MALAWI GOVERNMENT

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I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
31st March, 2022

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Purpose of the Act
4. Application

PART II—MANAGEMENT OF PUBLIC RESOURCES

5. Establishment of the Treasury
6. Functions and powers of the Treasury
7. Responsibilities of the Minister
8. Secretary to the Treasury
9. Responsibilities of the Secretary to the Treasury
10. Access to information by the Secretary to the Treasury
11. Accountant General
12. Responsibilities of the Accountant General
13. Responsibilities of Ministers
14. Responsibilities of controlling officers on management of public funds
15. Responsibilities of controlling officers on management of public assets
16. Responsibilities of officers
17. Comptroller of Internal Audit

SECTION

18. Responsibilities of the Comptroller of Internal Audit
19. Audit committee
20. Functions of the audit committee

PART III—PARLIAMENTARY OVERSIGHT OF BUDGETARY MATTERS

21. Responsibilities of the Budget Committee
22. Powers of the Budget Committee
23. Meetings and reports of the Budget
24. Confidentiality

PART IV—ECONOMIC, FISCAL AND FINANCIAL POLICY

25. Principles of responsible fiscal management
26. Accounting procedures and practices
27. Economic and fiscal policy statement
28. Budget policy statement
29. Fiscal risk and management strategy
30. Economic and fiscal data
31. Reporting requirements
32. Provision of relevant information

PART V—PARLIAMENTARY APPROPRIATION AND BUDGET

33. Estimates
34. Form of estimates
35. Appropriation required
36. Adjustment for unforeseen expenditure
37. Approval of Appropriation Bill
38. Supplementary appropriation
39. Appropriation of Funds
40. Transfer between outputs
41. Charge for supply of goods or provision of services

PART VI—PUBLIC MONEY AND THE CONSOLIDATED FUND

42. Consolidated Fund
43. Development Fund
44. Treasury Funds
45. Treasury Single Account System
46. Dealing with public money
47. Banks to furnish statements
48. Overseas bank accounts and imprests
49. Balances may be invested

SECTION

50. Temporary transfer from one fund or account to another
51. Imprests
52. Remission or refund of revenue
53. Refund and corrections
54. Donations and grants

PART VII—TRUST MONEYS AND UNCLAIMED MONEY

55. Trust money
56. Establishment of a Trust Fund and trust accounts
57. Operation of trust accounts
58. Investment of trust account money
59. Oversight of the Trust Fund trust accounts
60. Unclaimed money— interpretation
61. Period after which money comes unclaimed money
62. Register of unclaimed money
63. Holder to notify entry to Secretary to the Treasury and owner
64. Payment of unclaimed to the Consolidated Fund
65. Secretary to the Treasury to pay to claimant
66. Examination of accounts
67. Unclaimed trust money
68. Responsibility to second claimant
69. Offences and penalty

PART VIII—BORROWING, LOANS AND GUARANTEES

70. Government not to borrow except under an Act
71. Debt management strategy
72. Annual borrowing plan
73. Instrument of loan agreement
74. Minister may borrow when authorized
75. Provisions for general borrowing
76. Subsidiary loan agreement
77. Borrowing on overdraft
78. Treasury Bills
79. Borrowing by stocks, bonds or promissory notes
80. Derivative transactions
81. Liability of the Government
82. Power to give guarantees and indemnities
83. Taking and releasing of securities by Government

SECTION
84. Expenditure for protection of public securities
85. Power to lend money

PART IX—DEBT RETIREMENT FUND

86. Debt Retirement Fund
87. Sources of money for the Debt Retirement Fund
88. Debt Retirement Fund Committee
89. Payments from the Debt Retirement Fund
90. Records and reporting requirements

PART X—STATUTORY BODIES AND STATE-OWNED ENTERPRISES

91. Classification of statutory bodies and state-owned enterprises
92. Annual commitments
93. Performance, management plan and budget
94. Bank accounts
95. Moneys payable to, or to be retained by, statutory bodies
96. Borrowing on overdraft and private loans
97. Guarantee by statutory body or state-owned enterprise
98. Application of resources
99. Accounts and records
100. Reports and financial statements
101. Powers of inspection of the Secretary to the Treasury
102. Investment and reporting requirements
103. Payment of dividends and surplus funds to the Consolidated Fund
104. Reporting on adverse occurrences
105. Reporting on investments where Government is minority shareholder

PART XI—FINANCIAL REPORTING

106. Quarterly reports and summaries
107. Financial statements
108. Annual reports

PART XII—DISCIPLINE AND OFFENCES

109. Improper conduct and disciplinary measures
110. Offences and penalty
111. General penalty
112. Obligation to report

SECTION

PART XIII—MISCELLANEOUS PROVISIONS

113. Write-off of losses

114. Conflict of interest

115. Regulations

116. Treasury and Desk Instructions

117. Transitional provisions

118. Repeal and savings

SCHEDULES

FIRST SCHEDULE — CONTENTS TO BE INCLUDED IN REPORTS AND STATEMENTS UNDER PART IV

SECOND SCHEDULE — REGISTER OF UNCLAIMED MONEY

THIRD SCHEDULE — PROVISIONS FOR GENERAL BORROWING

FOURTH SCHEDULE — FORM AND CONTENT OF FINANCIAL STATEMENTS

An Act to provide for the legal and institutional framework for public finance management within an economic and fiscal policy framework; the preparation and implementation of the national budget; the strengthening of transparency, accountability and responsible management and control of public resources; the responsibilities of controlling officers, officers and public bodies in public finance management; cash and debt management systems; the efficient, effective and economic recognition and accounting for and reporting of, public resources and the financial position of the Government; the management and control of public assets and stores; the establishment and management of the Debt Retirement Fund; the repeal of the Public Finance Management Act (Cap. 37:02); and matters incidental thereto

ENACTED by the Parliament of Malawi as follows—

Short title and commencement

1. This Act may be cited as the Public Finance Management Act, 2022, and shall come into force on 1st April, 2022.

Interpretation

2.—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 money for such goods and services as are specified in the Act;

Cap. 44:01 "bank" has the meaning assigned thereto, by the Banking Act and includes an international financial institution;

"chief executive officer" means the head, however titled, of a state-owned enterprise or an entity established by statute;

"Consolidated Fund" means the Consolidated Fund established by section 172 of the Constitution;

"controlling officer" means a person who is—

(*a*) the head or principal officer in-charge of a Ministry, department or any Government agency; or

(*b*) charged with a duty to, or actually collect, receive, disburse or deal, in any way, with public money or charged with the purchase, receipt, custody, or disposal of, or the accounting for, public resources or public securities;

"Estimates" means the statement of proposed public revenue and expenditure in any financial year as approved by the National Assembly through the enactment of an Appropriation Act;

"financial institution" has the meaning assigned thereto by the
Cap 44: 05 Financial Services Act;

"financial statements" means the financial statements required under Part XI and the Fourth Schedule;

"financial year" means a period of twelve months beginning on 1st April and ending on 31st March;

"fiscal risk" means a factor that may cause fiscal outcomes to negatively deviate from forecast;

"generally accepted accounting practices" means—

(*a*) standards and practices promulgated by the International Federation of Accountants as applicable to Governments and statutory bodies; or

(*b*) where no standard, principle or practice exists, then accounting standards, 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 all the three branches of Government;

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

"holding account" means an account maintained by a public body at the Reserve Bank of Malawi, used solely for the purpose of receiving and holding public money;

"imprestee" means a person in whose custody public money is placed for expenditure;

"internal control" means the whole system of controls, financial, administrative or otherwise established by Government in order to carry out Government business in an orderly, effective and efficient manner to achieve Government objectives;

"officer" means an employee of the Public Service of Malawi and includes an officer on permanent and pensionable contract and an officer on fixed term contract;

"operating account" means an account maintained by a public body at a commercial bank, used solely for expenditure, which is linked to the holding account held by the public body at the Reserve Bank of Malawi;

"outputs" means the goods and services that are produced by a Ministry, department, agency or any other body which receives an appropriation;

"over-commitment" means entering into a contract or other financial obligation that cause the funded budget to be exceeded;

"public asset" means any property, real, tangible or intangible, including shares and proprietary rights, owned by the Government or any public body;

"public body" means any organ or agency of the Government and includes a local authority, statutory body, state-owned enterprise and such other body as may be defined as such by law;

"public debt" means all financial liabilities created as a result of borrowing by the public sector, including called contingent liabilities and all outstanding liabilities created by the issuance of public securities;

"public funds" means the Consolidated Fund, the Contingency Fund and any other fund established by or under an Act of Parliament;

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

"public money" includes—

(*a*) all money, other than trust money, received by the Government or a public body, including revenue, donation, grant, loan and other moneys;

(*b*) money raised by any person or body under statutory authority;

(*c*) all bonds, debentures, and any other securities received by, or on account of, or payable to, or belonging to, or deposited with the Government by—

(i) any officer of the Government in his official capacity; or

(ii) any person on behalf of the Government;

"public resources" include public money, asset, property, stores and investment that belong to, or is held by or on behalf of the Government or a public body;

"public securities" means securities as defined under the Securities Act representing the investment of, or securing the payment of, public money;

Cap. 46:06

"records" means information recorded and kept by any means, and includes all books, accounts, rolls, files, vouchers, receipts, cheques, records, registers, papers and other documents relating to accounting operations and practice, kept or maintained in electronic or any other format used to maintain or store information;

"revenue" means all non-repayable receipts;

"Secretary to the Treasury" means the Secretary to the Treasury appointed under section 8;

"state-owned enterprise" means a body corporation, or subsidiary of a corporation where the Government, directly or indirectly—

(*a*) has controlling interest or power;

(*b*) controls the composition of the board of directors;

(*c*) has more than fifty per cent of the voting power; or

(*d*) holds more than fifty per cent of the issued share capital either directly or through another agency or statutory body;

"statutory body" means—

(*a*) a body of persons, whether corporate or unincorporated, other than the Reserve Bank of Malawi, established by any written law; and

(*b*) a local authority established under the Local Government Act; Cap. 22:01

"statutory expenditure" means—

(*a*) expenditure charged on the Consolidated Fund under 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; and

(*b*) expenditure which is not subject to the vote of the National Assembly;

"Treasury Instructions" means Treasury Instructions issued under section 116;

"trust account" means a trust account established under section 56;

"Trust Fund" means a Trust Fund established under section 56; and

"vote" means a placement of charge authorized under section 35(2) on which revenues and expenditure are incurred.

Purpose of the Act

3.—The purpose of this Act is to provide a framework for effective, transparent and responsible public finance management within an economic and fiscal framework in Malawi.

Application

4.—(1) This Act shall apply to Government, statutory bodies and state-owned enterprises.

(2) Subject to the Constitution, where there is any inconsistency between the provisions of this Act and the provisions of any other law relating to management of public resources, the provisions of this Act shall prevail to the extent of the inconsistency.

PART II—MANAGEMENT OF PUBLIC RESOURCES

Establishment of the Treasury

5.—(1) There is established the Treasury which shall comprise the—

(*a*) Minister;

(*b*) Secretary to the Treasury; and

(*c*) Accountant General.

(2) The Minister shall be the head of the Treasury.

Functions and powers of the Treasury

6.—(1) The Treasury shall—

(*a*) formulate, implement, coordinate, promote and monitor macroeconomic and fiscal policies;

(*b*) receive, receipt, keep, manage and disburse public funds and public money;

(*c*) prepare, regulate, implement, monitor and evaluate the national budget and matters relating to budgeting;

(*d*) promote and enforce effective, transparent and responsible management of revenue, expenditure, assets and liabilities of public bodies;

(*e*) manage the Consolidated Fund;

(*f*) recall funds from public accounts to the Consolidated Fund;

(*g*) manage public debt;

(*h*) manage fiscal risks in public bodies;

(*i*) provide financial policy direction on the operation of statutory bodies and state-owned enterprises;

(*j*) set up appropriate institutional arrangements for the coordination and supervision of financial matters in statutory bodies and state-owned enterprises;

(*k*) oversee the design and implementation of financial management systems in all public bodies;

(*l*) perform such other functions as are required for the implementation of this Act; and

(*m*) perform such other functions as may be assigned to the Treasury under this Act or any other written law.

(2) The functions of the Treasury shall be performed by the Secretary to the Treasury or any other officer that may be authorised in writing by the Secretary to the Treasury.

Responsibilities of the Minister

7.—(1) The Minister shall, in addition to responsibilities provided in the Constitution and other provisions of this Act—

(*a*) develop and present to Cabinet and the National Assembly, annual draft estimates and such other estimates as may be necessary and oversee their implementation;

(*b*) oversee public resources and liabilities and provide a full account of the public resources and liabilities to the National Assembly;

(*c*) publish, by whatever means the Minister considers appropriate, information on economic plans and projects approved by Government and the progress made in their implementation;

(*d*) ensure adequate procedures, internal controls and guidelines exist for the use of public resources;

(*e*) develop and monitor implementation of macroeconomic and fiscal policy in accordance with this Act;

(*f*) oversee the finances of statutory bodies and state-owned enterprises; and

(*g*) ensure Treasury complies with its responsibilities under this Act and any other written law.

(2) The Minister shall, when submitting draft estimates to Cabinet, 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 28; and

(*b*) where appropriate, details of available options to change the draft estimates including details of possible changes in Government expenditure and programs.

(3) The Minister may delegate, in writing, his powers and responsibilities under this Act, except where the Act prohibits delegation.

(4) The responsibility of the Minister shall not be derogated merely by having exercised his power of delegation under subsection (3).

Secretary to the Treasury

8.—(1) The President shall appoint a Secretary to the Treasury who shall be the principal financial adviser to the Government and principal controlling officer of public resources.

(2) A person shall not be appointed as Secretary to the Treasury, unless the person—

(*a*) possesses a minimum qualification of a Masters' degree in economics, accounting, administration or finance from an institution accredited or recognized under the National Council for Higher Education Act, obtained subsequent to a bachelor's degree from a reputable education institution accredited or recognized under the National Council for Higher Education Act; and

Cap. 30:12

Cap. 30:12

(*b*) has at least fifteen years relevant post qualification working experience, five of which are at senior management level.

(3) The Secretary to the Treasury shall be responsible to the Minister for the Treasury's compliance with obligations under this Act.

Responsibilities of the Secretary to the Treasury

9.—(1) The Secretary to the Treasury shall—

(*a*) provide economic, fiscal and financial advice to the Government;

(*b*) formulate Treasury Instructions prescribing standards for budgeting, accounting, internal auditing and classification system for public resources;

(*c*) monitor and assess compliance with this Act and any prescribed standards and practices by public bodies;

(*d*) develop and implement effective, transparent and responsible financial management systems;

(*e*) manage and administer the Consolidated Fund and other public Funds established under this Act or any other written law;

(*f*) take necessary action against an officer or public body that is found to be in breach of this Act;

(*g*) prescribe, monitor and review financial management and reporting systems in Government and public bodies;

(*h*) develop policies relating to the proper management of public resources;

(*i*) coordinate and monitor public finance and cash management systems in accordance with the fiscal and monetary policies of the Government;

(*j*) provide financial policy direction on the operations of statutory bodies and state-owned enterprises including the setup of appropriate institutional arrangements with regard to financial management;

(*k*) oversee the design and implementation of financial management systems in public bodies;

(*l*) monitor implementation of recommendations of the Public Accounts Committee of the National Assembly; and

(*m*) perform such other functions as may be prescribed by this Act, any written law or as may be considered reasonably necessary for effective and efficient management of public resources.

(2) The Secretary to the Treasury may, except for responsibilities under subsection (1) (*b*), (*e*) and (*f*) and Part VIII and subject to subsection (3), delegate to a senior officer of the Treasury, in writing, the responsibilities under subsection (1) or any provision of this Act or any written law so as to ensure the effective, transparent and responsible operation of the Treasury, or where he is unable, for the time being, to perform the responsibilities or exercise any power.

(3) The Secretary to the Treasury shall not delegate any power under subsection (1) where this Act prohibits the power of delegation.

(4) The responsibilities of the Secretary to the Treasury under this Act shall not be derogated merely by the exercise of the power of delegation by the Secretary to the Treasury under subsection (2).

Access to information by Secretary to the Treasury

10.—(1) The Secretary to the Treasury shall have free and full access to all accounts and records of controlling officers that relate, directly or indirectly, to—

(*a*) the collection, receipt, expenditure, issuance and use of public money; and

(*b*) the procurement, receipt, issuance, custody, use and disposal of public assets.

(2) The Secretary to the Treasury may inspect, inquire into or call for additional information on the accounts and records accessed under subsection (1).

(3) In the exercise of the powers under this section, the Secretary to the Treasury may appoint, in writing, any person to inquire into any matter specified in the instrument of appointment.

Accountant General

11.—(1) The President shall appoint an Accountant General who shall be the head of Government accounting services.

(2) A person shall not be appointed as Accountant General, unless the person—

(*a*) possesses a minimum qualification of a Masters' degree in accounting, finance or business administration from an institution accredited or recognized under the National Council for Higher Education Act, obtained subsequent to a bachelor's degree from a reputable education institution accredited or recognized under the National Council for Higher Education Act; Cap. 30:12

(*b*) is a member of a relevant professional accountancy organization and the Malawi Accountants Board; and

(*c*) has at least ten years' relevant post qualification working experience in public finance management, five of which are at senior management level.

(3) The Accountant General shall report to the Secretary to the Treasury.

Responsibilities of the Accountant General

12.—(1) In addition to responsibilities of a controlling officer provided in sections 14 and 15, the Accountant General shall—

(*a*) give advice to the Government on implementation of revenue and expenditure policies, asset management and bank accounts management;

(*b*) develop, implement, monitor and evaluate accounting systems, policies and guidelines in accordance with this Act or any other written law for the proper management of public resources;

(*c*) ensure safe custody of public money;

(*d*) prescribe standards for asset management and safe custody of such assets and related documents;

(*e*) prescribe, maintain and monitor registers of all property, assets and investments of the Government;

(*f*) prepare, pay and account for Government expenditure;

(*g*) prepare and consolidate financial management and accounting reports;

(*h*) develop, maintain and monitor the implementation of effective and transparent accounting and financial management policies, procedures and practices in Government;

(*i*) manage Government bank accounts, including banking and payment systems;

(*j*) manage capacity building and placement of accounting staff to Ministries, departments and agencies, subject to the applicable public service laws;

(*k*) maintain and secure the custody and distribution of accounting documents and equipment;

(*l*) coordinate and monitor the implementation and maintenance of locksmith services in Government; and

(*m*) develop, implement and maintain an effective, transparent and responsible integrated financial management information system in the Government.

(2) The Accountant General may, subject to subsection (3), delegate, in writing, to a senior officer of the Accountant General's Department, the responsibilities of the office under this Act or any other written law where the Accountant General is unable to exercise the responsibilities in person.

(3) The Accountant General shall not delegate any of the following functions—

(*a*) signing of consolidated financial statements; and

(*b*) opening of bank accounts.

(4) The responsibilities of the Accountant General under this Act shall not be derogated merely by the exercise of the power of delegation by the Accountant General under subsection (2).

Responsibilities of Ministers

13.—Every Minister shall ensure that—

(*a*) controlling officers under the charge of the Minister comply with their responsibilities under this Act for the effective, transparent and responsible management of public resources;

(*b*) estimates of revenue and expenditure provided by entities that comprise the assigned responsibilities of the Minister are realistic and fully consistent with the budget policy statement of the Government published pursuant to section 28;

(*c*) the public resources allocated to the assigned responsibilities of the Minister in an Appropriation Act achieve the objects and outputs approved for each vote; and

(*d*) reporting responsibilities under this Act for the assigned area of responsibility of the Minister are complied with.

Responsibilities of controlling officers on management of public funds

14.—(1) A controlling officer shall, with respect to the controlling officer's institution, ensure that—

(*a*) this Act is complied with;

(*b*) advice on financial management is provided to the responsible Minister;

(*c*) adequate information on financial allocation and utilization, revenue collection, and acquisition, management and disposal of assets is provided to the responsible Minister;

(*d*) all accounts and records relating to the functions and operations of the institution are properly maintained;

(*e*) all necessary precautions are taken to safeguard the collection and custody of public money;

(*f*) all expenditure, is properly authorized and applied to the specific purposes for which it is appropriated;

(*g*) the collection of public money is according to approved plans and estimates;

(*h*) all expenditure is incurred with due regard to economy, efficiency, effectiveness and the avoidance of waste;

(*i*) there is no over-expenditure or over-commitment of funds;

(*j*) all necessary precautions are taken to safeguard public resources;

(*k*) any tax, duty, fee, levy or other charge for which the institution is responsible for collecting under law, is collected promptly and to the fullest extent;

(*l*) any proposal to charge for the supply of goods or services 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 promptly and is accurate;

(*n*) estimates and forecasts in respect of collection and expenditure of public money 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, reports are submitted as specified in Treasury Instructions;

(*p*) an effective system of internal controls is developed and maintained;

(*q*) all officers in the institution are aware of their duties and responsibilities under this Act;

(*r*) relevant legislation and Government policies which impact on finance management are complied with;

(*s*) outcomes are consistent with those specified in the Appropriation Act;

(*t*) public resources are employed and managed in an efficient, effective, economic, transparent and responsible manner; and

(*u*) effective and appropriate action is taken against any officer who contravenes or fails to comply with a provision of this Act.

(2) The controlling officer shall ensure that any tax, duty, levy or other charge collected pursuant to subsection(1)(j) is reviewed and reported upon, at least once in each financial year, in the form prescribed in Treasury Instructions in order to establish whether—

(*a*) the level of such tax, duty, fee, levy or other charge is adequate; and

(*b*) the tax, duty, fee, levy or other charge should be varied and, if so, by what amount.

(3) A controlling officer may delegate responsibilities under this section, but the responsibility of the controlling officer shall not be derogated or reduced by reason of any such delegation.

Responsibilities of controlling officers on management of public assets
Cap. 37:03

15.—(1) A controlling officer shall, with respect to the controlling officer's institution, ensure that—

(*a*) the Public Procurement and Disposal of Public Assets Act is complied with in the procurement and disposal of public assets; and

(*b*) proceeds from disposal of public assets are accounted for and deposited into a relevant bank account.

(2) A controlling officer shall not loan or transfer a public asset to any other person or permit any other person to use a public asset, for purposes other than carrying out the functions of the institution.

(3) A controlling officer shall not use a public asset as security for a loan without prior written approval of the Minister.

Responsibilities of officers

16.—Every officer shall—

(*a*) comply with this Act in so far as it is applicable to that officer;

(*b*) ensure that public resources within the officer's area of responsibility are used in a way which is lawful, economic, efficient, effective, transparent and accountable;

(*c*) ensure that adequate arrangements are made for the proper use, custody, safeguard and maintenance of public assets and stores which are in the custody or under the control of the officer;

(*d*) safeguard the financial interests of the Government at all times; and

(*e*) comply with applicable financial management and internal control systems.

Comptroller of Internal Audit

17.—(1) The President shall appoint a Comptroller of Internal Audit who shall be the head of Government internal auditing services.

(2) A person shall not be appointed as Comptroller of Internal Audit, unless the person—

(*a*) possesses a minimum qualification of a Masters' degree in auditing, accounting, finance, commerce, administration or information technology from an institution accredited or recognized under the National Council for Higher Education Act, obtained subsequent to a bachelor's degree from a reputable education institution accredited or recognized under the National Council for Higher Education Act; Cap. 30:12

(*b*) is a member of a relevant professional accountancy organization and the Malawi Accountants Board; and

(*c*) has at least ten years' relevant post qualification working experience in internal audit services or public finance management, five of which are at senior management level.

(3) The Comptroller of Internal Audit shall report to the Secretary to the Treasury.

Responsibilities of Comptroller of Internal Audit

18.—(1) In addition to responsibilities of a controlling officer provided in sections 14 and 15, the Comptroller of Internal Audit shall—

(*a*) provide internal audit services to the Government in accordance with the Internal Auditing Charter promulgated by the Minister under section 19;

(*b*) conduct risk based financial, compliance, performance, information communication technology, forensic and any other specialized internal audit;

(*c*) manage placement of internal auditing staff in Government Ministries, departments and agencies, subject to the applicable public service laws;

(*d*) advise Government on effective risk management, internal control and good governance;

(*e*) advise Government on management, use and deployment of public assets;

(*f*) advise Government on investments and securities;

(*g*) coordinate the operations of Audit Committees; and

(*h*) conduct special internal audit assignments in public bodies.

(2) The Comptroller of Internal Audit shall, in the performance of duties under this Act have access to accounts, records, books, vouchers, financial and non-financial management systems, and documents relating to the accounts of any Government institution or agency.

(3) The Comptroller of Internal Audit may inspect, inquire into and call for additional information on the accounts, records, books, vouchers, financial and non-financial management systems and documents accessed under subsection (2).

Audit committees

19.—(1) There shall be established for each Ministry or Government institution, an audit committee which shall perform functions and exercise such powers as are conferred on the audit committee under this Act.

(2) An audit committee may serve more than one Ministry or Government institution, where the Minister determines it appropriate.

(3) An audit committee shall be appointed by the Minister and shall comprise five members, as follows—

(*a*) one member nominated by a professional body for accountants;

(*b*) one member nominated by a professional body for internal auditors;

(*c*) one member nominated by the Malawi Law Society; and

(*d*) two members being retired senior public servants with extensive knowledge or experience in accounting or auditing.

(4) The Minister shall, by Order published in the *Gazette*, promulgate an Audit Committee Charter which shall prescribe—

(*a*) the roles and responsibilities of audit committees;

(*b*) procedure for the conduct or transaction of business;

(*c*) the term of office for members of audit committees;

(*d*) allowances payable to the members; and

(*e*) any other matter relevant for the effective and efficient delivery of the mandate of the committees.

Functions of audit committee

20.—An audit committee shall have oversight over and give advice on—

(*a*) governance, risk management and control processes established and maintained within the Government and the procedures in place to ensure that they are operating as intended;

(*b*) systems and practices established by the Government to monitor compliance with laws, policies and standards of ethical conduct;

(*c*) systems and practices for the prevention, deterrence and detection of fraud;

(*d*) internal audit arrangements for Government institutions;

(*e*) observations and conclusions of internal auditors, external auditors and any regulatory agency and track management's action plans to address the observations; and

(*f*) any other responsibilities as set out in the Audit Committee Charter.

PART III—PARLIAMENTARY OVERSIGHT OF BUDGETARY MATTERS

Responsibilities of the Budget Committee

21. In addition to the responsibilities set out in Standing Orders of the National Assembly, the Budget Committee of the National Assembly shall—

(*a*) provide general direction on budgetary matters to the Government;

(*b*) review the budget policy statement and estimates and make appropriate recommendations to the National Assembly;

(*c*) monitor adherence by the Government to principles of public finance management set out in the Constitution and this Act; and

(*d*) monitor all budgetary matters falling within the competence of the National Assembly under this Act and report on those matters to the National Assembly.

Powers of the Budget Committee

22.—(1) For purposes of exercising any responsibility under this Act, the Budget Committee—

(*a*) may inquire into any Government financial matter;

(*b*) shall have full access to Government records relating to revenue, expenditure and any other public resources which are relevant to an inquiry;

(*c*) may, by notice in writing, require any person having possession or control of any Government records relating to revenue, expenditure and other public resources, to deliver to the Committee all or any record specified in the notice; and

(*d*) may cause extracts to be taken from any Government record relating to revenue, expenditure and any other public resource without payment of any fee.

(2) A member of the Budget Committee shall not be personally liable to civil action for any act or omission done in good faith under this Act.

Meetings and reports of the Budget Committee

23.—(1) The Budget Committee shall meet at least twice every year for purposes of performing responsibilities of the Committee under this Act.

(2) The Budget Committee shall present its reports to the National Assembly in accordance with Standing Orders of the National Assembly.

Confidentiality

24. The Budget Committee or a member of the Committee shall not publish or disclose to any person or entity, other than in the course of duty, any information which comes to the knowledge of the Committee or the member in the course of performing the functions and responsibilities of the Committee under this Act.

PART IV—ECONOMIC, FISCAL AND FINANCIAL POLICY

Principles of responsible fiscal management

25.—(1) Subject to subsection (3), the Government shall pursue policy objectives which are consonant with applicable fiscal rules and the principles of responsible fiscal management specified in subsection (2).

(2) The following principles shall apply to fiscal management in the Government—

(*a*) total public debt shall be managed at prudent levels so as to provide a buffer against factors that may impact adversely on the level of total public debt;

(*b*) the total overall expenditure of the Government in each financial year shall be in the public interest and designed to achieve long-term fiscal stability within any borrowing program;

(*c*) the net worth of the Government shall be maintained at levels that provide a buffer against factors that may impact adversely on the Government's net worth;

(*d*) the fiscal risks of the Government shall be managed with a view to maintaining fiscal stability; and

(*e*) the economic and fiscal policies to be pursued shall be consistent with a reasonable degree of predictability about the level and stability of tax rates in the medium term.

(3) The Government may deviate from any of the principles of responsible fiscal management specified in subsection (2) only in cases of exceptional circumstances, and where this is done—

(*a*) the deviation shall be temporary; and

(*b*) the Minister shall specify the—

(i) reasons for the deviation, including the applicable exceptional circumstances;

(ii) strategy the Government intends to use to return to the principles; and

(iii) estimated period of the deviation which, in any case, shall not exceed two years.

(4) Where exceptional circumstances referred to in subsection (3) arise during a financial year, the exceptional circumstances shall be disclosed to the National Assembly forthwith if the National Assembly is in session, and if not, at the commencement of the next ensuing session, and the exceptional circumstances shall be included in the next ensuing economic and fiscal update.

Accounting procedures and practices

26. All financial reports, financial statements, associated financial information and accounting procedures required by this Act shall be made in accordance with generally accepted accounting practices.

Economic and fiscal policy statement

27.—(1) The Minister shall publish, not later than 30th November of each year, an economic and fiscal policy statement for the next financial year and forecasts for the two years following that financial year, which 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 long-term fiscal policy objectives of the Government and in particular, provide for the principal variables specified in sections 30 and 31;

(*c*) specify the broad strategic priorities which shall guide the Government in preparing the estimates for that financial year; and

(*d*) indicate by appropriate means, the intentions of the Government regarding the variables specified in sections 30 and 31.

(2) The economic and fiscal policy statement shall—

(*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 25; 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 person may, within twenty-eight days of the publication of the economic and fiscal policy statement, submit to the office of the Minister, in writing, any question or recommendation the person may have on the statement.

(4) The Minister shall, within sixty days of receiving the submission under subsection (3), provide a response in writing to the person.

(5) The Minister shall, no later than 15th January in each year, conduct public consultations on the economic and fiscal policy statement and ensure public participation in the development of the budget policy statement laid before the National Assembly under section 28.

Budget policy statement

28.—(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 responsible fiscal management set out in section 25; and

(*b*) a statement, with 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 expenditure of the Government;

(iii) the Government's debt management responsibilities and details of a financial plan to meet those responsibilities; and

(iv) a statement indicating that the annual budget is fiscally responsible in accordance with the principles set out in section 25.

Fiscal risk and management strategy

29.—The Minister shall submit to the National Assembly, together with the budget policy statement referred to in section 28, a report on, and the strategy for, managing the fiscal risks of the Government which shall—

(*a*) include an assessment of the extent to which the budget policy statement is consistent with the economic and fiscal policy statement;

(*b*) include an explanation of the reasons for any significant differences between the current economic and financial situation of the Government and the information and intentions presented in the previous economic and fiscal policy statement;

(*c*) where circumstances have changed, present an amended set of intentions;

(*d*) provide projections of movements in the variables specified in sections 30 and 31 which demonstrate intended progress towards achieving the long-term objectives specified in the economic and fiscal policy statement most recently published and state the significant assumptions on which the projections are based; and

(*e*) include the macroeconomic and fiscal risks that may adversely affect implementation of the budget and the proposed strategies to mitigate the impact of the risks.

Economic and fiscal data

First Schedule

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

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

First Schedule

(3) Economic forecasts shall include a statement of all significant assumptions underlying the forecasts.

(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, the reason why the information is not available.

Reporting requirements *First Schedule*

31.—(1) Any forecast or statement required under this Part shall include details of the information specified in Part II of the *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, the reason why the information is not available.

Provision of relevant information

32.—(1) Every controlling officer and chief executive officer shall provide to the Secretary to the Treasury such relevant information, as may be in that officer's possession, that will assist the Secretary to the Treasury to produce the economic and fiscal data and reporting information required under this Part.

(2) A controlling officer or chief executive officer who, on the date prescribed by the Secretary to the Treasury or on demand, fails to comply with the obligation under subsection (1) commits an improper conduct.

PART V—PARLIAMENTARY APPROPRIATION AND BUDGET

Estimates

33.—(1) The Minister shall, not less than fourteen days before presenting 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 anticipated budgetary appropriations.

(2) The Cabinet shall consider and approve a proposed budget for the forthcoming financial year and the Minister shall thereafter, cause the Treasury to prepare the Estimates, in accordance with the budget approved by Cabinet, for introduction to the National Assembly.

(3) Subject to section 175 of the Constitution, 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 programs or activities of the Government, 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 estimate figures for each item in respect of the previous appropriation period.

Form of estimates

34. The Budget Estimates shall include the following information in respect of each vote—

(*a*) the minister responsible for the vote;

(*b*) the institution and controlling officer administering the vote;

(*c*) a brief description of each output to be delivered by the institution together with an estimate of the expenditures to be made and any receipts from charges for the delivery of that output;

(*d*) all other revenues to be collected on behalf of the Government;

(*e*) a brief description of any output to be provided by a third party on behalf of the Government together with an estimate of the expenditures to be made;

(*f*) a brief description of any transaction on behalf of the Government together with an estimate of the expenditures to be made;

(*g*) comparative revised estimate figures for each of the items in paragraphs (*c*) to (*f*) for the previous appropriation period; and

(*h*) any other relevant information as directed by the Minister.

Appropriation required

35.—(1) Subject to section 176 of the Constitution, no public money shall be expended unless the expenditure is authorized by an Appropriation Act in accordance with subsection (2) or is statutory expenditure.

(2) No expense or liability shall be incurred by Government 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 an institution;

(*b*) any payment to a non-government agency or person by way of grant or otherwise;

(*c*) loans by the Government to any third party;

(*d*) capital contributions and capital purchases;

(*e*) each item of statutory expenditure; and

(*f*) any other payment on behalf of the Government.

(4) The authority to expend cash or incur expenses or liabilities under an Appropriation Act shall 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) 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.

Adjustment for unforeseen expenditure

36.—(1) The annual Estimates presented to the National Assembly shall contain a vote for unforeseen expenditure with a proposed appropriation not exceeding one percent of the total appropriation for outputs.

(2) The Minister may only use funds from the unforeseen expenditure vote in exceptional circumstances and any expenditure under the vote shall first be 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 vote for unforeseen expenditure such sum or sums as he considers necessary, not exceeding the amount of the balance available in the vote for unforeseen expenditure.

(4) If, during any regular or other review of budget performance, it appears to the Cabinet that any vote or votes may be under-spent during a financial year, the Cabinet may direct the Minister to transfer any such surplus to the vote for unforeseen expenditure and such 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 shall 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 transfer occurs shall disclose each instance of a revised appropriation, notwithstanding 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.

Approval of Appropriation Bill

37.—(1) The National Assembly shall, by 31st March every year, consider and approve—

(*a*) the annual budget for the ensuing financial year;

(*b*) the Appropriation Bill; and

(*c*) any other Bill that may be required to implement the annual budget.

(2) An annual budget, approved by the National Assembly, shall be assented to by the President so as to take effect from 1st April of the ensuing financial year.

Supplementary appropriation

38.—(1) The Minister shall, subject to section 177 of the Constitution, where in any financial year—

(*a*) the amount appropriated by the Appropriation Act for any purpose is insufficient;

(*b*) a need arises for expenditure for a purpose for which no amount is appropriated by the Appropriation Act; or

(*c*) any moneys have been expended for any purpose in excess of the amount appropriated for that purpose by the Appropriation Act,

as soon as practicable, present to the National Assembly for approval any such expenditure or planned expenditure.

(2) Where the supplementary expenditure is approved under subsection (1), the Minister shall present a Supplementary Appropriation Bill as soon as practicable for the appropriation of the sums so approved.

Appropriation of Funds

39.—Upon the President assenting to an Appropriation Bill, the Secretary to the Treasury shall make funds available to the respective votes according to—

(*a*) revenue performance; and

(*b*) cash flow forecasts agreed between the controlling officer for the vote and the Secretary to the Treasury.

Transfer between outputs

40.—(1) The Secretary to the Treasury may, at the request of a controlling officer and with the approval of the Minister, direct that an amount appropriated for a set of activities, outcomes, outputs or programs to be delivered by an institution, be transferred to another set of activities, outcomes, outputs or programs to be delivered by that institution where—

(*a*) the amount to be transferred between activities, outcomes, outputs or programs does not increase the total allocation of the activities, outcomes, outputs or programs to which the amount is

transferred by an amount exceeding ten percent of the total expenditure approved for that financial year;

(*b*) the transfer does not compromise achievement of outcomes specified in the budget policy statement; and

(*c*) the total appropriation for that financial year for that institution is unaltered.

(2) Without limiting the validity of the transfers made under subsection (1), a record of transfers made under the subsection in a financial year shall be made in a Supplementary Appropriation Act for the same or the succeeding financial year, and all such budget variations shall be noted in the financial statements for that financial year.

(3) For purposes of this section, "outcome" means the impacts or consequences for the people of Malawi of the outputs or activities of Government or the results of the outputs produced.

Charge for supply of goods or provision of services

41.—Save as otherwise expressly provided in any other written law, a public institution may, with the approval of the Minister or under the authority of a written law, charge for the provision of goods or services.

PART VI—PUBLIC MONEY AND THE CONSOLIDATED FUND

Consolidated Fund

42.—(1) Subject to the Constitution, the Secretary to the Treasury shall determine the revenue to be paid into the Consolidated Fund.

(2) The Secretary to the Treasury may establish such accounts as may be deemed necessary for the proper accounting of moneys in the Consolidated Fund.

(3) A controlling officer shall cause revenue collected by an institution under the charge of the controlling officer to be deposited into the Consolidated Fund as prescribed in Treasury Instructions.

(4) An officer who collects revenue and fails to deposit the revenue as prescribed in Treasury Instructions commits an improper conduct.

(5) Public revenue collection agents shall transmit revenue collected on behalf of a public institution to the Consolidated Fund as prescribed by the Secretary to the Treasury.

(6) No money shall be withdrawn from the Consolidated Fund except in accordance with section 173 of the Constitution and this Act.

(7) For purposes of this section, revenue raised or received for the purpose of a public institution shall not include money received on

deposit or held on trust or held on trust by any other officer for any purpose other than the purposes of the Government or a public institution.

Development Fund

43.—(1) Money held for the purposes of development projects shall be accounted for in a separate account in the Consolidated Fund known as the Development Fund.

(2) There shall be paid into the Development Fund, all money held by the Treasury for the purposes of the Development Fund immediately prior to the coming into operation of this Act, and all money subsequently received or appropriated for the purposes of the Fund, including the proceeds of any loan which may be raised for general development purposes.

(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 that financial year in respect of the projects.

(4) The amount applied in respect of any project during any financial 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 necessary 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 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 issuance of sums to be applied to such project out of the total appropriated by the National Assembly.

(6) Where the Minister exercises the power under subsection (5), the Minister shall, not later than the next meeting of the National Assembly occurring after the expiration of seven days from the date of the exercise of the power, lay before the National Assembly a supplementary development Estimate providing for the project.

(7) Where it is necessary 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 the total estimated cost be varied accordingly.

(8) The powers conferred on the Minister by subsections (5) and (7) shall not be exercised so as to increase the total estimated cost of a project provided for in the Development Estimates approved by

the National Assembly by an amount exceeding five percent of the approved total estimated cost of the project, or so as to cause the amount authorized to be spent by the approved Development Estimates to be exceeded.

Treasury Funds

44.—(1) The Minister may, on written recommendation of the Secretary to the Treasury, by Order published in the *Gazette*, establish special funds to be known as Treasury Funds.

(2) An Order establishing a Treasury Fund under subsection (1) shall prescribe—

(*a*) the objects of the Fund;

(*b*) duration of the Fund;

(*c*) regulation, management and reporting requirements of the Fund;

(*d*) budgeting requirements of the Fund;

(*e*) accounting and audit of the Fund; and

(*f*) any other matters as the Minister may determine necessary.

(3) Where a Treasury Fund is established, the Secretary to the Treasury shall cause to be maintained, a separate account within the Consolidated Fund in respect of that Treasury Fund which shall be regulated and managed in accordance with this Act.

(4) The Treasury Fund shall remit to the Consolidated Fund such sums, in such manner and at such intervals as prescribed in the Fund Order published under subsection (2).

(5) The Minister shall include a report on Treasury Funds in the budget statement presented to the National Assembly.

(6) The Secretary to the Treasury shall review the performance of each Treasury Fund at the expiry of the term of the Fund and may, where the Secretary to the Treasury is—

(*a*) satisfied with the performance of the Fund and it is in the public interest that the Fund be extended, recommend to the Minister extension of the Fund for a specified duration;

(*b*) not satisfied with the performance of the Fund, recommend to the Minister discontinuation of the Fund; or

(*c*) not satisfied with the performance of the Fund but continuation of the fund is in the public interest, recommend to the Minister restructuring of the Fund and its extension for a specified duration.

(7) The Minister shall, on the recommendation of the Secretary to the Treasury, by Order published in the *Gazette*, extend the duration

of a Treasury Fund for a specified period or discontinue a Treasury Fund.

(8) The Minister shall, where a Treasury Fund continues to under performing after restructuring, discontinue the Fund.

(9) Section 175 (1), (2), (3) and (4) of the Constitution shall not apply to receipt and expenditure of Treasury Funds.

Treasury Single Account System

45.—(1) The Secretary to the Treasury shall establish a Treasury Single Account for the proper accounting of public moneys—

(*a*) which shall serve as a unified structure of bank accounts to give a consolidated view of the public cash resources;

(*b*) into which, all Government cash including moneys received by public bodies shall be deposited; and

(*c*) from which, all expenditure of the Government and public bodies shall be made.

(2) The Treasury Single Account shall be maintained at the Reserve Bank of Malawi.

(3) The Secretary to the Treasury may transfer money from the Treasury Single Account to another account held by the Government or a public body.

(4) The Secretary to the Treasury may agree with any bank, the terms and conditions for the conduct of the banking business of the Government, including arrangements for deposits to be made under the authority of this Act or any other written law and any charges payable.

(5) 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.

(6) The Secretary to the Treasury shall keep complete and current records of all bank accounts for which the Secretary to the Treasury is responsible under the Constitution, this Act or any other written law.

Dealing with public money

46.—(1) Public money is property of the Government.

(2) Public money shall, except as otherwise provided in this Act, be deposited into bank accounts designated by the Secretary to the Treasury for that purpose and such accounts shall form part of the Consolidated Fund.

(3) Public money shall not be paid out of a designated bank account except as provided by the Constitution or this Act.

(4) Notwithstanding any other written law, a public body shall not open, operate or continue to operate a bank account for the deposit or withdrawal of public money other than in accordance with this Act.

(5) The Secretary to the Treasury may demand the disclosure of records of an account, current or otherwise, operated by a public body from the manager of a bank operating in Malawi and on receiving such demand, the manager shall comply with the demand accordingly.

Banks to furnish statements

47.—(1) Every bank at which a Government account is kept, shall send to the Secretary to the Treasury and to the National Audit Office, statements of the bank account as the Secretary to the Treasury or the Auditor General may require.

(2) The statements submitted pursuant to subsection (1) shall show particulars of the account as the Secretary to the Treasury or the Auditor General may require.

(3) For purposes of this section "National Audit Office" has the meaning assigned thereto under the Public Audit Act.

Cap. 37:01

Overseas bank accounts and imprests

48.—(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 the Secretary to the Treasury may determine.

(2) The bank account referred to in subsection (1) shall be operated by a person appointed for that purpose, by the Secretary to the Treasury.

(3) No money shall be withdrawn from a bank account referred to in subsection (1), moved to another bank account or spent except with the written approval of the Secretary to the Treasury.

(4) Subject to Part V, any money in a bank account referred to in subsection (1) may be utilized for expenditure approved under the Constitution, this Act or any other written law, and shall be deemed to have been issued by way of imprest under section 51 and that section shall apply, with the necessary modifications.

(5) The Secretary to the Treasury may cancel the appointment of a person, made pursuant to subsection (2), to operate a bank account held under this section.

Balances may be invested

49.—(1) The Secretary to the Treasury may invest, at any bank and in such other securities as the Minister may determine to be consistent with the financial policies of the Government, any balances in the Consolidated Fund, or any part thereof, at call or for

such period and on such terms as the Secretary to the Treasury determines appropriate.

(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 securities referred to in subsection (1) and the money realized therefrom shall be paid into the Consolidated Fund to the credit of the account from which the money invested was drawn.

(4) The investment or lending of moneys forming part of the Consolidated Fund shall not be considered a withdrawal from the Consolidated Fund.

Temporary transfer from one fund or account to another

50.—(1) The Secretary to the Treasury may transfer any balance or any part of any balance of any fund or account within the Consolidated Fund to another fund or account within the Consolidated Fund for such period of time and on such terms as the Secretary to the Treasury determines appropriate.

(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 restored to the fund or account from which the transfer was made, together with any interest gained thereon, before the end of the financial year in which the transfer was made.

(3) The Secretary to the Treasury shall report particulars of every transfer made pursuant to subsection (1) in the financial statements for the year in which the transfer was made.

(4) No transfer shall be made from or between trust accounts.

Imprest

51.—(1) The Secretary to the Treasury may issue money, by way of imprest, in the name of the Government from the Consolidated Fund for the purpose of effecting payment of an amount payable by the Government to a person or an account within or outside Malawi.

(2) The Secretary to the Treasury may, in such cases as the Secretary to the Treasury determines appropriate, authorize an imprest account to be opened at a bank and the account shall be identified as a Government account.

(3) All withdrawals from an imprest account shall be made by an imprestee, except in special circumstances approved in writing by the Secretary to the Treasury.

(4) Money required to be issued by way of imprest shall, as far as practicable, be charged against another vote or other authority for the service for which the imprest is required.

(5) Notwithstanding subsection (4), 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.

(6) Money issued by way of general imprest in any financial year shall not at any time, exceed two percent of the total amount appropriated that financial year.

Remission or refund of revenue

52.—(1) The Minister may, on recommendation of the Secretary to the Treasury, authorize any officer to remit any revenue which may be due or to refund any sum received by way of revenue if the Minister is satisfied that such remission or refund is necessary and in the public interest.

(2) The Minister shall, within thirty days of the expiry of each financial year, publish in the *Gazette*, particulars of remissions made during the financial year.

Refund and corrections

53.—(1) The Secretary to the Treasury may, within six years of any sum being paid into the Consolidated Fund, refund, as statutory expenditure, all or so much of the sum that was not by law payable to the Government, whether or not an application has been made for a refund.

(2) The Secretary to the Treasury shall record the payment of the amount made pursuant to subsection (1) against the appropriate vote, other authority, fund or account.

(3) Where any person is 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 may, on being satisfied as to the facts, amend the records to reflect the true position.

Donations and grants

54.—(1) A public body may receive a donation or grant only after approval of the Minister.

(2) A public body shall notify the Minister of the actual receipt of the donation or grant within thirty days of receiving the donation or grant.

(3) Where a project to be financed by a donation or grant requires Government counterpart funding, the project shall not start until—

(*a*) the required counterpart funding is appropriated in accordance with this Act or is authorised by any other written law; or

(*b*) the Minister has given a written authorisation for the project to start.

(4) The Minister shall—

(*a*) where the National Assembly is sitting, within seven days of granting the written authorisation; or

(*b*) where the National assembly is not sitting, within seven days of the commencement of the next sitting,

inform the National Assembly of the authorisation given pursuant to subsection (3)(*b*).

(5) The public body that receives a donation or grant shall record the value of the donation or grant in its books of accounts.

(6) The public body shall administer and account for the donation or grant in accordance with—

(*a*) generally accepted accounting practices; and

(*b*) accounting rules and procedures specified in the donation or grant agreement between the recipient and the development partner, in so long as the rules and procedures are not inconsistent with generally accepted accounting practices.

(7) A donation or grant received under this section is a public resource and shall be subject to audit in accordance with the Public Audit Act. Cap. 37:01

(8) For purposes of this section—

"donation or grant" means a gift, financial contribution or other assistance from a development partner which is not repayable and—

(*a*) is intended to—

(i) finance a project;

(ii) facilitate delivery of public goods or services for the benefit of the people of Malawi; or

(iii) otherwise assist a public body to achieve goals that are consistent with the policy objectives of the Government; and

(*b*) under which the public body is required to act in accordance with terms and conditions specified in the donation or grant agreement.

PART VII—TRUST MONEY AND UNCLAIMED MONEY

Trust money

55.—(1) Trust money shall be held and accounted for separately from public money.

(2) Trust money shall be used only in accordance with this Part.

(3) For the purposes of this Part, "trust money" means money that is—

(*a*) deposited with the Government pending the completion of a transaction or dispute and which may become repayable to the depositor, the Government or a third party;

(*b*) 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*) paid to the Government in trust for any purpose as approved by the Secretary to the Treasury; and

(*e*) due to, or belongs to any person and is collected by the Government under an agreement between the Government and that person.

Establishment of a Trust Fund and trust accounts

56.—(1) The Secretary to the Treasury may establish a Trust Fund and trust accounts under the Trust Fund to receive trust money, and all such moneys shall be paid into trust accounts constituting the Trust Fund established for that purpose.

(2) A controlling officer or a designated officer of an organization responsible for a trust account, shall prepare for the account established or to be established within the Trust Fund, an instrument, signed by that officer, 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 of funds to be deposited in the account;

(*h*) the approved categories of expenditure to be paid from the account;

(*i*) any particular conditions for use of the account; 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 may approve or refuse to grant approval of the request made pursuant to subsection (2) and shall endorse appropriately on the face of the instrument.

(4) Notwithstanding subsection (3), the Secretary to the Treasury shall not withhold approval of a request where trust money has already been received by a public body.

(5) Where the Secretary to the Treasury approves a request for establishment of a trust account, the account shall be established forthwith and the instrument shall constitute an agreement for the operation of the account.

Operation of trust accounts

57.—(1) A trust account shall always be in credit.

(2) There shall be paid to the credit of a trust account, all moneys paid for the purposes of the account.

(3) There shall be issued and paid to or on behalf of the depositor, such amounts and in such manner as provided in the agreement related to the trust account.

(4) The Government shall not be liable to any person for any money payable into the trust account except for money actually paid into the account under the agreement.

(5) 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, in accordance with the rules and procedures prescribed for the payment of public moneys.

(6) The Secretary to the Treasury may appoint an agent to manage some or all trust moneys on such terms and conditions as the Secretary to the Treasury may determine, subject to the requirements of this section.

(7) An institution shall not qualify for appointment as an agent under subsection (6) unless the institution is a recognized professional institution of a kind and with experience in the handling of trust moneys.

Investment of trust account money

58.—(1) The Secretary to the Treasury or any trust agent appointed under section 57(6) may invest trust money for such periods, and on such terms and conditions as are consistent with sound trust investment practice.

(2) No legal action shall lay against the Secretary to the Treasury or against the Government in respect of the investment or non-investment of trust money.

(3) When any trust account money becomes payable or repayable to the depositor or other person entitled thereto, there shall be—

(*a*) added thereto, an amount of interest certified by the Secretary to the Treasury to have been earned thereon; and

(*b*) deducted therefrom a reasonable charge for the services of the Secretary to the Treasury in accordance with Treasury Instructions.

(4) Subsections (2) and (3) shall apply to an agent appointed under section 57(6) in the same manner as if the agent were the Secretary to the Treasury.

Oversight of the Trust Fund and trust accounts

59.— (1) The Secretary to the Treasury shall provide financial oversight of the Trust Fund and trust accounts.

(2) The controlling officer or the designated officer of the organization responsible for a trust account shall submit reports to the Secretary to the Treasury in accordance with Part XI.

Unclaimed money-interpretation

60. In sections 61 to 69, unless the context otherwise requires—

"holder" includes—

(*a*) a bank and a financial institution, carrying on business in Malawi;

(*b*) a person, partnership, company and corporation carrying on business in Malawi; and

(*c*) the Secretary to the Treasury, in respect of the Trust Fund and trust accounts;

"owner" means the person entitled to any unclaimed money, and includes his executor, administrator, assignee, lawful attorney or agent; and

"unclaimed money" means, subject to sections 61 and 67, all principal and interest money, dividends, bonuses, profits and other sums of money whatsoever owing to any owner which, at any time before or after 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.

Period after which money becomes unclaimed money

61. The following money deposited with a holder shall become unclaimed money within the meaning of this Act at the following times, whether or not the money has at any prior time become payable—

(*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 in a current account, at the expiration of six years from the date when the account was last operated on by the customer.

Register of unclaimed money *Second Schedule*

62.— (1) Every holder shall, on 1st April in each year, enter in a register to be kept by such holder at his principal office in Malawi, in the form provided in the *Second Schedule*, all unclaimed money held by the holder in Malawi at the time of making the entry.

(2) From and after 8th April in each year, the holder shall open the register for public inspection during ordinary business hours upon payment of a fee determined by the Secretary to the Treasury.

(3) On ceasing to carry on business in Malawi, a holder shall deposit the register in the custody of the Secretary to the Treasury and pay all unclaimed money to the credit of the Consolidated Fund.

Holder to notify entry to Secretary to the Treasury and owner

63. A holder shall, not later than 15th April in each year, or such later date as the Secretary to the Treasury may approve in writing—

(*a*) furnish to the Secretary to the Treasury, a copy of the register kept under section 62(1); 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.

Payment of unclaimed money to the Consolidated Fund

64.— (1) All unclaimed money not paid by a holder to the owner within three months after the notice prescribed by section 63 is given, 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 Government.

Secretary to the Treasury to pay to claimant

65. Where a person makes a demand of any unclaimed money within six years of the money being paid into the Consolidated Fund under section 64, the Secretary to the Treasury shall, on being satisfied that the person is the owner of the money demanded, order payment of the money to the person and the payment shall be a statutory expenditure.

Examination of accounts

66.— (1) The Secretary to the Treasury may, at any time, examine any register kept by a holder under section 62 and any account of the holder relating to unclaimed money, and may, for that purpose, require the production of any record relating to such money.

(2) The Secretary to the Treasury or any officer authorized by the Secretary to the Treasury shall, at all times, have full and free access to all records of unclaimed money and have the right to make copies.

(3) Every person shall, where requested by the Secretary to the Treasury, furnish in writing any information which may be in that person's knowledge, or produce any record in the person's possession or control that relates to money which is or may be unclaimed money.

(4) Where any error is found in any register or account or notice sent to the owner, or copy of any such document, the Secretary to the Treasury may direct that the error be corrected.

(5) The Secretary to the Treasury and every officer authorized by the Secretary to the Treasury, shall maintain secrecy over any matter which comes to the knowledge of the Secretary to the Treasury or the officer in the course of the inspection under this section, and shall not communicate any such matter to any person, except for the purposes of implementing this Part.

(6) A person who fails to comply with this section commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and, in the case of a natural person, to imprisonment for five years.

Unclaimed trust money

67. (1) Any trust money together with interest, if any, that is unclaimed for a period of three years after having become repayable or payable to a depositor or any other person entitled thereto shall, after due inquiry and publication of a notice in the *Gazette* and two newspapers of nationwide circulation, be transferred to the Consolidated Fund.

(2) Where trust money deposited into the Consolidated Fund under subsection (1) is claimed within six years of being so transferred and the Secretary to the Treasury is satisfied that the money is payable to the claimant, the Secretary to the Treasury shall pay the money to the claimant together with any interest accrued thereon in accordance with section 58(3)(*a*) but subject to section 58 (3)(*b*).

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

69. Where a holder defaults on an obligation under sections 62, 63 or 64, the holder and every director, manager, secretary and other officer of the holder who knowingly and willfully authorizes or permits the default, commits an offence and shall, upon conviction, be liable to a fine of K50,000 for every day during which the default subsists. Offences and penalty

PART VIII—BORROWING, LOANS AND GUARANTEES

70. The Government may only borrow money in accordance with this Act and under an Act authorizing such borrowing. Government not to borrow except under an Act

71.— (1) The Secretary to the Treasury shall prepare and submit to the Minister, a medium-term debt management strategy for the management of public debt. Debt management strategy

(2) The strategy under subsection (1) shall ensure—

(*a*) that the financing needs and the repayment obligations of the Government are met on a timely basis;

(*b*) that borrowing cost to the Government is as low as possible over medium to long term, consistent with a prudent degree of risk;

(*c*) development of the domestic debt market; and

(*d*) that any other action considered to impact positively on public debt is pursued.

(3) The medium-term debt management strategy shall be based on the principles of economic, fiscal and financial policy set out under Part IV and shall take into account—

(*a*) the cost and risk embedded in the current debt portfolio;

(*b*) future borrowing and debt requirements of the Government;

(*c*) the macro-economic framework of Malawi;

(*d*) prevailing market conditions; and

(*e*) any other factors that may be relevant for the development of the medium-term debt management strategy.

(4) The medium-term debt management strategy shall include guidelines or ranges for acceptable market risks in the debt portfolio and planned borrowings and other debt management activities to promote development of the domestic debt market in Malawi.

(5) The Secretary to the Treasury shall update the medium-term debt management strategy, at least once every year, and submit the update to the Minister.

(6) The Minister shall not later than 31st December review the medium-term debt management strategy or updates under subsection (5) and submit the strategy or updates to Cabinet for approval.

(7) The Minister shall, within twenty-eight days after Cabinet approval, publish in the Gazette, the approved medium-term debt management strategy or updates to the strategy, as the case may be.

(8) Upon approval of the medium-term debt management strategy by Cabinet, all Government borrowing and other debt management operations shall be undertaken in compliance with the medium-term debt management strategy.

Annual borrowing plan

72.—(1) The Secretary to the Treasury shall, not later than 31st March, prepare an annual borrowing plan to meet the aggregate borrowing requirements of the Government for the next financial year.

(2) The annual borrowing plan shall include—

(*a*) planned borrowing operations over the year;

(*b*) borrowing instruments to be used; and

(*c*) the indicative timing of the borrowings.

(3) The Minister shall not later than 30th April submit the annual borrowing plan to Cabinet for approval.

(4) The annual borrowing plan shall be updated at least once every six months.

(5) The Minister shall, within twenty-eight days of approval, publish in the *Gazette*, the annual borrowing plan and any updates thereto.

Instrument of loan agreement

73. Every loan raised 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.

Minister may borrow when authorized

74.— (1) The Minister may 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—

(*a*) ensure that the raising of the loan is in the public interest;

(*b*) ensure that the borrowing is fiscally responsible in accordance with section 25;

(*c*) ensure that the borrowing is consistent with the Government economic and fiscal policy;

(*d*) satisfy himself that the Government has or is likely to have, based on current projections, the financial ability to meet all obligations under the loan agreement including future loan payments;

(*e*) in the case of an external debt, consult the Reserve Bank of Malawi in accordance with section 42 of the Reserve Bank of Malawi Act; and

No. 3 of 2019

(*f*) obtain a written legal opinion of the Attorney General on the legal aspects of the loan agreement.

(3) All money received by the Government under a loan agreement shall be paid into an account within the Consolidated Fund, and the proceeds shall only be expended for the purposes for which the money 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.

Provisions for general borrowing

75.— (1) When exercising power to borrow under section 74, the Minister may, with the approval of Cabinet and after consulting the Secretary to the Treasury, raise a loan in a 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, comes into force and the Minister decides to raise a loan accordingly, subject to any regulation that provides for the same, the provisions of Part II of the *Third Schedule* shall apply.

Third Schedule

Subsidiary loan agreement

76.— (1) The Minister may on-lend to another body, including a statutory body or state-owned enterprise, under a written subsidiary loan agreement, such amounts of money obtained through a loan, on

such terms and conditions as are specified in the subsidiary loan agreement.

(2) The Minister shall ensure that money on-lent under subsection (1) is repaid in accordance with the terms and conditions of the on-lent loan agreement and shall submit periodic reports on the status of subsidiary loans to the National Assembly.

Borrowing on overdraft

77.— (1) The Minister may 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.

No. 3 of 2019

(2) Where the Minister borrows money under subsection (1), the borrowing shall comply with section 39 of the Reserve Bank of Malawi Act.

Treasury Bills

78.— (1) The Secretary to the Treasury may, with the prior approval of the Minister, borrow for and on behalf of the Government, by the issuance of Treasury Bills payable at the Reserve Bank of Malawi, sums not exceeding the sum prescribed in paragraph 44 of the *Third Schedule* or such further sums as may 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 other written law 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*.

Third Schedule

Borrowing by stocks, bonds or promissory notes

79.— (1) Where the Minister determines it necessary to supplement Government revenue, the Minister may raise money by the issuance 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 connection with the raising of such loans may, if the Minister so directs, be paid out of the principal moneys raised.

(4) Subject to any other written law providing for the same, the terms and conditions on which any stocks, bonds or promissory notes may be issued are prescribed in the *Third Schedule*.

Third Schedule

(5) The Reserve Bank of Malawi is appointed Registrar of all registered stocks, bonds and promissory notes issued under this section.

Derivative transactions

80.— (1) The Minister may, in the public interest, enter into derivative transactions, either directly or indirectly through an intermediary, but only within the framework and limits of the budget policy statement and the medium-term debt management strategy in a manner and on such terms and conditions prescribed by regulations made under this Act.

(2) For purposes of subsection (1) derivative transactions include—

(*a*) financial swaps and other derivative transactions entered into for the purposes of managing the risks of the Government under various financial transactions;

(*b*) offering buyback and exchange of public debt securities; and

(*c*) offering early repayment of a loan before the date of maturity of the loan.

(3) Money required to be paid by the Government under a derivative transaction entered into under this section shall be a charge—

(*a*) on the Consolidated Fund; or

(*b*) where the Minister so determines, any other public fund established for the purpose of making such payments.

(4) Any expense incurred in connection with a derivative transaction entered into under this section shall be a charge on the Consolidated Fund and a protected expenditure.

(5) The Minister shall, every three months, publish a notice in the *Gazette* of the derivative transactions entered into pursuant to this section.

Liability of the Government

81. The Government shall not be liable to contribute towards the payment of any debt or liability of a public body unless the Government is liable to make a contribution under any other written law, a guarantee or indemnity given under section 82, or is otherwise liable to pay to the creditor.

Power to give guarantees and indemnities

82.— (1) Subject to subsection (2), the Minister may, where the Minister determines it to be in the public interest and necessary, give a guarantee or indemnity, in writing, on behalf of the Government upon such terms and conditions as the Minister determines as appropriate, in respect of the performance of any person, 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 25.

(2) The Minister shall, within seven days of giving the guarantee or indemnity, report the giving of the guarantee or indemnity to the National Assembly, if the National Assembly is in session, and if not, at the commencement of the next ensuing session.

(3) A report under subsection (2) shall—

(*a*) contain reasons as to why it was in the public interest and necessary to give the guarantee or indemnity; and

(*b*) provide an assessment of the risks associated with the guarantee or indemnity.

(4) Any money paid by the Government under a guarantee or indemnity given under this section shall constitute a debt due to the Government from the person, body corporate, organization or statutory body in respect of whom the guarantee or indemnity was given, and may be recoverable in any court.

(5) Where a guarantee is given to a body corporate, the Minister shall, in addition to matters required to be considered under subsection (1), satisfy himself that the guarantee will facilitate such body corporate in the initiation or advancement of any enterprise conducive to national economic development or growth in Malawi.

(6) A guarantee involving a financial liability shall not be binding upon the Government unless entered into in accordance with this section.

Taking and releasing of securities by Government

83.—(1) Whenever a 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 Government, 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 connection with, the security which could be exercised, undertaken, or performed by the Government.

(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 Government.

Expenditure for protection of public securities

84.—(1) Subject to Part V, 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.

(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.

Power to lend money

85. Subject to section 35, where it is in the public interest to do so, the Minister may, on behalf of the Government on terms and conditions approved by the National Assembly, lend money to any organization whether within or outside of Malawi.

PART IX— DEBT RETIREMENT FUND

Debt Retirement Fund

86. There is hereby established a Debt Retirement Fund in which shall be reserved moneys for servicing public debts.

Source of money for the Debt Retirement Fund

87. There shall be deposited into the Debt Retirement Fund money—

(*a*) appropriated by the National Assembly for that purpose; and

(*b*) from sources prescribed annually by the Minister, by Order published in the *Gazette*.

Debt Retirement Fund Committee

88.— (1) There shall be a Debt Retirement Fund Committee comprising the—

(*a*) Secretary to the Treasury, who shall be the Chairperson;

(*b*) Governor of the Reserve Bank of Malawi;

(*c*) Solicitor General;

(*d*) Secretary responsible for economic planning; and

(*e*) Accountant General.

(2) The Debt Retirement Fund Committee shall—

(*a*) recommend to the Minister, sources of funds for the Debt Retirement Fund;

(*b*) approve debt repayment plans;

(*c*) approve withdrawals from the Debt Retirement Fund; and

(*d*) determine the debts to be repaid from the Debt Retirement Fund.

(3) Members of the Debt Retirement Fund Committee shall attend to business of the Committee in person.

Payments from the Debt Retirement Fund

89.— (1) Money in the Debt Retirement Fund shall not be withdrawn for any other purpose other than repayment of a public debt.

(2) All withdrawals from the Debt Retirement Fund shall be made upon prior authorization by the Debt Retirement Fund Committee.

(3) The Debt Retirement Fund Committee shall authorize payments out of the Debt Retirement Fund in accordance with approved debt repayment plans.

Records and reporting requirements

90.— (1) The Debt Retirement Fund Committee shall maintain proper records of the income and expenditure of the Debt Retirement Fund.

(2) The Debt Retirement Fund Committee shall, by 31st December each year, submit to the Minister an income and expenditure report of the Fund for that financial year.

(3) The Minister shall, by 31st March each year, submit to the National Assembly, a report on the—

(*a*) sources of funds for the Debt Retirement Fund for that financial year;

(*b*) amount of money collected; and

(*c*) public debts retired in that financial year, including the amount of the debts retired.

PART X—STATUTORY BODIES AND STATE-OWNED ENTERPRISES

Classification of statutory bodies and state-owned enterprises

91. Statutory bodies and state-owned enterprises shall be classified according to their source of income as follows—

(*a*) semi-subvented;

(*b*) wholly subvented; or

(*c*) commercial.

Annual commitments

92.— (1) Each statutory body and state-owned enterprise shall enter into an annual performance contract with the Secretary to the Treasury by 31st March.

(2) The annual performance contract shall be reviewed by 30th September.

Performance, management plan and budget

93.—(1) A chief executive officer of a commercial statutory body or state-owned enterprise shall, within three months before the end of a financial year, submit to the Secretary to the Treasury, a performance and management plan, including projected financial statements for the following financial year, in such form as the Secretary to the Treasury may require.

(2) Where a subvented statutory body or state-owned enterprise seeks Government financial assistance by way of appropriation, grant, subsidy or otherwise, the chief executive officer of the subvented statutory body or state-owned enterprise shall, not later than three months before the end of the financial year, submit to the Secretary to the Treasury, a performance and management plan of the statutory body or state-owned enterprise together with estimates of revenue, expenditure and cash flows for the following financial year, in such form as the Secretary to the Treasury may require.

(3) A chief executive officer of a local authority shall, within three months before the end of a financial year, prepare and submit to the Secretary to the Treasury, through the National Local Government Finance Committee, an annual budget for the following financial year.

Bank accounts

94.— (1) A statutory body and state-owned enterprise shall at all times maintain a revenue holding account with the Reserve Bank of Malawi which shall form part of the Treasury Single Account.

(2) A statutory body and state-owned enterprise shall open one operating bank account with a commercial bank which shall be operated on credit ceiling authority or in accordance with Treasury Instructions.

(3) The Secretary to the Treasury may, on application by a statutory body or state-owned enterprise, and upon being satisfied that justifiable operational reasons exist, give written approval for the statutory body or state-owned enterprise to open additional operating accounts as are appropriate for the operations of the statutory body or state-owned enterprise.

(4) A statutory body or state-owned enterprise may open revenue collecting accounts with financial institutions as it determines appropriate and in accordance with guidelines issued by the Secretary to the Treasury.

(5) A statutory body or state-owned enterprise shall deposit all its revenue into the revenue holding account and shall, from time to time, transfer from the holding account to the operating account such amounts as are required for its operations.

(6) Any balance in the holding account of a statutory body or state-owned enterprise at the close of a financial year shall be applied in accordance with the Government policy on dividends and surplus.

Moneys payable to, or to be retained by, statutory bodies or state-owned enterprises

95.— (1) Where money is appropriated by the National Assembly for the purposes of a subvented statutory body or state-owned enterprise, such money shall be payable at such times and in such amounts as the Secretary to the Treasury determines, in accordance with the Appropriation Act.

(2) A regulatory statutory body shall retain, for its operations, such percentage of the money collected by the regulatory statutory body in a financial year, under the authority of the Act establishing the regulatory statutory body, as may be determined by the Secretary to the Treasury after consulting the regulatory statutory body.

(3) Any moneys retained by a regulatory statutory body under subsection (2) in respect of a financial year which are not expended by the end of that financial year may be expended in the subsequent financial year, subject to the budget of the regulatory statutory body.

(4) For purposes of this section a "regulatory statutory body" means a statutory body whose core mandate is to regulate and monitor a specific sector of the economy.

Borrowing on overdraft and private loans

96.— (1) A statutory body or state-owned enterprise may, with the prior written approval of the Minister, borrow money by way of loan or overdraft for purposes of the statutory body or state-owned enterprise, on such terms as are agreed between the statutory body or state-owned enterprise and the lender.

(2) Where a statutory body or state-owned enterprise raises a loan or overdraft pursuant to subsection (1), there shall be no liability attached to the Government unless otherwise approved by the Cabinet.

Guarantee by statutory body or state-owned enterprise

97.—(1) A statutory body or state-owned enterprise may only give a guarantee to its subsidiary.

(2) A guarantee shall not be given under subsection (1) unless approved in writing by the Minister.

(3) The Minister shall, before giving approval under subsection (2), ascertain with the Secretary to the Treasury the financial implications on the Government of the statutory body or state-owned enterprise giving the guarantee, and ensure that the giving of the guarantee is in the public interest.

(4) There shall be no liability attached to the Government by virtue only of the approval of the Minister given under subsection (2).

Application of resources

98.— (1) A statutory body and state-owned enterprise shall apply their resources only for the purposes specified in the Act establishing the statutory body or the memorandum and articles of association establishing the state-owned enterprise and this Act.

(2) The statutory body and state-owned enterprise shall apply the resources on programs that are strictly in line with the performance management plans of the statutory body or state-owned enterprise and shall take cognizance of value for money and efficiency.

(3) The Secretary to the Treasury shall ensure that the resources of statutory bodies and state-owned enterprises are managed efficiently and effectively and in accordance with this Act.

Accounts and records

99.—(1) A statutory body and state-owned enterprise shall keep proper accounts and records of its transactions and financial position, and shall—

(*a*) ensure that all payments are correctly made and properly authorized;

(*b*) maintain adequate internal control over its assets and other assets in its custody;

(*c*) ensure that liabilities are incurred in accordance with generally accepted accounting principles; and

(*d*) keep the accounts and records in such a way as to facilitate the preparation of financial statements required under section 100 and enable such accounts to be properly audited.

(2) The statutory body and state-owned enterprise 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.

(3) The accounts and records required under subsection (I) shall be kept in accordance with generally accepted accounting practices.

Reports and financial statements

100.— (1) Each statutory body or state-owned enterprise shall prepare and submit to the Secretary to the Treasury, quarterly financial and non-financial performance reports that are consistent with the performance management plan submitted under section 93 and the format prescribed by the Secretary to the Treasury.

(2) The statutory body or state-owned enterprise shall, not later than 30th June each year, prepare and submit to the Auditor General

an annual performance and management report of its operations and its financial statements for the preceding financial year.

(3) The Auditor General shall review the report and financial statements submitted under subsection (2) and issue a report on the extent to which the financial statements present the financial operations and financial position of the statutory body or state-owned enterprise and whether the statutory body or state-owned enterprise complied with its performance management plan.

(4) The statutory body or state-owned enterprise shall, by 31st July each year, furnish to the Minister, the responsible Minister and the Secretary to the Treasury, the performance management report, the financial statements and the report of the Auditor General.

(5) The Minister shall lay before the National Assembly, the reports received under subsection (4) within thirty days, if the National Assembly is in session, and if the National Assembly is not in session, at the commencement of the next session.

(6) Where the performance management report or financial statement of the statutory body or state-owned enterprise is published, the report of the Auditor General shall be included in the publication.

(7) The Minister shall, before 30th September in each year, lay before the National Assembly an annual consolidated financial and non-financial report for all statutory bodies and state-owned enterprises.

Powers of inspection of the Secretary to the Treasury

101.— (1) Where the Secretary to the Treasury considers it appropriate or has reason to believe that a statutory body or state-owned enterprise has or may have failed to implement the performance and management plan submitted pursuant to section 93, 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 or state-owned enterprise.

(2) Where an investigation into, or inspection of, the records of a statutory body or state-owned enterprise is carried out, the Secretary to the Treasury shall have full and free access to all accounts and records of the statutory body or state-owned enterprise and any subsidiary of the statutory body or state-owned enterprise that relate, directly or indirectly to—

(*a*) the collection, receipt, expenditure and issuance of money of the statutory body, state-owned enterprise or subsidiary;

(*b*) the receipt, custody, disposal, issuance or use of public resources or other property of, or property in the custody of the statutory body, state-owned enterprise or subsidiary; and

(*c*) the incurring of any liability by the statutory body, state-owned enterprise or subsidiary.

(3) The Secretary to the Treasury may, by written instrument, delegate to an officer the powers under subsection (1).

(4) The Secretary to the Treasury and any delegated officer shall, except in the performance of the duties, functions and powers under this Part or pursuant to a court order, keep confidential and not disclose to any person any information obtained in the course of conducting an investigation or inspection under this section.

Investment and reporting requirements

102.— (1) Where Government establishes a state-owned enterprise or acquires shares in any entity, the shares shall be registered in the name of the Secretary to the Treasury.

(2) Where a State-owned enterprise is wholly owned by Government, the Secretary to the Treasury shall be the principal shareholder.

(3) A statutory body or state-owned enterprise shall not be dissolved or participate in any acquisition, merger, investment or disinvestment without prior written approval of the Secretary to the Treasury.

(4) A chief executive officer of a statutory body or state-owned enterprise shall, within fourteen days of making an investment in its subsidiary, report the investment to the Secretary to the Treasury.

(5) The Secretary to the Treasury may issue Treasury Instructions prescribing investment guidelines and reporting requirements.

Payment of dividends and surplus funds to the Consolidated Fund

103.— (1) Subject to the principles of responsible fiscal management in section 25, every statutory body and state-owned enterprise shall pay into the Consolidated Fund, any—

(*a*) dividend due from the state-owned enterprise to the Government, and

(*b*) money determined to be a surplus for the purposes of the statutory body.

(2) The statutory body or state-owned enterprise shall remit the dividend or surplus into the Consolidated Fund in accordance with the Government policy on dividends and surplus.

Reporting on adverse occurences

104.— (1) The chief executive officer of a statutory body or state-owned enterprise shall report to the Minister, the responsible Minister and the Secretary to the Treasury, in writing, immediately upon the occurrence of a significant event which adversely affects the financial position of the statutory body or state-owned enterprise.

(*b*) present fairly the matters required by this Act, any other related written law and applicable generally accepted accounting practices.

(4) Where the Auditor General is not able to provide a report as required by subsection (3), the Auditor General shall state the reasons thereof.

(5) The Auditor General shall, as soon as practicable but not later than 30th September each year submit the financial statements together with the report issued under subsection (3) to—

(*a*) the President;

(*b*) the Speaker of the National Assembly;

(*c*) the Minister; and

(*d*) the Secretary to the Treasury.

(6) The Minister shall, forthwith, lay before the National Assembly the report received under sub section (5) if the National Assembly is in session, and if not in session, at the commencement of the next ensuing session.

(7) The Minister shall cause the annual financial statements to be published in the *Gazette* and at least two newspapers of nationwide circulation in such summarized form as the Minister may determine.

Annual reports

108.—(1) A controlling officer shall, as soon as practicable, but not later than 31st July each year, submit to the Minister and the responsible Minister an annual report in a form approved by the Minister.

(2) The Annual report submitted under subsection (1) shall include information relevant to that Ministry taken from the financial statements required under section 107, and the Secretary to the Treasury shall certify the information contained in the report 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 shall lay a copy before the National Assembly if it is in session, and if it is not in session, at the commencement of the next ensuing session.

PART XII — DISPLINE AND OFFENCES

Improper conduct and disciplinary measures Cap. 1.03

109.—(1) Subject to the Constitution and the Public Service Act, where the Secretary to the Treasury or controlling officer has reason to believe that a controlling officer or an officer is engaging in or has engaged in improper conduct within the meaning of subsection (4)—

(*a*) in the case of a controlling officer, the Secretary to the Treasury shall—

(i) take such measures as may be prescribed in regulations made under this Act; or

(ii) refer the matter to the Secretary to the President and Cabinet or the relevant body with recommendation to take appropriate disciplinary measures against the controlling officer; or

(*b*) in the case of an officer, the controlling officer shall—

(i) take appropriate measures to discipline the officer; or

(ii) refer the matter to the relevant office or body with recommendation to take appropriate disciplinary measures against the officer.

(2) The Secretary to the Treasury shall, where the Secretary to the Treasury has reason to believe that a controlling officer has been or may have been in breach of this Act, recommend to the Secretary to the President and Cabinet that the controlling officer be suspended from all duties and responsibilities in the public service, in accordance with applicable law, pending investigations.

(3) Where the Secretary to the Treasury has reason to believe that a chief executive officer of a statutory body or state-owned enterprise is engaging in or has engaged in improper conduct within the meaning of subsection (4), the Secretary to the Treasury shall refer the matter to the relevant body with recommendation to take appropriate disciplinary measures against the chief executive officer in accordance with the applicable terms and conditions of appointment.

(4) A controlling officer, chief executive officer or an officer engages in improper conduct where the controlling officer, chief executive officer or officer—

(*a*) fails to comply with this Act;

(*b*) fails to put in place effective systems of risk management, internal controls and internal audit;

(*c*) refuses or without reasonable excuse, fails to attend an inspection or inquiry under this Act at a time and place required of that person by the Secretary to the Treasury;

(*d*) over-commits or overspends funds under that person's control;

(*e*) fails to conform or comply with financial and operational procedures laid down in Treasury Instructions or any other applicable guidelines;

(*f*) undermines any financial management procedures or controls that apply to the public body;

(*g*) fails to maintain proper accounting records or assets inventories;

(*h*) fails, without justifiable reason, to pay eligible and approved bills promptly in circumstances where funds for settlement of the bills are provided;

(*i*) fails to comply with timelines on submission of performance management plans and budgets;

(*j*) fails to comply with reporting timelines under this Act;

(*k*) fails to implement commitments in annual performance commitment targets;

(*l*) fails to service a debt obligation;

(*m*) incurs arrears, without taking necessary precautions to avoid incurrence of the arrears;

(*n*) fails to resolve findings and implement recommendations of internal or external auditors within the time stipulated by the Audit Committee or the Secretary to the Treasury;

(*o*) fails to report to the Secretary to the Treasury any case of apparent waste or extravagance; or

(*p*) fails, without justifiable reason, to implement recommendations of the Secretary to the Treasury or audit committee.

(5) A person subject to disciplinary action under this section may be liable to sanctions under section 110.

(6) For purposes of this section, "arrears" means all unpaid bills, inclusive of contractual and statutory obligations, after the end of a financial year.

Offences and penalty

110.—(1) A person who—

(*a*) refuses or fails to produce or submit any information in his possession when required to do so under this Act;

(*b*) issues a local purchase order outside the financial management information system used by the Government;

(*c*) makes or permits expenditure that is unlawful, unauthorised, irregular or wasteful;

(*d*) misuses or permits the misuse of any public asset or property which results in the loss of the public asset or property;

(*e*) contravenes, causes another person to contravene or knowingly permits another person to contravene a provision of this Act;

(*f*) refuses or neglects to pay any public money or trust money into a Fund or account into which it is payable;

(*g*) expends funds where there is no appropriation permitting such expenditure;

(*h*) makes any statement or declaration or gives any information, certificate or document required under this Act knowing it to be false or misleading;

(*i*) implements or varies capital investments without approval of the Secretary to the Treasury;

(*j*) fails to exercise controls over the receipt, custody or utilization of public resources;

(*k*) conceals or destroys information that is required to be recorded under this Act;

(*l*) alters or obliterates data maintained under this Act;

(*m*) fails to account for assets in that person's custody or under the control of that person;

(*n*) opens or causes to be opened a bank account for official use in contravention of this Act;

(*o*) 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 money; or

(*p*) fails to meet any obligation imposed on that person under this Act,

commits an offence.

(2) A person who commits an offence under subsection (1) shall, upon conviction, be liable to a fine of K50,000,000 or the financial gain derived from the offence, whichever is greater, and to imprisonment for twelve years.

General penalty

111. A person who contravenes a provision of this Act for which a specific penalty is not provided, shall be liable, upon conviction, to a fine of K10,000,000 or the financial gain derived from the offence, whichever is greater, and to imprisonment for five years.

Obligation to report

112.—(1) A person who has knowledge of any circumstances which may cause that person to believe that an improper conduct or an offence under section 109 or 110 is about to be committed or may

have been committed shall report the circumstances to the Secretary to the Treasury.

(2) A person who lodges a report under subsection (1) shall not be penalized in any way, whether the allegation is proved or not, unless there is sufficient proof that the person was acting in bad faith.

(3) For the purpose of this section, a person is penalized if the person is dismissed from employment, discriminated against, made the object of reprisal or other form of adverse treatment or is denied any appointment, promotion or advantage that otherwise would have been provided but for the report.

PART XIII—MISCELLANEOUS PROVISONS

Write-off of losses

113.— (1) The Minister may, by Order published in the *Gazette*, prescribe thresholds for approval of amounts that may be written-off as losses.

(2) 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*) value of lost, deficient, condemned, unserviceable or obsolete public assets; and

(*e*) investment to be written-off.

(3) The Secretary to the Treasury may, following any investigation that the Secretary to the Treasury considers appropriate in each particular case—

(*a*) approve the write-off if the amount is within the threshold that can be approved by the Secretary to the Treasury; or

(*b*) refer to the Minister for approval any case in which the amount exceeds the threshold that can be approved by the Secretary to the Treasury.

(4) Where the Secretary to the Treasury refers a case to the Minister under subsection (3)(*b*), the Minister may—

(*a*) approve the write-off, if the amount is within the threshold that can be approved by the Minister; or

(*b*) refer to Cabinet for approval any case in which the amount exceeds the threshold that can be approved by the Minister.

(5) Where the Minister refers a case to Cabinet under subsection (4)(*b*), the Cabinet shall approve or decline to approve the proposed write-off.

(6) Particulars of any approved write-offs granted under this section shall be reported in the financial statements and published in the *Gazette*.

(7) The Minister may, subject to approval by Cabinet and by notice published in the *Gazette*, amend the thresholds prescribed under subsection (1).

Conflict of interest

114.—(1) An officer shall not act in a manner, or be in a position, where the personal interest of that officer conflicts, or is likely to conflict, with the performance of the functions of that officer under this Act.

(2) An officer who fails to disclose a conflict of interest commits an improper conduct.

Regulations

115.—(1) The Minister may make such regulations as are necessary or expedient for the purpose of giving full effect to this Act in general, and for the better control and management of public money and public resources.

(2) Without limiting the generality of subsection (1), the regulations may provide for—

(*a*) registration, issuance, transfer, conversion, replacement, payment for and redemption of stocks or bonds;

(*b*) 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;

(*c*) replacement of lost or damaged certificates;

(*d*) registers of stockholders or bondholders upon whose stocks or bonds the interest has been unclaimed;

(*e*) fees and charges for any services rendered pursuant to this Act;

(*f*) periodic closure of any register provided for in this Act;

(*g*) control and management of investments and disinvestments in state-owned enterprises and other private corporations; and

(*h*) use, management and control of public assets.

Treasury and Desk Instructions

116.—(1) The Secretary to the Treasury may issue Treasury Instructions setting out detailed procedures for any matter prescribed by this Act to be so prescribed for the better control and management of public moneys and public resources.

(2) The Treasury Instructions shall be issued and distributed in printed, electronic or other form.

(3) A Treasury Instruction 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 to which the content relates;

(*d*) state whether the Treasury Instruction is new, adding to, amending or replacing a previous Instruction and where the Treasury Instruction is adding to, amending or replacing a previous Treasury Instruction, refer to or identify the previous Treasury Instruction being added to, amended or replaced; and

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

(4) The Secretary to the Treasury may issue Desk Instructions setting out detailed procedures and processes to guide officers on performance of specific tasks under this Act.

(5) Desk Instructions shall, with the necessary modifications, comply with the provisions of subsections (2) and (3).

Transitional provisions

117.—(1) All statutory bodies and state-owned enterprises shall, within three months of coming into force of this Act, comply with section 94.

(2) A controlling officer of a Treasury Fund shall, within three months of the coming into force of this Act, submit to the Secretary to the Treasury performance and financial reports of the Fund for the preceding three financial years.

(3) The Secretary to the Treasury shall, within three months of receiving reports under subsection (2), review the performance of the Trust Fund and where the Secretary to the Treasury is—

(*a*) satisfied with the performance of the Treasury Fund and it is in the public interest that the Fund should continue to exist, recommend to the Minister the reestablishment of the Fund for a specified duration;

(*b*) not satisfied with the performance of the Fund, recommend to the Minister discontinuation of the Fund; or

(*c*) not satisfied with the performance of the Fund but continuation of the Fund is in the public interest, recommend to

the Minister restructuring and reestablishment of the Fund for a specified duration.

(4) The Minister shall, on the recommendation of the Secretary to the Treasury, by Order published in the Gazette, reestablish, a Treasury Fund for a specified period or discontinue the Treasury Fund in accordance with section 44.

Repeal and savings
Cap 37:02

118.— (1) The Public Finance Management Act is hereby repealed.

(2) Notwithstanding subsection (1)—

(*a*) any subsidiary legislation made under the repealed Act in force immediately before the commencement of this Act shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act;

(*b*) any person who, immediately before the commencement of this Act, is serving in the office of Secretary to the Treasury or Accountant General shall continue to serve in that office until replaced by a person appointed in accordance with this Act; and

(*c*) any act, matter or thing commenced under the repealed Act and in progress immediately before the commencement of this Act and which is affected by this Act shall be continued, but subject to this Act.

FIRST SCHEDULE

(ss.30&31)

CONTENTS TO BE INCLUDED IN REPORTS AND STATEMENTS UNDER PART IV

PART I—ECONOMIC AND FISCAL DATA

1. Economic reports required under Part IV 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;

(*e*) interest rate movements;

(*f*) exchange rate movements; and

(*g*) such other information deemed necessary by the Minister to provide a comprehensive economic forecast.

2. Fiscal forecasts required under Part IV of this Act shall include—

(*a*) forecast information with respect to the statements required under section 27;

(*b*) forecast information with respect to the current year fiscal update and comparative budgeted and actual (where available) or provisional (where actual not available) figures for the immediately preceding financial year; and

(*c*) details of fiscal risks and, where they cannot be quantified, a statement of possible impacts and mitigation measures.

PART II—REPORTING REQUIREMENTS

1. Any forecast or statement required under Part IV of this Act shall include details of—

(*a*) the total domestic revenues;

(*b*) all other revenue;

(*c*) the total grants;

(*d*) the total expenses;

(*e*) net acquisition of non-financial assets;

(*f*) overall fiscal balance; and

(*g*) total borrowing (domestic and foreign borrowing).

SECOND SCHEDULE (ss.62)

REGISTER OF UNCLAIMED MONEY

Register of Unclaimed Money held by

(insert name of holder)

Name, Occupation and last known Address of Owner	*Total Amount due to Owner*	*Description of Unclaimed Money*	*Date of Last Claim*

THIRD SCHEDULE (ss.75,78 & 79)

PROVISIONS FOR GENERAL BORROWING

PART I—PRELIMINARY

Interpretation

1. 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 depositary;

"holder" means a person registered as a holder of any stock;

"Registrar" means the Registrar in whose register any stock issued under the provisions of this Schedule is registered; and

"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

Compliance with debt management strategy, etc

2. Where the Minister decides to raise a loan, the Minister shall borrow in accordance with the annual borrowing plan.

Receipt and expenditure of loan money

3. 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 provides 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.

Issue of securities

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

Securities not to be free of income tax

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

Loans to be charged on public revenue

6. All principal sums and interest payable under any securities shall 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.

Security converted for lenders

7. 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.

Prior securities not affected

8. 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.

Saving of existing claims

9. 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.

Authorized investment for trust funds

10. Securities issued under this Act shall 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.

Payment of loan before due date

11. The Minister may repay the whole or part of any loan before the due date, on such terms as he considers appropriate.

Agreement with Registrar as to securities

12.—(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 pursuant to this paragraph shall be as valid and have effect as if the terms thereof had been set forth and enacted by 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 determines appropriate.

Registrar of securities

13. Each Registrar shall keep a register of securities in which shall be entered, with respect to 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 the holder;

(*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.

Application for securities

14. 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 shall, on payment of the price of the securities and subject to the provisions of this Schedule, register that person in the register prescribed under paragraph 13.

No notice of trust to be received or registered

15. 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.

Registered holder of securities

16. A 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 the securities for that amount standing to the credit of that person in the register, with the right, subject to the provisions of this Schedule, to receive the interest thereon.

Certificates of title to securities

17.— (1) A Registrar shall, on application in writing by the registered holder of any securities registered in the Registrar's register, issue to the applicant 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 the applicant is the registered holder.

(2) The certificate of title shall be conclusive evidence of the ownership of the securities to which it relates.

(3) Where the Registrar is satisfied that a 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 the substitute certificate in the register accordingly.

(4) A substitute 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 paragraph.

(6) The transfer, whether by delivery or otherwise, of a 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 the 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.

Infants may be registered as holders of securities

18. A child of the age of ten years or more may be registered as a holder of securities under this Schedule and may apply for the issue of certificate of title in relation to the securities, or may execute a memorandum of transfer of the securities, which shall have effect in all respects as if the child were of the age of eighteen years.

Application of book-entry system

19. Where Government securities are issued, held or transferred in book-entry form, the Registrar—

(*a*) 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.

(*b*) may issue an additional statement requested by a security-holder during the month but the additional statement shall be provided at a fee which reflects the cost of producing the statement, as the Registrar may determine;

(*c*) may issue a paper certificate to a security-holder 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

(*d*) 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.

Transfer of securities

20.—(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 K1,000,000.00 or a multiple of K100,000.00 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 the 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) An entry under subparagraph (2) 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 paragraph while a 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.

Acquisition of securities by operation of law

21. 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, the Registrar shall, on application by or on behalf of the person entitled, and on being satisfied that the person is legally entitled to be registered as the holder of the securities, enter the name of the person in the register as the holder of the securities accordingly.

Vesting of securities of deceased holder without requiring probate or letters of administration

22.—(1) Where the registered holder of any securities under this Schedule has died, and the total nominal amount of the securities does not exceed K1,000,000 the Registrar shall have 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 the person is entitled to the securities under a will or intestacy of the deceased security-holder; or

(*b*) that the person is entitled to obtain probate of the will of the deceased security-holder, or letters of administration of the estate of the deceased person; and

(*c*) that in either case no grant of probate or letters of administration has been made.

(2) The Registrar shall give notice, in writing, to the Administrator General of any exercise of the powers conferred by subparagraph (1) within fourteen days of exercising the power.

Payment of interest

23.—(1) A Registrar shall, according to the terms of a loan, pay interest on any securities registered in the register maintained by that Registrar.

(2) Interest shall be paid to the registered security-holder or, in the case of securities held jointly or otherwise by two or more persons, to the security-holder first named in the register.

(3) Nothing in subparagraph (2) shall preclude the Registrar 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 paragraph shall be statutory expenditure.

Closing of register

24.—(1) The Registrar shall, for a period of fourteen days before each payment of interest on any securities registered in the Registrar's register, close the register 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 securities.

Power of attorney

25.—(1) A person may, by power of attorney in the prescribed form, appoint any other person to be that person's attorney for any purpose in relation to securities under this Schedule.

(2) A power of attorney under subparagraph (1) shall be deposited in the office of the Registrar.

(3) The power of attorney 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.

Redemption, conversion or renewal of securities

26.—(1) The Cabinet may authorize the Minister to issue, in Malawi or elsewhere, on such terms as the Minister determines appropriate, 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 for such period as the Minister thinks appropriate.

(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 paragraph, the money shall not be applied for any purpose other than redeeming or converting the securities for which it was borrowed and defraying the costs, charges, and expenses incurred in connection with the borrowing, redemption or conversion.

(4) Nothing in subparagraph (3) shall be construed to prevent the temporary investment of any such money pending its application to the purpose aforesaid.

(5) Trustees and other persons acting in a fiduciary capacity may convert any securities held by them pursuant to this paragraph, and shall not be liable for any loss resulting from any such conversion.

Interest on securities sold to redeem outstanding securities

27. In every case where securities are disposed of to raise 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.

Auditor General to be notified

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

Cost, charges and expenses

29. The costs, charges and expenses incurred in connection with raising a loan under this Schedule or converting, redeeming or renewing any securities shall be a statutory expenditure and may in accordance with the loan authorization Act, 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

Subscriptions from non-Malawian or non-residents

30. The Minister may, pursuant to an authorizing Act, accept subscriptions to a 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 repayment of the principal in any currency other than Malawi Kwacha, and the transfer from Malawi of any interest or principal will be subject to any written law in this respect then in force.

Registrar of securities

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

Statements by Registrar

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

Exemption from stamp duty

33. 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 25 of the Schedule and relating exclusively to any such securities.

Evidence of contents of register

34. 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

Determination of certain terms for borrowing outside Malawi

35. Each Act authorizing the Minister to borrow money outside Malawi shall state the—

(*a*) country in which the money is to be borrowed and the securities issued and registered for all amounts so borrowed;

(*b*) place for the payment of interest and the repayment of principal, respectively;

(*c*) currency in which the money is to be borrowed; and

(*d*) currency in which the securities are 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.

Agreements relating to loans raised outside Malawi

36.—(1) The Minister, acting in accordance with the annual borrowing plan, may enter into any agreement with a government or a government agency of a country other than Malawi which the Minister 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 subparagraph (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 paragraph shall be laid before the National Assembly within fourteen days after the date of the execution of the agreement if the National Assembly is then in session, and if the National Assembly is not in session, at the commencement of the next ensuing session.

Appointment of Registrar of securities

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

Appointment of loan agents

38. 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 the Minister's hand, appoint any two or more persons as joint loan agents for raising the loan or issuing the securities and may, in like manner, confer upon such persons, all such powers as the Minister determines as 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*.

Replacement of loan agents

39. 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 to replace that agent.

Minister's power not limited

40. The authority of the Minister to raise the whole or any part of a loan authorized to be raised, and generally to exercise all the powers conferred on the Minister by the Act, shall be in no way limited or affected by the fact that the Minister has appointed loan agents.

Cost of stamp duty on transfer of certain securities

41.—(1) The cost of composition of any stamp duty payable in a country other than Malawi in respect of transfer 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 transfer 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 transfer of securities in excess of the amount estimated under subparagraph (2), 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.

Transfer of securities from overseas to Malawi

42.—(1) Subject to such conditions and on payment of such fees as maybe 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 registration in Malawi of any transferred securities, 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 connection with the raising of the loan.

(3) Any securities 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

Interpretation

43. 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 46; and

"Treasury Bill" means a Treasury Bill issued under paragraph 44 and pursuant to this Part and includes any coupon in connection with that Treasury Bill.

Issue of Treasury Bills

44.—(1) The Minister may borrow, on behalf of the Government 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 percent of annual budgeted revenue.

45. The provisions of paragraphs 11 and 24 of this Schedule shall not apply to Treasury Bills. Provisions not applicable to Treasury Bills

46. Every Treasury Bill shall be— Value and form of Treasury Bills

(*a*) for a sum of K100,000 or a multiple thereof and shall be recoverable by the Reserve Bank of Malawi which may recommend amendment of the sum to the Minister;

(*b*) 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*) in such form as the Minister may determine; and

(*d*) issued by such method as the Minister may determine.

47. The par value of Treasury Bills shall be secured by way of a charge upon the Consolidated Fund or any other Fund as the Minister may determine and shall be payable as a statutory expenditure. Treasury Bills to be a charge on Consolidated Fund

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

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

50.—(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. Cancellation, redemption and discounting Treasury Bills

(2) The Reserve Bank of Malawi may purchase Treasury Bills at a discount prior to the redemption date.

PART VI—MISCELLANEOUS

51. Subject to the provisions of this Schedule, the Secretary to the Treasury may— Forms and other matters may be prescribed

(*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.

FOURTH SCHEDULE

FORM AND CONTENT OF FINANCIAL STATEMENTS

1. Financial statements shall 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 the closure date of the reporting period;

(*c*) a statement of changes in equity/net assets during the reporting period;

(*d*) notes to the financial statements;

(*e*) all necessary disclosures as required;

(*f*) a statement of cash flows showing the cash receipts and cash payments for operating, financing and investing activities during the reporting period, and the cash and cash equivalent at the beginning of the reporting period and also as at date of closure of the reporting period;

(*g*) 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;

(*h*) a statement of cash balances showing a breakdown of the balances held by type of holding;

(*i*) a statement of service performance showing appropriated budgets, approved variations to appropriated budgets, actual performance and variation between actual and budget;

(*j*) disaggregated statements of service performance for each Ministry, department 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 Government, and the variation between appropriated budget and actual performance;

(*k*) a statement of statutory expenditure showing details of domestic debt servicing, external debt servicing, statutory remuneration and other material items of expenditure;

(l) a statement of investments showing the nature or type of investments and current and non-current investments;

(*m*) a statement of borrowings showing total debt and the break-down 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);

(*n*) a statement of contingent gains and liabilities' showing where possible an indication of the gain or cost;

(*o*) a statement of ex-gratia payments approved under the provisions of this Act;

(*p*) a statement of write-offs approved under section 113 showing, in aggregate, losses and deficiencies of public money, irrecoverable amounts of revenue, irrecoverable debts and overpayments, the value of assets including investments written-off; and

(*q*) a statement on the level of asset values, including a statement of Government policy for the maintenance of asset values".

2. A statement showing, for each account in the Trust Fund and Treasury 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—

(*a*) comparative amounts for the corresponding previous reporting period must be shown in the statements, except where inappropriate or the item has not previously existed.

(*b*) where items included in the current reporting period have been reclassified, the comparative amount of the previous reporting period should be similarly reclassified.

(*c*) where respective reporting periods are not equal in length, the period covered must be clearly identified.

(*d*) 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—

(*a*) there must be attached to the front of the financial statements—

(i) 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

(ii) a copy of the report by the Auditor General required by section 107 (3);

(*b*) at the same time that the financial statements are laid before the National Assembly, the Auditor General, through the Speaker of the National Assembly and in accordance with the Standing Orders, 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 49, and of all securities redeemed or otherwise disposed of during that financial year.

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

FIONA KALEMBA
Clerk of Parliament