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ACT

No. 12 of 2017

I assent

PRO. ARTHUR PETER MUTHARIKA

PRESIDENT

20th January, 2017

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An Act to provide for the establishment of the National Planning Commission and matters connected therewith and incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

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|------------------------------|---|
| Short title and commencement | 1. This Act may be cited as the National Planning Commission Act, 2017, and shall come into operation on a date the Minister may, by notice published in the <i>Gazette</i> , appoint. |
| Interpretation | 2. In this Act, unless the context otherwise requires— <p style="margin-left: 20px;">“chairperson” means the chairperson of the Board of the Commission appointed under section 4 of this Act;</p> <p style="margin-left: 20px;">“Commission” means the National Planning Commission established under section 3 of this Act;</p> <p style="margin-left: 20px;">“committee” means a committee of the Board of the Commission established under section 7 of this Act,</p> <p style="margin-left: 20px;">“Director General” means the Director General appointed under section 19 of this Act;</p> <p style="margin-left: 20px;">“member” means a member of the Board of the Commission appointed under section 4 (1) of this Act.</p> |

PART II—THE NATIONAL PLANNING COMMISSION

3. There is hereby established a Commission to be known as the National Planning Commission (hereinafter referred to as “the Commission”) which shall be a body corporate with perpetual succession and a common seal and be capable of—

Establishment
of National
Planning
Commission

(a) acquiring, holding and disposing of real and personal property;

(b) suing and being sued in its own name; and

(c) doing or performing all such acts and things as bodies corporate may by law do or perform.

4.—(1) The Board of the Commission shall consist of—

Board of the
Commission

(a) a chairperson appointed by the President;

(b) five other members appointed by the President in consultation with relevant professional and other bodies; and

(c) the Secretary responsible for planning and development.

(2) The appointment of members of the Board of the Commission under subsections 1 (a) and (b) shall be confirmed by the Public Appointments Committee of the National Assembly.

(3) A member of the Board of the Commission, other than the *ex-officio* member shall not, by reason only of his appointment as a member of the Board of the Commission, be deemed to be an employee in the public service.

(4) The Minister shall publish names of all members of the Commission, as first constituted, and every change in the membership, in the *Gazette*.

(5) A person, other than an *ex-officio* member shall not be qualified for appointment as a member of the Board of the Commission if he—

(a) does not possess—

(i) a minimum educational qualification of a master’s degree or its equivalent obtained subsequent to a bachelor’s degree from a recognized and reputable educational institution; and

(ii) expertise and experience in a field relevant to the functions and responsibilities of the Commission;

(b) holds a political office or is an active member of a political party;

(c) is an officer, member or employee in a public institution;

(d) is adjudged or declared bankrupt; and

(e) would for any other reason be disqualified by law from serving as a director of a company or as trustee.

(6) The Commission may, where necessary taking into account the nature of the matter to be deliberated, invite any person to attend a meeting of the Commission or any of its committees and participate in the deliberations or to make a presentation or to be asked questions, on any matter, but the person so invited shall not be entitled to vote.

(7) The Secretary responsible for planning and development shall be the deputy chairperson of the Commission.

(8) At least three members of the Commission appointed under section 4 (1) shall be women.

Tenure of office 5.—(1) A member of the Board of the Commission, other than an *ex-officio* member shall hold office for a period of five years and shall be eligible for re-appointment for a further and final term of five years.

(2) When making an appointment after the expiry of five years, the President shall have regard to the need for continuity in the membership of the Board of the Commission so that at least half of the appointed members shall be re-appointed for the next term of office.

Vacancies 6.—(1) A vacancy in the office of a member of the Board of the Commission shall occur if the member—

(a) dies;

(b) is adjudged or declared bankrupt;

(c) is convicted and sentenced for an offence against any written law to a term of imprisonment without the option of a fine;

(d) fails, without good and justifiable reasons, to attend three consecutive meetings of the Board of the Commission of which he had notice;

(e) is certified by a medical practitioner to be incapacitated by reason of physical or mental disability;

(f) resigns in accordance with subsection (2);

(g) is removed by the President in accordance with subsection (3);

(h) if a situation arises that if the person was not appointed, would have disqualified him from being appointed as a member of the Board of the Commission.

(2) A member of the Board of the Commission, other than an *ex-officio* member, may at any time resign his office by giving one

month written notice to the Chairperson, who shall then forward the resignation to the President, through the Minister.

(3) The President may remove any member of the Board of the Commission, except an *ex-officio* member, of the Commission on any of the following grounds—

(a) misconduct or misbehaviour that brings the office of the member into disrepute;

(b) incompetence in the execution of the functions of his office as a member of the Board of the Commission;

(c) in circumstances where the member is compromised to the extent that his ability to impartially and effectively exercise the duties of his office is seriously in question:

Provided that—

(a) before a member is removed from office, he shall be given an opportunity to be heard; and

(b) the Public Appointments Committee of the National Assembly shall confirm the removal of a member of the Board of the Commission.

(4) A vacancy in the membership on the Board of the Commission shall be filled by the appointment of a new member by the President in accordance with section 4 (1) (b).

(5) A person appointed to fill a vacancy shall serve for the remainder of the term of office but no person may be appointed to fill a vacancy of the remainder of a term of office where the remainder of the term is less than six months.

(6) The period served by a person appointed under subsection (4) shall not be regarded as a term for the purposes of section 5 (1).

(7) Subject to section 13(4), a vacancy in the membership of the Board of the Commission shall not affect its decisions, the performance of its functions or the exercise of its powers under this Act or any other written law.

7.—(1) For the better carrying into effect of its functions, the Board of the Commission may establish such number of committees as may be considered necessary to perform such functions and responsibilities as may be determined by the Commission.

Committees
of the Board

(2) A committee may consist of either members of the Board of the Commission only or members of the Board of the Commission and such other suitably qualified persons other than members of staff of the Commission as the Commission may deem fit.

(3) The Board of the Commission shall appoint the chairperson and deputy chairperson of each committee from only amongst the members of the Board of the Commission.

(4) The provisions of this Act relating to the meetings of members of the Board of the Commission shall apply mutatis mutandis to the meetings of its committees.

(5) Every committee shall act in accordance with any directions given to it in writing by the Board of the Commission.

Allowances
and expenses

8.—(1) Members of the Board of the Commission and of any of its committees shall be paid sitting and other allowances as the Minister responsible for finance may determine.

(2) The Board of the Commission may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board of the Commission or a member of a committee or a person invited under section 4 (6) in connection with the business of the Commission or a committee.

Independence
of the
Commission

9. Every member and employee of the Commission and every member of a committee shall perform the functions and exercise the powers provided for in this Act independent of the direction, undue influence or interference of—

- (a) any public office;
- (b) any organ of the Government;
- (c) any political party; or
- (d) any person whosoever or organisation whatsoever:

Provided that solely for purposes of accountability, the Commission shall be answerable, and report bi-annually and directly to the President who shall, through the Minister responsible for planning and Development, present such reports to the National Assembly on the overall fulfilment of the functions and powers of the Commission.

Functions
of the
Commission

10. The functions of the Commission shall be to—

- (a) identify Malawi's socio-economic development priorities and formulate the national vision and strategy for social and economic goals taking into account the country's resource potential and comparative advantage;
- (b) oversee the implementation of long-term national vision and strategies and the medium-term development plans;
- (c) formulate innovative and progressive flagship projects and programmes for implementation in line with the national vision and strategies for the country;

(d) identify and commission research on any matter the Commission deems relevant to the attainment of the objects of this Act;

(e) engage relevant individuals and institutions in all sectors of the economy in the conduct of its functions under this Act;

(f) apprise the President and the National Assembly annually on the progress made with regard to the implementation of plans, programmes and projects; and

(g) perform any other functions in relation to national planning as it may deem appropriate for achieving the purposes of this Act.

11. The Commission shall, in the discharge of its functions, have power to— Powers of the Commission

(a) engage persons of suitable qualifications and experience as consultants to the Commission;

(b) request the production by any person, of any document or information which, in the opinion of the Commission, is necessary for the execution of its functions under this Act;

(c) promote its functions and objectives, or any matter under its consideration, through sponsorship, support or organisation of conferences, workshops or meetings;

(d) receive donations of funds, materials and technical assistance for the furtherance of its work;

(e) carry out consultations regarding any matter under its consideration and for the general conduct of its work and determine the procedure for carrying out such consultations; and

(f) do and perform all such things or acts as are necessary or expedient for the execution of its functions, duties and powers under this Act.

12. The Commission shall prepare and submit a long-term national vision and strategy or a medium-term development plan to Cabinet, through the Minister, for its consideration and approval. Approval of plans and strategies

13.—(1) The Commission shall meet at least once every three months at a place and at a time as the Chairperson may determine. Meetings

(2) The Chairperson shall convene ordinary meetings of the Commission by giving the members of the Commission not less than fourteen days written notice and may, on his own motion, convene an extraordinary meeting of the Commission at a place and time as he may determine in consultation with the Director General.

(3) The Chairperson or in the absence of the Chairperson, the Deputy Chairperson shall at the written request of more than three

members of the Commission and within seven days of a request, call for an extraordinary meeting of the Commission, at a place and time as the Chairperson or Deputy Chairperson may determine, in consultation with the Director General.

(4) The quorum at every meeting of the Commission or a committee shall be constituted by a simple majority of the members.

(5) The Chairperson or, in his absence, the Deputy Chairperson, shall preside at all meetings of the Commission:

Provided that in the absence of both the Chairperson and Deputy Chairperson at a particular meeting of the Commission, the members of the Commission present and forming a quorum shall elect one of their number to preside over the meeting of the Commission.

(6) At any meeting of the Commission, the decision of the Commission on any matter shall be that of the majority of the members of the Commission present and voting, and at all the meetings, the person presiding shall have, in the event of an equality of votes, a casting vote in addition to a deliberative vote.

(7) Minutes of each meeting of the Commission or a committee shall be kept by the Director General and shall be confirmed at the subsequent meeting of the Commission or committee, as the case may be.

(8) Subject to the provisions of this Act, the Commission may make rules to regulate its proceedings and business or the proceedings and business of any of its committees.

Personal
attendance of
meetings

14. A member of the Board of the Commission or committee shall not attend a meeting of the Commission or committee by proxy and where a member of the Board of the Commission is unable to attend any meeting of the Commission, he may request that his apologies for failure to attend be recorded.

Disclosure of
interest

15.—(1) If a member of the Board of the Commission or a committee is present at a meeting of the Commission or at a meeting of a committee at which any matter which is the subject of consideration is a matter in which that member or his immediate family member or his professional or business partner is directly or indirectly interested, he shall, as soon as practicable, after the commencement of the meeting, disclose his interest and that member shall not take part in any consideration or discussion of, or vote on, any question relating to the matter.

(2) A disclosure of interest by a member of the Board of the Commission or a committee shall be recorded in the minutes of the meeting at which it is made.

16. Every—

Oath of
secrecy

- (a) member of the Board of the Commission;
- (b) member of a committee;
- (c) member of staff or service provider of the Commission; or
- (d) person invited under section 4 (6),

shall, upon assumption of his office, before attending a meeting, take an oath of secrecy in the form set out in the Schedule to this Act and the oath shall be administered by a commissioner of oaths.

17.—(1) A court action or other proceedings shall not be brought personally against any member, a member of a committee or member of staff of the Commission in respect of any act or omission done in good faith in the course of carrying out the provisions of this Act.

Protection
from liability

(2) Where, in any proceedings, a question arises on whether or not an act or an omission was done in good faith in the course of carrying out the provisions of this Act, the burden of proving that the act or the omission was not done in good faith in the course of carrying out the provision of this Act shall be on the person alleging that it was not so done.

PART II—ADMINISTRATION

18. The secretariat of the Commission shall consist of the Director General and other employees of the Commission appointed under this Act.

Secretariat

19.—(1) The Director General shall be appointed by the Commission through an open, strenuous and competitive process on terms and conditions as the Commission may, in consultation with the Minister, determine.

Director
General

(2) The office of the Director General shall be a public office.

(3) The Director General shall be the chief executive officer of the Commission and the chief economic adviser to the Commission on all matters pertaining to planning and development.

(4) A person shall not be appointed as Director General, unless he—

(a) possesses a minimum qualification of a master's degree or its equivalent obtained subsequent to a bachelor's degree obtained from a recognized and reputable educational institution;

(b) has proven and shown demonstrable expertise and experience in executive management, administration and economic or development planning, or in a field relevant to the functions and responsibilities of the Commission; and

(c) does not hold and has not held in the past a political office.

(5) The Director General shall hold office for a term of five years and shall be eligible for re-appointment for one final term of five years

Duties and responsibilities of Director General

20.—(1) Subject to the general and special directions of the Commission and without prejudice to the generality of section 19 (3), the Director General shall be responsible for—

(a) the day to day operations and management of the Commission;

(b) the effective management of the funds, property and business of the Commission;

(c) the administration, organization and control of the other officers and staff of the Commission; and

(d) the effective administration and implementation of the provisions of this Act.

(2) The Director General shall devote his full time to the duties of his office and shall ensure that the Commission is provided with all the information, data, statistics, documents and other materials pertinent to the efficient performance by the Commission of its functions and responsibilities under this Act or any other written law.

Removal of Director General

21.—(1) The Commission may remove the Director General from office on the following grounds—

(a) misbehaviour or misconduct that brings the office of the Director General into disrepute;

(b) incompetence in the execution of his functions as Director General;

(c) incapacity by reason of physical or mental illness as certified by a medical practitioner or medical board;

(d) if he is declared or adjudged bankrupt by a competent court;

(e) if he is sentenced for an offence against any written law to any term of imprisonment without the option of a fine.

(2) The Commission shall notify the Minister in writing of its decision to remove the Director General from office under subsection (1) and the reason or reasons therefor:

Provided that before the Director General is removed from office, the Commission shall give him an opportunity to be heard.

Secretary to the Commission

22.—(1) The Director General shall be the secretary to the Commission.

(2) The Director General shall have custody of the common seal of the Commission.

(3) The Director General may, with the approval of the Chairperson, delegate senior members of staff of the Commission to act as secretaries to the committees of the Commission.

23.—(1) There shall be employed in the service of the Commission, subordinate to the Director General, other management, professional, research, technical, administrative and other support staff as the Commission shall consider necessary for the exercise of its powers and performance of its duties and functions.

Other staff
of the
Commission

(2) The staff of the Commission referred to in subsection (1) shall be appointed by the Board of the Commission on terms and conditions as the Commission shall determine in consultation with the Government department responsible for human resource management and development:

Provided that the Commission may, by directions in writing, delegate to the Director General, the appointment of its staff in specified junior ranks and the Director General shall report to the Board of the Commission every appointment made pursuant to this subsection.

(3) Every member of staff of the Commission shall, on first appointment, take an oath of secrecy in the form set out in the Schedule to this Act and a Commissioner of Oaths shall administer the oath.

(4) The Director General or other officer of the Commission as the Commission or the Director General may designate, may attend meetings of the Commission and of any of its committees and may address the meetings, but shall not vote on any matter.

(5) Where, in any meeting, the deliberations of the Commission or any of its committee concerns the Director General or any officer of the Commission designated to attend the meeting, the Commission or the committee, as the case may be, may exclude the Director General or the officer from the meeting.

(6) Section 14 shall apply *mutatis mutandis*, to the Director General and any other officer referred to in this section.

PART IV—FINANCIAL PROVISIONS

24.—(1) The funds of the Commission shall consist of—

(a) sums appropriated by Parliament for purposes of the Commission;

Funds of the
Commission

(b) sums or assets that may accrue to or vest in the Commission, whether in the course of the performance by the Commission of its functions or the exercise of its powers or otherwise;

(c) sums or assets that may accrue to or vested in the Commission by way of grants, subsidies, bequests, donations, gifts and subscriptions, from the Government or any other person;

(d) sums that are received by the Commission by way of voluntary contributions; and

(e) sums or assets as may be donated to the Commission by any foreign government, international agency or other external body of persons.

(2) The Commission may receive the sums or assets referred to in subsection (1) from a source other than the Government provided that no sums or assets so received shall jeopardise or compromise the independence of the Commission.

(3) The Commission shall, within a reasonable period not exceeding one month, provide the Minister responsible for finance in writing details of the sums or assets received by the Commission under subsection (1) from a source other than the Government.

(4) For the purposes of this section, "an external body of persons", means any body of persons, incorporated or unincorporated, formed under or by virtue of the laws of any country other than Malawi.

(5) The Government shall adequately fund the Commission to enable it exercise its powers and perform its functions and duties so as to ensure its independence.

(6) The funds and assets of the Commission shall exclusively be under the control of the Commission and shall be utilized solely for the purposes of this Act in accordance with the written directions of the Commission and for no other purpose.

(7) The Commission shall at all times comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement Act.

Cap. 37:01
Cap. 37:02
Cap. 37:03

Accounting
and audit

25.—(1) The Commission shall be liable to account to the National Assembly in the manner applicable to Government departments.

(2) The accounts of the Commission shall be liable to audit annually by the Auditor General or by independent professional auditors appointed by the Commission in consultation with the Auditor General, and the expenses of the audit shall be paid out of the funds of the Commission.

PART V—MISCELLANEOUS

26. Every relevant or competent public officer and public or private entity shall accord the Commission, any assistance or co-operation as may be reasonably required for the exercise of its powers and performance of its functions and responsibilities and for the protection of its independence.

Duty to
co-operate

27. A person who—

Offences

(a) without reasonable excuse, refuses to produce any information or documentation when required by the Commission to do so under this Act;

(b) makes any statement knowing it to be false, or provides any information or documentation that is materially incorrect with the intention of misleading the Commission;

(c) without a written permission of the Commission, publishes or discloses to any unauthorized person or otherwise than in the course of duty, the contents of any document, communication or information of any kind which has come to his knowledge in the course of his duty under this Act,

commits an offence and shall, upon conviction, be liable to a fine of K7,000,000 and to imprisonment for seven years.

28. Any person who obstructs or interferes with the Commission, a member, employee, agent or service provider in the performance of any function under this Act or other written law, commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for ten years.

Obstruction,
an offence

29.—(1) The Commission shall—

Annual
reports

(a) from time to time and in consultation with the Minister, apprise the Cabinet, Members of Parliament, Principal Secretaries and Local Government Authorities and Councillors on the work of the Commission and in particular on matters that could affect the national development policy and on the priorities to be set by the Commission;

(b) prepare and submit to the President within four months after the end of every financial year, a comprehensive annual report on the general conduct of the affairs of the Commission and the activities it has carried out during that financial year;

(c) prepare and submit to the National Assembly, through the Minister, within four months after the end of every financial year, a comprehensive annual report on the general conduct of the affairs of the Commission and the activities it has carried out during that financial year.

(2) The Minister shall lay a copy of every annual report referred to in subsection (1) (c) in Parliament.

Powers of the Minister

30. The Minister may, by notice published in the *Gazette*,—
(a) on the advice of the Commission, make regulations for the better carrying out of the provisions of this Act; and
(b) amend any Schedule to this Act.

SCHEDULE

(s. 16)

OATH OF SECRECY

I,, being a member/having been employed in the service, of the National Planning Commission, do hereby swear/affirm that I will freely without fear or favour, affection or ill will, discharge the functions of a member/an employee, of the Commission, and that I will not directly, or indirectly reveal any matters related to such functions to any unauthorized person or otherwise than in the course of my duty.

SWORN at this day of, 20

Signature:

Before:.....

Commissioner for Oaths

Passed in Parliament this sixteenth day of December, two thousand and sixteen.

FIONA KALEMBA
Clerk of Parliament

