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Act

No. 29 of 2024

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
22nd November, 2024

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An Act to provide for sustainable irrigation development and management and to provide for matters incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Irrigation Act, 2024 and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*.

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

"commission" means confirming that construction works have complied with specifications of a project and handing over the project to a user for operation and maintenance;

"developer" means the person responsible for funding or implementing a project to construct, modernize, upgrade or rehabilitate an irrigation scheme;

"estate model irrigation scheme" means an irrigation scheme in which land and water within the scheme is used and managed, in an integrated manner by a single actor even if the land is owned by more than one person;

"Fund" means the Irrigation Trust Fund established under section 29;

"Irrigation Inspection Officer" means an officer designated as such by the Director;

"Irrigation Organization" means a nonprofit making organization established and registered by farmers to manage, operate and maintain an irrigation scheme developed using public resources or a grant provided by a local or international entity;

"irrigation scheme" means defined land area that is supplied with water through a network of canals, or pipes together with any associated drains and structures for purposes of irrigation;

"large-scale irrigation scheme" means an irrigation scheme where the service area is equal to or greater than five hundred hectares;

"main supply infrastructure" means a conveyance canal or pipeline, together with associated weir, dam or diversion structure, used to supply water to two or more irrigation blocks;

"medium-scale irrigation scheme" means an irrigation scheme where the service area is equal to or greater than fifty hectares but less than five hundred hectares;

"mini-scale irrigation scheme" means an irrigation scheme where the service area is less than ten hectares;

"private irrigator" means the person responsible for the management, operation and maintenance of an irrigation scheme developed using private resources;

"public resources" has the same meaning ascribed thereto in the Public Finance Management Act; No.4 of 2022

"Scheme Works Permit" means an official permission to undertake construction of a new irrigation scheme or upgrade, modernize or rehabilitate an existing irrigation scheme;

"smallholder irrigation scheme" means an irrigation scheme in which the agronomic practices and water management decisions are made and executed collectively by smallholder farmers; and

"small-scale irrigation scheme" means an irrigation scheme where the service area is equal to or greater than ten hectares but less than fifty hectares.

PART II—DIRECTOR OF IRRIGATION SERVICES

Director of Irrigation Services

3. There shall be appointed in the public service an officer to be designated as the Director of Irrigation Services (in this Act referred to as the "Director") and other officers subordinate to the Director.

Duties and responsibilities of the Director of Irrigation Services

4. The Director shall be responsible for—

(*a*) approving applications for Scheme Works Permits;

(*b*) maintaining an irrigation schemes database for irrigation schemes;

(*c*) promoting the establishment and supporting the functioning of Irrigation Organizations;

(*d*) providing technical support for operation of Irrigation Organizations;

(*e*) promoting training and support programs for Irrigation Organizations and irrigation practitioners;

(*f*) promoting research in sustainable irrigation development and management;

(*g*) conducting performance audits of irrigation schemes;

(*h*) overseeing construction, modernization, upgrading or rehabilitation of irrigation projects funded by public resources;

(*i*) promoting international cooperation in irrigation and drainage with relevant bodies and partners;

(*j*) imposing administrative sanctions and penalties for breach of this Act;

(*k*) preparing and reviewing the Irrigation Master Plan and Investment Framework; and

(*l*) promoting investments in the irrigation sector.

PART III—SCHEME WORKS PERMIT

Scheme Works Permit

5.—(1) A developer shall not construct a new irrigation scheme or rehabilitate, upgrade or modernize an existing irrigation scheme without a Scheme Works Permit.

(2) An application for a Scheme Works Permit shall be made to the Director and shall be accompanied by—

(*a*) a copy of an environmental and social impact assessment report or an environmental and social management plan approved by the Malawi Environmental Protection Authority;

(*b*) a technical design of the proposed scheme;

(*c*) a plan indicating the operation and maintenance approaches to be used;

(*d*) the prescribed fee; and

(*e*) in the case of a new irrigation scheme, in addition to requirements in paragraphs (*a*), (*b*), (*c*) and (*d*)—

(i) proof of land availability for the proposed scheme and a strategic business plan; and

(ii) a licence to abstract and use water from the National Water Resources Authority.

(3) In the case of a smallholder irrigation scheme, a copy of the land use agreement entered into by smallholder farmers shall be sufficient proof of land availability for the proposed irrigation scheme.

(4) In the case of an estate model irrigation scheme—

(*a*) an agreement confirming that the owners of the plots of land specified in the application are willing to pool their land plots and farm the land as a single estate; or

(*b*) title deed,

shall be sufficient proof of land availability for the proposed irrigation scheme.

(5) A strategic business plan shall—

(*a*) in the case of a smallholder irrigation scheme, demonstrate that the service fees paid by members of the Irrigation Organization will be sufficient to cover the operation and maintenance costs of the scheme; and

(*b*) in the case of an estate model irrigation scheme, demonstrate the business viability of the proposed irrigation scheme.

(6) The Director may, within seven days of receipt of an application for a Scheme Works Permit, request additional information from the developer, who shall within seven days of receipt of the request submit the requested information.

(7) The Director may, within forty-five days of receipt of the application under subsection (2),—

(*a*) approve the application and issue a Scheme Works Permit to the developer; or

(*b*) reject the application and give reasons for the decision.

(8) Where the application has been rejected, the developer may reapply at any time after addressing the shortfalls specified in the rejection.

Modification of technical designs

6.—(1) A developer shall not modify a technical design submitted under section 5(2)(*b*), unless the modification is approved in writing by the Director.

(2) An application for modification under subsection (1) shall be in the prescribed form.

(3) The Director may approve the application made under subsection (1) within thirty days of receipt of application , subject to such terms and conditions as the Director may impose.

Suspension, modification and cancellation of a Scheme Works Permit

7.—(1) A Scheme Works Permit may be suspended by the Director, where the developer has—

(*a*) failed to comply with a condition of the Scheme Works Permit;

(*b*) departed from the technical design submitted under section 5(2)(*b*); or

(*c*) been convicted of an offence under this Act.

(2) The Director may cancel a Scheme Works Permit if the developer fails to commence the works within twenty-four months from the date of issuance.

(3) The Director shall not exercise the power under subsection (2), unless the developer is given the right to be heard.

Commissioning of irrigation schemes

8.—(1) A developer shall not commission an irrigation scheme, unless the Director certifies in writing that the construction, upgrading, rehabilitation or modernization has been done in accordance with the approved technical design.

(2) Subject to subsection (1), the Director shall, on the completion of the construction, upgrading, rehabilitation or modernization of an irrigation scheme, inspect the irrigation scheme within ten days of receipt of the notification of completion, to confirm that the construction, upgrading, rehabilitation or modernization complies with the approved technical design.

(3) The Director may, within ten days of the inspection—

(*a*) where he or she is satisfied that the construction, upgrading, rehabilitation or modernization of the irrigation scheme has been done in accordance with its approved technical design, issue a completion certificate to the developer; or

(*b*) where he or she is not satisfied that the construction, upgrading, rehabilitation or modernization of an irrigation scheme has been done in accordance with its approved technical design, not issue a completion certificate and give reasons for the decision.

Delegation of functions to local authorities

9. The Director may delegate some of his or her functions under this Part in respect of mini scale and small scale irrigation schemes, to a local government authority within whose jurisdiction the irrigation scheme is located.

PART IV—IRRIGATION ORGANIZATIONS AND PRIVATE IRRIGATORS

Irrigation Organizations

10.—(1) Farmers in a locality who intend to engage in irrigation farming shall establish an Irrigation Organization which shall be—

(*a*) a legal entity registered under the appropriate written law; and

(*b*) responsible for managing, operating and maintaining the irrigation scheme.

(2) Farmers who create an Irrigation Organization shall register the Irrigation Organization with the Director.

(3) An application for registration of an Irrigation Organization shall be accompanied by—

(*a*) the registration certificate of the legal entity; and

(*b*) a copy of constitution of the entity; or

(*c*) a copy of the by-laws of the farmers.

(4) The Director shall keep and maintain a register of Irrigation Organizations, in the prescribed form.

(5) A person may, upon written request, inspect the register of irrigation organization at the office of the Director during working hours.

Mortgaging, pledging or selling of irrigation organizations assets

11.— (1) An Irrigation Organization shall not mortgage or sell an irrigation scheme or pledge or sell any asset of the Irrigation Organization without prior written approval of the Minister.

(2) An application for approval under subsection (1) shall be in the prescribed form, and shall include—

(*a*) the signed minutes of the general assembly of the Irrigation Organization which indicate the decision to mortgage or sell the irrigation scheme or pledge or sell the asset;

(*b*) particulars of the land or asset to be mortgaged, pledged or sold;

(*c*) the reason for the intended borrowing or sell;

(*d*) where the intended lender or buyer is known, particulars of the lender or buyer; and

(*e*) in case of borrowing, the repayment plan of the loan.

(3) The Minister may approve an application under subsection (2) subject to such terms and conditions as the Minister may impose.

Financial performance audits

12.—(1) The Director may order a financial performance audit of the funds of an Irrigation Organization.

(2) The financial performance audits ordered under subsection (1) shall be conducted by the Auditor General in accordance with the Public Audit Act.

Cap 37:01

Private Irrigators

13.—(1) A person who intends to operate an irrigation scheme funded by private resources shall submit an application for registration as a private irrigator, in the prescribed form, to the Director.

(2) An application for registration as a private irrigator shall be accompanied by—

(*a*) the prescribed fees;

(*b*) in the case of a legal entity, a certified copy of the Memorandum and Articles of Association of the entity; and

(*c*) a copy of the Scheme Works Permit.

(3) The Director shall keep and maintain a register of private irrigators, in the prescribed form.

(4) A person may, upon written request, inspect the register at the office of the Director during working hours.

Service Areas

14.—(1) An Irrigation Organization or private irrigator shall provide irrigation water within its defined service area.

(2) An Irrigation Organization or private irrigator may divide a service area into hydraulic sub-units in order to ensure effective management.

(3) For purposes of this section, "service area" means a distinct hydraulic unit or a defined area of land receiving irrigation water through an irrigation scheme operated by an Irrigation Organization or private irrigator.

Introduction of new components

15.—(1) An Irrigation Organization or private irrigator shall not introduce a new component in its irrigation system unless the new component is approved by the Director.

(2) An application for introduction of a new component of the system shall be in the prescribed form and contain—

(*a*) particulars of the new component;

(*b*) details of modifications to be made to the scheme to accommodate the new system; and

(*c*) reasons for the introduction of the new component.

(3) The Director may approve the application made under subsection (2), within fifteen days, subject to such terms and conditions as the Director may impose.

Part V—Operation and Maintenance of Irrigation Schemes

Operation and maintenance of main supply infrastructure

16.—(1) An operator for a smallholder irrigation scheme main supply infrastructure shall be —

(*a*) a government agency;

(*b*) a private operator; or

(*c*) an Irrigation Organization.

(2) An operator of main supply infrastructure shall at all times ensure that the main supply infrastructure is operated in a fair and rational manner so as to ensure that each irrigation block is supplied with a fair share of water.

(3) For the purposes of this section, a "private operator" means a person who has been engaged by an Irrigation Operator to operate and maintain an irrigation scheme on behalf of the Irrigation Operator.

Scheme Utilisation

17.——(1) An Irrigation Organization and private irrigator shall, at the end of each cropping cycle, submit to the Director—

(*a*) a list of irrigated crops;

(*b*) the area covered; and

(*c*) the production for each irrigated crop.

(2) Where the Director is of the view that the production of an irrigated crop by an Irrigation Organization is low in comparison with the area covered, the Director shall provide technical support to the Irrigation Organization to improve production of the irrigated crop.

Irrigation Inspection Officers

18.—(1) The Director may designate such officers as he or she may determine as Irrigation Inspection Officers, who shall—

(*a*) inspect each irrigation scheme every quarter and produce an inspection report, in writing, for each field visit; and

(*b*) provide technical support to Irrigation Organizations and private irrigators regarding the correct management, operation and maintenance of irrigation schemes.

(2) An inspection report issued under subsection (1) (*a*) shall contain—

(*a*) observed conditions and performance of the irrigation scheme;

(*b*) recommendations on actions to be taken to ensure compliance with the scheme operation and maintenance requirements; and

(*c*) for subsequent inspections, observations on implementation of previous recommendations.

(3) The Irrigation Inspection Officer shall within a period of ten days from the inspection, submit the inspection report to the Director and the Irrigation Organization or private irrigator.

(4) The Director may upon receipt of the report issued under subsection (1) (*a*), in the case of an Irrigation Organisation where the irrigation scheme conditions and performance fall short of the specified standards, impose a fine of two per cent of the service fee collected.

PART VI—IRRIGATION TRUST FUND

Establishment and management of the Irrigation Trust Fund No. 4 of 2022

19.——(1) Subject to the Public Finance Management Act, the Secretary to the Treasury shall establish a fund to be known as the Irrigation Trust Fund (in this Act referred to as the "Fund").

(2) The objective of the Fund shall be to promote sustainable irrigation development and management in Malawi with the view to contribute to increased agricultural productivity and commercialization.

(3) The Fund shall consist of—

(*a*) sums of money as may be appropriated to the Fund by the National Assembly, from time to time;

(*b*) sums of money as may be advanced to the Fund by way of bequests, donations and grants; and

(*c*) fees and such other sums of money as may, in any manner, become payable to, or vested in, the Fund.

(4) The Fund shall be used to—

(*a*) conduct design studies for irrigation schemes;

(*b*) construct, upgrade, rehabilitate or modernize irrigation schemes;

(*c*) support off-taker arrangements for irrigation system; and

(*d*) provide loans to developers of irrigation schemes.

PART VII—OFFENCES AND PENALTIES

Interference of an irrigation or drainage system

20. A person who, without authority, interferes with any part of an irrigation or drainage system commits an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for twelve months.

Destruction of a service area

21. A person who engages in practices which are destructive to the service area commits an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for twelve months.

Grazing in irrigation schemes

22. A person who grazes or permits livestock to graze in an irrigation scheme commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for six months.

Applying hazardous chemicals or substances on an irrigation scheme

23. A person who applies or causes to be applied on an irrigation scheme, any hazardous chemicals or substances commits an offence and shall, upon conviction, be liable to a fine of K15,000,000 and to imprisonment for eight years.

Construction or extension of an irrigation scheme without permit

24. A person who constructs or extends any irrigation scheme without a Scheme Works Permit commits an offence and shall, upon conviction, be liable to—

(*a*) in the case of a natural person, a fine of K6,000,000 and to imprisonment for three years: or

(*b*) in the case of a legal person, a fine of K15,000,000.

Hindering or otherwise preventing an Irrigation Inspection Officer from undertaking an inspection

25. A person who hinders or otherwise prevents an Irrigation Inspection Officer from undertaking an inspection commits an offence and shall, upon conviction, be liable to a fine of K6,000,000 and to imprisonment for three years.

PART VIII—MISCELLANEOUS

Appeals

26.—(1) A person who is dissatisfied with a decision of the Director with respect to a matter regulated under this Act, may, within ninety days of the person gaining knowledge of the decision, lodge an appeal, in writing with the Minister.

(2) The appeal lodged under subsection (1) shall set out the reasons why the Minister should vary or set aside the decision.

(3) The Minister shall, upon receipt of the appeal, request the Director to submit a report on the matter.

(4) The Minister may, after considering the appeal and the report of the Director—

(*a*) confirm, vary or set aside that decision; or

(*b*) appoint a panel comprising three members to consider the appeal and advice the Minister on the matter.

(5) The panel shall upon consideration of the appeal submit a report of its findings and recommendations to the Minister.

(6) The Minister may, upon considering the report of the independent panel, make a decision, confirm, vary or set aside the decision or make any other decision as he may deem appropriate.

Annual reports

27.—(1) The Director shall, as soon as practicable, but not later than three months after the end of each financial year, cause to be prepared and submitted to the Minister an annual report detailing activities implemented during the year.

(2) The report submitted under subsection (1) shall include an income and expenditure account of the Fund, a balance sheet and a copy of the report made thereon by the Auditor General.

(3) The Minister shall, as soon as practicable after the end of each financial year, but not later than six months after the end of the financial year, lay before Parliament a copy of the annual report received under subsection (1).

Regulations

28.—(1) The Minister may by notice published in the *Gazette*, make regulations as are necessary or expedient for the purpose of

giving full effect to this Act and prescribing all matters which are necessary or convenient to be prescribed.

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

(*a*) any forms required for the purposes of this Act;

(*b*) fees payable in respect of any service provided by the Director;

(*c*) the furnishing of reports to the Minister on irrigation and drainage;

(*d*) the management, operation and maintenance of irrigation schemes;

(*e*) form and contents of reports prescribed under this Act;

(*f*) standards for the importation and sale of irrigation equipment; and

(*g*) the code of practice for persons involved in development, operation and management of irrigation; and

(*h*) the mode of inquiry into breaches of the code of practice and the penalties which may be imposed upon a registered person found guilty of such conduct.

(3) Notwithstanding section 21 (*e*) of the General Interpretation Act, the regulations made under this section may create offences in respect of any contravention of the regulations and may, for the offences, impose a fine of up to K2,000,000 and to imprisonment for one year.

Repeal and Savings

Cap. 72 :04

29.—(1) The Irrigation Act is hereby repealed.

(2) Any subsidiary legislation made under the Irrigation Act, repealed by 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.

(3) Any power exercised, decision made or action taken under the Irrigation Act, repealed by subsection (1), shall, on the commencement of this Act, be deemed to have been exercised, made or undertaken under this Act.

(4) Any outstanding balance in the Irrigation Fund established under the Irrigation Act, repealed by subsection (1) shall, on the commencement of this Act, be transferred to the Irrigation Trust Fund.

Transitional provision

30. A person who at the commencement of this Act was operating, or was engaged in, irrigation farming shall, within one year of the date of commencement of this Act, register as an Irrigation Organization or private irrigator with the Director.

Passed in Parliament this eleventh day of September, two thousand and twenty four.

FIONA KALEMBA
Clerk of Parliament