiscal stability;

- (c) achieving and maintaining levels of the State's net worth that provide a buffer against factors that may impact adversely on the State's net worth in the future;
  - (d) managing prudently the fiscal risks facing the State;
  - (e) pursuing policies that are consistent with a reasonable degree of predictability about the level and stability of tax rates for future years; and
  - (f) agreement of Government on the fiscal limits that will apply to the current and future financial expenditure on Ministries and Government projects.
- (3) The Government may depart from the principles of responsible fiscal management specified in subsection (2) only in cases of exceptional circumstances, and when the Government does so—
- (a) any such departure shall be temporary;
  - (b) the Minister shall specify—
    - (i) the detailed reasons for the Government's departure from those principles, including justification of those exceptional circumstances;
    - (ii) the approach the Government intends to take to return to those principles; and
    - (iii) the period of time that the Government expects to take to return to those principles.
- (4) Where such exceptional circumstances arise which force a departure from the principles of responsible fiscal management specified in subsection (2) during the financial year, those exceptional circumstances shall be disclosed to the National Assembly forthwith if the Assembly is in session, and if not, at the commencement of the next ensuing session, and the exceptional circumstances shall also be included in the next ensuing economic and fiscal update.

### 13. Generally accepted accounting practice

Financial reports, financial statements, associated information and accounting procedures required by this Act shall be in accordance with generally accepted accounting practice.

### 14. Economic and fiscal policy statement

- (1) The Minister shall submit to the National Assembly and publish, not later than 1st April of each year, an economic and fiscal policy statement for the financial year commencing on 1st July after publication, and forecasts for the two years following that financial year, and the economic and fiscal policy statement shall—
- (a) specify the economic and fiscal policy that the Government will follow in all economic and fiscal dealings, and disciplines that the Government will adhere to;
  - (b) specify or re-affirm the Government's long-term fiscal policy objectives and in particular, provide for the principal variables specified in sections [18](#) and [19](#);
  - (c) specify the broad strategic priorities by which the Government will be guided in preparing the Estimates for that fiscal year; and
  - (d) indicate by appropriate means the Government's intentions regarding the variables specified in sections [18](#) and [19](#).
- (2) The economic and fiscal policy statement shall also—
- (a) assess the extent to which the objectives, priorities, and intentions referred to under subsection (1) are consistent with the requirement to produce a fiscally responsible budget under [section 12](#) (2) (b); and
  - (b) assess the consistency of the objectives, priorities, and intentions referred to under subsection (1) with the objectives, priorities, and intentions indicated in the immediately

preceding economic and fiscal policy statement, or, if amended, the amended statement and, where these are not consistent, justify the difference.

- (3) Any member of the public may, within twenty-eight days of the economic and fiscal policy statement being published, deliver in writing to the office of the Minister any submission that that person may have in respect of that statement.

## 15. Budget policy statement

- (1) The Minister shall lay before the National Assembly, with the Estimates, a written budget policy statement.
- (2) The budget policy statement shall include—
  - (a) a budget message, which shall include such supporting financial, statistical, output performance, and other information, data and recommendations as the Minister may determine are in the public interest and consistent with the principles of fiscal responsibility set out in [section 12](#); and
  - (b) a statement, including forecasts, providing a projection of expenditures for each category of outputs for the ensuing financial year and the two years following that financial year including—
    - (i) the details of the estimated revenue of the Government;
    - (ii) the details of the estimated expenditures of the Government;
    - (iii) the Government's debt management responsibilities and, where applicable, the details of a financial plan to meet those responsibilities; and
    - (iv) a statement that the annual budget is fiscally responsible in accordance with the principles set out in [section 12](#).

## 16. Fiscal strategy

- (1) The Minister shall submit to the National Assembly, at the same time as, and in addition to, the budget policy statement referred to in section 15 a report on the Government's fiscal strategy.
- (2) The report on the fiscal strategy shall—
  - (a) include an assessment of the extent to which the budget policy statement is consistent with the economic and fiscal policy statement required under [section 14](#);
  - (b) include an explanation of the reasons for any significant differences between the current economic and financial situation of the State and the information and intentions presented in the previous economic and fiscal policy statement required under [section 14](#);
  - (c) where the circumstances have changed, present an amended set of intentions; and
  - (d) provide projections of movements in the variables specified in sections [18](#) and [19](#) which demonstrate intended progress towards achieving the longer-term objectives specified in the economic and fiscal policy statement most recently published and state the significant assumptions on which the projections are based.

## 17. Economic and fiscal update

- (1) The Minister shall, no later than 30th June in each year, publish a report updating the economic and fiscal policy statement for the following financial year.
- (2) The economic and fiscal update report shall contain—
  - (a) an economic and fiscal update for the current financial year, and forecasts for the following two financial years, containing the information specified in sections [18](#) and [19](#); and

- (b) a statement of the date on which the contents were finalized confirming that the data used was the most recent available.

## 18. Economic and fiscal data

- (1) Economic reports required under this Part shall include, where available, forecasts of projected movements in Malawi of the information specified in Part I of the First Schedule.

*[First Schedule]*

- (2) Fiscal forecasts required under this Part shall include, where available, the information specified in Part I of the First Schedule.

Malawi of the information specified in Part I of the First Schedule.

*[First Schedule]*

- (3) Economic forecasts shall include a statement of all significant assumptions underlying them.
- (4) Where information to be included in reports and statements under this section is not available, the Minister shall provide in the report or statement required the reason why the information is not available.

## 19. Reporting requirements

- (1) Any forecast or statement required under this Part shall include, where available, details of the information specified in Part II of the First Schedule.

Malawi of the information specified in Part I of the First Schedule.

*[First Schedule]*

- (2) Where information to be included in reports and statements under this section is not available, the Minister shall provide in the report or statement required the reasons why the information is not available.

## 20. Provision of relevant information

Every Controlling Officer and the head of every agency of Government shall provide to the Secretary to the Treasury such relevant information, as may be in his possession, that will assist the Secretary to the Treasury to produce the economic and fiscal data and reporting information required under this Part.

## Part IV – Parliamentary appropriation and budget

### 21. Estimates

- (1) The Minister shall, not less than fourteen days before introducing the Estimates to the National Assembly, prepare and submit to Cabinet a statement of anticipated revenue for the forthcoming financial year together with a statement of the anticipated budgetary appropriations.
- (2) The Cabinet shall consider and approve a proposed budget and the Minister shall then cause the Ministry of Finance to prepare the Estimates, in accordance with the budget approved by Cabinet, for introduction to the National Assembly for the forthcoming financial year.
- (3) The Minister shall, on behalf of the Government, lay before the National Assembly a statement of the estimated receipts, grants, all other revenue and expenditure for the forthcoming financial year.
- (4) Details of statutory expenditure, shall be included in the Estimates in order to present the total expenditure proposed in the Government's programmes or activities, but shall not be submitted to the vote of the National Assembly.

- (5) The statement of statutory expenditure shall include a brief description of all projected statutory expenditures for the forthcoming financial year, stating the authority for any payment to be made and showing comparative revised estimates figures for each item in respect of the previous appropriation period.

## 22. Form of the Estimates

The Estimates shall include the following information in respect of each Vote—

- (a) the Minister responsible for the Vote;
- (b) the Ministry and Controlling Officer administering the Vote;
- (c) a brief description of each output to be delivered by the Ministry together with an estimate of the expenditures to be made and any receipts from charges made for the delivering of that output;
- (d) all other revenues to be collected on behalf of the State;
- (e) a brief description of any output to be provided by a third party on behalf of Government together with an estimate of the expenditures to be made;
- (f) a brief description of any transaction on behalf of the State together with an estimate of the expenditures to be made;
- (g) comparative revised estimates figures for each of the items in paragraphs (c) to f) of this subsection for the previous appropriation period; and
- (h) any other relevant information as directed by the Minister.

## 23. Appropriation required

- (1) Subject to section 178 of the Constitution, no public money shall be expended unless the expenditure has been authorized by an Appropriation Act in accordance with subsection (2) or is statutory expenditure.
- (2) No expense or liability will be incurred unless the expenditure in relation to such expense or liability is chargeable to a category specified in subsection (3).
- (3) A separate appropriation shall be made for each of the following—
  - (a) each category and output to be delivered by a Ministry;
  - (b) any payment to a non-government agency or person by way of grant or otherwise;
  - (c) loans by Government to any third party; and
  - (d) capital contributions and capital purchases; and
  - (e) each item of statutory expenditure or any other payment on behalf of the State.
- (4) The authority to expend cash or incur expenses or liabilities under an Appropriation Act will lapse at the end of the financial year to which that Act relates.
- (5) Subject to this Part, any money appropriated under this section shall be expended only in relation to that appropriation, and for no other purpose.
- (6) Each expenditure of public money made in respect of statutory expenditure shall be managed and accounted for in the same manner as public money expended under an Appropriation Act.

## 24. Adjustment for unforeseen expenditure

- (1) The annual Estimates presented to the National Assembly shall contain a Vote for Unforeseen Expenditure, with a proposed appropriation not exceeding two per cent of the total appropriation for outputs.
- (2) The Minister may only use funds from the unforeseen expenditure vote in exceptional circumstances and any expenditure of unforeseen expenditure shall be first approved by the Cabinet.
- (3) Subject to subsection (2), where the Minister considers that expenditure from the Consolidated Fund in any financial year in excess of, or without, appropriation by the National Assembly should be approved, he may transfer to one or more nominated Votes from the Unforeseen Expenditure Vote such sum or sums as he considers necessary up to but not exceeding the amount of the balance from time to time available in the Unforeseen Expenditure Vote.
- (4) If during any regular or other review of budget performance, it appears to the Cabinet that any vote or votes may be underspent during the financial year, the Cabinet may direct the Minister to transfer any such surplus to the Unforeseen Expenditure Vote and such sum or sums shall be available for transfer as provided in subsection (3).
- (5) No expenditure in excess of, or without, appropriation other than is provided in this section, is permitted.
- (6) This section does not apply to statutory expenditure.
- (7) Without affecting the validity of any transfers approved under subsections (1) and (2), the financial statements for the financial year in which any such transfer occurs shall disclose each instance of a revised appropriation, (regardless of whether such sum has been subsequently appropriated during the course of the financial year in an amended or Supplementary Appropriation Act) together with an explanation of the reasons for such revision.

## 25. Transfer between outputs

- (1) The Secretary to the Treasury may, with the approval of the Minister at the request of a Controlling Officer, direct that an amount appropriated for a specified output to be delivered by a Ministry be transferred to another output to be delivered by that Ministry where—
  - (a) the amount transferred does not increase an appropriation for the financial year for an output by more than twenty per cent;
  - (b) the transfer does not conflict with performance of the outputs or policy specified in the Estimates; and
  - (c) the total appropriation for that financial year for that Ministry is unaltered.
- (2) Without limiting the validity of the transfers made under subsection (1), a clause recording any transfers made under subsection (1) in that financial year shall be made in an Appropriation Act for the same or the succeeding financial year, and all such budget variations shall be noted in the financial statements for that year.

## 26. Approval of Appropriation Bill

Upon an Appropriation Bill receiving the assent of the President, the Secretary to the Treasury shall make funds available to the respective votes according to the cashflow forecasts agreed between the head of the entity responsible for the Vote and the Secretary to the Treasury, and if agreement cannot be reached, as approved by the Minister.

## 27. Charge for supply of goods or services

Save as expressly otherwise provided in any other written law, a Ministry may, with the approval of the Minister, charge for the provision of goods or services:

Provided that, if the recipient of the goods or services is another Ministry, there is a prior agreement to charge the costs incurred to an output of the recipient Ministry.

## Part V – Public money and the consolidated fund

### 28. Consolidated Fund

- (1) The Secretary to the Treasury may establish such accounts as may be deemed necessary for the proper accounting of moneys in the Consolidated Fund.
- (2) Subject to any other written law and the terms of any trust, the Secretary to the Treasury shall in respect of any such account or class of accounts referred to in subsection (1) specify the person by whom and the manner in which such account or class of accounts shall be controlled.
- (3) Subject to any other written law and the terms of any trust, the Secretary to the Treasury may direct that any deposit account shall be closed and after all liabilities of the account have been met, the account shall be closed and any balance of moneys standing to the credit of such account shall be transferred to the Consolidated Fund.

### 29. Development Fund

- (1) There shall be paid into the Development Fund all moneys held by the Treasury for the purposes of such Fund immediately prior to the coming into operation of this Act, and all moneys subsequently received or appropriated for the purposes of the Fund, including the proceeds of any loan which may be raised for general development purposes.
- (2) Moneys held for the purposes of the Development Fund shall be accounted for in a separate account in the Consolidated Fund.
- (3) The estimates of expenditure to be made from the Development Fund shall show the total estimated cost of each project and the amount estimated to be required for expenditure during the current year in respect of such projects.
- (4) The amount applied in respect of any project during any year shall be in accordance with the directions of the Secretary to the Treasury but shall not exceed the unexpended balance of the total estimated cost of the project as shown in the latest estimates approved by the National Assembly.
- (5) Where it is expedient in the public interest for sums to be spent on a project for which no total estimated cost has been approved in any Development Estimates laid before the National Assembly, the Minister of Finance may direct that an additional item be created to provide for such project with such particulars, including an estimate of the total cost, as may be appropriate and may authorize the issue of sums to be applied to such purpose out of the total appropriated by the National Assembly:

Provided that in any case where the Minister has so directed a supplementary Development Estimate providing for such project shall be laid before the National Assembly not later than the next meeting of the National Assembly occurring after the expiration of seven days from the date of the direction.

- (6) Where it is expedient in the public interest for the total estimated cost shown in the Development Estimates in respect of any project to be varied the Minister may direct that it be varied accordingly.
- (7) The powers conferred by subsections (5) and (6) shall not be exercised so as to increase the total estimated cost of the projects provided for in the Development Estimates approved by the National

Assembly by an amount exceeding one million Kwacha, nor so as to cause the amount authorized to be spent in the Appropriation (Development Fund) Act to be exceeded.

### 30. Treasury Funds

- (1) The Minister may, on the recommendation of the Secretary to the Treasury, by Order published in the *Gazette*, establish special funds to be known as Treasury Funds, and may make orders for the regulation and management of such Treasury Funds.
- (2) Where a Treasury Fund is established pursuant to subsection (1), the Secretary to the Treasury shall cause to be maintained separate accounts within the Consolidated Deposit Account in respect of the Treasury Fund which shall be regulated and managed in accordance with orders made by the Minister for that purpose.
- (3) Section 175 (1), (2), (3) and (4) of the Constitution shall not apply to receipts and expenditure of Treasury Funds.

### 31. Dealing with public money

- (1) Public money is the property of the State.
- (2) Public money shall, except as otherwise provided in this Act, be paid into bank accounts designated by the Secretary to the Treasury for that purpose and such accounts shall form part of the Consolidated Fund.
- (3) Money paid into any designated bank account is public money, and shall not be removed except as provided by the Constitution or this Act.
- (4) Notwithstanding any other written law to the contrary and except as permitted in subsection (5), no bank account shall be opened or operated or continue to be operated for the deposit or withdrawal of public money without the express authority of and on such conditions as the Secretary to the Treasury determines.
- (5) No Ministry shall continue to operate after three months from the commencement of this Act, any bank account other than in accordance with subsection (4).
- (6) The Secretary to the Treasury may make demand on the manager of a bank operating in Malawi for disclosure of the records of the accounts current or otherwise operated by a Ministry or statutory body and on receiving such demand, the manager shall comply with the demand accordingly.

### 32. Banking business of the Government

- (1) The Secretary to the Treasury may agree with any bank upon terms and conditions for the conduct of the banking business of Government, including arrangements for deposits to be made under the authority of this Act or any other written law and for interest to be payable by the bank on balances held.
- (2) The Consolidated Fund shall be kept at the Reserve Bank of Malawi, and the Secretary to the Treasury may transfer money within the Consolidated Fund from the Reserve Bank of Malawi to another or other banks.
- (3) The Secretary to the Treasury may make arrangements with any bank for the receipt, custody, payment and transmission of public money within or outside Malawi.

### 33. Banks to furnish statements

- (1) Every bank at which any Government account of any nature is kept shall send to the Ministry of Finance and to the National Audit Office, statements of such accounts as the Secretary to the Treasury or the Auditor General may require.

- (2) All such statements shall show such particulars of the accounts concerned as the Secretary to the Treasury or the Auditor General may require.

#### **34. Overseas imprests and other accounts**

- (1) The Secretary to the Treasury may direct that any public money received outside Malawi be paid into a bank account for the credit of such imprest account or other account as he may determine.
- (2) Any bank account referred to in subsection (1) may be operated by any person appointed for that purpose by the Secretary to the Treasury, who may cancel the authority of any person to operate any bank account, and may remove the money in any account, or such amount as he thinks fit, from any bank to any other bank.
- (3) No money shall be withdrawn from any bank account referred to in subsection (1) except in the manner provided by this Act.
- (4) Subject to the provisions of Part IV, any money in an overseas account may be utilized for expenditure approved under the provisions of the Constitution or this Act or any other written law, and shall be deemed to have been issued by way of imprest under [section 37](#) and the provisions of that section shall, with the necessary modification, apply accordingly.

#### **35. Balances may be invested**

- (1) The Secretary to the Treasury may invest any balances of the Consolidated Fund, or any part thereof, at call or for such period and on such terms as he thinks fit at any bank and in such other securities as the Minister may declare to be securities consistent with the financial policies of Government.
- (2) Interest earned on investments made pursuant to subsection (1) shall be credited to the Consolidated Fund and may be used only in accordance with an Appropriation Act.
- (3) The Secretary to the Treasury may sell and convert into money any such securities, and that money shall be paid into the Consolidated Fund to the credit of the fund to which it belongs.

#### **36. Temporary transfers from one fund to the other**

- (1) Subject to any other provision of this Act, the Secretary to the Treasury may transfer any balances or any part of any balances of any fund or account within the Consolidated Fund to another fund or account within the Consolidated Fund for such periods and on such terms as he thinks fit.
- (2) Any money transferred pursuant to subsection (1) shall be deemed to have been borrowed by the fund or account into which the transfer has been made, and shall be paid out and restored to the fund or account from which the transfer was made, together with any interest thereon, before the end of the financial year in which the transfer was made.
- (3) Particulars of every such transfer made in any financial year pursuant to subsection (1) shall be reported in the financial statements for that year.
- (4) No transfer shall be made from or between trust accounts.

#### **37. Imprests**

- (1) Money may be issued by way of imprest in the name of the Government from the Consolidated Fund for the purpose of effecting payment of amounts payable by the Government to such persons or to such accounts within or outside Malawi.
- (2) The Secretary to the Treasury may, in such cases as he thinks fit, authorize an imprest account to be opened at a bank and such account shall be identified as a Government of Malawi account.

- (3) Except in special circumstances approved in writing by the Secretary to the Treasury, all withdrawals from an imprest account shall be made by the imprestee and another designated officer.
- (4) Money required to be issued by way of imprest shall as far as practicable be charged against the other Vote or other authority for the service for which the imprest is required, but the Secretary to the Treasury may charge money by way of general imprest against the relative fund or account instead of a Vote or other authority, and in any such case the amount so charged shall be issued accordingly; and expenditure against money so issued to general imprest shall in due course be transferred to the several votes or authorities for the purposes of which the money is expended:

Provided that money issued by way of general imprest shall not at any time exceed ten per cent of the total amount of all sums appropriated by all Appropriation Acts for the current financial year.

### **38. Remission or refund of revenue**

- (1) The Minister may, in cases of national disaster or calamity, authorize any public officer to remit any revenue, which may be due, or to refund any sum received, by way of revenue, if he is satisfied that such remission or refund is desirable and in the public interest.
- (2) Subsection (1) shall not apply to the remission or refund of non-tax revenue.
- (3) Where the Minister has exercised the power conferred by subsection (1) notification thereof shall be published in the *Gazette*.

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### **39. Refunds and corrections**

- (1) Within six years of any sum being paid into the Consolidated Fund, the Secretary to the Treasury may refund as statutory expenditure all or so much of such sum as was not properly payable to the Government, whether or not application has been made for a refund.
- (2) The Secretary to the Treasury shall record the payment of the amount against the appropriate Vote or other authority or fund or account.
- (3) Where any person has become indebted to the Government and it is subsequently discovered that there is an error in the amount of the debt or the identity of the debtor, the Secretary to the Treasury on being satisfied as to the facts may amend the records to reflect the true position.

## **Part VI – Trust moneys and unclaimed money**

### **40. Trust money**

- (1) For the purposes of this Part trust money means—
  - (a) money that is deposited with the State pending the completion of a transaction or dispute and which may become repayable to the depositor or payable to the State or any other person;
  - (b) money that is paid into Court for possible repayment to the payer or a third party, by virtue of any written law, judicial direction or other authority;
  - (c) unclaimed money that is due to or belongs to any person and is deposited with the State;
  - (d) money that is paid to the State in trust for any purpose as approved by the Secretary to the Treasury; and
  - (e) money that belongs to or is due to any person and is collected by the State under any agreement between the State and that person

- (2) Trust money shall be held and accounted for separately from public money.
- (3) Trust money shall be used only in accordance with the provisions of this Part.

#### **41. Establishment of a Trust Fund and trust accounts**

- (1) Secretary to the Treasury may establish a Trust Fund and trust accounts under the Fund to receive trust moneys, and all such moneys shall be paid into trust accounts constituting the Trust Fund established for that purpose.
- (2) For each trust account established or to be established within the Trust Fund there shall be prepared by the Controlling Officer or the appropriate officer of the organization responsible for the account an instrument, signed by that person, setting out—
  - (a) a request for the establishment of the account;
  - (b) the name of the account;
  - (c) the name of the Ministry or organization operating the account;
  - (d) any legal requirement to set up or manage a trust account, citing the name and relevant section of the Act;
  - (e) the names and designations of not less than two authorized signatories;
  - (f) the purpose of the account;
  - (g) the source or sources of funds to be deposited in the account;
  - (h) the approved categories of expenditure to be paid from the account;
  - (i) any particular conditions; and
  - (j) instructions for the disposal of funds on the completion of the purpose or the closure of the account.
- (3) The Secretary to the Treasury shall endorse approval or disapproval of the request on the face of the instrument:

Provided that the Secretary to the Treasury shall not disapprove the request where the money has already and unavoidably been received by the department and is trust money as defined by [section 40](#).
- (4) Where the Secretary to the Treasury approves a request for a trust account, the instrument shall constitute an agreement for the operation of the relevant account which shall be established forthwith.

#### **42. Operation of trust accounts**

- (1) There shall be paid to the credit of a trust account, which shall always be in credit, all moneys paid by any person for the purposes of the account and there shall be issued and paid to or on behalf of that person such amounts, in such manner and at such times as may be set forth in any agreement; and the Government shall not be liable to any such person for any money so payable into the Trust Fund except for money actually received under any such agreement.
- (2) Moneys may be paid out of a trust account only—
  - (a) for the purposes of the account or as authorized by law;
  - (b) if sufficient credit is available in the account; and
  - (c) in accordance with Treasury Instructions or, if no Treasury Instructions exist, then in accordance with the rules and procedures prescribed for the payment of public moneys.

- (3) The Secretary to the Treasury may appoint an agent to manage some or all trust moneys on such terms and conditions as he may determine, subject to the requirements of this section, and to the requirement that the agent is a recognized professional institution of a kind and with experience in the handling of trust moneys.

#### 43. Investment of trust account money

- (1) The Secretary to the Treasury or any trust agent appointed under [section 42](#) (3) may invest any trust account money for such periods, and on such terms and conditions as are consistent with sound trust investment practice.
- (2) No person shall have any right of action against the Secretary to the Treasury or against the Government in respect of the investment or non-investment of any trust money.
- (3) Subject to subsection (4), when any trust account money becomes payable or repayable to the depositor or other person entitled thereto, there shall be added any amount of interest certified by the Secretary to the Treasury to have been earned thereon.
- (4) When any trust account money becomes payable or repayable to the depositor or any other person entitled thereto under subsection (3), a reasonable charge may be deducted for the services of the Secretary to the Treasury, which sum may be established in accordance with Treasury Instructions.
- (5) The provisions of subsections (2), (3) and (4) shall apply to an agent appointed under [section 42](#) (3) in the same manner as if the agent were the Secretary to the Treasury.

#### 44. Unclaimed money interpretation

In [sections 44](#) to [53](#), unless the context otherwise requires— “holder” includes—

- (a) every bank (including any savings bank) carrying on business in Malawi;
- (b) every person, partnership, company and corporation carrying on business in Malawi; and
- (c) the Secretary to the Treasury, in respect of money to which in this Part, trust funds apply;

“owner” means the person entitled to any unclaimed money, and includes his executors, administrators or assigns, or his or their lawful attorney or agent;

“unclaimed money” means, subject to [sections 45](#) and [49](#), all principal and interest money, and all unclaimed dividends, bonuses, profits and other sums of money whatsoever owing to any owner which, on the coming into force of this Act or at any time before the coming into force of this Act, have been in the possession of any holder for a period of six years or more after the time when the money became payable, and in respect of which no claim has been made by the owner against the holder.

#### 45. Period after which money becomes unclaimed

The following money deposited in any bank (including any savings bank) shall become unclaimed money within the meaning of this Act at the following times, whether or not it has at any prior time become payable, namely—

- (a) money deposited so as to bear interest for a fixed term, at the expiration of six years from the date when such fixed term expired;
- (b) money deposited so as to bear interest without any limitation of time, at the expiration of twenty-five years from the date when the account was last operated on by the customer; and
- (c) money deposited on current account or otherwise and not bearing interest, at the expiration of six years from the date when the account was last operated on by the customer, in the case of a bank other than a savings bank, and at the expiration of twenty-five years, in the case of a savings bank.

**46. Register to be kept**

- (1) It shall be the duty of every holder, on the first day of July in each year, to enter in a register to be kept by such holder at his principal office in Malawi, in the form provided in the Second Schedule or to the like effect, and with the particulars therein specified in the form provided in the Second Schedule, all unclaimed money in Malawi then held by the holder.
- (2) From and after 8th July in each year, each such register shall be open to the inspection of all persons at such office during ordinary business hours on payment of a fee from time to time determined by the Secretary to the Treasury.
- (3) On ceasing to carry on business in Malawi, a holder shall deposit his register in the custody of the Secretary to the Treasury and pay all unclaimed money to the credit of the Consolidated Fund:

Provided that any holder may at any time so deposit his register or any part of it, if no entry has been made in it for a period of not less than six years immediately preceding the date of such deposit.

Malawi of the information specified in Part I of the First Schedule.

*[Second Schedule]*

**47. Holder to notify Secretary to the Treasury and owner of entry**

Not later than 15th July in each year, or such later date as the Secretary to the Treasury approves in writing, every holder shall—

- (a) furnish to the Secretary to the Treasury a copy of every entry made on the first working day of that month in the register kept by him under [section 46](#); and
- (b) send to every person in respect of whom any such entry was made as the owner of unclaimed money a notice in writing specifying the amount of money that is held as unclaimed money.

**48. Payment of unclaimed money to the Consolidated Fund**

- (1) All unclaimed money that has not been paid by a holder to the owner within three months after the posting to the owner of the notice prescribed by [section 47](#) shall be paid by the holder to the credit of the Consolidated Fund, and the holder shall thereupon be relieved from all further liability in respect of the money so paid.
- (2) All money payable to the credit of the Consolidated Fund in accordance with this section shall be recoverable in any court of competent jurisdiction as a debt due to the State.

**49. Unclaimed trust money**

- (1) Any trust money that is unclaimed for a period of three years after having become repayable to the depositor or payable to any other person entitled thereto, and after due inquiry and notice by publication, shall, together with interest (if any) added in accordance with [section 43](#) (3) be deemed to be public money and shall, subject to [section 43](#) (4) be transferred to the Consolidated Fund.
- (2) Where any trust money is claimed within six years of being deposited under subsection (1) and the Secretary to the Treasury is satisfied that the trust money is payable to the claimant then that money shall be paid to the claimant together with any interest thereon in accordance with [section 43](#) (3) but subject to [section 43](#) (4).

## 50. Offences

If any default is made in complying with sections [46](#), [47](#) or [48](#), the holder, and every director, manager, secretary, and other officer of the holder who knowingly and willfully authorizes and permits the default, shall be liable to a fine of K50,000 for every day during which the default continues.

## 51. Examination of accounts

- (1) The Secretary to the Treasury may, at any time of accounts examine any register kept by a holder under [section 46](#) and any accounts of the holder relating to unclaimed money, and may, for that purpose require the production before him or any of his officers of any records relating to such money.
- (2) The Secretary to the Treasury or any officer authorized by him shall at all times have full and free access to all records and have the right to make copies.
- (3) Every person shall as required by the Secretary to the Treasury furnish in writing any information which may be in his knowledge, or produce any records in his possession or control that relates to money which is or may be unclaimed money.
- (4) If any error is found in any such register or accounts or notice sent to the owner, or copy of any such document, the Secretary to the Treasury may require it to be amended.
- (5) The Secretary to the Treasury and every officer authorized by him shall maintain and assist in maintaining the secrecy of all matters which come to his knowledge in the course of any inspection under this section, and shall not communicate any such matter to any person, except for the purpose of carrying this Part into effect.
- (6) Every person who fails to comply with any of the requirements of this section commits an offence, and is liable to a fine of K50,000.

## 52. Secretary to the Treasury may make payment to claimant

If any claimant makes any demand on any unclaimed money within six years of its having been paid to the Consolidated Fund under [section 48](#), the Secretary to the Treasury, on being satisfied that the claimant is the owner of the money demanded by him, shall order and direct payment of the money to be made to him and the payment shall be statutory expenditure.

## 53. Responsibility to second claimant

Where any unclaimed money paid to a claimant is afterwards claimed by another person, the Secretary to the Treasury shall not be responsible for the payment of the amount, but that person may have recourse against the claimant to whom the Secretary to the Treasury has paid the unclaimed money.

## Part VII – Borrowing, loans and guarantees

### 54. Government not to borrow except under an Act

The Government may only borrow in accordance with this Act and under an Act authorizing it to do so.

### 55. Instrument of loan agreement

Every loan under this Part shall be in the name of the Republic of Malawi, and every document required to be signed evidencing the terms of the loan shall be executed by the Minister or by any other person authorized in writing by the Minister.

## 56. Minister may borrow when authorized

- (1) Subject to this Part, the Minister is empowered to borrow by way of term loan within Malawi or elsewhere, as the National Assembly shall determine by an authorizing Act, not more than such sums of money as that Act authorizes.
- (2) Prior to raising a loan the Minister shall first—
  - (a) ensure that it is in the public interest to do so;
  - (b) ensure that it is fiscally responsible in accordance with [section 12](#);
  - (c) ensure it is consistent with Government economic and fiscal policy;
  - (d) satisfy himself that the Government has or is likely to have on current projections the financial ability to meet all the obligations under the loan including future loan payments; and
  - (e) consult with the Attorney General and obtain in writing from the Attorney General, an opinion approving the legal aspects of the loan agreement.
- (3) All money received by the Government under the loan agreement shall be paid into an account within the Consolidated Fund, and the proceeds shall only be expended for the purposes for which it was borrowed.
- (4) All principal, interest and other money payable under the loan agreement shall be a charge on the public revenues of Malawi and on the Consolidated Fund or such other fund or account as the Minister determines, and shall be statutory expenditure payable at the time or times provided in the loan agreement.

## 57. Provisions for general borrowing

- (1) When exercising his power to borrow under [section 56](#) the Minister may, with the approval of Cabinet and after consultation with the Secretary to the Treasury, raise loans in currency other than that of Malawi.
- (2) When an Act authorizing the borrowing of money other than from a foreign government or an international agency becomes law and the Minister decides to raise a loan accordingly, subject to any regulation that provides for the same, the provisions (where applicable) of Part II of the Third Schedule shall apply.

## 58. Subsidiary loan agreement

The Minister may on-lend loan to another body, including a statutory body, under a written subsidiary loan agreement, such amounts of money on such terms and conditions as are specified in the subsidiary loan agreement.

## 59. Borrowing on overdraft

- (1) Subject to the provisions of this section, the Minister may, from time to time, borrow money from the Reserve Bank of Malawi by way of overdraft to meet expenditure that has been appropriated, and in anticipation of revenue payable into the Consolidated Fund:  
  
Provided that on receipt of the anticipated revenue the overdraft shall be reduced by the full amount of the revenue received.
- (2) The amount owing on overdraft at any time during the financial year shall not exceed the aggregate total amount permitted to be advanced to the Government by the Reserve Bank of Malawi in accordance with section 40 of the Reserve Bank of Malawi Act.

*[Cap. 44: 02]*

- (3) All amounts borrowed under this section shall be repaid, together with any interest thereon, not later than the end of the current financial year.

## 60. Treasury Bills

- (1) The Secretary to the Treasury may, with the prior approval of the Minister, borrow for and on behalf of the Government by the issue of Treasury Bills payable at the Reserve Bank of Malawi, sums not exceeding the sum prescribed in paragraph 45 of the Third Schedule or such further sums as may from time to time be directed by the Minister in accordance with a resolution of the National Assembly.

*[Third Schedule]*

- (2) The principal moneys represented by the Treasury Bills issued under this section shall form part of the public debt.
- (3) Subject to any regulation providing for the same, the rules and procedures for the issuing and management of Treasury Bills shall be as prescribed in Part V of the Third Schedule.

## 61. Borrowing by stocks, bonds or promissory notes

- (1) The Minister may, from time to time, raise money in the currency of Malawi by the issue of stocks, bonds or promissory notes not exceeding the aggregate amount as may be authorized by an Act of Parliament.
- (2) The principal moneys and interest represented by stocks, bonds and promissory notes issued under this section shall form part of the public debt.
- (3) All expenditure in connexion with the raising of such loans may, if the Minister so directs, be paid out of the principal moneys raised.
- (4) Subject to any regulation providing for the same, the terms and conditions on which any stock, bonds or promissory notes shall be issued are set out in the Third Schedule.

*[Third Schedule]*

- (5) The Reserve Bank of Malawi shall be appointed Registrar of all registered stocks or bonds issued under this section.

## 62. Liability of the State

The Government shall not be liable to contribute towards the payment of any debt or liability of the State unless the State is liable to contribute under any other written law, or is, liable to contribute under any guarantee or indemnity given under [section 63](#), or is liable to pay to any creditor.

## 63. Power to give guarantees and indemnities

- (1) Subject to subsection (2), the Minister, on behalf of the State, may, if it appears to the Minister to be in the public interest and necessary to do so, give in writing a guarantee or indemnity upon such terms and conditions as the Minister thinks fit, in respect of the performance of any person, company or body corporate, organization or statutory body, but may only do so—
  - (a) with the prior approval of the Cabinet; and
  - (b) where such guarantee or indemnity is consistent with [section 12](#).
- (2) The Minister shall report the giving of the guarantee or indemnity within seven days to the National Assembly if the Assembly is then in session, and if not, at the commencement of the next ensuing session, and shall give reasons as to why it was in the public interest and necessary to give the guarantee or indemnity, and provide an assessment of the risks associated with the guarantee or indemnity.

- (3) Any money paid by the State under a guarantee or indemnity given under this section will constitute a debt due to the State from the person, company or body corporate, organization or statutory body in respect of whom the guarantee or indemnity was given, and may be recoverable in any court.
- (4) Where a guarantee is given to a company or body corporate the Minister shall, in addition to the matters he is required to consider under subsection (1), satisfy himself that the guarantee will facilitate such company or body corporate in the initiation or advancement of any enterprise conducive to national economic development or growth in Malawi.
- (5) No guarantee involving a financial liability shall be binding upon the State or the Government unless entered into in accordance with this section.

#### **64. Taking and releasing of securities by the State**

- (1) Wherever security is taken in respect of an advance of public money, unless the Act authorizing the advance provides otherwise, the security shall be given to and taken in the name of the Republic of Malawi.
- (2) Where any security is for the time being vested in the State, whether it has become so vested before or after the commencement of this Act, the Minister may, on behalf of the Government, exercise any powers, functions and rights (including any power of disposal), and undertake and perform any liabilities in respect of or in connexion with the security which could be exercised, undertaken, or performed by the State.
- (3) Any document purporting to be executed by the Minister under this section shall be deemed to have been duly executed on behalf of, and shall bind, the State.

#### **65. Expenditure for protection of public securities**

- (1) Subject to Part IV and to the provisions of this section, money may be expended out of any fund or account in the Consolidated Fund for the protection, preservation and improvement of any real or personal property on the security of which any money in that fund or account has been lawfully invested, whether before or after the commencement of this Act; and the authority conferred by this section may be exercised notwithstanding the prior exercise in respect of the mortgaged property of any power of sale or entry into possession.
- (2) No amount shall be expended under this section in respect of any property without the specific approval of the Minister acting on the recommendation of the responsible Minister, if that amount, together with all other amounts advanced or expended in respect of that property and still outstanding, would exceed the amount of the valuation of the property.
- (3) This section is in addition to and not in substitution for any powers or authorities conferred otherwise than by or under this section.

#### **66. Power to lend money**

Subject to [section 23](#), where it is in the public interest to do so, the Minister may on behalf of the State, on terms and conditions approved by the National Assembly, lend money to any organization whether within or outside of Malawi.

### **Part VIII – Statutory bodies**

#### **67. Application of this Part**

- (1) This Part applies to all statutory bodies.

- (2) A body ceasing to comply with the definition of statutory body in [section 2](#) shall cease to be a statutory body.
- (3) In this Part, a “subsidiary” means a subsidiary of a statutory body, which shall itself be a statutory body for the purposes of this Part.

#### **68. Performance, management plan and budget**

- (1) The head of every statutory body, however called, shall within three months before the end of its financial year submit to the Minister and to the Secretary to the Treasury a performance and management plan, including projected financial statements for the following financial year.
- (2) Where a statutory body seeks Government assistance by way of appropriation, grant, subsidy or otherwise, it shall not later than three months before the end of the Government financial year submit to the Secretary to the Treasury its performance and management plan together with estimates of its revenue, expenditure and cash flows for the following financial year, in such form as the Secretary to the Treasury approves.

#### **69. Financial activities**

- (1) The head of the statutory body shall advise the Minister and the responsible Minister by notice in writing immediately upon a significant event occurring or becoming known which adversely affects the financial position of the statutory body.
- (2) The notice shall specify the nature of the event, quantify when practicable the likely effect of the event on the statutory body and what steps have been taken, or are being taken or proposed, to rectify any adverse effects.
- (3) The head of the statutory body shall at the same time as delivering the notice to the Minister and responsible Minister under subsection (1), deliver a copy to the Secretary to the Treasury.

#### **70. Bank accounts**

- (1) A statutory body shall at all times maintain at least one bank account.
- (2) Subject to sections [75](#) and [81](#), a statutory body shall pay all its moneys into an account referred to in subsection (1).

#### **71. Moneys payable to statutory bodies**

Where money is appropriated by the National Assembly for the purposes of a statutory body, such money shall be payable at such times and in such amounts as the Secretary to the Treasury determines.

#### **72. Private loans**

- (1) A statutory body may, with the prior written approval of the Minister, borrow money for its purposes, on such terms as are agreed between the statutory body and the lender.
- (2) The statutory body shall repay a loan made under subsection (1) in accordance with the terms on which it was made.
- (3) Where a statutory body raises a loan under subsection (1) there shall be no liability attached to the State or Government by virtue only of the approval of the Minister.

#### **73. Borrowing on overdraft by statutory body**

A statutory body may, with the prior written approval of the Minister, borrow for its purposes, by overdraft, within such limits as the Minister approves, and there shall be no liability attached to the State or Government by virtue only of the approval of the Minister.

**74. Guarantees**

- (1) A statutory body shall not give a guarantee without the prior written approval of the Minister.
- (2) Before giving approval of a statutory body giving a guarantee under subsection (1), the Minister shall first ascertain from the Secretary to the Treasury the financial implications on Government of the statutory body giving the guarantee, and ensure that the giving of the guarantee is in the public interest.
- (3) There shall be no liability attached to the State or Government by virtue only of the approval of the Minister.

**75. Investment**

- (1) Moneys of a statutory body that are not immediately required may be invested—
  - (a) in any securities of, or guaranteed by, the Government;
  - (b) in any manner in which a trustee may, under any law, invest trust moneys;
  - (c) on deposit with a bank; or
  - (d) in any other manner approved by the Minister.
- (2) The Secretary to the Treasury may issue investment guidelines and reporting requirements as a Treasury Instruction.

**76. Application of resources**

The resources of a statutory body may be applied only for the purposes specified in its empowering Act, this Act or otherwise lawfully conferred on the body.

**77. Contracts for works, supplies and services**

A statutory body may enter into contracts for the works, acquisition, disposal or management of goods, services and construction works in accordance with the provisions of the Public Procurement Act.

*[Cap. 37: 03]*

**78. Accounts and records**

- (1) A statutory body or a subsidiary shall keep proper accounts and records of its transactions and financial position, and shall do all things necessary to ensure that all payments are correctly made and properly authorized and shall maintain adequate internal control over its assets, or assets in its custody, and over the incurring of liabilities by it.
- (2) A statutory body or a subsidiary shall keep the accounts and records referred to in subsection (1) in such a way as to facilitate the preparation of financial statements required by [section 79](#) and enable them to be conveniently and properly audited.
- (3) The accounts and records required by subsection (1) shall be kept in accordance with generally accepted accounting practice.
- (4) A statutory body or a subsidiary shall retain all the accounts and records referred to in subsection (1) for at least seven years after the completion of the transactions to which they relate.
- (5) Every statutory body shall within two years of the coming into force of this Act adopt an accounting period ending 30th June.

## 79. Reports and financial statements

- (1) Notwithstanding the provisions of any other written law, a statutory body shall prepare and furnish to the Minister and the responsible Minister, within four months of the end of the financial year of the statutory body, a performance and management report of its operations for that financial year, together with its financial statements.
- (2) Before furnishing financial statements to the Minister and the responsible Minister, a statutory body shall submit the financial statements to the Auditor General who may report on the extent to which they present fairly the financial operations and financial position of the statutory body and comply with its performance and management plan.
- (3) On receipt, the Minister shall cause the report and financial statements, together with any report of the Auditor General, to be laid before the National Assembly forthwith if it is in session, and if the National Assembly is not in session, at the commencement of the next ensuing session.
- (4) When the report or financial statement of a statutory body is reproduced for publication or for other purposes, the report of the Auditor General shall be included in the reproduction.

## 80. Powers of inspection of the Secretary to the Treasury

- (1) Where the Secretary to the Treasury considers it appropriate or has reason to believe that a statutory body has or may have failed to implement the performance and management plan as submitted under [section 68](#), the Secretary to the Treasury may carry out a performance review or initiate an investigation into, or inspection of, the records of that statutory body.
- (2) Where an investigation into, or inspection of, the records of a statutory body is being carried out, the Secretary to the Treasury has power to obtain full and free access at all times to all accounts and records of such statutory body and any subsidiary that relate, directly or indirectly to—
  - (a) the collection, receipt, expenditure and issue of moneys of the statutory body and any subsidiary;
  - (b) the receipt, custody, disposal, issue or use of public resources or other property of, or property in the custody of the statutory body and any subsidiary; and
  - (c) the incurring of any liabilities by the statutory body or any subsidiary.
- (3) The Secretary to the Treasury may, by written instrument, delegate to a person specified in the instrument, all or any of his powers under this section, other than this power of delegation, in respect of all statutory bodies or of specified statutory bodies or of a specified statutory body.
- (4) Except in the performance of the duties, functions and powers under this Part, the Secretary to the Treasury or any delegate shall not disclose to any person any information that shall come to his attention, and all such information shall remain confidential.

## 81. Payment of surplus funds to Consolidated Fund

- (1) Subject to the principles of responsible fiscal management in [section 12](#), the Minister may direct a statutory body to pay into the Consolidated Fund any money determined to be surplus to the purposes of such statutory body.
- (2) Any money paid into the Consolidated Fund in accordance with subsection (1) shall be first applied towards the discharge of any obligation of the statutory body concerned to the Government.

## 82. Investments in corporations other than statutory bodies

Details of investments in corporations in which the Government owns a shareholding but are not otherwise deemed to be a statutory body shall be disclosed in the financial statements in accordance with [section 83](#).

## Part IX – Financial reporting

### 83. Financial statements

- (1) The Secretary to the Treasury shall, as soon as practicable, but not later than 31 October of each year, prepare in accordance with [section 13](#), and send to the Auditor General the financial statements for that year in the form specified in the Fourth Schedule, including statements of any such funds and accounts as are by this Act or any other written law required to be included in the financial statements.

*[Fourth Schedule]*

- (2) The Auditor General shall examine the financial statements and provide a written report to be attached to the financial statements for presentation to the National Assembly, and the report shall state whether, in the opinion of the Auditor General the financial statements—
  - (a) have been prepared in accordance with this Act and any other written law; and
  - (b) present fairly the matters required by this Act and any other written law.
- (3) If the Auditor General is not able to report in terms required by subsection (2), he shall state the reasons, and if the Auditor General is of the opinion that he did not obtain all necessary information and explanations, he shall give particulars of the shortcomings.
- (4) The financial statements together with the report of the Auditor General shall be returned to the Secretary to the Treasury not later than six months from the end of the financial year to which they relate, and the Minister shall lay them before the National Assembly forthwith if the Assembly is then in session, and if the National Assembly is not in session at the commencement of the next ensuing session.
- (5) The financial statements, in such summarized form as may be authorized by the Minister, shall be published in the *Gazette* and in a newspaper with a wide circulation in Malawi.

### 84. Quarterly summaries and monthly reporting

- (1) The Secretary to the Treasury shall within one month of the end of each quarter, except the last quarter of every financial year, prepare and send to the Auditor General a summary of the receipts and payments of the Consolidated Fund from the beginning of the financial year to the end of that quarter.
- (2) Each summary referred to in subsection (1) after being certified by the Auditor General shall be returned not later than two months after the end of the quarter to which it relates to the Secretary to the Treasury, who shall forthwith publish the summary certified as aforesaid in the *Gazette*, and in a newspaper with a wide circulation in Malawi.
- (3) Every Controlling Officer shall supply to the Secretary to the Treasury, within fourteen days of the end of the month, a monthly summary of financial transactions in the form specified by the Secretary to the Treasury.

### 85. Details to be included in quarterly and monthly statements

- (1) All quarterly and monthly summaries required under [section 84](#) shall include all receipts and payments brought to charge by the Treasury during the period to which the summaries relate.
- (2) Imprests unaccounted for at the end of any quarter shall not be included in the payments, but shall be shown as balances in hand.

## 86. Annual reports

- (1) Every Controlling Officer shall, within four months of the end of the financial year submit to the responsible Minister and to the Minister an annual report in a form approved by the Minister.
- (2) Annual reports required under this section to be submitted by a Ministry shall include information relevant to that Ministry taken from the financial statements required by [section 83](#), and the Secretary to the Treasury shall certify the information contained in the statement as being a true extract from the financial statements.
- (3) On receiving the report under subsection (1) the Minister shall forward a copy to the President and at the same time table a copy in the National Assembly if it is in session, and if it is not in session, at the commencement of the next ensuing session.

## Part X – Offences and discipline

### 87. Disciplining of Controlling Officers and chief executives in certain circumstances

- (1) For the purposes of this section, “appointing authority” means the authority by whom, under the Constitution or any other written law, a Controlling Officer or chief executive is appointed.
- (2) Where a Controlling Officer or chief executive authorizes expenditure or commitment of funds in excess of the approved limit or commits or expends funds where there is no appropriation permitting such expenditure by the Ministry or statutory body, the appointing authority may suspend without pay the Controlling Officer or the chief executive, as the case may be, with effect on and from the date on which the Secretary to the Treasury certifies the unauthorized expenditure or commitment.
- (3) A Controlling Officer or chief executive suspended under subsection (2) may within fourteen days of the date of such suspension make written submissions to the appointing authority as to the circumstances giving rise to the unauthorized expenditure or commitment.
- (4) After the expiry of fourteen days from the date of the suspension the appointing authority, may after considering any submission made under subsection (3), remove the suspension or terminate the appointment of the Controlling Officer or chief executive.
- (5) A person subject to disciplinary action under this section may also be liable to sanction under [section 88](#).

### 88. Offences

- (1) A person commits an offence who—
  - (a) in connexion with an inspection or inquiry under this Act refuses, or without reasonable excuse fails, to attend at a time and place required of him by the Secretary to the Treasury;
  - (b) refuses to produce any records in his possession when required to do so under this Act;
  - (c) refuses or neglects to pay any public money or trust money into the account or fund into which it is payable;
  - (d) refuses to provide reports under this Act;
  - (e) intentionally or recklessly over-commits or overspends funds under his control or expends funds where there is no appropriation permitting such expenditure;
  - (f) makes any statement or declaration or gives any certificate required to be made or given by or under this Act, knowing it to be false;

- (g) does any act or omission for the purpose of procuring for that person or for any other person or organization—
  - (i) the improper payment of public money or trust money; or
  - (ii) the improper use of public resources; or
- (h) willfully fails to meet any obligation imposed on him under this Act.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine of K100,000 and to imprisonment for five years or where the person is a statutory body to a fine of K500,000.
- (3) Where any statutory body or body corporate commits an offence against this Act, every director, chief executive, or other officer of the statutory body or body corporate and every person purporting to act in any such capacity shall also be guilty of an offence unless that person satisfies the Court that either—
  - (a) the offence was committed without the knowledge or consent of that person or not through the gross negligence of that person; or
  - (b) that person took all reasonable steps to prevent the commission of the offence.
- (4) The Director of Public Prosecutions shall convey details of offences and penalties in each case under this section to the Public Accounts Committee of the National Assembly.

## 89. Obligation to report

- (1) A person who has knowledge of any circumstances which may cause him to consider that an offence under [section 88](#) may have occurred shall report those circumstances to the Secretary to the Treasury.
- (2) A person who, without malice, alleges a breach of this Act to the Secretary to the Treasury shall not be penalized in any way whether the allegation is proved or not.

## Part XI – Miscellaneous provisions

### 90. Write-off of losses

- (1) A Controlling Officer shall report promptly, in the prescribed form, to the Secretary to the Treasury, any—
  - (a) losses or deficiencies of public moneys;
  - (b) irrecoverable amounts of revenue;
  - (c) irrecoverable debts and overpayments;
  - (d) the value of lost, deficient, condemned, unserviceable or obsolete public property;
  - (e) investments to be written off.
- (2) The Secretary to the Treasury may, following any investigation that he thinks necessary in a particular case—
  - (a) approve the write-off of an amount not exceeding K10,000;
  - (b) refer to the Minister any case in which the amount exceeds K10,000; and
  - (c) take such action under Part X as he considers appropriate.

- (3) In any case referred by the Secretary to the Treasury to the Minister pursuant to subsection (2) (b), the Minister may—
  - (a) approve the write-off of an amount, not exceeding K50,000; or
  - (b) in a case in which the amount exceeds K50,000, refer the matter to the Cabinet who shall approve or decline the proposed write-off; or
  - (c) take such action under Part X as he considers appropriate.
- (4) All amounts approved for write-off by the Secretary to the Treasury, the Minister or Cabinet respectively, shall be reported in the financial statements.
- (5) The Minister may, by notice published in the *Gazette*, amend the figures prescribed in this section.

## 91. Regulations

The Minister may make such regulations as are deemed necessary or expedient for the purpose of giving full effect to this Act and for the due administration of this Act, and in general for the better control and management of public money and public resources and, without limiting the generality of this section, such regulations may include the following matters—

- (a) the registration of stocks and bonds;
- (b) the issue, transfer, conversion replacement and redemption of stocks or bonds;
- (c) prescribing the method of redemption of stock by drawing;
- (d) prescribing the method by which any payment in respect of any stock or bond may be made;
- (e) providing for the payment of interest, repayment of principal and transfer of stock or bonds in the case of persons who are or may be under any legal liability;
- (f) providing for the replacement of certificates which have been lost or destroyed;
- (g) providing for registers of stockholders or bondholders upon whose stocks or bonds the interest has been unclaimed;
- (h) providing the fees and charges for any services rendered pursuant to this Act; and
- (i) providing for the periodical closing of any register.

## 92. Treasury Instructions

- (1) The Secretary to the Treasury may issue Treasury Instructions setting out detailed procedures and requirements not inconsistent with this Act as to any matter prescribed by this Act to be so provided for, or that is necessary or desirable for carrying out or giving effect to this Act and in general for the better control and management of public moneys and public resources.
- (2) The Treasury Instructions referred to in subsection (1) may be issued and distributed in printed, electronic or other form.
- (3) Treasury Instructions shall—
  - (a) be headed “Treasury Instruction” with an identifying number, and contain an explanatory headnote;
  - (b) state a commencement date;
  - (c) make reference to the enabling section of the authorizing Act and to any other statutory provision or regulation to which the content relates;
  - (d) state whether the Treasury Instruction is new, adds to or replaces a previous Instruction and refer to the previous Instruction being added to or replaced; and

- (e) be signed by the Secretary to the Treasury.

### 93. Transitional provisions

- (1) No person in the preparation of financial statements, budgets or forecasts, unless it is shown that that person acted intentionally, shall be convicted of any offence under [section 88](#) for any act or failure to act by that person in respect of the reporting provisions in Parts III and IX during the period of eighteen months from the coming into force of this Act.
- (2) Where, during the period of eighteen months from the coming into force of this Act, any report, statement or update required by this Act is not provided by the due date in accordance with this Act, the Minister shall report the circumstances to the National Assembly forthwith, and if the Assembly is not in session, at the commencement of the next ensuing session.
- (3) Every act, matter or thing done in the name of the Minister, the Secretary to the Treasury, the Treasury or the Ministry of Finance before the commencement of this Act will, if validly done continue to have effect as if done in the name of the Minister, the Secretary to the Treasury, the Treasury or Ministry of Finance after the commencement of this Act, and every act, matter or thing in progress before the commencement of this Act and which is affected by this Act may continue in progress after the commencement of, but subject to, this Act.

### 94. This Act to prevail

Where any provision of this Act conflicts with a provision of any other written law, other than the Constitution, the provisions of this Act shall prevail.

### 95. Repeals and savings

- (1) Parts I, II, III, IV, V, VA, VII, and VIII, and sections 33, 34 and 45 of the Finance and Audit Act are repealed.
- (2) All subordinate legislation made under the Finance and Audit Act repealed by subsection (1) and in force immediately before the coming into force of this Act, shall so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

*[Cap. 37: 01]*

## First Schedule (Sections 18 and 19)

### Content to be included in reports and statements under Part III

#### Part I – Economic and fiscal data

1. Economic reports required under Part III of this Act shall include forecasts of projected movements in Malawi, of—
  - (a) gross domestic product, including the major components of gross domestic product;
  - (b) consumer prices;
  - (c) employment levels;
  - (d) balance of payments; and
  - (e) such other information deemed necessary by the Minister to provide a comprehensive economic forecast.

2. Fiscal forecasts required under Part III of this Act shall include—
- (a) forecast information with respect to the statements required under [section 19](#);
  - (b) forecast information with respect to the current year fiscal update and comparative budgeted and actual (where available) or provisional (where not) figures for the immediately preceding financial year; and
  - (c) details of fiscal risks and, where they cannot be quantified, a statement of possible impacts.

## Part II – Reporting requirements

1. Any forecast or statement required under Part III of this Act shall include details of—
- (a) the total trading revenues;
  - (b) all other revenue;
  - (c) the total grants or subsidies;
  - (d) the total operating expenditures;
  - (e) all other expenditures;
  - (f) the difference between all expenditure and all revenue;
  - (g) the level of total public debt; and
  - (h) the level of asset values, including a statement of Government policy for the maintenance of asset values.

## Second Schedule (Section 46)

### Register of unclaimed money

Register of Unclaimed Money held by

(insert name of holder)			
Name, Occupation and last know Address of Owner	Total Amount due to Owner	Description of Unclaimed money	Date of Last Claim

## Third Schedule (Sections 60 and 61)

### Provisions for general borrowing

#### Part I – Preliminary

#### 1. Interpretation

In this Schedule, unless the context otherwise requires—

“**book-entry securities**” means securities which are issued, held or transferred through the book-entry system;

“**book-entry system**” means a system whereby Government securities are issued; held or transferred by crediting or debiting, as the case may be, the securities accounts maintained by the Registrar without requiring the issuance, holding, or transfer of paper, and if transfer certificates are issued immobilizing the certificates in a central depository;

“**holder**” means any person registered as the holder of any stock;

“**prescribed**” means prescribed by the Minister;

“**Registrar**” means the Registrar in whose register any stock issued under the provisions of this Schedule is for the time being registered;

“**securities**” means Treasury Bills, Treasury Notes, Treasury Bonds, local registered stock, debentures, promissory notes, and other long term debt instruments issued by, or on behalf of, the Treasury, from time to time.

## Part II – Terms and conditions of loans

### 2. Cabinet to determine certain matters

When an Act authorizes the borrowing of money and the Minister decides to raise a loan accordingly, the Cabinet shall determine the following matters—

- (a) the price of the securities (if any);
- (b) the date or dates on which the money is to be repaid;
- (c) whether the Government will reserve the right to repay the loan before maturity, and if so, on what notice;
- (d) the rate or rates of interest to be paid on the amount borrowed;
- (e) the date or dates from which interest is to be computed and the half-yearly dates on which interest is to be paid;
- (f) the amount of the loan within the limit set by the authorizing Act;
- (g) whether or not the Minister may accept subscriptions in excess of the amount of the loan within the limit set by the authorizing Act: and
- (h) any other special conditions which shall apply to money borrowed in terms of the authorizing Act.

### 3. Receipt and expenditure of loan money

All money borrowed under the authority of an authorizing Act shall be received into the Consolidated Fund or into such other fund or account as the authorizing Act empowers or directs and may be expended from that fund or account only in accordance with an Appropriation Act or as statutory expenditure for which provision is made in this Schedule or the authorizing Act.

### 4. Issue of securities

Securities may be issued and registered for any amount borrowed under the provisions of this Schedule, and where securities are issued, shall be known as Malawi Government securities.

### 5. Securities not to be free of income tax

Unless expressly stated to the contrary, no securities shall be issued with the condition that the interest derived therefrom shall be exempt from income tax.

## 6. Loans to be charged on public revenue

All principal and interest payable under any securities are declared to be a charge upon the public revenues of Malawi and to be payable as statutory expenditure out of the Consolidated Fund or such other fund or account as the Minister thinks fit.

## 7. Security converted for lenders

All money borrowed and all securities issued under this Schedule and an authorizing Act shall, so far as concerns the lender or holder, be deemed to have been lawfully borrowed, issued or converted within the powers conferred by this Schedule and that authorizing Act, and no such lender or holder shall be concerned to inquire whether or to what extent authority has been given or occasion has arisen for the exercise of any such powers.

## 8. Prior securities not affected

Neither the authority to borrow any money given by any authorizing Act nor the exercise of any such authority under this Schedule and that Act shall alter or affect or vary any security theretofore issued.

## 9. Saving of existing claims

Nothing in this Schedule and nothing done under this Schedule, except by agreement, shall take away, abridge, or prejudicially affect any right or interest, by way of priority or otherwise, of any person in or against the Consolidated Fund, or the public revenues of Malawi, or any of them, or any remedy which any person would have had or might have exercised in respect of any such right or interest if this Act had not been passed.

## 10. Authorized investment for trust funds

Securities issued under this Act are declared to be an authorized investment for trust funds and the relevant provisions of any written law relating to trustee investments shall apply in respect of such securities accordingly.

## 11. Payment of loan before due date

The Minister may repay the whole or part of any loan before the due date, on such terms as he shall think fit.

## 12. Agreement with Registrar as to securities

- (1) The Minister, acting on the advice of the Cabinet, may from time to time, enter into an agreement with any Registrar in or outside Malawi providing for all or any of the following matters—
  - (a) for registering any securities in a register kept by the Registrar at his principal place of business, and for issuing certificates of title relating to any such securities;
  - (b) for managing the creation, registration, and issue of securities;
  - (c) for receiving any money borrowed under this Schedule;
  - (d) for paying such money into the Consolidated Fund, or into such other fund or account as is duly appointed for that purpose;
  - (e) for issuing script for deposits on loans;
  - (f) for managing transfer of securities;
  - (g) for paying interest on securities;

- (h) for reissuing, or re-registering securities, and reissuing certificates of title;
  - (i) for redeeming securities;
  - (j) for generally conducting all business connected with securities; and
  - (k) for the protection and remuneration of the Registrar under and in respect of any such agreement.
- (2) Every agreement made with any Registrar under this section shall be as valid and effectual as if the terms thereof had been set forth and enacted in this Act, and all remuneration payable under any such agreement to any Registrar shall be statutory expenditure and be charged upon and be paid out of the Consolidated Fund or such other fund or account as the Minister thinks fit,

### **13. Register of securities**

Each Registrar shall keep a register of securities in which shall be entered with respect of every holder of securities registered therein, the following particulars—

- (a) the full name and address of the holder;
- (b) the amount of securities held by him;
- (c) the rate of interest payable in respect of those securities;
- (d) the date or dates in each year on which the interest is payable;
- (e) the due date for repayment of the principal; and
- (f) such other special conditions as apply to those securities.

### **14. Application for securities**

Any person who desires to lend to the Minister any money on the security of securities under this Schedule may apply to the appropriate Registrar in the prescribed form, and that Registrar may, on payment of the price of the securities and subject to the provisions of this Schedule, register the name of that person in the register kept by him as the holder of the securities accordingly.

### **15. No notice of trust to be received or registered**

No notice of any trust in respect of any securities or certificate of title shall be entered in any register or be receivable by any Registrar; and no liability shall attach to the Government or to any Registrar, by reason of any express, implied or constructive notice of any trust affecting any such securities or certificate of title.

### **16. Registered holder of securities**

Every person whose name is for the time being on any register as the holder of any securities shall be deemed to be the holder of that securities for that amount standing to his credit in the register, with the right, subject to the provisions of this Schedule, to receive the interest thereon.

### **17. Certificates of title to securities**

- (1) Each Registrar shall, on application in writing by the registered holder of any securities registered in his register, issue to him a certificate of title in the prescribed form certifying that the applicant is the registered holder of the securities referred to in it, being the whole or any part of the amount of securities of which he is the registered holder.
- (2) Any such certificate of title shall be conclusive evidence of the ownership of the securities to which it relates by the person named in it as the holder,

- (3) Where the Registrar is satisfied that any such certificate of title has been lost or destroyed, the Registrar may, on such terms and subject to such conditions as may be prescribed, issue a substitute certificate of title with the word "Substituted" stamped or written on it, and shall record the issue of it in the register accordingly.
- (4) Every substituted certificate of title shall have the same effect to all intents and purposes as the original certificate of title for which it is substituted.
- (5) The Registrar shall enter in the register full particulars of the issue of certificates of title under this section.
- (6) The transfer, whether by delivery or otherwise, of any such certificate of title shall not operate as a transfer of the legal or equitable interest of the holder in the securities to which it relates, and no dealing with any securities to which any such certificate of title relates shall be recorded by the Registrar unless and until the certificate of title has been produced to and cancelled by the Registrar.

## **18. Infants may be registered as holders of securities**

Any infant of the age of ten years or upwards may be registered as the holder of any securities under this Schedule, and apply for the issue of certificates of title in relation to securities, or may execute a memorandum of transfer of any securities, as effectually in all respects as if he were of the age of twenty-one years.

## **19. Application of book-entry system**

- (1) Where Government securities are issued, held or transferred in book-entry form—
  - (a) the Registrar may issue to the security-holder, once a month, a statement which shall indicate the type of security, its nominal value, the date of its acquisition or disposal, its maturity date and a running nominal balance:

Provided that any additional statement requested by any securityholder during the month shall be provided at such fee which reflects the cost of producing such a statement as the Registrar may, from time to time, require.
  - (b) the Registrar may issue a paper certificate to the securityholder and such certificate shall be registered in the name of the Registrar or his appointed agent as nominee and deposited in a central depository for depositing such certificates and established for that purpose; and
  - (c) the Registrar shall not be liable for any claim or demand which may be brought against the Registrar by reason or in consequence of book-entry securities information acquired from the security-holder and used to unlawfully acquire or transfer book-entry securities.

## **20. Transfer of securities**

- (1) The registered holder of any securities under this Schedule may, by memorandum of transfer, transfer to any other person the whole of the securities or any part thereof, being an amount of K10,000 or a multiple of K1,000, or such other amount as the Registrar may in any particular case agree to.
- (2) On application to the Registrar, either by the registered holder or by the transferee, and on production to the Registrar of a duly executed memorandum of transfer of securities and any outstanding certificate of title to those securities, the Registrar shall enter in the register the name of the transferee as the registered holder of the securities to which the memorandum of transfer relates.
- (3) Every such entry shall operate as a transfer of the securities to which it relates and shall vest those securities in the transferee.

- (4) No transfer of securities shall be made under this section while any certificate of title is outstanding in respect of the securities, unless the amount of the securities proposed to be transferred is not more than the amount standing on the register and unaffected by the outstanding certificate.

## **21. Acquisition of securities by operation of law**

When the right to any securities under this Schedule is acquired by any person on the death or bankruptcy of the registered holder, or under a writ of execution, or in any manner other than by way of a transfer under paragraph 20 of this Schedule, the Registrar, on application by or on behalf of the person entitled, and on being satisfied that he is legally entitled to be registered as the holder of the securities, shall enter his name in the register as the holder of the securities accordingly.

## **22. Vesting of securities of deceased holder without requiring probate or letters of administration**

- (1) Where the registered holder of any securities under this Schedule has died, and the total nominal amount of the securities does not exceed K10,000, the Registrar shall have a discretion, without requiring the production of probate or letters of administration, to register as the holder of the securities any person who proves to the satisfaction of the Registrar—
  - (a) that he is entitled to the securities under the will or on the intestacy of the deceased security-holder; or
  - (b) that he is entitled to obtain probate of the will of the deceased security-holder, or letters of administration of his estate; and
  - (c) that in neither case has any grant been made of any such probate or letters of administration.
- (2) Notice of any exercise of the powers conferred by this section shall within fourteen days thereafter be given by the Registrar to the Administrator General.

## **23. Payment of interest**

- (1) The Registrar shall, from time to time, according to the terms of the loan issue cheques for the payment of interest on any securities registered in his register.
- (2) Every such cheque shall be drawn in favour of the registered holder of the securities to which it relates or, in the case of securities held jointly or otherwise by two or more persons, may be in the name of the security-holder first named in the register.
- (3) Nothing in this section shall preclude the Registrar from paying interest otherwise than by cheque if he thinks fit, or from accepting a direction from a security-holder or security-holders, as the case may be, for payment to be made to an agent,
- (4) All payments authorized by this section shall be statutory expenditure.

## **24. Closing of register**

- (1) The Registrar shall, for a period of fourteen days before each payment of interest on any securities registered in his register, close the register of that securities as regards transfers.
- (2) The persons who on the day of such closing are registered as security-holders shall, as between them and their transferees, be entitled to the interest then next payable on the security.

## **25. Power of attorney**

- (1) Any person may, by power of attorney in the prescribed form, appoint any other person to be his attorney for any purpose in relation to securities under this Schedule.

- (2) Every power of attorney under this section shall be deposited in the office of the Registrar.
- (3) Every such power of attorney that is deposited with office of the Registrar shall be valid and effectual for all the purposes mentioned in it until notice in writing of its revocation, or of the death, disability, bankruptcy, winding up or dissolution of the principal has been received in the office of the Registrar.

## **26. Redemption, conversion or renewal of securities**

- (1) The Cabinet may authorize the Minister to issue, in Malawi or elsewhere, on such terms as he thinks fit, new securities for such amount as may be necessary for the purpose of redeeming or converting any securities; and the Minister may, from time to time, by agreement with the holders, renew any securities by extending the currency of it for such period as he thinks fit.
- (2) The Cabinet may authorize the Minister to pay to the holder of any securities being converted such amount by way of premium or bonus as may be necessary to effect the conversion, and every such premium or bonus shall be deemed to be part of the costs, charges, and expenses of the conversion.
- (3) In every case where money is borrowed under this section it shall not be applied other than in redeeming or converting the securities for which it was borrowed and defraying the costs, charges, and expenses incurred in connexion with the borrowing and the redemption or conversion:

Provided that nothing in this subsection shall be construed to prevent the temporary investment of any such money pending its application to the purpose aforesaid.

- (4) Trustees and other persons acting in a fiduciary capacity are expressly authorized to convert under this section any securities held by them, and shall not be liable for any loss resulting from any such conversion.

## **27. Interest on securities sold to redeem outstanding securities**

In every case where securities are disposed of in order to provide money to redeem outstanding securities, interest may be paid on the securities so disposed of notwithstanding that interest is still payable under the outstanding securities.

## **28. Auditor General to be notified**

The Secretary to the Treasury shall notify the Auditor General of all issues, renewals, conversions and redemptions of securities under this Schedule.

## **29. Costs, charges and expenses**

The costs, charges and expenses incurred in connexion with raising any loan under this Schedule or converting, redeeming or renewing any securities shall be statutory expenditure and may at the discretion of the Minister, be charged upon and be paid out of the Consolidated Fund, or such other fund or account as the Minister thinks fit.

# **Part III – Loans raised in Malawi**

## **30. Subscriptions from non-Malawian or non-residents**

The Minister is empowered on borrowing in Malawi under the authority of this Schedule and an authorizing Act, to accept subscriptions to the loan from persons who are not Malawian citizens, or from persons who are not for the time being residents of Malawi, but no securities issued for such subscription shall provide for the payment of interest, or the repayment of principal in any currency other than that of Malawi, and the transfer from Malawi of any interest or principal will be subject to any written law in this respect then in force.

**31. Registrar of securities**

The Reserve Bank of Malawi shall be the Registrar of securities under this Part of this Schedule,

**32. Statements by Registrar**

The Registrar shall, from time to time, furnish to the Secretary to the Treasury certified statements as to the amount of securities registered under this Part of this Schedule, with such other particulars relating to it as the Secretary to the Treasury may require, and the Auditor General may for all purposes accept any such certified statements as correct.

**33. Exemption from stamp duty**

Notwithstanding any written law to the contrary no stamp duty shall be payable on the transfer of any securities registered under this Part, or on any power of attorney given under paragraph 26 of this Schedule and relating exclusively to any such securities.

**34. High Court may prohibit dealings with securities**

- (1) The High Court, on the application of an interested person made either ex parte or on notice to any other person as the Court may direct, may make an order prohibiting, for the time and subject to the conditions specified in the order, any dealings with any securities specified in the order, and may discharge any such order, with or without costs, and generally act in the premises in such manner as in the opinion of the Court the justice of the case requires.
- (2) The Registrar, without being made a party to the proceedings shall, on being served with any such order, obey it, and make an entry of the order in the register.
- (3) No liability shall attach to the Government or to the Registrar for any entry made or anything done by the Registrar pursuant to an order made under this section.

**35. Evidence of contents of register**

Any extract from the register, certified as correct by the Registrar, shall, for all purposes and in all courts, be conclusive evidence of the entry in the register to which the extract relates at the date when the extract was so certified.

**Part IV – Loans raised outside Malawi****36. Determination of certain terms for borrowing outside Malawi**

Each Act authorizing the Minister to borrow money outside Malawi shall state the following matters—

- (a) the country in which the money is to be borrowed and the securities issued and registered for all amounts so borrowed;
- (b) the place for the payment of interest and the repayment of principal respectively;
- (c) the currency in which the money is to be borrowed; and
- (d) the currency or money of account in which the securities is to be issued and in which the interest, principal and any other money thereby secured is expressed to be measured or to be payable or repayable in, whether that of Malawi or of any other country or whether or not that in which the money thereby secured was originally borrowed.

**37. Agreements relating to loans raised outside Malawi**

- (1) The Minister, acting on the advice of the Cabinet, may enter into any agreement with the Government or a Government agency of a country other than Malawi which he considers would facilitate the raising of a loan on reasonable terms in that country by the Government of Malawi.
- (2) Without restricting the generality of subsection (1) any such agreement may provide for the giving of consideration to obtain a guarantee of the loan, and for the ultimate protection of the guarantor.
- (3) A copy of any agreement entered into by the Minister under this section shall be laid before the National Assembly within fourteen days after the date of the execution of the agreement if the Assembly is then in session, and if the National Assembly is not in session, at the commencement of the next ensuing session.

**38. Appointment of Registrars**

The Minister, acting on the advice of Cabinet, may from time to time appoint in a country other than Malawi a Registrar of securities to be issued and registered in that country.

**39. Loans agents for raising loans outside Malawi**

If any loan authorized to be raised, or any securities authorized to be issued, under this Schedule is to be raised or issued outside Malawi, the Minister may by warrant under his hand, appoint any two or more persons as joint loan agents for raising the loan or issuing the securities and may also in like manner confer upon them all such powers as he thinks necessary in order to carry into effect the purposes of this Schedule and any authorizing Act, and notice of such appointment shall be published in the *Gazette*.

**40. Removal of loan agents**

The Minister may remove or accept the resignation of any loan agent; and in any such case, or if any loan agent dies, the Minister may appoint another person in his stead.

**41. Minister's power not limited**

The authority of the Minister to raise the whole or any part of the loans authorized to be raised, and generally to exercise all the powers conferred on him by this Act, shall be in no way limited or affected by the fact that he has made any appointment of a loan's agent.

**42. Cost of stamp duty on transfers of certain securities**

- (1) The cost of composition of any stamp duty payable in a country other than Malawi in respect of transfers of any securities issued upon the raising of any loan or upon the conversion of any securities shall be deemed, for the purposes of this Schedule, to be part of the costs, charges and expenses of raising the loan or issuing the securities.
- (2) In any case where any stamp duty in respect of such transfers is not compounded the Minister may estimate the amount required for the payment of the stamp duty during the first twelve months after the raising of the loan or the issuing of the securities, and the amount so estimated shall be deemed, for the purposes of this Schedule, to be part of the costs, charges and expenses of raising the loan or issuing the securities.
- (3) All sums paid as stamp duty on transfers in excess of the amount estimated under subparagraph (2) of this paragraph, and all other sums so paid in cases where no estimate is made, shall be deemed, for the purposes of this Schedule, to be part of the costs, charges and expenses of raising the loan or issuing the securities.

#### 43. Transfer of securities from overseas to Malawi

- (1) Subject to such conditions and on payment of such fees as may, from time to time, be prescribed, the holder of any securities repayable in a country other than Malawi may transfer the securities from the register kept in that country to the register kept in Malawi.
- (2) After the registration in Malawi of any such securities so transferred, the securities shall at maturity be redeemable in Malawi, and all interest falling due thereon after the date of that registration shall be payable in Malawi, notwithstanding anything to the contrary printed on any certificate of title or contained in a prospectus issued in connexion with the raising of the loan. (3) Any securities so transferred to the register kept in Malawi shall not at any later date be transferred to any register kept outside Malawi.

### Part V – Treasury Bills

#### 44. Interpretation

In this Part, unless the context otherwise requires—

“**redemption date**” means the date for the redemption of Treasury Bills determined by the Minister under paragraph 48 of this Schedule;

“**Treasury Bill**” means a Treasury Bill issued under paragraph 61 and pursuant to this Part and includes any coupon in connexion with it.

#### 45. Issue of Treasury Bills

- (1) The Minister may, on behalf of the Government, borrow by the issue of Treasury Bills in Malawi such amounts as may be authorized by a resolution of the National Assembly.
- (2) The amount of Treasury Bills outstanding at any time shall not exceed twenty-five per cent of annual budgeted revenue.

#### 46. Application to Treasury Bills

The provisions of paragraphs 2, 11 and 24 of this Schedule shall not apply to Treasury Bills.

#### 47. Value and form of Treasury Bills

Every Treasury Bill shall—

- (a) be for a sum of K10,000 or a multiple thereof which sum shall be recoverable by the Reserve Bank of Malawi which may recommend amendment of the sum to the Minister;
- (b) be repayable at par at such time or times as the Minister shall, before the issue of the Treasury Bill, determine, being not later than one year from the date of issue of the Treasury Bill;
- (c) be in such form as the Minister may determine; and
- (d) be issued by such method as the Minister may determine.

#### 48. Treasury Bills to be a charge on public revenue

The par value of Treasury Bills is hereby declared to be secured by way of charge upon the public revenues of Malawi and shall be payable as statutory expenditure.

**49. Appointment of agent**

The Reserve Bank of Malawi shall be the agent of the Government for the purposes of the issue and redemption of Treasury Bills.

**50. Audit Office to be notified**

The Reserve Bank of Malawi shall upon request notify the Auditor General of the par value of Treasury Bills outstanding at the time of notification.

**51. Cancellation, redemption and discounting Bills**

- (1) Upon the redemption date Treasury Bills shall be delivered to the Reserve Bank of Malawi for cancellation and the par value shall be paid.
- (2) The Reserve Bank of Malawi may at its discretion purchase Treasury Bills at a discount prior to the redemption date.

**Part VI – Miscellaneous****52. Forms and other matters may be prescribed**

Subject to the provisions of this Schedule, the Secretary to the Treasury may, from time to time, in such manner as he thinks fit—

- (a) prescribe the forms of application for securities, certificate of title, transfer of securities and other instruments under this Schedule; and
- (b) prescribe all such other matters as may be deemed necessary or expedient for giving full effect to the provisions of this Schedule.

**Fouth Schedule (Section 83)****Form and content of financial statements**

1. The financial statements must include the following information—
  - (a) a Consolidated Operating Statement showing revenue and expenditure and the surplus or deficit for the reporting period;
  - (b) a Statement of Financial Position showing the assets, liabilities and net financial position as at balance date of the reporting period;
  - (c) a Statement of Cash Flows showing the cash receipts and cash payments during the reporting period, and the cash balance as at balance date of the reporting period;
  - (d) a Statement of Funds showing, for each Fund, balances at the beginning and end of the reporting period, and the nature of the movement in the reporting period;
  - (e) a Statement of Cash Balances showing a breakdown of the balances held by type of holding;
  - (f) a Statement of Service Performance showing appropriated budgets, approved variations to appropriated budgets, actual performance and variation between actual and budget;
  - (g) Disaggregated Statements of Service Performance for each Ministry and agency showing appropriated budgets and variations to those budgets, actual receipts and payments for appropriated items, including third party outputs and transactions on behalf of the State, and the variation between appropriated budget and actual performance;

- (h) a Statement of Statutory Expenditure showing details of domestic debt servicing, external debt servicing, statutory remuneration and other material items of expenditure;
  - (i) a Statement of Investments showing the nature or type of investments and current and non-current investments;
  - (j) a Statement of Borrowings showing total debt and the breakdown of current and non-current debt, and for each debt showing the opening and closing balances for the reporting period and the nature of the movement during the period, the impact of exchange rate movements, average interest rate, and loan balances available for drawdown (if applicable);
  - (k) a Statement of Contingent Gains and Liabilities' showing where possible an indication of the gain or cost;
  - (l) a Statement of Ex-gratia Payments approved under the provisions of this Act; and
  - (m) a Statement of Write-offs approved under [section 90](#) showing in aggregate losses and deficiencies of public money, irrecoverable amounts of revenue, irrecoverable debts and overpayment, the value of assets including investments written off; and detailing all individual items with a value greater than K50,000 which have been written-off;
2. A statement showing for each account in the Trust Fund, balances at the beginning and end of the reporting period, and the nature of the movement in the reporting period.
3. A Statement of Accounting Policies setting out the significant accounting policies on which the financial statements are prepared, and other information specified by the Secretary to the Treasury in Treasury Instructions as are required to provide more detailed information or explanations.
4. Comparative Amounts—
- (1) Comparative amounts for the corresponding previous reporting period must be shown in the Statements, except where inappropriate or the item has not previously existed.
  - (2) Where items included in the current reporting period have been reclassified, the comparative amount of the previous reporting period should be similarly reclassified.
  - (3) Where respective reporting periods are not equal in length, the period covered must be clearly identified.
  - (4) An amount in relation to the previous reporting period must be shown notwithstanding that there is no corresponding amount for the current reporting period.
5. Certification—
- (1) There must be attached to the front of the financial statements—
    - (a) a statement, signed by the Secretary to the Treasury as to whether in his opinion, the financial statements present fairly the matters required by this Schedule; and
    - (b) a copy of the report by the Auditor General required by [section 83 \(2\)](#);
  - (2) At the same time that the financial statements are laid before the National Assembly, the Auditor General through the Speaker of the National Assembly shall lay before the National Assembly a return of public securities held in Malawi or elsewhere at the end of the financial year to which those financial statements relate; and every such return shall include a full account of all investments made under [section 35](#), and of all securities redeemed or otherwise disposed of during that financial year.