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Act

No. 6 of 2024

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
31st January, 2024

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An Act to provide for the promotion of investment and exports in Malawi; the establishment of the Malawi Investment and Trade Centre; the establishment of the One-Stop Service Shop; the establishment of the National Incentives Committee; the repeal of the Investment Promotion Act, the Export Promotion Council Act and the Export Incentives Act; and to provide for matters incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Investment and Export Promotion Act, 2024.

Interpretation

2. In this Act, unless the context otherwise requires—

"Centre" means the Malawi Investment and Trade Centre established under section 3;

"Chairperson" means the Chairperson of the Centre appointed under section 6 (2);

"Director General" means the Director General of the Centre appointed under section 14;

"domestic investment" means an investment made by a domestic investor;

"domestic investor" means an investor who is—

(*a*) a natural person who is a citizen, or a permanent resident, of Malawi;

(*b*) a partnership or association in which the controlling interest is owned by a person who is a citizen or permanent resident, or jointly owned by persons who are, citizens or permanent residents, of Malawi;

(*c*) a legal person incorporated under the laws of Malawi in which—

(i) more than fifty per cent of shares are held by persons who are citizens or permanent residents of Malawi; or

(ii) fifty per cent or more of the voting rights are held by persons who are citizens or permanent residents of Malawi;

"Exporter registration certificate" means a certificate issued by the Centre pursuant to section 29;

"foreign investment" means investment made by a foreign investor;

"foreign investor" means an investor who is not a domestic investor;

"investment" means a domestic investment or a foreign investment but excludes a portfolio investment;

"investment certificate" means a certificate issued by the Centre pursuant to section 22;

"investor" includes an existing and potential investor but excludes an investor on a securities market;

"portfolio investment" means an investment in shares or other securities traded on any securities and money market;

"public body" has the meaning as ascribed to that term under the Public Finance Management Act; and

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"strategic area" means a strategic area for investment or export as prescribed under section 35.

Part II—The Malawi Investment and Trade Centre

Establishment of the Malawi Investment and Trade Centre

3. There is hereby established a body to be known as the Malawi Investment and Trade Centre which shall—

(*a*) be a body corporate by that name, having perpetual succession and a common seal; and

(*b*) subject to the provisions of this Act, be capable of doing or performing all such acts or things as bodies corporate may by law do or perform.

Functions of the Centre

4.—(1) The Centre shall promote and facilitate investment and exports in Malawi.

(2) Without derogation from the generality of subsection (1), the functions of the Centre shall be to—

(*a*) register investors and exporters;

(*b*) issue—

(i) investment certificates to registered investors; and

(ii) export certificates to registered exporters;

(*c*) assist investors and exporters in obtaining licences, permits, approvals, incentives or exemptions under relevant written laws;

(*d*) provide information on investment opportunities and export markets;

(*e*) promote Malawi as an international destination for investment and as a source of reliable and quality goods and services;

(*f*) advise Government on investment and export policy, incentives, strategies for investment, export, economic growth and development, industrial planning and image building of the country;

(*g*) subject to the Land Act— Cap 57:01

(i) acquire any land or landed property required for its functions under this Act;

(ii) facilitate the allocation of land to investors registered under this Act; and

(iii) facilitate the development and servicing of, and manage, investment sites, industrial parks, estates, land and associated facilities;

(*h*) promote and facilitate the development and diversification of investments, exports and business activities;

(*i*) formulate investment and export promotion plans, promotional incentives and marketing strategies to attract foreign and domestic investments in selected sectors;

(*j*) co-ordinate and monitor investment and export promotion activities;

(*k*) provide technical assistance in product development to local entrepreneurs, local exporters and local business enterprises;

(*l*) co-operate with relevant institutions on matters relating to export financing, export incentives and specialised services to exporters; and

(*m*) do all such acts and things as are necessary, incidental, or conducive, to the better carrying out of its functions under the Act.

Powers of the Centre

5. The Centre may, in the discharge of its functions, have power to—

(*a*) invest in any activity which would facilitate the development and promotion of exports;

(*b*) solicit funds from sources other than its budgetary allocation or generate its own funds and invest all or any of such funds for purposes of investment and trade promotion;

(*c*) appoint agents within the country and in any other country to carry out functions on behalf of the Centre, as it may consider necessary, and prescribe terms of reference and performance targets of the agents in relation to promotion and facilitation of investment and exports;

(*d*) deal with queries and complaints by, or on behalf of, investors and exporters against public officers or public bodies in relation to matters submitted to the public officers or public bodies by, or on behalf of, the investors or exporters;

(*e*) monitor and evaluate activities, performance and development of investment and business enterprises and prescribe and enforce appropriate measures in line with applicable laws;

(*f*) inquire into any decision of a public officer or public body on any matter submitted by, or on behalf of, an investor or exporter to the public officer or public body and, where the Centre is not satisfied with the decision, to make representations to the public officer or public body or to the responsible Minister, on behalf of the affected investor or exporter; and

(*g*) do all such things as the Centre considers necessary for achieving its objects and performing its functions under this Act.

Composition of the Centre

6.—(1) The Centre shall consist of—

(*a*) the following members appointed by the Minister—

(i) one person from an association of manufacturers;

(ii) one person from an association of exporters;

(iii) one economist who is a member of an association of economists;

(iv) one banker who is a member of an association of bankers; and

(v) one marketer who is a member of an association of marketers; and

(*b*) the following *ex-officio* members—

(i) the Secretary responsible for trade or his or her designated representative;

(ii) the Secretary to the Treasury, or his or her designated representative;

(iii) the Secretary responsible for lands or his or her designated representative; and

(iv) the Secretary responsible for foreign affairs or his or her designated representative.

(2) The Minister shall—

(*a*) before making an appointment under subsection (1)(*a*), invite the relevant association to nominate two individuals, out of whom the Minister shall appoint one individual; and

(*b*) appoint the Chairperson of the Centre from among the members appointed under subsection (1) (*a*).

(3) The appointment of members of the Centre under subsection (1) (*a*) shall comply with the provisions of the Gender Equality Act. Cap.25:06

(4) A person, other than an *ex-officio* member, shall not be qualified for appointment as a member of the Centre, if that person—

(*a*) is a holder of a political office;

(*b*) is an undischarged bankrupt; and

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

(5) The Minister shall publish, in the *Gazette*, the names of members of the Centre as first constituted and every subsequent change in of membership.

(6) The Centre may, at its discretion, co-opt any person with specific knowledge, or expertise as a member for any length of time, and such person shall attend meetings of the Centre and take part in the deliberations, but shall not be entitled to vote on any matter.

(7) A member of the Centre shall not—

(*a*) be in the employment of the Centre nor serve the Centre on a full-time basis; and

(*b*) by reason only of the appointment as a member of the Centre, be deemed to be employed in a public office.

Tenure of office

7. A member, other than an *ex-officio* member, shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

Vacancies

8.—(1) The office of a member appointed under section 6 (1) (*a*) shall become vacant—

(*a*) on the expiry of the term of office of the member;

(*b*) if the member resigns, in accordance with subsection (2);

(*c*) upon death of the member;

(*d*) if the member is absent, without a valid excuse, from three consecutive meetings of the Centre of which he or she has had notice;

(*e*) if the member is declared bankrupt;

(*f*) if the member is convicted of an offence under any written law and sentenced to a term of imprisonment without the option of paying a fine;

(*g*) if the member is adjudged to be mentally or physically incapacitated and that due to the incapacitation, the member is not able to discharge his or her duties as a member of the Centre;

(*h*) if the member is directly or indirectly involved in an activity which is in contravention of this Act;

(*i*) upon the member being removed from office in accordance with subsection (3); and

(*j*) if a situation arises that if the member had not been appointed, the member would have been disqualified from appointment as a member of the Centre.

(2) A member of the Centre, other than an *ex-officio* member, may at any time resign from his or her office, by giving thirty day's written notice to the Chairperson.

(3) The Minister may remove from office any member of the Centre, other than an *ex-officio* member, on any of the following grounds—

(*a*) incompetence in the execution of the functions of the office of member;

(*b*) failure to declare a conflict of interest relating to any matter under consideration by the Centre;

(*c*) disclosure or publication to any other person, other than in the course of duty, any confidential information of the Centre obtained in the course of duty or otherwise;

(*d*) misconduct that brings the Centre into disrepute; or

(*e*) being compromised to the extent that his or her ability to impartially and effectively exercise the duties of his or her office is seriously in question.

(4) A vacancy in the membership of the Centre shall be filled by the appointment of a new member by the Minister in accordance with section 6 (1) (*a*).

(5) A person appointed to fill a vacancy under subsection (4) shall serve the remainder of the term of office, but no person shall be appointed to fill a vacancy where the remainder of the term is less than six months.

(6) The period served by a person appointed under subsection (4) shall not be regarded as a term for purposes of section 7, unless the period is two years or more.

Meetings of the Centre

9.—(1) The Centre shall hold its ordinary meetings at least once every three months, at such places and times as the Chairperson may, after consulting with the Director General, determine.

(2) The Chairperson shall convene ordinary meetings of the Centre by giving members at least seven days written notice.

(3) The Chairperson may, on his own motion, convene an extraordinary meeting of the Centre at a place and time as the Chairperson may determine after consulting the Director General.

(4) The Chairperson shall, after consulting the Director General, convene an extraordinary meeting of the Centre within three days of receipt of a request, in writing, signed by not less than four members specifying the purpose for which the meeting is to be convened.

(5) A quorum at every meeting of the Centre shall be constituted by five members.

(6) The Chairperson shall preside over meetings of the Centre, and in the absence of the Chairperson, the members present and forming a quorum shall elect one of their number to preside over the meeting.

(7) A decision of the Centre on any question shall be by consensus but where this is not possible, the decision shall be determined by a majority vote of members present and voting, and where there is an equality of votes, the Chairperson or, in the absence of the Chairperson, the member presiding, shall have a casting vote in addition to that person's deliberative vote.

(8) The Centre may, where necessary and taking into account the nature of the matter to be deliberated, invite any person to attend its meeting and participate in the deliberations or to make a

presentation or to be asked questions on any matter, but the person so invited shall have no right to vote.

(9) The Director General shall serve as secretary at meetings of the Centre, and shall record and keep minutes of each meeting of the Centre and the minutes shall be confirmed at the subsequent meeting.

(10) The Centre may make rules to regulate its proceedings and business or the proceedings and business of any of its committees.

(11) The Director General, or other employee of the Centre as the Director General may designate, may attend a meeting of the Centre and of any of its committees and may address the meeting, but shall not vote on any matter.

(12) Where, at any meeting, the deliberations of the Centre or any of its committees concerns the Director General or any other employee of the Centre designated to attend the meeting, the Centre or the committee, as the case may be, may exclude the Director General or the officer from the meeting.

Committees of the Centre

10.—(1) The Centre may, for the purpose of performing its functions under this Act, establish committees of the Centre, and delegate to any such committees any of its functions as it considers necessary.

(2) The Centre shall appoint a chairperson for each committee established under subsection (1) from amongst the members appointed under section 6 (1) (*a*).

(3) The Director General shall serve as secretary of committees of the Centre or may, with the approval of the chairperson, delegate senior employee of the Centre to serve as secretaries to the committees.

Allowances of members of the Centre

11.—(1) Members of the Centre and its committees shall be paid from the funds of the Centre such allowances and honoraria as the Minister shall determine, from time to time, after consulting the Government department responsible for human resource management and development.

(2) The Centre may reimburse any reasonable expenses incurred in connection with the business of the Centre by a member of the Centre, a member of a committee of the Centre and a person invited to attend a meeting of the Centre under section 9(8).

Disclosure of interest

12.—(1) Where a member of the Centre or committee of the Centre is present at any meeting of the Centre or of any of its committees, at which any matter for which that member or a

member of his or her immediate family is directly or indirectly interested in a private capacity is the subject of consideration, he or she shall, as soon as practicable, soon after the commencement of the meeting, disclose the interest and shall not, unless the Centre otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

PART III—ADMINISTRATION

Secretariat of the Centre

13. The secretariat of the Centre shall consist of a Director General and other employees of the Centre appointed under this Act.

Director General

14.—(1) The Centre shall appoint a Director General who shall—

(*a*) be—

(i) the chief executive officer of the Centre;

(ii) subject to the general and special directions of the Centre; and

(iii) responsible for the day-to-day operations of the Centre; and

(*b*) hold office for a term of five years and shall be eligible for re-appointment for a further term of five years.

(2) The Director General shall be appointed through a competitive process and on such terms and conditions as the Centre shall determine, after consulting the Government department responsible for human resource management and development.

(3) A person shall not be appointed as Director General, unless the person—

(*a*) possesses a minimum qualification of a Master's degree in a relevant field from a reputable education institution accredited or recognized under the National Council for Higher Education Act; Cap 30:12

(*b*) has proven and demonstrable expertise in investment and export promotion matters or any field relevant to the functions and responsibilities of the Centre;

(*c*) has not less than ten years' experience in executive management; and

(*d*) does not hold a political office.

(4) Subject to the general and special directions of the Centre, the Director General shall be responsible for—

(*a*) the day-to-day administration and management of the affairs of the Centre;

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

(*c*) the administration, organization and control of the other employees of the Centre;

(*d*) the effective administration of this Act; and

(*e*) the performance of any other duties and functions as may be assigned to him or her by the Centre.

(5) The Centre may terminate the appointment of the Director General if he or she—

(*a*) is guilty of a misconduct that brings the office of the Director General or the Centre into disrepute;

(*b*) is physically or mentally incapacitated so that he or she is not able to discharge his or her duties;

(*c*) is incompetent in the execution of his or her duties;

(*d*) is declared or adjudged bankrupt;

(*e*) is convicted of an offence and sentenced to a term of imprisonment without the option of a fine; or

(*f*) fails to declare a conflict of interest in a matter under consideration by his or her office or the the Centre.

Other employees

15.—(1) The Centre shall appoint, on such terms and conditions as it may determine, after consulting with the Government department responsible for human resources management and development, such other employees of the Centre, subordinate to the Director General, as it considers necessary for the performance of its functions.

(2) The Centre may, by directions in writing, delegate to the Director General the appointment, discipline and dismissal of other employees of Centre in specified junior ranks and the Director General shall report to the Centre, at its next meeting, every appointment, disciplinary decision and dismissal made pursuant to this subsection.

(3) Section 14 (5) shall apply, with the necessary modifications, to the removal from office of other employees of the Centre, appointed under this section.

Part IV—One Stop Service Shop

One-Stop Service Shop

16.—(1) The Centre shall establish, within the Centre, a One-Stop Service Shop, which shall be responsible for—

(*a*) facilitating investments in Malawi; and

(*b*) promoting exports from Malawi.

(2) A controlling officer of a Government ministry, department or public body shall, on written request of the Centre, deploy to the One-Stop Service Shop a relevant officer employed in the ministry, department or public body, as the case may be, to provide services specified in the request.

(3) The Centre may, after consulting with the Government department responsible for human resource management and development, adopt an organization structure and conditions of service for officers deployed to the One-Stop Service Shop from the public service.

Part V—National Incentives Committee

National Incentives Committee

17.—(1) There shall be a committee to be known as the National Incentives Committee which shall consist of—

(*a*) the Secretary responsible for trade, who shall be the chairperson of the committee;

(*b*) the Secretary to the Treasury;

(*c*) the Commissioner General of the Malawi Revenue Authority; and

(*d*) the Chief Executive Officer of the Malawi Confederation of Chambers of Commerce and Industry.

(2) The Director General shall serve as the secretary of the National Incentives Committee.

(3) The National Incentives Committee shall review applications for grant of investment and export incentives and make recommendations to the Minister responsible for finance.

Procedure and reporting of National Incentives Committee

18. The National Incentives Committee shall—

(*a*) regulate its own procedure; and

(*b*) submit quarterly progress reports to the Minister who shall present the reports to Cabinet.

Part VI—Financial Provisions

Funds and property of the Centre

19.—(1) The funds and property of the Centre shall consist of—

(*a*) such sums as shall be appropriated annually by Parliament for the purposes of the Centre;

(*b*) the levy payable under section 20;

(*c*) fees as may be charged by the Centre in respect of certificates, consultancy services, programmes, seminars, publications and other services the Centre may render;

(*d*) income as it may receive from development charges, lease of land, rentals or sale of buildings;

(*e*) such sums of money and other property as may be received, acquired, purchased or transferred to the Centre, whether by way of donation, devise, bequest, purchase or otherwise; and

(*f*) such other sums and assets as may vest in, or accrue to, the Centre, whether in the course of discharging its functions or otherwise.

(2) The Centre shall use the funds acquired under subsection (1) to meet expenses incurred in connection with its operations and functions under this Act.

Cap. 37:01
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Cap. 37:03

(3) The Centre shall, at all times, comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement and Disposal of Public Assets Act.

Levy

20.—(1) The Minister may, acting on the advice of the Centre, and after consulting the Minister responsible for finance, by order published in the *Gazette*, prescribe a levy on investments, imports, exports or other types of levies to be paid to the Centre by a particular industry in Malawi.

(2) An order made under this section may prescribe a penalty for non-payment or delayed payment of a levy.

(3) The levy and penalty payable under this section shall, if not paid, constitute a debt owing to the Centre and shall be recoverable by the Centre by way of civil proceedings.

Accounting and audit

21.—(1) The Centre shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Centre in accordance with the Public Finance Management Act.

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(2) Accounts of the Centre shall be audited at the end of each financial year in accordance with the Public Audit Act.

Cap.37:01

(3) The financial year of the Centre shall be a period of twelve months commencing on 1st April each year and ending on 31st March of the following year.

(4) The first financial year of the Centre may be such shorter or longer period than twelve months as the Centre shall determine but being not less than six months not more than eighteen months.

Part VII—Investment Certificate

Investment certificates

22.—(1) A domestic investor who intends to invest in a business enterprise may, subject to subsection (3), obtain an investment certificate under this Act.

(2) A foreign investor shall not invest in Malawi unless the investor holds an investment certificate issued under this Act.

(3) The Minister may, on recommendation of the Centre and by notice published in the *Gazette*, prescribe the minimum thresholds and sectors for issuance of domestic investment certificates.

Application for, and issuance of, investment certificates

23.—(1) An application for an investment certificate shall be made to the Centre in the prescribed form and shall be accompanied by the prescribed fee.

(2) The Centre may, in processing an application under subsection (1), require the applicant to provide such further information as may be necessary for the determination of the application.

(3) The Centre shall, within twenty-one working days from the date a complete application is lodged, approve or reject the application and notify the applicant of its decision in writing within five days of the decision.

(4) Where the Centre—

(*a*) approves, the application, the Centre shall issue to the successful applicant, an investment certificate in the prescribed form; or

(*b*) rejects the application, the Centre shall give to the applicant reasons for the rejection in writing.

(5) An investment certificate issued under subsection (4) (*a*) to an investor shall—

(*a*) in the case of a domestic investor, be valid for five years; and

(*b*) in the case of a foreign investor, be valid for three years.

Criteria for issuance of investment certificates

24. The Centre shall, in considering an application for an investment certificate, have regard to—

(*a*) the need to promote economic development and inclusive growth in Malawi;

(*b*) the extent to which the proposed investment will create employment opportunities and contribute to the development of human resources;

(*c*) the extent to which the investment will contribute to improvement of quality of life of Malawians, especially vulnerable groups;

(*d*) the degree to which the investment is export oriented or biased toward import substitution;

(*e*) the extent to which the investment will contribute to technology transfer; and

(*f*) any other considerations as the Centre may consider appropriate.

Renewal of investment certificates

25.—(1) A holder of an investment certificate may, before the expiry of the certificate, apply for renewal of the certificate.

(2) An application for renewal of an investment certificate shall be—

(*a*) made to the Centre in such form and manner and within such timeframe as may be prescribed; and

(*b*) accompanied by the prescribed fee.

(3) Sections 23 and 24 shall apply, with the necessary modifications, to an application for renewal of an investment certificate.

(4) The Centre may renew an investment certificate for the period prescribed under section 23 (5) or such shorter period as the Centre may determine appropriate.

Transfer of investment certificate

26. A holder of an investment certificate shall not assign, cede or otherwise transfer the certificate to another person, without the prior written approval of the Centre.

Revocation of investment certificate

27.—(1) Where the Centre is satisfied that a holder of an investment certificate—

(*a*) fraudulently obtained the certificate or provided false or misleading information in the application for the certificate;

(*b*) is acting or has acted in breach of any term or condition of the investment certificate;

(*c*) has assigned, ceded or otherwise transferred the certificate to another person without prior written approval of the Centre;

(*d*) has, without prior written approval of the Centre, invested in a business enterprise other than the one stipulated in the certificate;

(*e*) has acted in contravention of this Act or any other relevant written law; or

(*f*) has acted in such a manner as to tarnish the reputation of Malawi as an attractive destination for investment or a source of exports,

the Centre may, having regard to all the circumstances of the case and by notice in writing to the holder of the certificate, suspend or

revoke the certificate or any incentive to which the holder of the certificate is entitled under this Act.

(2) The Centre shall, before exercising the power in subsection (1), by notice in writing, require the holder of the certificate to, within thirty days of the date of service of the notice, show cause why the investment certificate or any specified incentive should not be suspended or revoked.

(3) The Centre shall, in exercising its power under subsection (1), take into consideration the submission made under subsection (2) by the holder of the certificate.

(4) Where the Centre decides to revoke the certificate, the Centre shall notify the holder of the certificate in writing and shall, in the notice, require the holder of the certificate to surrender the revoked certificate to the Centre within a period specified in the notice.

(5) A holder of an investment certificate which is revoked under subsection (4) who, without valid excuse, fails to surrender the revoked certificate to the Centre within the period specified in the notice commits an offence.

Notification of abandonment of an investment certificate

28.—Where a holder of an investment certificate—

(*a*) decides not to invest in the business enterprise specified in the certificate; or

(*b*) having started to invest in the business enterprise decides to abandon the investment,

the holder of the certificate shall notify the abandonment of the investment to the Centre in writing, within thirty days of the decision, stating the reasons for abandoning the investment.

Part VIII—Exporter Registration Certificate

Exporter registration certificate

29.—(1) Subject to subsection (2), a person shall not export goods from Malawi, unless the person has an exporter registration certificate issued by the Centre under this Act.

(2) The Minister may, on the recommendation of the Centre and by notice published in the *Gazette*, prescribe the category of goods that shall not be exported from Malawi without an exporter registration certificate.

(3) An application for an exporter registration certificate shall be—

(*a*) in a prescribed form; and

(*b*) accompanied by the prescribed fee.

(4) The Centre may, in processing an application for an exporter registration certificate, require the applicant to provide such further information as may be necessary for the determination of the application.

(5) The Centre may, within five working days from the date the application is lodged, approve or reject the application and notify the applicant of its decision in writing within twenty-four hours of the decision.

(6) Where the Centre—

(*a*) approves the application, the Centre shall—

(i) issue to the applicant an exporter registration certificate in the prescribed form; and

(ii) give notification of the issuance of the certificate in writing to the Governor of the Reserve Bank of Malawi and Commissioner General of the Malawi Revenue Authority.

(*b*) rejects the application, the Centre shall give to the applicant reasons for the rejection in writing.

(7) A holder of an exporter registration certificate shall, upon production of the certificate to the Reserve Bank of Malawi or other relevant public body and subject to the provisions of this Act, be granted export incentives, facilities and other benefits prescribed under this Act.

(8) An exporter registration certificate shall be valid for twelve months from the date of issuance.

(9) A holder of an exporter registration certificate shall not assign, cede or otherwise transfer the certificate to any other person without the prior written approval of the Centre.

Renewal of exporter registration certificate

30.—(1) A holder of an exporter registration certificate may, apply for renewal of the certificate, before its expiry.

(2) An application for renewal of an exporter registration certificate shall be—

(*a*) made to the Centre in such form and manner and within such timeframe as may be prescribed; and

(*b*) accompanied by the prescribed fee.

(3) Section 29 (4), (5), (6), (7) and (8) shall apply to an application for renewal, and grant, of an exporter registration certificate.

Suspension or revocation of exporter registration certificate

31.—(1)Where the Centre is satisfied that a holder of an exporter registration certificate—

(*a*) fraudulently obtained the certificate or provided false or misleading information in the application for the certificate;

(*b*) is acting or has acted in breach of any term or condition of the certificate;

(*c*) has assigned, ceded or otherwise transferred the certificate to another person without prior written approval of the Centre;

(*d*) the holder of the certificate fails to export the product specified in the certificate in accordance with the terms and conditions specified in the certificate;

(*e*) has acted in contravention of this Act or any other relevant written law; or

(*f*) has acted in such a manner as to tarnish the reputation of Malawi as a source of exports,

the Centre may, having regard to all the circumstances of the case and by notice in writing to the holder of the certificate, suspend or revoke the certificate or withdraw any incentive to which the holder of the certificate is entitled under this Act.

(2) The Centre shall, before exercising the power in subsection (1), by notice in writing, require the holder of the exporter registration certificate to, within thirty days of the date of service of the notice, show cause why the certificate or a specified incentive should not be suspended or withdrawn.

(3) The Centre shall, in exercising its power under subsection (1), take into consideration the submission made under subsection (2) by the holder of the certificate.

(4) Where the Centre decides to revoke the certificate, the Centre shall notify the holder of the certificate in writing and shall, in the notice, require the holder of the certificate to surrender the revoked certificate to the Centre within a period specified in the notice.

(5) A holder of a certificate which is revoked under subsection (4) who, without valid excuse, fails to surrender the revoked certificate within the period specified in the notice to the Centre commits an offence.

Part IX—Incentives

Fiscal incentives

32.—(1) The Minister responsible for finance may, by order published in the *Gazette*, prescribe fiscal investment and export incentives.

(2) The Minister responsible for finance shall, on application, grant an incentive prescribed under subsection (1) to a holder of an investment certificate or exporter registration certificate, as the case may require.

(3) The Minister responsible for finance shall, in considering an application for grant of a fiscal incentive to an investor or exporter, take into account the recommendations of the National Incentives Committee.

Income tax allowance

33. The Minister responsible for finance may, by order published in the *Gazette*, prescribe income tax allowances for holders of exporter registration certificates.

Duty drawback

34.—(1) A holder of an exporter registration certificate who exports a product from Malawi which is—

(*a*) manufactured or otherwise produced in Malawi; and

(*b*) manufactured, processed or produced using raw materials, including packaging materials, on which duty is paid,

shall be entitled to drawback of duty in accordance with the Customs and Excise Act. Cap 42:01

(2) The Commissioner General of the Malawi Revenue Authority shall effect a duty drawback under subsection (1), within the period prescribed by the Minister responsible for Finance.

(3) The Commissioner General shall effect a duty drawback upon being satisfied that—

(*a*) the holder of an exporter registration certificate exported the product in question; and

(*b*) the exporter paid the duty claimed.

PART X—SERVICES

Strategic areas for investment and exports

35.—(1) For purposes of this Act, the Minister may, on recommendation of the Centre and by notice published in the *Gazette*, prescribe—

(*a*) strategic areas of investment and export; and

(*b*) the sectors that shall require mandatory joint ventures between foreign investors and domestic investors and the conditions for such ventures.

(2) The Centre shall accord priority to promotion of investment and export in strategic areas prescribed under subsection (1).

One-stop service for relevant permits, licences, etc

36.—(1) A holder of an investment certificate or an exporter registration certificate may submit to the relevant authority an application for a licence, certificate, permit or other authorization required for the investment or export through the Centre.

(2) Where an application for a certificate, licence, permit or other authorization is submitted to the Centre under subsection (1), the Centre shall act as a one-stop service centre and expeditiously process the application on behalf of the investor or exporter.

Land for investment

37.—(1) Where a holder of an investment certificate requires land for his or her investment, the Centre shall assist the holder of the certificate in —

(*a*) identifying suitable land for the investment; and

(*b*) acquisition of the identified land, in accordance with the applicable law.

Immigration

38.—(1) Where a holder of an investment certificate requires a business resident permit or the services of an expatriate employee, the holder of the certificate shall submit the application for the business resident permit or work permit for the expatriate employee to the Department of Immigration through the Centre.

Cap 15:01

(2) Subject to the provisions of the Immigration Act, the Department of Immigration shall, on receipt of an application for a resident permit or work permit under subsection (1), issue the resident permit or work permit within thirty days from the date of receipt of the application.

Utilities and other services and facilities

39. The Centre shall, where necessary, assist a holder of an investment certificate in processing connectivity to water, electricity, communication and other services and facilities required for the investment.

PART XI—APPEALS

Appeals

40.—(1) A person aggrieved by a decision of the Centre under this Act may, within thirty days from the date the decision is communicated to him or her appeal to the Minister, in writing, for review of the decision.

(2) Upon receipt of an appeal under subsection (1), the Minister shall appoint an *adhoc* appeals panel consisting of three members one of whom shall be appointed chairperson of the panel.

(3) A person shall be appointed a member of an appeals panel if the person is duly qualified and experienced in law, finance, economics, investment, business or any other relevant field.

(4) The appeals panel shall expeditiously inquire into the matter and receive evidence from the appellant and any other person as the panel shall determine appropriate and submit its recommendations to the Minister.

(5) The appeals panel may make any of the following recommendations to the Minister—

(*a*) confirming, varying or setting aside the decision of the Centre; and

(*b*) reconsideration of the decision by the Centre in accordance with any directions, as the panel may recommend.

(6) The Minister shall, within seven days of receipt of the recommendations of an appeals panel, communicate his or her decision to the appellant.

Procedure and expenses of appeals panels

41.—(1) The Minister may prescribe procedure for the conduct of appeals lodged under section 40.

(2) Members of an appeals panel shall be paid such allowances and expenses as may be determined by the Minister.

(3) The appellant shall pay the costs and expenses of an appeals panel in the event that his or her appeal has not been successful, otherwise the costs and expenses shall be paid out of the funds of the Centre.

PART XII—MISCELLANEOUS

Non-application of the Act to certain products, etc.

42. The Minister may, by order published in the *Gazette*, exempt application of all or any of the provisions of this Act to—

(*a*) any product specified in the order, either by reference to the name, use, nature, class or description of the product; or

(*b*) any holder of an investment or export registration certificate or a particular class of holders of investment or export registration certificates.

Register of licences, permits, certificates, etc

43. The Centre shall maintain or cause to be maintained in the prescribed form a register of certificates issued under this Act.

Records to be kept

44.—(1) A holder of an investment certificate or exporter registration certificate shall keep and maintain at his or her registered office, in a form and manner conforming to generally accepted practices and standards—

(*a*) a register into which shall be entered his or her assets and liabilities; and

(*b*) books of accounts, invoices, customs permits and other documents connected to the investment or export certificate.

(2) A holder of a licence under this Act shall, at such intervals as may be prescribed or on written request, furnish to the Centre any document or record referred to under subsection (1) in a manner or format as may be prescribed or specified in the request.

(3) The records maintained under subsection (1), shall be kept for a period of six years.

(4) A holder of a certificate under this Act shall, on demand by an authorized officer of the Centre, produce for inspection the books, records, documents and other information referred to in subsection (1) and shall allow the officer to make copies or take extracts from the documents.

(5) The Centre shall treat information obtained pursuant to this section as confidential.

(6) A person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of K30,000,000 or to imprisonment for three years.

Amendment of certificate, permit, etc

45. The Centre may, at the request of the holder of a certificate or permit issued under this Act, amend the certificate or permit, as the case may be, subject to any restrictions as the Centre may prescribed.

Annual reports

46.—The Centre shall, within three months after the end of each financial year, prepare and submit to the Minister a report of its activities during the preceding year and the Minister shall lay the report before the National Assembly at its next sitting.

Common seal

47.—(1) The common seal of the Centre shall be kept by the Director General and shall not be used, except in the manner authorized.

(2) All deeds, instruments, contracts and other documents shall be considered to be duly executed by or on behalf of the Centre—

(*a*) where they are required to be under seal, if sealed with the common seal and authenticated by the Chairperson or any other member nominated in that behalf by the Centre and the Director General or any other officer authorized by the Centre; or

(*b*) where they are not required to be under seal, if executed in that behalf by a member authorized by the Centre for that purpose.

(3) A deed, instrument, contract or any other document executed in accordance with subsection (2) shall, in law, bind the Centre, its assignees and its successors and may be varied or discharged in the same manner that it was executed.

(4) All courts and other persons acting in a judicial capacity shall take judicial notice of the common seal of the Centre affixed to any document and shall presume, unless otherwise proven, that it was duly affixed.

Oath of secrecy

48. Every member of the Centre, member of a Committee of the Centre, employee of the Centre, consultant, advisor or subcontractor of the Centre shall, upon being appointed to, or on being engaged by the Centre, as the case may be, take the oath of secrecy prescribed in the *Schedule*.

Confidentiality

49.—(1) A member of the Centre, member of a Committee of the Centre, employee of the Centre, or consultant, advisor or contractor of the Centre shall not publish or disclose to any person, other than in the course of duty, the contents of any document, communication or information which come to him or her in the course of his or her duty under this Act.

(2) A member of the Centre, member of a Committee of the Centre, employee of the Centre, or consultant, advisor or subcontractor of the Centre who holds confidential information, or any person who, directly or indirectly, obtains such information from the member, employee, consultant, advisor or subcontractor and knows or has reasonable cause to believe that the member, employee, consultant, advisor or subcontractor obtained the information in the course of duty and—

(*a*) deals in any contract or proposed contract to which the information relates and in which the Centre is involved;

(*b*) counsels or instigates any other person to deal in any contract referred to in paragraph (*a*); or

(*c*) communicates to any other person the information so held or so obtained, knowing or having reasonable cause to believe that the other person to whom the information is communicated may use the information for the purpose of dealing in, or counselling or causing another person to deal in any contract referred to in paragraph (*a*),

commits an offence and shall, upon conviction, be liable to a fine of K30,000,000 and to imprisonment for three years.

(3) This section shall not apply where the information disclosed by the member of the Centre, member of a Committee of the Centre, employee of the Centre, or consultant, advisor, subcontractor or other person has been published by the Centre prior to the disclosure.

(4) This section shall continue to apply to a member of the Centre, member of a Committee of the Centre, employee of the Centre, or consultant, advisor or subcontractor, notwithstanding the expiry or termination of the term of office of the member or employment of the employee, consultant, advisor or subcontractor, as the case may be.

Protection from personal liability

50. No action or proceeding shall be brought personally against any member of the Centre, committee of the Centre or employee of the Centre in respect of any act or omission done in good faith in the course of carrying out the provisions of this Act.

General penalty

51. A person who commits an offence under this Act for which a penalty has not been provided shall, upon conviction, be liable to a fine of K30,000,000 and to imprisonment for three years.

Regulations, rules, etc

52.—(1) The Minister may, on recommendation of the Centre, make regulations for the carrying into effect of the provisions of this Act.

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

(*a*) the forms, certificates, fees payable and the procedure for applications to be made under this Act;

(*b*) the information and documents to be submitted in support of applications to be made under this Act;

(*c*) the manner and form of lodging appeals against decisions of the Centre; and

(*d*) generally the carrying into effect of the purposes of this Act.

Cap 1:01

(2) Notwithstanding section 21(*e*) of the General Interpretation Act, the regulations made under this Act may create offences the contravention of which may attract a penalty of a fine of K5,000,000 and to imprisonment for twelve months.

(3) The Commission may issue rules, guidelines and notices for purposes of providing guidance or directions, as the case may be, for better carrying into effect the provisions of this Act.

Repeal and savings
Cap 39:05
Cap 39:03
Cap 39:04

53.—(1) The Investment Promotion Act, Export Promotion Council Act and Export Incentives Act are repealed.

(2) Any subsidiary legislation made under the Acts repealed under subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Cessation of Malawi Investment and Trade Centre Limited and transfer of rights and obligations

54.—(1) On the commencement of this Act—

(*a*) the Malawi Investment and Trade Centre Limited, a company incorporated under the Companies Act on 2nd December, 2010 (hereinafter referred to as the "Company") shall cease to exist;

(*b*) any person who, immediately prior to the commencement of this Act, is employed by the Company shall be deemed to have been employed by the Centre and shall continue to serve on the same terms and conditions of service and, for purposes of determining his or her rights and obligations, his or her service shall be regarded as continuous from the date he or she was appointed by the Company; and

(*c*) all assets, liabilities, obligations, agreements and arrangements existing immediately prior to the commencement of this Act, and vested in, acquired, incurred or entered into by the Company shall, be deemed to have vested in, or to have been acquired, incurred or entered into, by or against the Centre, and shall be enforceable by or against the Centre to the same extent as they were enforceable by or against the Company.

(2) Where the transfer of any property under subsection (1) (*c*) is required, by any written law, to be registered, the Centre shall, within one year from the commencement of this Act, or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Centre or any person by way of registration fees, stamp or other duties—

(*a*) make such entries in the appropriate register as shall give effect to the transfer and, where appropriate, issue to the Centre a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

(*b*) make any necessary endorsement on such deeds or other documents as may be presented on such registering authority relating to the title, right or obligation concerned.

SCHEDULE (s.48)

OATH OF SECRECY

I, …….....……, being a member/ employee/ consultant/ advisor/ subcontractor of the Centre, do hereby swear/affirm that I will freely without fear or favour, affection or ill will, discharge the functions of a member/employee/ consultant/ advisor/ subcontractor of the Centre, and that I will not, directly or indirectly, reveal any matters related to such functions to any unauthorized person or otherwise than in the course of my duty.

SWORN at …..... this …. day of ……..……., 20 ...

Signature: ……

Before:…….....
Commissioner for Oaths

Passed in Parliament this sixth day of December, two thousand and twenty three.

FIONA KALEMBA
Clerk of Parliament