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ACT

No. 10 of 2017

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

20th January, 2017

ARRANGEMENT OF SECTIONS

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An Act to amend the Local Government Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Local Government (Amendment) Act, 2017, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.

Short title and
commence-
ment

Amendment
of s.2 of
Cap. 22:01

2. The Local Government Act (hereinafter referred to as the "principal Act") is amended, in section 2, by deleting the words "Local Authority" and substituting therefor the words "local government authority".

Amendment of
s.15 of the
Cap. 22:01

3. Section 15 of the principal Act is amended in subsection (1) by deleting the proviso thereto and substituting thereto the following—

"Provided that the Council shall not delegate its powers to—

(a) make by-laws and Standing Orders;

(b) borrow money;

(c) levy a rate; and

(d) acquire and dispose of land."

Amendment
of s.34 of the
principal Act
Cap. 58:04

4. Section 34 of the principal Act is amended by deleting subsection (2) and substituting it with the following new subsection as subsection (2)—

Cap 58:04

"(2) Subject to the provisions of the Lands Acquisition Act, the Council may acquire land for any purpose for which the Council is authorized by this Act to acquire land, notwithstanding that the land is not immediately required for that purpose; and until it is required for the purpose for which it was acquired under this subsection, the land may be used for the purpose of any of the Council's functions."

Replacement of
s. 35 of the
principal Act

5. Section 35 of the principal Act is repealed and replaced with the following new section—

"Disposal of
land Act No. 16
of 2016
Cap. 58:01

35. The Council may dispose of land held by it in accordance with the provisions of the Land Act, 2016 and the Registered Land Act."

Repeal of s. 36
of the principal
Act

6. Section 36 of the principal Act is repealed.

Replacement of
s. 61 of the
principal Act

7. Section 61 of the principal Act is repealed and replaced with the following new section—

"Application

61.—(1) This Part shall apply to areas or parts thereof which the Minister shall designate by notice published in the *Gazette* as rateable areas.

(2) The Minister shall, before designating an area as a rateable area, be satisfied that—

(a) the following aspects are such that they justify an area to be designated a rateable area—

- (i) physical size of the area;
- (ii) population size of the area;
- (iii) economic activities;
- (iv) available infrastructure; and
- (v) potential to generate revenue locally;

(b) the Council has the capacity and ability to provide basic essential services; and

(c) there is rateable property in the area.”.

8. Section 62 of the principal Act is amended by inserting therein, in the correct alphabetical order, the definition of the words “Valuation Tribunal” as follows—

Amendment
of s.62 of the
principal Act

“Valuation Tribunal” means the Tribunal appointed under section 78A.”.

9. Section 63 of the principal Act is amended—

Amendment
of s.63 of the
principal Act

(a) in paragraph (c) by adding, at the end of the paragraph, the words,..... “, but shall not include those which are privately owned”;

(b) in paragraph (e) by inserting the word “public” immediately before the word “railway”;

(c) by inserting, immediately after paragraph (e), a new paragraph, to be paragraph (f), as follows—

“(f) rivers, streams and buffer zones except those which are privately owned.”.

10. Section 66 of the principal Act is amended—

Amendment
of s.66 of the
principal Act

(a) in subsection (2), by deleting the word “excluded” and substituting therefor the word “demolished”; and

(c) in subsection (3), by deleting the words “may estimate the value of the property as if it had been completed or occupied and may levy a rate calculated on such estimated value which” and substituting therefor the words “shall use the estimated value of the property for rating purposes and such rates”.

11. Section 67 of the principal Act is repealed and replaced with the following new section—

Replacement
of s.67 of the
principal Act

“Valuer
Cap. 53:08

67.—(1) Each valuation and preparation of valuation rolls and supplementary valuation rolls shall be undertaken by a valuer registered under the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act.

(2) A local government authority shall pay fees and expenses incurred by a valuer in respect of his duties under this Act together with remuneration and other expenses as may be agreed upon between the local government authority and the valuer.”

Amendment
of s.68 of the
principal Act

12. Section 68 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection, as subsection (2)—

“(2) The total valuation of an assessable property shall represent the fair amount of income in rental which the property is likely to realize at the time of the valuation if the property were in a reasonable state of repair, having regard to the type of property and the area in which it is situated.”

Amendment of
s.73 of the
principal Act

13. Section 73 of the principal Act is amended in subsection (2) by deleting the words “K5,000” and “K1,000” and substituting therefor the words “K50,000” and “K10,000”, respectively.

Amendment of
s.75 of the
principal Act

14. Section 75 of the principal Act is amended in subsection (2) by deleting the word “one” immediately after the words “at least” and substituting therefor the word “two”.

Amendment of
s.76 of the
principal Act

15. Section 76 of the principal Act is amended in subsection (1) paragraph (b) by—

(a) deleting the word “valuer” appearing in the fourth line and substituting therefor the word “Council”; and

(b) adding the words “and the Council shall in turn advise the valuer of the objection.”, at the end of the paragraph.

Insertion of ss.
78A, 78B and
78C into the
principal Act

16. The principal Act is amended by inserting, immediately after section 78, the following new sections, as sections 78A, 78B and 78C—

“Valuation
Tribunal

78A.—(1) The Minister shall appoint a Valuation Tribunal which shall consist of—

(a) a Resident Magistrate or a legal practitioner of not less than five years’ experience, who shall be the Chairperson of the Valuation Tribunal, recommended by the Judicial Service Commission;

"Valuation
Tribunal

(b) three valuers recommended by the Board of Registration of Land Economy Surveyors, Valuers, Estate Agents and Auctioneers; and

(c) a person conversant with issues of land economy.

(2) A local government authority having jurisdiction in the area where an issue arises for the consideration of the Valuation Tribunal shall be responsible for the payment of expenses, fees and allowances for the members of the Valuation Tribunal as may be prescribed.

(3) A member of the Valuation Tribunal shall not, by reason only of the payment to him of a fee or allowance under this Act, be deemed to be an officer of the local government authority or to have a pecuniary interest in any contract or proposed contract or other matter of the local government authority.

Proceedings
of a valuation
Tribunal

78B.—(1) The Chief Executive Officer or other person appointed by a local government authority, shall act as clerk to the Valuation Tribunal.

(2) At each sitting of the Valuation Tribunal, three members present shall constitute a quorum, and a decision of the Valuation Tribunal shall be arrived at by a vote of a majority of the members present and voting; and, in case of an equality of votes, the Chairperson or a member acting as a Chairperson shall have a casting vote.

(3) A member of the Valuation Tribunal shall not sit on a hearing of a matter in which he is directly or indirectly interested or concerned as being liable to pay the rates or a part of the rates in question.

(4) In case of a vacancy in the Valuation Tribunal or incapacity to act by a member, so that a quorum cannot be formed, the local government authority may at once, appoint a suitable person temporarily or otherwise to fill up the vacancy or the place of a member incapable of sitting.

(5) The clerk shall publish notice of a sitting of the Valuation Tribunal not later than seven days before the fixed date of its first sitting.

(6) The Valuation Tribunal shall determine its own procedures.

(7) Proceedings before the Valuation Tribunal shall be deemed to be judicial proceedings as defined under section 4 of the Penal Code.

Consideration
of objectives by
the Valuation
Tribunal

78C.—(1) An aggrieved person who is not satisfied with the decision of the valuer under section 76, may appeal against the decision of the Valuer to the Valuation Tribunal.

(2) The Valuation Tribunal shall, at a sitting duly called by the clerk, consider the appeal made under subsection (1).

(3) The clerk shall send a notice of the date to the persons mentioned in subsection (3) not less than seven days before the day fixed for the consideration by the Valuation Tribunal of the appeal; but the Valuation Tribunal may hear the appeal at shorter notice if all the persons entitled to be heard on the appeal consent.

(4) On the consideration of the appeal, the local government authority, the person who lodged the appeal and a rateable owner of the property, which is the subject of the appeal, may appear and be heard, either in person or by legal practitioner or an accredited representative, and may call and examine witnesses before the Valuation Tribunal.

(5) After hearing the persons mentioned in subsection (3), or such of them as desire to be heard, the Valuation Tribunal shall confirm, or may amend the draft valuation roll or draft supplementary valuation roll, by way of reduction, increase, addition or omission, as it may consider appropriate.

(6) Where the Valuation Tribunal has amended a draft valuation roll or draft supplementary valuation roll in accordance with subsection (4), the Valuation Tribunal may make further amendments to the roll, as it may consider appropriate, in consequence of the first-mentioned amendment:

Provided that—

(a) the further amendment by way of increase or addition shall not be made unless the rateable owner concerned has been given at least fourteen days' prior notice of the proposed amendment and of the date of the sitting of the Valuation Tribunal at which such amendment will be considered; and

(b) the rateable owner may lodge an objection to such further amendment in writing, so as to reach the clerk not less than three days before the date of the sitting of the Valuation Tribunal at which such amendment will be considered.

(7) The Valuation Tribunal shall consider the objections made under paragraph (b) of the proviso to subsection (5), and the provisions of subsection (3) shall apply, *mutatis mutandis*, in respect of those objections.”.

17. Section 79 of the principal Act is amended in subsection (1) by deleting the word “all” and substituting therefor the word “some”. Amendment of s. 79 of the principal Act

18. Section 83 of the principal Act is amended in subsection (1)— Amendment of s. 83 of the principal Act

(a) in paragraph (d), by adding, at the end of the paragraph, the words “that is not operating on a commercial basis”;

(b) in paragraph (e) by adding, at the end of the paragraph, the words “that is not operating on a commercial basis.”.

19. Section 84 of the principal Act is repealed and replaced with the following new section— Replacement of s. 84 of the principal Act

“Exempted properties 84. — (1) A rate shall not be made or levied in respect of assessable property owned by a diplomatic mission as may be approved by the Minister responsible for foreign affairs.

(2) The decision of the Minister shall be based on existing reciprocal agreement with the State of the relevant diplomatic mission.”.

Passed in Parliament this twenty fifth day of November, two thousand and sixteen.

FIONA. KALEMBA
Clerk of Parliament

