

VOLUME VII

[Chap4701]CHAPTER 47:01

INSURANCE

ARRANGEMENT OF SECTIONS

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33 of 1956(F)

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31 of 1970

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22 of 1989

6 of 1990

39 of 1998

G.N. 26/1964(N)

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166/1967

An Act to make provision relating to the carrying on of insurance business and for the protection to be afforded in respect of policies of life insurance and for matters incidental thereto

[1ST MARCH 1957]

PRELIMINARY

[Ch4701s1]1. Short title

This Act may be cited as the Insurance Act and shall be deemed to have come into operation on 1st March, 1957.

[Ch4701s2]2. Application

This Act shall not extend or apply to—

- (a) a local authority which carried on insurance business; or
- (b) an association of individuals with no share capital established for the purpose of rendering aid to its members or their dependants, commonly called a friendly society, which does not at any time after the date of commencement of this Act employ a person whose main remunerated occupation consists of inducing persons to become members of the association or of collecting from members of the association contributions or subscriptions towards the association's fund; or
- (c) a person or a class of persons declared by the Minister by Order published in the Gazette to be exempt from this Act; or

(d) a class of insurance business declared by the Minister by Order published in the Gazette to be exempt from this Act.

[Ch4701s3]3. Interpretation

6 of 1990, 39 of 1998(1) In this Act, unless inconsistent with the context—

“insurance brokers” means a person acting as an agent for brokers who are authorized by an association of underwriters to place insurance business with members of the association;

“approved securities” means securities issued by the Government and such other securities as the Registrar may approve;

“association of underwriters” means—

(a) underwriters at Lloyd’s; or

(b) an association of individual underwriters, organized in accordance with the system known as Lloyd’s, in which every underwriting member becomes liable for a stated part, limited or proportionate to the whole sum insured by a policy;

“chairman”, in relation to an association of persons, includes the individual presiding over the board of directors or other governing body of the association;

“contingent obligation dependent on human life” means—

(a) an obligation to pay to a particular person certain sums of money at specified intervals or a certain sum of money or to provide for a particular person a certain other benefit—

(i) on the occurrence of the death of a particular person or on the occurrence of the birth of a child to a particular person at any time or within a specified period; or

(ii) in the event of a particular person continuing to live throughout a specified period or specified periods; or

(b) an obligation assumed—

(i) until the occurrence of the death of a particular person; or

(ii) during a specified period or until the occurrence of the death of a particular person before the expiration of that period;

“director” includes an individual occupying the position of director or alternate director of an association of persons or a member or alternate member of a committee of management or of any other governing body of an association of persons by whatever name he may be called;

“existing insurer”, in relation to an applicant for registration as an insurer in terms of Part I, means an applicant who is, at the date of his application for registration, carrying on insurance business inside or outside Malawi;

“external insurer” means a registered insurer whose head office is not in Malawi;

“financial year”, in relation to a person, means each period at the end of which the balance of the accounts of the person is struck, whether that period is a year or not;

“funeral policy” means a policy whereby the insurer assumes, in return for a premium or the promise of a premium, an obligation to provide, on the death of any person, benefits, not exceeding in value a total of one hundred pounds, which consist principally of provision for the funeral of that person or the grant to another person of some other non-monetary benefit, whether or not the policy provides for—

(a) the payment, at the option of the insurer or any other person, of a sum of money instead of the provision of a funeral or the grant of a non-monetary benefit; and

(b) the payment of a sum of money in addition to the provision of a funeral or the grant of some non-monetary benefit;

“holding company” has the meaning assigned thereto in the Companies Act; Cap. 46:03

“industrial policy” means a policy whereby the insurer assumes, in return for a premium or the promise of a premium payable from time to time, at intervals not exceeding two months, a contingent obligation dependent on human life, not exceeding in amount the sum of one hundred pounds, if the insurer has expressly or tacitly undertaken to send a person from time to time to the owner of the policy or to his residence or place of work to collect the premiums;

“insurance agent” means a person who—

(a) initiates insurance business; or

(b) does any act in relation to the receiving of proposals for insurance, the issue of policies or the collection of premiums; on behalf of a person carrying on insurance business;

“insurance business”—

(a) means the business of assuming the obligations of an insurer in any class of insurance business whatsoever, whether defined in this section or not, which is not declared to be exempt from this Act by order made in terms of section 2 (d);

(b) includes re-insurance business;

“insurer” means a person carrying on insurance business, otherwise than as an insurance broker or as an insurance agent, who is not a person or a member of a class of persons declared to be exempt from this Act by order made in terms of section 2 (c);

“life insurance business” means the business of assuming the obligations of an insurer under life policies, funeral policies, industrial policies or sinking fund policies;

“life insurance fund” means the fund to which the receipts of an insurer in respect of his life insurance business are carried;

“life insurer” means a registered insurer carrying on life insurance business;

“life policy” means a policy whereby the insurer assumes, in return for the payment or the promise of the payment of a sum or sums of money or the promise of a periodical payment of a certain premium, a contingent obligation dependent on human life and includes any contract of insurance customarily regarded as a life insurance contract, but does not include a funeral policy, an industrial policy, a personal accident policy, a sinking fund policy or an insurance policy whereby the insurer assumes a contingent obligation dependent on human life in which the contingent obligation forms a subordinate part of the insurance effected by the policy;

“local insurer” means a registered insurer whose head office is in Malawi;

“local policy” means a policy issued in or outside Malawi upon an application made or presented to an agent for brokers or an insurance agent at any place in Malawi and includes a life policy issued outside Malawi and subsequently made payable in Malawi at the request of the owner which the owner has agreed in writing shall be treated as a local policy for the purposes of this Act, but does not include a life policy made payable, after the date of its issue, outside Malawi at the request of the owner which the owner has agreed in writing shall not be treated as a local policy for the purposes of this Act;

“new insurer”, in relation to an applicant for registration as an insurer in terms of Part I, means an applicant who is not, at the date of his application for registration, carrying on insurance business inside or outside Malawi;

“owner”, in relation to a policy, means the person who is entitled to enforce any benefit provided for in the policy;

“personal accident policy” means a policy whereby the insurer assumes, in return for the payment or the promise of the payment of a sum or sums of money and otherwise than incidentally to an insurance effected by means of some other class of policy, an obligation to pay a certain sum or certain sums of money to, or provide any other benefit for, a particular person in the event of an accident or sickness causing the death or injury or disability of a particular person;

“policy” means a valid insurance contract, whatever the form in which the rights and obligations of the parties to the contract are expressed or created, and includes a sinking fund policy, but does not include an insurance contract in which—

(a) a person or a member of a class of persons declared to be exempt from this Act by order made in terms of section 2 (c) assumes the obligations of the insurer; or

(b) a person assumes the obligations of an insurer in a class of insurance business declared to be exempt from this Act by order made in terms of section 2 (d);

“principal officer” means the principal officer of a registered insurer appointed in terms of section 15;

“registered insurer” means an insurer registered in terms of Part I;

“Registrar” means the Registrar of Insurance appointed in terms of section 4;

“share” has the meaning assigned thereto in the Companies Act; Cap. 46:03

“sinking fund policy” means a contract whereby one party to the contract assumes the obligation to pay, after the expiration of a certain period or during a specified period, a certain sum or certain sums of money to a particular person in return for the payment or the promise of a payment from time to time of a certain sum of money by the other party to the contract;

“underwriting liabilities”, in relation to a member of an association of underwriters, means the liabilities of the insurance business of the member calculated in accordance with formulae fixed by the committee of the association and approved—

- (a) in the case of an association constituted in Malawi, by the Registrar; and
- (b) in the case of an association constituted in a country outside Malawi, by the appropriate authority in whom is vested the administration of the insurance law relating to associations of underwriters in that country.

(2) For the purposes of this Act, an association of underwriters shall be treated as an insurer.

PART I

REGISTRATION AND CANCELLATION OF REGISTRATION OF INSURERS

[Ch4701s4]4. Appointment of Registrar

There shall be an officer, to be known as the Registrar of Insurance, for the purposes assigned to the Registrar under this Act and such other purposes as the Minister may determine.

[Ch4701s5]5. Insurers to be registered

(1) Subject to subsection (2), no person shall carry on insurance business in Malawi unless he is registered as an insurer in the class of insurance business carried on by him or is a member of an association of underwriters registered as an insurer in the class of insurance business carried on by him.

(2) Nothing in subsection (1) contained shall apply to—

- (a) an agent for brokers; or
- (b) an insurance agent; or
- (c) the carrying on by—
 - (i) a person whose registration as an insurer in a class of insurance business has been cancelled; or
 - (ii) a member of an association of underwriters, the registration of which as an insurer in a class of insurance business has been cancelled,

of business relating to policies in that class of insurance business which were issued by him before the date of the cancellation of his registration as an insurer in that class of insurance business or, as the case may be, before the date of the cancellation of the registration of the association as an insurer in that class of insurance business.

[Ch4701s6]6. Registration of insurers

41 of 1970(1) An application to be registered as an insurer in a class of insurance business shall be made to the Minister in the form prescribed and shall be accompanied by such documents as may be prescribed.

41 of 1970(2) If the Minister is satisfied—

(a) that an applicant for registration as an insurer is not disqualified in terms of section 12 to be registered as an insurer in the class of insurance business with respect to which application for registration is made; and

(b) in the case of an applicant who is a new insurer, that the class of insurance business with respect to which application for registration is made will be carried on by the applicant or by the applicant's members in accordance with sound insurance principles; and

(c) in the case of an applicant who is an existing insurer and who applies for registration as an insurer in a class of insurance business carried on by the applicant or the applicant's members outside Malawi, that—

(i) the class of insurance business with respect to which application for registration is made will be carried on in Malawi and is being carried on outside Malawi by the applicant or the applicant's members in accordance with sound insurance principles; and

(ii) the other class or classes of insurance business carried on by the applicant or the applicant's members inside or outside Malawi are being carried on by the applicant or the applicant's members in accordance with sound insurance principles; and

(d) in the case of an applicant who is an existing insurer and who applies for registration as an insurer in a class of insurance business not carried on by the applicant or the applicant's members outside Malawi, that—

(i) the class of insurance business with respect to which application for registration is made will be carried on by the applicant or the applicant's members in accordance with sound insurance principles; and

(ii) the other class or classes of insurance business carried on by the applicant or the applicant's members inside or outside Malawi are being carried on by the applicant or the applicant's members in accordance with sound insurance principles,

41 of 1970the Minister shall register the applicant as an insurer in the class of insurance business with respect to which application for registration is made and shall notify the applicant in writing accordingly.

41 of 1970(3) If, notwithstanding anything contained in subsection (2), the Minister is satisfied that it would be in the public interest to register an applicant as an insurer in the class of insurance business with respect to which application for registration is made subject to such conditions as the Minister may deem desirable in the public interest to impose, the Minister shall—

(a) notify the applicant in writing of the conditions which he deems desirable to impose;
and

(b) in the case of an applicant who agrees within sixty days of the date of the notice to be so registered, register the applicant as an insurer in that class of insurance business subject to those conditions and notify the applicant in writing accordingly; and

41 of 1970(c) in the case of an applicant who does not agree within sixty days of the date of the notice to be so registered, notify the applicant in writing that his application for registration is rejected.

41 of 1970(4) If the Minister is satisfied—

(a) that an applicant for registration as an insurer is disqualified in terms of section 12 to be registered as an insurer in the class of insurance business with respect to which application for registration is made; or

(b) in the case of an applicant who is a new insurer, that the class of insurance business with respect to which application for registration is made will not be carried on by the applicant or by the applicant's members in accordance with sound insurance principles; or

(c) in the case of an applicant who is an existing insurer and who applies for registration as an insurer in a class of insurance business carried on by the applicant or the applicant's members outside Malawi, that—

(i) the class of insurance business with respect to which application for registration is made will not be carried on in Malawi or is not being carried on outside Malawi by the applicant or the applicant's members in accordance with sound insurance principles; or

(ii) the other class or classes of insurance business carried on by the applicant or the applicant's members inside or outside Malawi are not being carried on by the applicant or the applicant's members in accordance with sound insurance principles; or

(d) in the case of an applicant who is an existing insurer and who applies for registration as an insurer in a class of insurance business not carried on by the applicant or the applicant's members outside Malawi that—

(i) the class of insurance business with respect to which application for registration is made will not be carried on by the applicant or the applicant's members in accordance with sound insurance principles; or

(ii) the other class or classes of insurance business carried on by the applicant or the applicant's members inside or outside Malawi are not being carried on by the applicant or the applicant's members in accordance with sound insurance principles; or

41 of 1970(e) that it would be contrary to the public interest to register an applicant as an insurer,

41 of 1970 the Minister shall notify the applicant in writing that his application for registration is rejected.

[Ch4701s7]7. Cancellation of registration

41 of 1970(1) The Minister shall notify a registered insurer in writing that his registration as an insurer is cancelled if at any time—

41 of 1970(a) the Minister is satisfied that—

(i) the registered insurer would, if he were an applicant for registration as an insurer, be disqualified in terms of section 12 to be registered as an insurer in the class of insurance business with respect to which he is registered; or

(ii) a class or classes of insurance business with respect to which the insurer is registered or any other class of insurance business carried on outside Malawi by the registered insurer or, in the case of a registered insurer who is an association of underwriters, by a member of the association, is not being carried on by the insurer or, as the case may be, member of the association in accordance with sound insurance principles; or

(iii) the registered insurer and, additionally or alternatively, in the case of a registered insurer who is an association of underwriters, a member of the association has or have, as the case may be, failed to comply with a provision of this Act or of any insurance law of a country outside Malawi applying to the registered insurer or, as the case may be, the member of the association, which relates to the maintenance of a life insurance fund or the holding in trust of insurance premiums; or

(iv) the registered insurer and, additionally or alternatively, in the case of a registered insurer who is an association of underwriters, a member of the association has or have, as the case may be, failed to comply with a condition subject to which the registered insurer was registered as an insurer: or

41 of 1970(v) it is contrary to the public interest for the said registration to continue in force; or

(b) the registered insurer is convicted of an offence against section 79 and an appeal against the conviction is not brought or, if brought, is abandoned or dismissed; or

(c) a judgment is obtained against the registered insurer or, in the case of a registered insurer who is an association of underwriters, a member of the association, in any court in Malawi and remains unsatisfied for twenty-one days and an appeal from the judgment is not brought or, if brought, is abandoned or dismissed.

[Ch4701s8]8. Repealed by 41 of 1970

[Repealed by 41 of 1970.]

[Ch4701s9]9. Cancellation of registration at the request or an insurer, etc.

(1) The Registrar may, at the request of a registered insurer or his liquidator, trustee or judicial manager, cancel his registration in any or all of the classes of insurance business carried on by him in Malawi.

(2) The Registrar shall cancel the registration of an insurer in a class of insurance business if he is satisfied that the insurer has ceased to carry on that class of insurance business in Malawi.

[Ch4701s10]10. Registration or cancellation to be published in the Gazette

The Registrar shall cause a notice of the registration of an insurer or the cancellation of the registration of an insurer to be published in the Gazette.

[Ch4701s11]11. Special provisions with respect to the cancellation of the registration of insurers registered in terms of section 12 (2)

41 of 1970(1) Section 7 shall not apply to an insurer registered in terms of section 12 (2) until the insurer has gained the margin of solvency sufficient for the purpose of the class or, as the case may be, classes of insurance business with respect to which the insurer is registered.

(2) The Minister may cancel the registration of an insurer registered in terms of section 12 (2) without notifying the insurer of his reasons for so doing at any time before the insurer gains the margin of solvency sufficient for the purpose of the class or, as the case may be, the classes of insurance business with respect to which the insurer is registered.

(3) The Registrar shall cancel the registration of an insurer registered in terms of section 12 (2) if, before gaining the margin of solvency referred to in subsection (2), the insurer carries on insurance business outside Malawi.

[Ch4701s12]12. Persons disqualified to be registered as insurers

(1) The Minister shall not register as an insurer—

41 of 1970(a) an applicant if the name under which the applicant desires to be registered is identical with the name of a registered insurer or so nearly resembles the name of that registered insurer as to be likely to be mistaken for it, unless that registered insurer is being or is to be wound up or dissolved or, as the case may be, has ceased to carry on insurance business in Malawi and consents to the registration of the applicant under the name in question; or

(b) an applicant other than an association of underwriters, unless the applicant's margin of solvency is, in terms of section 13, sufficient for the purposes of the class or, as the case may be, classes of insurance business for which application for registration is made; or

(c) an applicant who is an association of underwriters, unless—

(i) the regulations constituting the association and governing the operations of the members provide for the matters referred to in sections 23, 26, 27 and 24 or, as the case may be, 25; and

(ii) the committee of the association holds, under a document creating a trust the terms of which have been approved by the committee, a deposit from each member of the

association of money or approved securities or both to the value of ten thousand Kwacha as security in respect of each member's underwriting liabilities; and

(iii) in the case of an association constituted in a country outside Malawi—

(A) the association was constituted not less than five years before the date of the association's application for registration; and

(B) the insurance law of the country in which the association was constituted provides for the regulation of associations of underwriters; or

(d) an applicant who is a corporate body with share capital, unless the applicant—

(i) is lawfully constituted in accordance with the laws of the country in which the head office of the applicant is situate; and

(ii) has a paid-up share capital of not less than one hundred thousand Kwacha.

14 of 1970(2) Notwithstanding subsection (1) (b), the Minister may register as an insurer an applicant, other than an association of underwriters, whose margin of solvency is not sufficient for the class of insurance business with respect to which application for registration is made, if—

(a) the head office of the applicant is in Malawi; and

(b) the applicant has no share capital; and

(c) the applicant is established for the business of the mutual insurance of the applicant's members; and

(d) the applicant deposits with the Registrar approved securities of a face value of not less than one hundred thousand Kwacha; and

14 of 1970(e) the Minister is satisfied—

(i) that the applicant is capable of carrying on the class of insurance business with respect to which application for registration is made; and

14 of 1970(ii) from information furnished by the applicant, that before the expiration of the period of seven years commencing on the date of application or such longer period as the Minister may approve, the applicant is likely to gain the margin of solvency sufficient for the class of insurance business with respect to which application for registration is made.

(3) For the purposes of subsection (1) (b) an applicant who carries on, outside Malawi, a class or classes of insurance business other than that or those with respect to which application for registration is made shall be treated as if he had applied for registration as an insurer both in the class or classes of insurance business with respect to which his application for registration is made and in the other class or classes of insurance business carried on by him outside Malawi.

[Ch4701s13]13. Margin of solvency sufficient for the purposes of carrying on insurance business

(1) An insurer other than an association of underwriters shall be treated as having a margin of solvency sufficient for the purposes of carrying on—

(a) any class of insurance business other than life insurance business, if the value of his assets in respect of the classes of insurance business carried on by him exceeds the amount of his liabilities in respect of the classes of insurance business carried on by him by—

(i) fifty thousand pounds; or

(ii) one-tenth of his premium income in his last preceding financial year, whichever is the greater amount;

(b) life insurance business only, if his liabilities under unmatured life, funeral, industrial and sinking fund policies do not exceed the amount of his life insurance fund;

(c) any class of insurance business, including life insurance business, if—

(i) in respect of his life insurance business, he has a margin of solvency referred to in paragraph (b); and

(ii) the value of his assets in respect of all classes of insurance business carried on by him exceeds the amount of his life insurance fund, together with all his liabilities other than his liabilities in respect of unmatured life, funeral, industrial and sinking fund policies, by—

(A) fifty thousand pounds; or

(B) one-tenth of his premium income, other than life insurance premium income, in his last preceding financial year,

whichever is the greater amount.

(2) In calculating the margin of solvency referred to in subsection (1) (a) and (c) (ii)—

(a) all contingent and prospective liabilities of an insurer, but not liabilities in respect of share capital, shall be taken into account in assessing the amount of the liabilities of the insurer; and

(b) an insurer's premium income, other than life insurance premium income, in any financial year shall be assessed as the net amount, after deduction of any premiums paid by the insurer in re-insurance, of the premiums received by the insurer in his last preceding financial year in respect of all insurance business, other than life insurance business, carried on by him in that last preceding financial year.

PART II

PROVISIONS GOVERNING THE CARRYING ON OF INSURANCE BUSINESS BY REGISTERED INSURERS OTHER THAN ASSOCIATIONS OF UNDERWRITERS

[Ch4701s14]14. Application of Part II

This Part applies to registered insurers who are not associations of underwriters.

[Ch4701s15]15. Registered insurers to maintain principal office and appoint principal officer

(1) Where a registered insurer has established a principal office in Malawi, he shall appoint a principal officer in Malawi.

(2) Where a registered insurer has established a principal office and appointed a principal officer, the registered insurer shall notify the Registrar in writing of the situation of such office and the name of such officer.

(3) If a registered insurer changes the situation of his principal office in Malawi or closes such office or appoints a new principal officer, such registered insurer shall, within 21 days of such change, closure or new appointment, give notice thereof to the Registrar in writing.

(4) A registered insurer shall inform the Registrar in writing of the name and address of every person entitled to act on behalf of such insurer, whether as agent or otherwise, in Malawi and shall keep such information current by notifying the Registrar of any changes or additions or deletions with respect to the names and addresses of such persons.

[Ch4701s16]16. Registered insurers to notify Registrar of certain changes and particulars

A registered insurer shall, within six months of the end of each financial year, notify the Registrar in writing of any change which occurred in that year in any matter prescribed in relation to the insurer for the purposes of this section.

[Ch4701s17]17. Accounts and balance sheets, etc., of registered insurers to be submitted to Registrar

(1) Subject to subsection (3), a registered insurer shall, within six months of the end of each financial year, prepare and furnish to the Registrar in the appropriate forms prescribed—

(a) a certificate as to the solvency of the insurer, certified, in the case of a life insurer, by an actuary approved by the Registrar; and

(b) a balance sheet showing the financial position of the insurer's insurance business at the close of that year; and

(c) a profit and loss account in respect of insurance business carried on by the insurer in that year; and

(d) a revenue account in respect of life insurance business, if any, carried on by the insurer in that year; and

(e) a statement of life insurance business, other than business in connexion with funeral, industrial and sinking fund policies, if any, carried on by the insurer in Malawi in that year; and

(f) a revenue account in respect of insurance business, other than life insurance business, if any, carried on by the insurer in that year; and

(g) such other documents and information relating to the accounts and balance sheet referred to in this subsection as may be prescribed.

(2) A registered insurer shall furnish to the Registrar with the documents referred to in subsection (1) a copy of any report on the affairs of the insurer submitted to the policy-owners or shareholders of the insurer in respect of the financial year to which those documents relate.

(3) Subsection (1) (c) shall not apply to a registered insurer who—

(a) carries on only one class of insurance business and no business other than insurance business; or

(b) has no share capital.

(4) If, in the opinion of the Registrar, an account or balance sheet furnished by a registered insurer in terms of subsection (1) is incorrect or is not prepared in accordance with this Act, the Registrar may, by notice in writing, call upon the insurer to amend the account or balance sheet or to furnish a correct account or balance sheet or, as the case may be, an account or balance sheet prepared in accordance with this Act.

(5) If a registered insurer fails to comply with a notice referred to in subsection (4) to the satisfaction of the Registrar, the Registrar may himself either amend the document in question, giving the insurer particulars of the amendments, or reject the document.

(6) An account or balance sheet amended by the Registrar or by a registered insurer in terms of this section shall be treated as having been submitted to the Registrar in its amended form.

(7) If the account or balance sheet of a registered insurer has been rejected by the Registrar in terms of subsection (5), the insurer shall be treated as having failed to comply with subsection (1) in relation to that account or balance sheet unless and until he has furnished another account or balance sheet in accordance with the directions of the Registrar.

(8) A registered insurer liable under a local life, funeral, industrial or sinking fund policy shall, at the request of the owner, furnish him free of charge with a copy of the revenue account, profit and loss account or balance sheet prepared by the insurer in terms of subsection (1) in respect of his last preceding financial year.

[Ch4701s18]18. Keeping of records by external insurers

An external insurer shall keep within Malawi—

(a) a record of all local policies issued by him showing his rights and obligations thereunder; and

(b) a record of the premiums received on all local policies issued by him; and

(c) documentary evidence of his assets in Malawi.

[Ch4701s19]19. Audit of accounts of local insurers

(1) The accounts of a local insurer shall be audited annually by an auditor approved by the Registrar. The auditor shall not be an employee, manager or director of the insurer.

(2) The auditor of a local insurer shall satisfy himself that the accounts of the insurer have been properly prepared in accordance with the books and records of the insurer.

(3) The auditor of a local insurer shall certify whether—

(a) he has obtained adequate information from the books and records of the insurer; and

(b) the accounts of the insurer accord with the information given to him by the insurer for the purposes of his audit; and

(c) the balance sheet and profit and loss account respectively of the insurer give a true and fair view of the insurer's financial position and profit or loss.

[Ch4701s20]20. Audit of accounts of external insurers

An external insurer shall furnish evidence to the satisfaction of the Registrar that his accounts are subject to an annual audit by an independent auditor.

[Ch4701s21]21. Publication of authorized capital, etc., of registered insurers

A registered insurer shall not publish a statement or issue a document on which is printed a statement—

(a) of his authorized capital, unless the statement also sets forth the amount of his subscribed capital and of his paid-up capital; or

(b) of his subscribed capital, unless the statement also sets forth the amount of his paid-up capital.

PART III

PROVISIONS GOVERNING ASSOCIATIONS OF UNDERWRITERS WHICH ARE REGISTERED INSURERS AND THE CARRYING ON OF INSURANCE BUSINESS BY THEIR MEMBERS

[Ch4701s22]22. Application of Part III

This Part applies to associations of underwriters which are registered insurers and their members.

[Ch4701s23]23. Premiums received by members of associations of underwriters to be held in trust

All premiums received by each member of an association of underwriters shall be held in trust in the names of trustees for the payment of the underwriting liabilities attached thereto of each member and the expenses of his insurance business.

[Ch4701s24]24. Audit of accounts of members of associations of underwriters constituted in Malawi

(1) The accounts of a member of an association of underwriters constituted in Malawi shall be audited annually by an auditor approved by the Registrar. The auditor shall not be an employee, manager or director of the member.

(2) The auditor of a member of an association of underwriters constituted in Malawi shall satisfy himself that the accounts of the member have been properly prepared in accordance with the books and records of the member.

(3) The auditor of a member of an association of underwriters constituted in Malawi shall certify to the committee of the association whether—

(a) he has obtained adequate information from the books and records of the member; and

(b) the accounts of the member accord with the information given to him by the member for the purposes of his audit; and

(c) the balance sheet and profit and loss account respectively of the member give a true and fair view of the member's financial position and profit or loss.

[Ch4701s25]25. Audit of accounts of members of associations of underwriters constituted in countries outside Malawi

An association of underwriters constituted in a country outside Malawi shall furnish evidence to the satisfaction of the Registrar that the accounts of each member of the association are subject to an annual audit by an independent auditor.

[Ch4701s26]26. Certificates of auditors of members of associations of underwriters as to underwriting assets

The auditor of a member of an association of underwriters shall certify to the committee of the association whether the underwriting assets held by the member at the close of each financial year were sufficient to cover the underwriting liabilities attached at that time to the member's underwriting accounts.

[Ch4701s27]27. Information relating to the insurance business of members of associations of underwriters to be furnished to the Registrar

An association of underwriters shall furnish annually to the Registrar—

(a) in the case of an association constituted in Malawi, such returns relating to the insurance business carried on by each of the members of the association as the Registrar may specify; and

(b) in the case of an association constituted in a country outside Malawi—

(i) a certified copy of the returns relating to the insurance business carried on by the members of the association prepared and furnished each year to the appropriate authority in whom is vested the administration of the insurance law relating to associations of underwriters in that country; and

(ii) a certificate signed by the chairman of the association and by the authority referred to in subparagraph (i) that the members of the association have, in respect of the preceding year, complied with the insurance law relating to associations of underwriters in that country.

[Ch4701s28]28. Insurance brokers to be registered

6 of 1990 No person shall act in Malawi as an insurance broker unless he is registered as an insurance broker in terms of section 29.

[Ch4701s29]29. Registration and cancellation of registration of insurance brokers

(1) An application for registration as insurance broker shall be made to the Minister in the form prescribed.

31 of 1970, 41 of 1970, 6 of 1990 (2) The Minister shall not register, and shall cancel, the registration of any person as insurance broker—

(a) who has, under any law within or without Malawi relating to bankruptcy or insolvency, been adjudged or otherwise declared bankrupt or insolvent, and has not been rehabilitated or discharged, or has made an assignment to or arrangement or composition with creditors, which has not been rescinded or set aside; or

(b) who has been convicted by any court wheresoever situate of any offence involving dishonesty or has been convicted of an offence against section 80 or 81, an appeal against the conviction not having been brought or, if brought, having been abandoned or dismissed; or

41 of 1970 (c) whose registration as such, or the continuation in force thereof, would, in the opinion of the Minister, be contrary to the public interest.

[Ch4701s30]30. Accounts to be kept by insurance brokers

A registered insurance broker shall—

6 of 1990 (a) keep regular and special accounts of all insurance business placed through his agency with members of associations of underwriters and other insurers; and

(b) prepare and furnish, in the form prescribed, to the Registrar, within six months of the end of each financial year, a return of all insurance business referred to in paragraph (a).

PART IV

SPECIAL PROVISIONS GOVERNING THE CARRYING ON OF LIFE INSURANCE BUSINESS BY REGISTERED INSURERS OTHER THAN ASSOCIATIONS OF UNDERWRITERS

[Ch4701s31]31. Application of Part IV

This Part shall apply to life insurers who are not associations of underwriters.

[Ch4701s32]32. Life insurers carrying on business other than life insurance business

(1) A life insurer who carries on, in addition to his life insurance business, any other business, whether insurance business or otherwise, shall keep a separate account of all receipts in respect of his life insurance business.

(2) The receipts in respect of the business of a life insurer referred to in subsection (1) which are receipts in respect of his life insurance business shall be carried to and form part of the life insurance fund.

(3) The life insurance fund of a life insurer referred to in subsection (1) shall be as absolutely the security of the owners of the life, funeral, industrial and sinking fund policies issued by the life insurer as though it belonged to a life insurer carrying on no other business than life insurance business. Payments from the life insurance fund of a life insurer referred to in subsection (1) shall not be made in pursuance of the contracts of the life insurer which would not be made if the business of the life insurer were only that of life insurance, and the life insurance fund shall not be applied directly or indirectly to any purposes other than those of life insurance.

(4) Nothing in this section contained shall preclude a life insurer referred to in subsection (1) from investing the life insurance fund in the same investments as any other fund.

[Ch4701s33]33. Periodical investigations to be made into financial position of life insurers

(1) A life insurer shall, once in every five years, cause an investigation to be made into his financial position by an actuary approved by the Registrar.

(2) An investigation into the financial position of a life insurer made in terms of subsection (1) shall include—

- (a) a valuation of the liabilities in respect of the whole of his life insurance business; and
- (b) a valuation of the liabilities in respect of his life insurance business in Malawi.

(3) A life insurer whose financial position is investigated in terms of this section, shall prepare and furnish to the Registrar in the appropriate forms prescribed, within six months of the date to which his accounts are made up for the purposes of the investigation, an abstract of the report of the actuary approved by the Registrar by whom the investigation was made, and a statement of his insurance business at that date.

(4) An external insurer who carries on life insurance business, whether or not he carries on life insurance business in Malawi, shall, whenever he furnishes to the appropriate authority in the country in which his head office is situate, an abstract, statement, return or other document reflecting the results of an actuarial investigation of the liabilities of the whole of his life insurance business, furnish a copy of the abstract, statement, return or other document to the Registrar.

(5) Notwithstanding subsections (1) (2) and (3) inclusive, the Registrar may, subject to subsection (6), require a life insurer whom he suspects is not conducting his life insurance business in accordance with sound insurance principles to prepare and furnish, within six months commencing on the date the Registrar calls upon him in writing to do so, valuations of the liabilities referred to in subsection (2) (a) and (b) and an abstract and statement referred to in subsection (3).

(6) The Registrar shall not require a life insurer to prepare and furnish the documents referred to in subsection (5) more than once in any year.

[Ch4701s34]34. Amalgamations and transfers of life insurance business

(1) No local insurer shall—

(a) amalgamate with one or more insurers if one or more or all of the insurers to be amalgamated are persons carrying on life insurance business; or

(b) transfer his life insurance business or a part of his life insurance business to or take transfer of the life insurance business or a part of the life insurance business of another insurer,

unless the amalgamation or, as the case may be, the transfer is sanctioned by the Minister in accordance with this section.

(2) If it is intended to amalgamate two or more insurers carrying on life insurance business, one or more or all of whom are local insurers, or to transfer the life insurance business or a part of the life insurance business of one insurer to another insurer one or both of whom are local insurers, the directors of the insurers concerned may apply to the Minister to sanction the proposed amalgamation or, as the case may be, transfer.

(3) Before an application to the Minister is made in terms of subsection (2)—

(a) notice of the intention to make the application shall be published in the Gazette; and

(b) a statement of the nature of the amalgamation or, as the case may be, transfer, together with—

(i) an abstract containing the material facts embodied in the agreement under which the amalgamation or transfer is proposed to be effected; and

(ii) copies of the actuarial reports upon which the agreement referred to in subparagraph (i) is founded, including a report by an actuary approved by the Registrar,

shall be posted to the registered or last known address of each life, funeral, industrial or sinking fund policy-owner in Malawi of each insurer and to the Registrar; and

(c) the agreement under which the amalgamation or, as the case may be, transfer is proposed to be effected shall be open for inspection by policy-owners and share-holders at the offices of the insurers in Malawi for a period of twenty-one days after the publication of the notice in the Gazette.

(4) The Minister, after considering the application and such representations as may be made by policy-owners and share-holders of the insurers concerned and by other persons whom he considers are entitled to be heard, may sanction the arrangement if he is satisfied that no sufficient objection to the arrangement has been established.

(5) The Minister shall not sanction an amalgamation or, as the case may be, transfer if it appears to him that the life, funeral, industrial and sinking fund policy-owners, representing one-fifth or more of the total amount insured by any of the insurers carrying on life insurance business concerned, dissent from the amalgamation or transfer.

(6) If an amalgamation or transfer has taken place in accordance with this section, no life, funeral, industrial or sinking fund policy-owner shall be regarded as having abandoned any claim which he would have had against the original insurer or to have accepted in place thereof the liability of another insurer, unless he or his agent has signed a written document abandoning that claim and accepting in place thereof the liability of that other insurer.

[Ch4701s35]35. Statement in case of amalgamation or transfer of business

Within three months after the date of the completion of an amalgamation or transfer referred to in section 34, the combined insurer or, as the case may be, the purchasing insurer shall deposit with the Registrar—

(a) certified copies of statements of the assets and liabilities of the insurers concerned in the amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer; and

(b) a certified copy of the agreement or deed under which the amalgamation or transfer was effected; and

(c) certified copies of the actuarial or other reports upon which the agreement or deed was founded; and

(d) a declaration under the hand of the chairman of each insurer and of the principal officer of each insurer that—

(i) to the best of their knowledge and belief, every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and no other payments, except those set forth, have been made or are to be made, either in money, policies, bonds, valuable securities or other property, by or with the knowledge of the parties to the amalgamation or transfer; and

(ii) due notice of the proposed amalgamation or transfer was given to the shareholders, if any, and policy-owners of each insurer concerned in compliance with section 34.

[Ch4701s35A]35A. Special provisions relating to demutualization of registered insurer

39 of 1998(1) If a registered insurer which is not a company with share capital proposes to undertake a demutualization scheme, it shall apply to the Minister to sanction the transaction in accordance with this section and section 34 shall not apply to such a transaction.

(2) Before an application is made to the Minister under subsection (1)—

(a) notice of the intention to make an application shall be published in the Gazette;

(b) a statement of the nature of the transaction together with—

- (i) an abstract containing the material facts embodied in the transaction, and
- (ii) a summarized version of the actuarial reports concerning the transaction, including that of an actuary approved by the Registrar,

shall be sent to the Registrar by registered post and to the registered or last known address of each owner in Malawi of a policy effected by the registered insurer; and

(c) a copy of the agreement under which the transaction is to be effected and the full actuarial reports relating thereto shall be provided to the Registrar and shall also be made available for inspection by the public at the offices of the registered insurer in Malawi for a period of twenty-one days after publication of the notice in the Gazette.

(3) The Minister, after considering the application and such representations as may be made by policy owners of the registered insurer and by other persons whom he considers are entitled to be heard, may sanction the transaction and in doing so the minister may, among other things, authorize and confirm—

(a) the allotment issue or transfer to any person by any party to the scheme of shares in the insurer or in a company which is to become a holding company of any such party, whether in mutualization for membership is the insurer or otherwise;

(b) the cessation of membership in the society;

(c) the scheme taking effect on a specified date which may be a date before or after the date of sanction by the Minister.

(4) A transaction, if sanctioned by the Minister in accordance with this section, shall have effect and be binding on all persons including the owner of a policy who shall no longer have any claim against the original registered insurer but, in place thereof, such claim shall be against the registered insurer to which the business of the original registered insurer has been transferred or into which the original registered insurer has been converted, as the case may be.

(5) In this section, the term demutualization scheme means the process whereby—

(a) a registered insurer which is not a company with share capital, whether constituted and known as a mutual society or otherwise, transfer its insurance business to, or is converted without interruption of its corporate existence into, a public company which is incorporated under the Companies Act and which is registered as an insurer under this Act; and Cap. 46:03

(b) the membership of the registered insurer is replaced by ownership of shares in the said public company or in a company of which it is a subsidiary.

[Ch4701s36]36. Reinsurance contracts of life insurers

(1) No life insurer shall, after the 30th June, 1961, enter into a contract of re-insurance against any liability in respect of his life insurance business in Malawi otherwise than with a life insurer.

(2) Subsection (1) shall not apply to a contract of reinsurance against any liability in respect of life insurance business in Malawi the parties to which and the terms of which have been approved by the Registrar.

[Ch4701s36A]36A. Assets of insurer may include shares in holding company

39 of 1998(1) If the assets which a life insurer holds in its life insurance fund in respect of its liabilities to policy holders include shares in its holding company—

(a) those shares shall be deemed, for the purpose of section 57 (2) of the Companies Act, to be held by the insurer as trustee for the benefit of owners of the policies to which the liabilities relate; Cap. 46:03

(b) those shares shall only be held subject to such limitations and conditions as the Registrar may determine; and

(c) the insurer shall not have the right to vote at meetings of the company in which it holds such shares or at meetings of any particular class of members of that company.

PART V

SPECIAL PROVISIONS RELATING TO LIFE AND OTHER POLICIES

[Ch4701s37]37. Interpretation of terms in Part V

(1) In this Part, unless inconsistent with the context—

“bankruptcy” shall be construed in accordance with any enactment in force in Malawi relating to bankruptcy and as including an assignment to or arrangement or composition with creditors made in terms of any enactment in force in Malawi relating thereto; and “bankrupt” shall be construed accordingly;

“children” includes illegitimate children, step-children and children adopted in terms of any enactment whatsoever relating to the adoption of children;

“minor” means a person who, by reason of his youth, is under a legal disability;

“trustee”, in relation to an estate in insolvency or bankruptcy, includes an assignee or, as the case may be, a trustee under a deed of arrangement or the person having the conduct of an order of composition.

(2) If the proceeds on realization of an asset, which was acquired with moneys paid by the insurer under a life policy and with other moneys, exceed in amount the moneys paid under the policy which were used for the purpose of acquiring the asset, a reference in this Part to the proceeds on realization of the asset shall be construed as a reference to the amount of the moneys paid under the policy which were used for the purpose of acquiring the asset, and a reference to the value of any such asset shall be construed accordingly.

[Ch4701s38]38. Minor may insure his life

(1) A minor who has attained the age of eighteen years may, without the consent of his guardian, effect a life policy upon his own life and pay any premium due under the policy with money he has earned or with any other money at his disposal.

(2) Subject to subsection (3), a minor who has effected a life policy upon his own life as in subsection (1) is provided shall be as competent in all respects to be a policy-owner and to have and to exercise all the powers and privileges of a policy-owner in relation to the policy as if he were of full age.

(3) A minor who has effected a life policy upon his own life shall not, without the consent of his guardian, pledge, cede or surrender the policy while he is a minor.

(4) If any money becomes payable to a minor who has attained the age of eighteen years under a life policy effected by him on his own life, the insurer liable under the policy shall pay that money to the minor, who may, without the consent of his guardian, deal therewith as he thinks fit.

[Ch4701s39]39. Life policies effected by married persons

(1) Notwithstanding anything to the contrary in any written law or in the common law, but subject to this Part—

(a) a married woman may—

(i) effect and own a life policy; and

(ii) hold and, by the way of gift or otherwise, acquire from or dispose of to any person, including her husband, any interest in a life policy; and

(iii) hold—

(A) any moneys paid by the insurer in respect of any interest held by her in a life policy or any assets acquired by her with those moneys;

(B) any moneys or assets acquired by her in respect of the disposal of any interest held by her in a life policy or any assets acquired by her with those moneys; and

(iv) dispose of to any person, including her husband, by way of gift or otherwise, any moneys or assets referred to in subparagraph (iii),

in all respects as if she were a single woman of full age and capacity; and

(b) a married man may, by way of gift, acquire from or dispose of to his wife—

(i) any interest in a life policy; and

(ii) any moneys paid by the insurer in respect of any interest in a life policy or any assets acquired with those moneys; and

(iii) any moneys or assets acquired in respect of the disposal of any interest in a life policy or any assets acquired with those moneys,

in all respects as if he were a single man of full age and capacity.

(2) Subsection (1) (a) shall apply in relation to—

- (a) a life policy effected by a married woman before her marriage; or
- (b) any interest in a life policy acquired by a married woman before her marriage; or
- (c) any moneys due or paid to a married woman before her marriage in respect of a life policy referred to in paragraph (a) or any interest in a life policy referred to in paragraph (b) or acquired by her before her marriage in respect of the disposal of any interest in a life policy; or
- (d) any assets acquired by a married woman before her marriage with moneys referred to in paragraph (c).

as if the policy, interest, moneys or assets was or were effected or paid to or acquired by her or became due during her marriage.

[Ch4701s40]40. Life policy on own life: protection afforded during life

(1) If a life policy effected by a person, whether married or not, on his or her own life which has inured for three years from the date of the payment of the first premium or longer—

- (a) is attached in execution of a judgment or order of any court at the instance of a creditor of that person; or
- (b) becomes part of that person's estate in bankruptcy, during the lifetime of that person, the proceeds on realization of the policy shall, to the extent specified in subsection (2), be protected against that person's creditors and against any claim in connexion with the attachment or the bankruptcy.

(2) The protection afforded by subsection (1) in respect of a life policy referred to in that subsection—

- (a) shall extend to so much of the proceeds on realization of the policy as does not exceed an amount of two thousand pounds; and
- (b) shall, subject to paragraph (a), extend, if the policy is pledged, to so much of the proceeds on realization of the policy as exceeds the amount of the liability, the payment of which the pledge secures, but no further.

(3) If moneys due or paid by the insurer under a life policy referred to in subsection (1) or assets acquired with those moneys or with those moneys and other moneys—

- (a) are attached in execution of a judgment or order of any court at the instance of a creditor of a person by whom the policy was effected; or
- (b) become part of the estate in bankruptcy of the person by whom the policy was effected,

during the period of five years from the date the moneys due or paid under the policy first became due, the moneys due or paid under the policy or the proceeds on realization of the assets shall, to the extent specified in subsection (4), be protected against that person's creditors and against any claim in connexion with the attachment or the bankruptcy.

(4) The protection afforded by subsection (3) in respect of moneys or assets of a person referred to in that subsection—

(a) shall extend to those moneys or the proceeds on realization of those assets in so far as those moneys and proceeds, together with—

(i) all other moneys due or paid to that person under life policies referred to in subsection (1); and

(ii) the value of all other existing assets of that person acquired with moneys paid under life policies referred to in subsection (1) or with such moneys and other moneys; and

(iii) the realizable value of all life policies referred to in subsection (1) of which that person is the owner,

do not exceed two thousand pounds; and

(b) shall, subject to paragraph (a), extend, in the case of an asset which is pledged or mortgaged, to so much of the proceeds on realization of the asset as exceeds the amount of the liability, the payment of which the pledge or mortgage secures, but no further, and

(c) shall not extend to any moneys due or paid under a life policy referred to in subsection (1) on surrender of the policy or to any assets acquired with those moneys or with those moneys and other moneys.

(5) For the purposes of this section—

(a) a life policy which an insurer issues in exchange for or in consideration of the surrender of another life policy under which the insurer was previously liable shall be regarded as having been effected on the date on which the surrendered policy was issued if the insurer received no payment other than the value of the surrendered policy as a consideration for the new policy;

(b) a life policy which an insurer issues in terms of section 46 (3) shall be regarded as having been effected on the date on which the old life policy for which it was substituted was issued.

[Ch4701s41]41. Life policy on own life: protection afforded on death

(1) In this section—

“beneficiary” means—

(a) the surviving spouse of an owner; or

(b) a dependant under the will of an owner; or

(c) a dependant by right of succession on intestacy; or

(d) a dependant under or by virtue of an order made in terms of any written law relating to inheritance or succession;

“dependant” means the surviving spouse, parents, children or grandchildren of an owner;

“owner” means an owner of a life policy, moneys or assets in respect of which protection is afforded by section 40.

(2) If—

(a) a beneficiary has, on the death of the owner, a claim—

(i) under a life policy; or

(ii) to moneys or assets,

in respect of which protection is afforded by section 40, and

(b) the life policy, moneys or assets referred to in paragraph (a)—

(i) are attached in execution of a judgment or order of any court at the instance of a creditor of the deceased owner; or

(ii) become part of the deceased owner’s estate in bankruptcy,

the beneficiary shall, in respect of his claim, enjoy the protection afforded by section 40.

[Ch4701s42]42. Protection afforded in respect of life policy inuring to spouse or children

(1) If—

(a) before or during marriage a man effects or cedes for the benefit of his wife or his wife and children, including children to be born to him and his wife, or any of them; or

(b) before or during marriage a woman effects or cedes for the benefit of her husband or her husband and children, including children to be born to her and her husband, or any of them; or

(c) a person effects or cedes for the benefit of his or her children, including children to be born to him or her,

a life policy on his or her life or on the life of his or her spouse, the policy or moneys due or paid thereunder by the insurer or any asset acquired with those moneys shall not, subject to this section and, in the case of a policy which is ceded, to the terms of the cession—

(i) be liable to be attached in execution of a judgment or order of any court at the instance of a creditor of the person by whom the policy was effected or ceded; or

(ii) form part of the estate in bankruptcy of the person by whom the policy was effected or ceded.

(2) A benefit conferred or purported to be conferred upon a spouse or child under a life policy referred to in subsection (1) or by virtue of the cession of a life policy referred to in that subsection shall, notwithstanding any agreement to the contrary between the insurer and the person by whom the policy was effected, but subject, in the case of a policy which is ceded, to the terms of the cession, be enforceable against the insurer liable under the policy at the suit of the spouse or child or the legal representative of the spouse or child, notwithstanding that the spouse or child has not accepted the benefit and is not a party to the contract of insurance.

(3) A life policy shall not be treated for the purposes of this section as having been effected for the benefit of the spouse and, additionally or alternatively, the children, including unborn children, or any of them, of the person by whom the policy was effected unless, at the time of its issue, the policy expressly so provides.

(4) This section shall not apply to a life policy issued before the date of commencement of this Act and section 40 of the Bankruptcy Act as in force at that date and, notwithstanding section 82, the provisions of any enactment referred to in the Schedule which applied to the policy immediately before that date shall continue to have effect with respect to the protection afforded to policies of life insurance effected or ceded for the benefit of a spouse and, additionally or alternatively, children, including unborn children, or any of them.

[Ch4701s43]43. Protection afforded in respect of life policy insuring to wife

(1) If, before or during marriage, a man effects or cedes for the benefit of his wife a life policy on his or her life and the policy—

(a) is attached in execution of a judgment or order of any court at the instance of her creditors; or

(b) becomes part of her estate in bankruptcy,

the proceeds on realization of the policy shall, to the extent specified in section 40 (2), be protected against her creditors and against any claim in connexion with the attachment or the bankruptcy.

(2) Section 40 (3), (4) and (5) and section 42 (2), (3) and (4) shall, mutatis mutandis, apply to a life policy referred to in subsection (1) or moneys due or paid thereunder by the insurer or any assets acquired with those moneys or with those moneys and other moneys.

[Ch4701s44]44. Certain provisions in life insurance policies to be of no force or effect

(1) A provision in a life policy issued on or after the 27th November, 1959—

(a) in which a person is named as a beneficiary; or

(b) which confers on a person, other than the person effecting the policy or his estate, a benefit provided for in the policy,

shall not, subject to subsection (2), be of force or effect.

(2) Subsection (1) shall not apply to—

(a) a life policy effected for the benefit of a spouse and, additionally or alternatively, children, including unborn children, to which section 42 relates; or

26 of 1959(F)(b)a life policy effected for the benefit of a wife to which section 42 relates which was issued before the date of commencement of the Insurance Amendment Act, 1959, of the former Federation of Rhodesia and Nyasaland (that is, the 27th November, 1959), or

(c) the cession of a benefit provided for in a life policy.

[Ch4701s45]45. Selection for realization of life policies in respect of which protection is afforded

If—

(a) two or more life policies or assets in respect of which protection is afforded by section 40, 41 or 43, being the property of one person, are attached in execution of a judgment or order of any court at the instance of a creditor; or

(b) the owner of two or more life policies or assets in respect of which protection is afforded by section 40, 41 or 43 is adjudged or otherwise declared insolvent or bankrupt,

and a part only of the aggregate realizable value of the policies or assets is protected, the judgment creditor or, as the case may be, the trustee of the estate in insolvency or bankruptcy shall determine which policy or policies or other asset or other assets shall be realized, wholly or partly, in order to make available to him so much of the aggregate realizable value as is not protected.

[Ch4701s46]46. Partial realization and partial conversion of life policies

(1) A judgment creditor of the owner of a life policy or the trustee of his estate in insolvency or bankruptcy who is entitled to a part of the realizable value of the policy may, if he is in possession of the policy, deliver it to the insurer who is liable under the policy for the purposes of the payment to him of the sum to which he is entitled.

(2) If a judgment creditor or trustee referred to in subsection (1) is not in possession of the life policy to which that subsection relates, the owner or any other person in possession of the policy shall, at the request of the judgment creditor or trustee, deliver it to the insurer who is liable under the policy for the purposes of the payment to the judgment creditor or trustee of the sum to which he is entitled.

(3) On receipt of a life policy delivered to him in terms of subsection (1) or (2), the insurer shall—

(a) at the request of the judgment creditor or trustee referred to in subsection (1), pay to him a sum equal to the part of the realizable value of the policy to which he is entitled; and

(b) at the request of the owner of the policy, issue to him a new policy of the same class, but for a sum insured equal to the difference between—

(i) the full sum insured under the old policy, including any bonus which may have accrued in connexion therewith; and

(ii) an amount which bears the same ratio to the full sum insured under the old policy, including any bonus, as the amount paid by the insurer to the judgment creditor or trustee referred to in subsection (1) bears to the full realizable value of the old policy.

(4) If an insurer has made the payment and issued a new life policy as in subsection (3) is provided, the old life policy shall lapse.

[Ch4701s47]47. Provisions in case of life policy ceded or trust policy cannot be kept up

If a person who—

(a) has effected or ceded a life policy for the benefit of his spouse and, additionally or alternatively, children, including unborn children, or any of them; or

(b) holds a life policy in trust for any other person and is obliged to pay the premiums on the policy,

is or has been unable to pay the premiums, that person may, with the consent of each person who has an interest in the policy or, if any such person is a minor, with the consent of his guardian or the master or registrar of the High Court, agree with the insurer liable under the policy—

(i) to exchange the policy for a paid-up life policy of a value equal to that of the original policy according to the insurer's current tariff, payable at the time and in the manner stipulated in the original policy to the person or persons entitled to the sum insured by the original policy; or

(ii) to borrow from the insurer upon security of the policy such sums as may be necessary to keep the policy in force or to revive it; or

(iii) to apply any bonus which may have accrued in connexion with the policy to a temporary or permanent reduction of premiums or to the payment of any premiums which have fallen due.

[Ch4701s48]48. Life policies ceded or premiums paid with intent to benefit someone at the expense of a creditor

(1) Nothing in this Part contained shall be construed as derogating from the power of a competent court to set aside, in terms of any enactment in force in Malawi relating to bankruptcy, any cession of a life policy made with intent to benefit someone at the expense of a creditor.

(2) If a premium upon a life policy was paid with intent to benefit a person at the expense of a creditor of the person making the payment, a competent court may order the owner of the policy to pay a sum equal to the aggregate of all premiums so paid, with interest at the rate of six per centum per annum, on the amount of each premium so paid from the date of its payment, to the person to whose detriment the premium was or the premiums were paid or, if the person has been adjudged or otherwise declared insolvent or bankrupt, to the trustee of his estate in bankruptcy.

(3) An order for the payment of a sum of money made in terms of subsection (2) shall have the effect of pledging the life policy referred to in that subsection to the person entitled to the

payment as security for the payment and, until the payment is made, that person shall be entitled to possess the policy.

[Ch4701s49]49. Proof of age

If—

(a) a claim is made for a benefit under a life policy which has inured for a period of three years from the date of the payment of the first premium; and

(b) the age or date of birth of the insured has not been admitted by the insurer liable under the policy; and

(c) the person claiming the benefit shows that, owing to circumstances beyond the control and through no default either of himself or of the person by whom the policy was effected, there was, at no time after the date of the payment of the first premium under the policy, either in existence or available any documentary evidence affording reasonable proof of the age or date of birth of the insured,

any written statement made in the proposal or application for the policy as to the age or date of birth of the insured shall be accepted for the purposes of the claim as the correct age or date of birth of the insured, unless the contrary is proved by records of a medical examination of the insured, made at the instance of the insurer, within the period of three years referred to in paragraph (a) or in any other manner.

[Ch4701s50]50. Age incorrectly stated

(1) If after the issue of a life policy it is proved that the policy is based upon an incorrect statement of the age of the person whose life is insured, the sum insured and other benefits under the policy shall, subject to subsection (2), be the same as those which the premiums payable under the policy would have secured had the policy been based upon a correct statement of the person's age

(2) If the Registrar is satisfied that the actuarial nature of life policies of any particular kind is such as to render the application of subsection (1) inequitable, he may direct an insurer to apply, in relation to policies of that kind, such other method of making adjustments in respect of incorrect statements of age as may appear to the Registrar to be equitable.

[Ch4701s51]51. Death of insured by his own act

(1) No life policy in which it is provided that the policy shall be void in the event of the insured, whether sane or insane, dying by his own act within a stipulated period shall be void for that reason if the insured dies by his own act after the expiration of that period.

(2) A life policy in which no provision such as is referred to in subsection (1) is contained shall not be void by reason of the insured, whether sane or insane, dying by his own act at any time after the issue of the policy.

[Ch4701s52]52. Lost or destroyed life policies

(1) If a local life policy is lost or destroyed and the loss or destruction is proved and advertised in the manner prescribed, the insurer liable under the policy shall, at the request of the policy-owner and on payment by the policy-owner to the insurer of the prescribed fee, issue to the policy-owner—

(a) a correct and certified copy of the policy upon which shall be inscribed any endorsement made by the insurer on the original policy after its issue; and

(b) a correct and certified copy of any record in the possession of the insurer of any dealings with the policy after its issue.

(2) A certified copy of a life policy issued in terms of subsection (1) shall for all purposes—

(a) take the place of the policy lost or destroyed; and

(b) be the sole evidence of the contract made by the policy.

[Ch4701s53]53. Life policy may include disability benefits

(1) If a registered insurer by notice in writing—

(a) informs the Registrar that he has issued on or before the date of commencement of this Act, or that he intends to issue, local life policies which provide benefits—

(i) on the total or partial permanent disablement of the person whose life such a policy insures; or

(ii) on the death of the person whose life such a policy insures as a result of an accident or a particular disease; and

(b) requests the Registrar that the policies referred to in paragraph (a) shall be treated for the purposes of this Act as life policies only,

any such policy issued by the insurer on or before the date of commencement of this Act or after notification to the Registrar as in paragraph (a) is provided shall, subject to subsection (2), be treated, for the purposes of this Act, as a life policy only.

(2) A policy referred to in subsection (1) (a) shall not be treated for the purposes of this Act as a life policy only if the value of the benefits referred to in subparagraphs (i) and (ii) of that paragraph which it provides exceeds an amount equal to a waiver of claims to a premium under the policy in respect of the period of disability, together with—

(a) a monthly benefit, payable during the period of the disability of the person whose life the policy insures, but not extending beyond the date of termination of the risk of the life insurance proper effected by the policy, amounting to one and one-quarter per centum of the sum payable under the policy on the death of the person; or

(b) a lump sum equal to the sum payable under the policy on the death of the person whose life the policy insures; or

(c) in the case of a deferred annuity policy, a monthly benefit, payable during the period of the disability of the person whose life the policy insures, but not extending beyond the date as from which the annuity will become payable, amounting to one-twelfth of the annuity.

(3) A local life policy providing benefits such as are described in subsection (1) (a) which cannot, by reason of subsection (2), be treated for the purposes of this Act as a life policy only shall, for the purposes of this Act, be treated as both a life policy and a personal accident policy.

[Ch4701s54]54. Discrimination between life policies, etc., prohibited

(1) No insurer shall make or permit to be made any discrimination in respect of the rate of premiums charged or the rate of bonuses granted between life policies which are of the same kind and under which the persons whose lives are insured have an equal expectation of life.

(2) Nothing in subsection (1) shall apply to life policies which—

(a) are re-insurance contracts; or

(b) are for large sums at preferential rates in accordance with the current tariff of the insurer concerned; or

(c) insure at preferential rates the lives of employees of one employer or a combination of employers or members of the families of such employees or the lives of a group of persons carrying on the same occupation; or

(d) are of a class prescribed.

(3) No insurer and no director, servant or agent of an insurer shall pay, allow or give or offer to pay, allow or give, directly or indirectly—

(a) a rebate of the premium payable on a life policy; or

(b) an advantage in the nature of a rebate of the premium payable on a life policy; or

(c) preferential treatment in connexion with a bonus or other benefit under a life policy,

as an inducement to insure.

(4) No person shall knowingly receive as such, any rebate of premium, advantage or preferential treatment referred to in subsection (3) as an inducement to insure.

(5) No director, servant or agent of an insurer shall accept any proposal or application for a life policy in respect of which—

(a) a promissory note, bill of exchange or other negotiable instrument, not being a cheque payable on the date of issue; or

(b) an acknowledgment of debt, not being a stop order,

in favour of the insurer or any person whatsoever has been given for the first year's premium or any part thereof.

(6) A person who contravenes any provision of this section shall be liable to a fine of double the amount of the annual premium normally payable on a life policy similar to the one in respect of which the offence is committed.

[Ch4701s55]55. Application of certain provisions of Part V to industrial policies

Sections 38 to 51 inclusive and section 54 shall, mutatis mutandis, apply to industrial policies.

[Ch4701s56]56. Application of certain provisions of Part V to sinking fund policies

Sections 52 and 54 shall, mutatis mutandis, apply to sinking fund policies.

[Ch4701s57]57. Application of certain provisions of Part V to funeral policies and other provisions in regard thereto

(1) Sections 38 to 49 inclusive and sections 51 and 53 shall, mutatis mutandis, apply to funeral policies.

(2) If after the issue of a funeral policy it is proved that the policy is based upon an incorrect statement of the age of the person whose life is insured, the benefits under the policy shall not be affected thereby, but the premiums payable under the policy from the date on which the person became insured shall be deemed to be those which would have been required had the age been correctly stated, and the insurer liable under the policy shall—

(a) be entitled to recover from the policy-owner any resultant shortfall in the premiums actually paid; or, as the case may be,

(b) refund to the policy-owner any resultant overpayment of premiums.

(3) A funeral policy issued on or after the date of commencement of this Act—

(a) shall provide that the policy-owner shall, at his option, be entitled to a sum of money instead of each funeral or other non-monetary benefit for which provision is made in the policy; and

(b) may provide that the insurer liable under the policy shall likewise have the option to pay the sum of money referred to in paragraph (a) instead of providing for each funeral or other non-monetary benefit for which provision is made in the policy.

(4) An option referred to in subsection (3) and the sum of money to which it relates shall be stated expressly and clearly in the funeral policy and, in every premium receipt book issued in connexion therewith, in printed or typed letters no smaller than, and as legible as, the letters of the provisions of the policy.

(5) A registered insurer who issued a funeral policy before the date of commencement of this Act shall, if the policy is still in force, within three months of that date declare to the Registrar

the value in money of each funeral or other non-monetary benefit for which provision is made in the policy, and that value shall be stated in clear type and in distinct terms in every premium receipt book issued thereafter in connexion with the policy.

(6) If the Registrar is of the opinion that a sum of money stated in a funeral policy in terms of subsection (4), or that the value declared by a registered insurer in terms of subsection (5) with reference to a particular funeral policy, does not approximate to the value of the funeral or other non-monetary benefit for which provision is made in the policy, he shall declare the amount of money which is, in his opinion, equal to the value of the funeral or other benefit provided for in the policy.

(7) In a funeral policy the amount declared by the Registrar in terms of subsection (6), or if no amount is so declared, the sum of money stated in the policy in terms of subsection (4), or the value declared in terms of subsection (5), shall be deemed to be the sum insured.

[Ch4701s58]58. Days of grace, paid-up policies and non-forfeiture provisions: life, industrial and sinking fund policies

(1) If a premium under a local life, industrial or sinking fund policy has not been paid on its due date, the insurer liable under the policy shall, notwithstanding any agreement to the contrary between the parties to the policy, maintain the policy in force for the full sum insured without payment of a further premium for a period of one month as from the due date of the first unpaid premium and if the premium is paid within the month the insurer shall renew the policy.

(2) If the premiums under a local life or sinking fund policy are payable at monthly intervals, or at intervals of less than one month, subsection (1) shall have effect as if the references in that subsection to the words "one month" and "month" were references to the words "fifteen days".

(3) If a claim under a local life, industrial or sinking fund policy arises during the period of grace provided for in this section, the insurer liable under the policy shall be entitled to deduct the amount of the unpaid premium from the claim.

(4) If a premium under a local policy which is—

- (a) a life policy under which at least three years' premiums have been paid; or
- (b) an industrial policy under which at least five years' premiums have been paid; or
- (c) a sinking fund policy under which at least three years' premiums have been paid,

has not been paid within the period specified in subsection (1) or, as the case may be, subsection (2), the insurer liable under the policy shall, in accordance with rules made by him and approved by the Registrar, either issue, in return for and instead of the policy, a paid-up policy which shall be free from the obligation to pay any premiums thereunder or, unless the policy is a sinking fund policy, apply the non-forfeiture value of the policy in maintaining the policy in force for a period and by a method to be determined in accordance with the rules.

(5) The owner of a policy referred to in subsection (4) may in writing waive the rights conferred upon him by that subsection.

(6) The rules referred to in subsection (4) shall specify the basis on which and the methods by which the amount of the non-forfeiture value and the amount of the paid-up policy are to be calculated and whether a paid-up policy such as is referred to in that subsection shall entitle the owner to any future bonuses thereon.

(7) Subsection (4) shall not apply in connexion with any particular kind of life or industrial policy which an insurer has issued or proposes to issue if the Registrar is satisfied that the actuarial nature of that kind of policy prevents the insurer from accumulating, in respect of policies of that kind, sufficient funds to enable him to grant any substantial benefit of a kind described in that subsection.

(8) If on or after the date of commencement of this Act a local life policy under which at least three years' premiums have been paid lapses or is dealt with as in subsection (4) is provided and the owner of the policy informs the Registrar within thirty days of the date on which he is notified by the insurer liable under the policy that the policy has lapsed, or has been so dealt with or, if he is not so notified, within six months of the date on which the policy lapsed or has been so dealt with that he received no written notice from the insurer a reasonable time beforehand to the effect that the policy was due to lapse or be so dealt with, the Registrar may, unless the insurer satisfies him that the notice was duly dispatched to the owner at his last known residence or place of work a reasonable time before the policy was due to lapse or be so dealt with, require the insurer to revive the policy on payment of the premium required within a period to be fixed by the Registrar. A policy shall be revived in terms of this subsection without any alterations in its conditions with effect from the date of the payment of the premium required.

[Ch4701s59]59. Days of grace, paid-up policies and non-forfeiture provisions: funeral policies

(1) If a premium under a local funeral policy has not been paid on its due date, the insurer liable under the policy shall, notwithstanding any agreement to the contrary between the parties to the policy, maintain the policy in force for the full value of the benefits—

(a) if the insurer is bound by an express or tacit undertaking to send a person from time to time to the owner of the policy or to his residence or place of work to collect the premiums, for a period of one month as from the due date of the first unpaid premium; and

(b) if paragraph (a) does not apply, for a period expiring on a date specified for that purpose in a written notice which the insurer has served on the owner of the policy at least fourteen days before that date.

(2) If a premium referred to in subsection (1) is paid within the relevant period specified in paragraph (a) or (b) of that subsection, the insurer liable under the policy shall renew the policy, and if a claim under the policy arises during the period, the insurer shall be entitled to require the owner of the policy to pay the amount of the premium.

(3) If a premium under a local funeral policy which is issued on or after the date of commencement of this Act is not paid within the period specified in subsection (1), the policy shall, subject to this section, nevertheless remain in force for the appropriate period fixed in terms of subsection (6) for the full sum insured without payment of further premiums.

(4) If an insurer's liability under a funeral policy is contingent upon the death of two or more persons and the policy provides for a benefit on the death of a person who is under the age of twenty-one years and who is not the owner of the policy or his wife or her husband, no benefit shall be claimable under that policy on that person's death if it occurs after he or she attained the age of twenty-one years.

(5) If an insurer's liability under a funeral policy is contingent upon the death of one person only, who was under nine years of age when the policy was issued, the period specified in subsection (6) shall be computed as if the policy had been issued on the anniversary of the date of its issue when that person was between nine and ten years of age.

(6) A funeral policy referred to in subsection (3) shall remain in force for the appropriate period listed in the first column of the following table in accordance with the number of years for which premiums were paid under the policy specified opposite thereto in the second column of the table—

6	months	5	years	or	over	and	less	than	7	years
9	„	7	„		„		„		9	„
12	„	9	„		„		„		11	„
18	„	11	„		„		„		14	„
24	„	14	„		„		„		17	„
36	„	17	„		„		„		21	„
48	„	21	„		„		„		25	„
60	„	25	or over.							

[Ch4701s60]60. Grant of more favourable terms than those specified in section 58 or 59 not precluded

Nothing in section 58 or 59 contained shall preclude an insurer from granting to an owner of a policy of a kind referred to in section 58 or 59 more favourable terms than those specified for that kind of policy in section 58 or, as the case may be, 59.

PART VA

LICENSING OF INSURERS AND INSURANCE AGENTS

[Ch4701s60A]60A. Licensing of insurance agents, etc.

31 of 1970, 41 of 1970 Unless he is licensed by the Minister under this Part, no insurer shall transact insurance business direct with the public, and no person, whether or not he is registered as an insurer or as an insurance broker, shall carry on the business of an insurance agent.

[Ch4701s60B]60B. Insurance licences

A licence (hereinafter referred to as an “insurance licence”) issued under this Part shall be in the prescribed form and shall expire on the 31st March next following the date of issue.

[Ch4701s60C]60C. Fees for insurance licences

6 of 1990(1) There shall be payable in respect of the issue of an insurance licence under this Act a fee specified in the Second Schedule.

(2) The Minister may amend the Second Schedule by Order published in the Gazette.

(3) Upon issue of an insurance licence, the licence fee paid in respect thereof shall not be refundable.

[Ch4701s60D]60D. Issue of licence to registered insurer or insurance broker

41 of 1970, 6 of 1990 On receipt by the Minister of an application by a person registered as an insurer or as an insurance broker in the prescribed form and accompanied by the appropriate fee, the Minister shall issue an insurance licence to such person.

[Ch4701s60E]60E. Application by unregistered person for licence

6 of 1990 Any person not being a registered insurer or a registered insurance broker (hereinafter referred to as an unregistered person) wishing to carry on the business of an insurance agent in any year, may apply to the Minister, in the prescribed form and accompanied by the appropriate fee, for the issue of an insurance licence.

[Ch4701s60F]60F. Issue of and cancellation of licences

41 of 1970 The Minister shall not issue an insurance licence to, and shall cancel any insurance licence already issued to, any unregistered person—

(a) who has, under any law within or without Malawi relating to bankruptcy or insolvency, been adjudged or otherwise declared bankrupt or insolvent, and has not been rehabilitated or discharged, or has made an assignment to, or arrangement or composition with, creditors, which has not been rescinded or set aside; or

(b) who has been convicted by any court wheresoever situate of any offence involving dishonesty, or has been convicted of any offence against section 80 or section 81, an appeal against conviction not having been brought, or, if brought, having been abandoned or dismissed; or

41 of 1970(c) whose licensing as such, or the continuation in force thereof, would, in the opinion of the Minister, be contrary to the public interest.

[Ch4701s60G]60G. Automatic cancellation of licence

6 of 1990 If the registration of a registered insurer or a registered insurance broker is cancelled, other than at his own request, any insurance licence issued to him under section 60D shall cease to have effect from the same date.

PART VI

POWERS AND DUTIES OF THE MINISTER, THE REGISTRAR AND AN INSPECTOR APPOINTED IN TERMS OF THIS PART

[Ch4701s61]61. Registrar may extend certain periods specified for the performance of things to be done under this Act

(1) If a registered insurer or an applicant for registration as an insurer is required or entitled, in terms of a provision of this Act, to perform an act within a specified period, the Registrar may at his request extend the period from time to time.

(2) The Registrar may extend a period within which a registered insurer or an applicant for registration as an insurer is required or entitled, in terms of a provision of this Act, to perform any act after the period specified in that provision has expired.

[Ch4701s62]62. Registrar may classify insurance business

(1) At the request of an insurer the Registrar may, subject to subsection (2) and to such conditions and limitations as the Registrar may fix, determine that any insurance business of any particular class which the insurer carried on or intends to carry on shall be treated, for the purposes of this Act, as insurance business of another class.

(2) The Registrar shall not accede to a request referred to in subsection (1), unless he has satisfied himself that his determination will not be detrimental to the interest of any person and will not defeat the objects and purposes of this Act.

[Ch4701s63]63. Registrar may demand information from insurers

The Registrar may, for the purposes of carrying out this Act, demand from a registered insurer or an applicant for registration as an insurer any document or information relating to any matter connected with his business or transactions, whether insurance business or transactions or otherwise.

[Ch4701s64]64. Registrar may alter or adapt prescribed forms

On the application of or with the consent of a registered insurer or an applicant for registration as an insurer, the Registrar may alter any prescribed form for the purpose of adapting the form to meet the circumstances of the registered insurer or applicant.

[Ch4701s65]65. Registrar may require information to be supplied in the English language

The Registrar may require any person who furnishes to the Registrar, in terms of this Act, any statement, certificate or other document whatsoever in a language other than the English language to provide a translation of that document in the English language at that person's expense.

[Ch4701s66]66. Investigation of the affairs of an insurer

(1) If—

(a) an insurer, having failed to furnish the Registrar with any document or information required by or under a provision of this Act, within the period specified, has not furnished that document or information within a period of sixty days, commencing on the date upon which the Registrar reminded him in writing of his failure; or

(b) an insurer, having furnished incorrect or incomplete information to the Registrar, has not furnished correct or complete information within a period of sixty days, commencing on the date upon which the Registrar called upon him in writing to correct or complete the information; or

(c) an insurer has not within a period of sixty days, commencing on the date upon which the Registrar demanded from him in writing any document or information which the Registrar was entitled, in terms of this Act, to demand from him, furnished that document or information to the satisfaction of the Registrar; or

(d) any document or information furnished by an insurer to the Registrar shows that the insurer has failed to comply with this Act; or

(e) the auditor or actuary of an insurer has informed the insurer of an irregularity that requires correction and the insurer has not corrected that irregularity within a period of sixty days, commencing on the date upon which the Registrar called upon him in writing to correct the irregularity; or

(f) the Registrar is in possession of information which, in his opinion, calls for an investigation into the affairs of an insurer and the insurer has failed to furnish within a period of sixty days, commencing on the date the Registrar called upon him in writing to do so, a satisfactory explanation of any matter which forms grounds for the Registrar's opinion,

the Registrar and, additionally or alternatively, an inspector, who shall be appointed by the Minister for the purpose, may investigate the affairs or any part of the affairs of the insurer.

(2) No investigation shall be made into the affairs of an insurer in terms of subsection (1) without the approval of the Minister.

(3) For the purposes of making an investigation as in subsection (1) is provided, the Registrar and, additionally or alternatively, as the case may be, an inspector appointed in terms of that subsection, shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act and sections 9 to 13 inclusive of that Act shall, mutatis mutandis, apply in relation to an investigation made in terms of this section and to any person summoned to give evidence or giving evidence at that investigation. Cap. 18:01

(4) On the completion of an investigation made in terms of this section, the Registrar and, additionally or alternatively, as the case may be, an inspector appointed in terms of subsection (1), shall furnish to the Minister a report of the investigation and to the insurer whose affairs are investigated a summary of the conclusions arrived at as a result of the investigation.

(5) The Minister may recover from an insurer whose affairs are investigated in terms of this section all expenses necessarily incurred in connexion with the investigation.

[Ch4701s67]67. Deposit of approved securities by life insurers

(1) The Minister may, before an investigation is made or in the course of an investigation made into the affairs of a life insurer in terms of section 66, require the life insurer to deposit with the Registrar such approved securities as the Minister may deem sufficient to meet the liabilities of his life insurance business in Malawi.

(2) The Minister may require a life insurer who has been notified by the Registrar in writing in terms of section 7 that the Registrar proposes to cancel his registration as an insurer, to deposit with the Registrar such approved securities as the Minister may deem sufficient to meet the liabilities of his life insurance business in Malawi.

[Ch4701s68]68. Reports by Registrar

(1) The Registrar shall, within six months of the 30th June each year, submit to the Minister a report in regard to insurance business in Malawi during the twelve months ended the preceding 31st December.

(2) The Minister shall, as soon as may be, lay before the National Assembly a report submitted to him by the Registrar in terms of subsection (1).

PART VII

MISCELLANEOUS

[Ch4701s68]69. Service of process against registered insurers

(1) Process in any legal proceedings against a registered insurer, who is not an association of underwriters, may be served at the principal office of the insurer in Malawi or, in the absence of any such principal office, at the office of the Registrar.

(2) Service of process upon the Registrar, in accordance with subsection (1), shall be deemed to be service upon the insurer.

[Ch4701s70]70. Action by policy-owners against insurers

(1) The owner of a local policy shall, notwithstanding any contrary provision in the policy or in any agreement relating to the policy, be entitled to enforce his rights under the policy against the insurer liable under the policy in any competent court in Malawi.

(2) Any question of law arising in any action under a local policy which is instituted by the owner against the insurer liable under the policy shall, subject to this Act, be decided in accordance with the law of Malawi.

(3) Notwithstanding subsection (1), a local policy may validly provide that the amount of any liability under the policy shall be determined in accordance with the enactment relating to arbitration in force in Malawi.

[Ch4701s71]71. Deposit of approved securities

(1) The Registrar shall, at the request of an insurer who has deposited approved securities with the Registrar in terms of this Act, furnish the insurer once each year with a certificate specifying the approved securities deposited by the insurer and their face value.

(2) An insurer who has deposited approved securities with the Registrar in terms of this Act shall be entitled to the income derived from the approved securities.

(3) An insurer may at any time substitute for an approved security deposited by him with the Registrar in terms of this Act any other approved security of like face value.

(4) If the registration of an insurer who has deposited approved securities with the Registrar in terms of this Act is cancelled the Minister may cause the approved securities deposited by the insurer to be realized to meet the liabilities of the insurance business of the insurer in Malawi.

(5) When the Minister is satisfied that the liabilities of the insurance business in Malawi of an insurer referred to in subsection (4) have been met the Minister shall cause the Registrar to return to the insurer such of the approved securities deposited by the insurer as have not been realized to meet those liabilities.

(6) If the registration of an insurer who has deposited approved securities in terms of section 12 (2) (d) is not cancelled the Minister shall cause the Registrar to return the approved securities to the insurer as soon as the Minister is satisfied that the insurer has gained the margin of solvency sufficient for the class of insurance business with respect to which the insurer is registered.

(7) If the registration of a life insurer who has deposited approved securities in terms of section 67 (1) or (2) is not cancelled the Minister shall cause the Registrar to return the approved securities to the life insurer at such time as the Minister may specify having regard to the financial position of the life insurer.

[Ch4701s72]72. Inspection of documents, etc.

(1) A person may, on payment to the Registrar of the appropriate prescribed fee—

- (a) inspect; or
- (b) inspect and make a copy of,

any document furnished to the Registrar in terms of section 6, 17, 27 or 33.

(2) The Registrar shall on payment of the prescribed fee furnish, at the request of any person, a certified copy of or abstract from any document furnished to the Registrar in terms of section 6, 17, 27 or 33.

(3) The Registrar shall, without charge, furnish at the request of any person the names of the principal officer (if any) in Malawi of a registered insurer and the address of the principal office (if any) in Malawi of a registered insurer.

[Ch4701s73]73. Effect of Registrar's certificate on documents

A document purporting to be certified by the Registrar as a document furnished to the Registrar in terms of this Act or to be a copy of such a document shall, prima facie, be deemed to be such a document, or a copy thereof, and shall be admissible in evidence as if it were the original document.

[Ch4701s74]74. Documents furnished to the Registrar in terms of this Act to be signed and accompanied by copies

(1) Subject to subsection (2), an insurer shall be regarded as having failed to comply with a provision of this Act requiring an insurer to furnish documents or copies of documents to the Registrar, unless—

(a) in the case of a document prepared by the insurer which is not in a form prescribed—

(i) the document is signed—

(A) by the chairman and one other director of the insurer or, if the insurer has no chairman or director, by such other person or persons having control over the business of the insurer as the Registrar may specify; and

(B) if the insurer is not an association of underwriters, by the principal officer of the insurer; and

(C) by such persons other than the persons referred to in paragraphs (A) and (B) as are required by a provision of this Act to sign or certify the document;

and

(ii) the document is accompanied by two copies; and

(b) in the case of a document prepared by the insurer which is in a form prescribed—

(i) the document is signed by the persons specified in the form; and

(ii) the document is accompanied by two copies; and

(c) in the case of an original document other than a document referred to in paragraph (a) or (b), the document is accompanied by two copies; and

(d) in the case of a copy of a document, the copy is accompanied by two other copies, one of which is certified as correct by the insurer or by an officer of the insurer.

(2) The Registrar may, in such cases as he deems expedient, direct that a lesser number of copies of documents than that specified in subsection (1) (a), (b), (c) or (d) or that no copy of a document referred to in subsection (1) (a), (b) or (c) be furnished to him.

[Ch4701s75]75. Sums insured, etc., to be stated in currency of Malawi

(1) In every local policy, the sum insured, the premium and every other sum of money mentioned in the policy shall be stated in the currency of Malawi, unless the parties to the policy

have, at the time of the issue or subsequent to the time of the issue of the policy, agreed that the sum insured, the premium and every other sum of money mentioned in the policy shall be stated in some currency other than the currency of Malawi.

(2) If the parties to a local policy have agreed that the sum insured, the premium and every other sum of money mentioned in the policy shall be stated in some currency other than the currency of Malawi, that fact and the currency in question shall be stated in or endorsed on the policy in distinct terms and in printed or typed letters no smaller than, and as legible as, the letters of the other provisions of the policy.

[Ch4701s76]76. Policy not invalid owing to failure to comply with law

A policy issued by any person, whether before, on or after the date of commencement of this Act, shall not be invalid merely because that person contravened or failed to comply with any enactment in force applying to that policy.

[Ch4701s77]77. This Act to apply to policies effected before date of commencement

It is hereby declared that this Act shall, save as is otherwise provided in this Act, apply in relation to policies effected or ceded before the date of commencement of this Act as if they had been effected or ceded on or after the date of commencement of this Act.

[Ch4701s78]78. Certain policies to be printed in clearly legible letters, etc.

No person shall, on or after the 1st January, 1961, issue—

(a) a local life, funeral or industrial policy in a form, the printed provisions of which, whatever their nature, are not put in a clear type face in letters of a uniform size of not less than 8 point; or

(b) a local policy of a class not specified in paragraph (a), the printed provisions of which, whatever their nature, are not put in a clear type face in clearly legible letters.

[Ch4701s79]79. False statements, etc.

(1) If a person issues a document referred to in this Act which is false in any material respect, that person and every other person who took part in the preparation or issue of the document or who signed it shall be guilty of an offence, unless it is proved that the accused, if an individual, or all the persons who acted on behalf of the accused, if the accused is not an individual, had no knowledge of the falsity of the document when it was issued.

(2) A person guilty of an offence specified in subsection (1) shall be liable, if the offender is an individual, to a fine of K2,000 and to imprisonment for four years or, if the offender is not an individual, to a fine of K2,000.

[Ch4701s80]80. Persons acting on behalf of unregistered insurers

(1) A person who causes a person to enter into or make an application to enter into a contract of insurance with a person who is not a registered insurer or a member of an association of

underwriters which is a registered insurer or a person referred to in section 5 (2) (a) shall, subject to subsection (3), be liable to a fine of K1,000.

(2) A person shall, save as is provided in subsection (3), be guilty of an offence in terms of subsection (1) notwithstanding that—

(a) the insurance is placed by an insurance broker; and

(b) the contract of insurance is without his knowledge or consent effected with a person who is not a registered insurer or a member of an association of underwriters which is a registered insurer or a person referred to in section 5 (2) (a).

(3) A person who causes a person to enter into a contract of insurance such as is referred to in subsection (1) shall not be guilty of an offence in terms of that subsection if—

(a) the insurance as a whole is placed by a broker who is authorized by an association of underwriters which is a registered insurer to place insurance business with members of the association; and

(b) a substantial portion of the risk insured is placed with a registered insurer or with members of the association of underwriters referred to in paragraph (a) or with a registered insurer and with members of the association of underwriters referred to in that paragraph; and

(c) the portion of the risk insured which is not placed in accordance with paragraph (b) is placed with an insurer who does not solicit business, either directly or indirectly, in Malawi or advertise his business in any newspaper or other publication in Malawi.

[Ch4701s81]81. General offences and penalties

A person who contravenes a provision of this Act or fails or neglects to comply with a provision of this Act with which it is his duty to comply or a condition subject to which he was registered as an insurer or, as the case may be, the association of underwriters of which he is a member was registered as an insurer shall be guilty of an offence and, if no penalty is specially provided for that contravention or default, shall be liable, if the offender is an individual, to a fine of K400 or to imprisonment for two years without the option of a fine or, if the offender is not an individual, to a fine of K400.

[Ch4701s82]82. Regulatory powers of the Minister

(1) The Minister may make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act.

(2) In regulations made in terms of subsection (1), the Minister may make different provision for different classes of insurers and for different classes of insurance business.

[Ch4701s83]83. Certain U.K. Acts not to apply in Malawi

It is hereby declared that any Act of the United Kingdom specified or described in the first column of the first Schedule shall not, on or after the date of commencement of this Act, have effect

in Malawi in so far as they relate to the matters specified opposite thereto in the second column of the First Schedule.

[Ch4701s84]84. References to insurance companies in other enactments

Any reference in any enactment in force in Malawi relating to companies or to a company carrying on insurance business in terms of any other enactment or to an insurance company registered or licensed in terms of any other enactment shall be read and construed as a reference or, if the context so requires, as including a reference to a company carrying on insurance business in terms of this Act.

[Ch4701s85]85. Delegation of certain of the Minister's powers and duties to the Reserve Bank

22 of 1989(1) The Minister may, by Order published in the Gazette delegate to the Reserve Bank of Malawi such of the powers and duties conferred under this Act as relate to the conduct of banking business by an insurer, including powers and duties relating to licensing and registration of insurers.

(2) In this section "banking business" has the meaning ascribed thereto in the Banking Act. Cap. 44:01

SCHEDULE s. 83

ACTS OF THE UNITED KINGDOM NOT APPLYING IN MALAWI

The Married Women's Property Act, 1982. Any policy of life insurance effected for the benefit of a spouse and, additionally or alternatively, children, including unborn children, or any of them.

The Life Assurance Companies Act, 1870, and any other Act relating to insurance. The carrying on of insurance business in Malawi.

The Infants Relief Act, 1874. Any contract entered into by an infant to repay a loan or for the supply of goods if by way of security the infant pledges, in terms of section 37, a policy effected by him upon his own life.

SUBSIDIARY LEGISLATION

INSURANCE (EXEMPTION) ORDER

under s. 2 (c) and (d)

G.N. 178/1960(F)

41/1971

57/1971

1. Citation

This Order may be cited as the Insurance (Exemption) Order.

2. Interpretation

41/1971 In this order, unless inconsistent with the context—

“medical aid insurance business” means the business of providing medical benefits in the form of payments in respect of doctors’, dentists’, hospital, medical, surgical, nursing, maternity and other incidental or similar fees and the reimbursement of costs in respect of medicines, drugs, surgical or dental appliances and other incidental or similar expenses;

“pension fund insurance business” means—

(a) any transaction undertaken by a person who does not carry on insurance business for the purpose of giving effect to a scheme or arrangement made—

(i) by an employer or by a combination of employers to provide benefits for former employees or for their dependants on the cessation of the employment or on the death after the cessation of the employment of the employees; or

(ii) by an association or group of persons who carry on an occupation to provide benefits to members or former members of the association or group or for their dependants when their ability to carry on the occupation in question has ceased or is substantially diminished or on their death;

(b) any transaction undertaken by a registered insurer for the purpose of giving effect otherwise than by means of policies of insurance issued by the registered insurer to a scheme or arrangement made by him, either alone or in conjunction with other persons, to provide benefits for his former employees or for their dependants on the cessation of the employment or on the death of the employees.

3. Declaration of exemption

41/1971 It is hereby declared that every trade union carrying on any class of insurance business in Malawi shall be exempt from the Act.

4. Pension fund insurance business

Pension fund insurance business is hereby declared to be a class of insurance business which shall be exempt from the Act.

5. Medical aid insurance business

Medical aid insurance business is hereby declared to be a class of insurance business which shall be exempt from the Act. G.N. 41/1971

6. Re-insurance contracts

Such reinsurance contracts, concluded by a registered insurer with an insurer who is not a registered insurer, as may be approved by the Registrar are hereby declared to be a class of insurance business which shall be exempt from the Act: G.N. 57/1971

Provided that such unregistered insurer does not solicit, either directly or indirectly, in Malawi or advertise his business in any newspaper or other publication in Malawi.

APPOINTMENT OF REGISTRAR

under s. 4

G.N. 112/1965

The Minister has appointed the Secretary to the Treasury to be Registrar of Insurance.

INSURANCE REGULATIONS

under s. 82

G.N. 301/1959(F)

26/1964(N)

181/1970

112/1971

1. Citation

These Regulations may be cited as the Insurance Regulations.

2. Interpretation

In these Regulations, unless inconsistent with the context—

“fire insurance business” means the business of insuring persons against loss or damage caused by fire or by an occurrence incidental to a fire or against any loss or damage against which insurance is customarily effected in conjunction with the business of insurance against loss or damage caused by fire, but does not include the business of insuring persons against such loss or damage if the business is incidental to some other class of insurance business;

“Form” means the appropriate Form prescribed in the Schedule;

“funeral insurance business” means the business of assuming the obligations of an insurer under funeral policies;

“industrial insurance business” means the business of assuming the obligations of an insurer under industrial policies;

“motor vehicle insurance business” means the business of insuring persons against loss or damage or claims arising out of, or in connexion with, the use or ownership of motor vehicles;

“sinking fund insurance business” means the business of assuming obligations under sinking fund policies;

“transport insurance business” means the business of effecting and carrying out, otherwise than incidentally to some other class of insurance business policies—

(a) upon vessels or aircraft or upon machinery, tackle, furniture or equipment of vessels or aircraft; or

(b) upon goods, merchandise or property of any description whatsoever on board vessels or aircraft; or

(c) upon the freight of or any other interest in or relating to vessels or aircraft; or

(d) against damage arising out of or in connexion with the use of vessels or aircraft, including third party risks; or

(e) against risks incidental to the construction, repair or docking of vessels, including third party risks; or

(f) against transit risks, whether the transit is by sea, inland water, land or air or partly one and partly another, including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance, but excluding risks, the insurance of which is motor vehicle insurance business; or

(g) against any other risks, the insurance of which is customarily effected in conjunction with or as incidental to any business referred to in paragraphs (a) to (f) inclusive of this definition.

3. Application for registration as an insurer

An application for registration as an insurer made in terms of section 6 (1) of the Act by a person who—

(a) is not an association of underwriters shall be in Form 1;

(b) is an association of underwriters shall be in Form 2.

4. Documents to accompany application

(1) An application for registration as an insurer made in terms of section 6 (1) of the Act by a person other than an association of underwriters shall be accompanied by the following documents—

(a) in the case of an existing insurer whose head office is not in Malawi—

(i) a certificate as to solvency in Form 3, 4 or 5, as the case may be; and

(ii) the legislative authority, memorandum and articles of association, regulations or other document constituting the applicant, and regulating the conduct of his business; and

(iii) a balance sheet, profit and loss account and revenue accounts in respect of his last preceding financial year as submitted to the appropriate authority in the country in which his head office is situate; and

(iv) a certificate by the appropriate authority in whom is vested the administration of the insurance law in the country in which the insurer's head office is situate to the effect that the insurer has complied and is complying with the insurance law in that country; and

(v) if he is carrying on anywhere life insurance business—

(A) an abstract of the report of an actuary on the last investigation into his financial position in which a valuation of his liabilities was made, as submitted to the appropriate authority in the country in which his head office is situate; and

(B) a statement signed by an actuary showing the amount of his total net liabilities under unexpired policies in respect of the life insurance business carried on by him in Malawi as shown by the latest calculation which he has made and the date of the calculation; and

(vi) if the applicant is applying for registration to carry on life insurance business other than funeral insurance business—

(A) the draft rules which he proposes to make in terms of section 58 (4) and (6) of the Act; and

(B) a statement showing whether the draft rules referred to in subparagraph (A) have been furnished to and approved or disapproved by an appropriate authority in a country outside Malawi and, if so furnished, the date on which the rules were approved or disapproved.

(b) in the case of an applicant who is not an existing insurer—

(i) the documents referred to in paragraph (a) (ii); and

(ii) an audited balance sheet showing his authorized and paid up capital if any;
and

(iii) if he is to carry on life insurance business, a certificate by an actuary approved by the Registrar that the conditions under which the proposed life insurance business is to be carried on are actuarially sound.

(2) An application for registration as an insurer made in terms of section 6 (1) of the Act by a person who is an association of underwriters shall be accompanied by the following documents—

(a) a copy of the regulations constituting the association and governing the operations of the members; and

(b) a list of members; and

(c) in the case of an association constituted in a country outside Malawi, a certificate by the appropriate authority in whom is vested the administration of the insurance law relating to

associations of underwriters in that country as to the matters referred to in section 12 (1) (c) (iii) of the Act.

5. Matters prescribed for purposes of section 16

The matters prescribed for the purposes of section 16 of the Act are—

(a) the legislative authority, memorandum and articles of association, regulations or other document constituting the insurer and regulating the conduct of his business;

(b) the names of the directors of the insurer;

(c) in the case of an external insurer, the situation of the head office of the insurer outside Malawi.

6. Section 17 (1) documents

The documents referred to in the paragraphs of section 17 (1) of the Act listed in the first column of the following table which a registered insurer who is not an association of underwriters is required to prepare and furnish to the Registrar in terms of that subsection shall be in the Forms specified opposite thereto in the second column of the table—

Paragraph	Form
-----------	------

- | | |
|-----|---|
| (a) | 3, 4 or 5, as the case may be. |
| (b) | 6. |
| (c) | 7. |
| (d) | 8. |
| (e) | 9. |
| (f) | 10, and additionally or alternatively 11, as the case may be. |

7. Registration as agent for brokers

An application for registration as agent for brokers made in terms of section 29 (1) of the Act shall be in Form 15.

8. Broker's annual return

The annual return which an agent for brokers is required to prepare and furnish to the Registrar in terms of section 30 (b) of the Act shall be in Form 16.

8A. Insurance licence

(1) An application for an insurance licence made in terms of sections 60D and 60E of the Act shall be in Form 17. G.N. 181/1970

(2) An insurance licence issued in terms of section 60B shall be in Form 18.

9. Actuary's report

(1) The abstract of the report of an actuary approved by the Registrar referred to in section 33 (3) and (5) of the Act which a life insurer is required to prepare and furnish to the Registrar in terms of those subsections shall be in Form 12, and the summary and valuation of liabilities included in that abstract shall be in Form 13;

(2) The statement of insurance business referred to in section 33 (3) and (5) of the Act which a life insurer is required to prepare and furnish to the Registrar in terms of those subsections shall be in Form 14.

(3) Instead of complying with the provisions of subsections (1) and (2) a life insurer who is an external insurer may furnish to the Registrar in addition to the documents referred to in section 33 (4) of the Act—

(a) a summary and valuation of his liabilities in Malawi in Form 13; and

(b) a statement of his insurance business in Malawi in Form 14.

10. Loss or destruction of a policy

(1) The loss or destruction of a policy referred to in section 52 (1) of the Act shall be—

(a) proved on the production to the insurer of a declaration giving the circumstances of the loss or destruction, sworn by the policy-owner before a commissioner for oaths or like authority and on the production to the insurer of such additional proof of loss or destruction as he may reasonably call for; and

(b) advertised once in the Gazette and twice, at an interval of not less than three weeks, in a newspaper, or, if the insurer desires, in each of two newspapers nominated by the insurer and circulating in Malawi.

(2) The insurer shall not issue a correct and certified copy of the policy until a period of three weeks, commencing on the date on which the last advertisement referred to in subsection (1) (b) appeared, has expired.

(3) The fee payable by the owner to the insurer for the issue of a correct and certified copy of the policy shall be such sum, not exceeding one Kwacha, as the insurer may fix, together with the costs incurred by the insurer—

(a) in providing the loss or destruction of the policy; and

(b) in advertising the loss or destruction of the policy; and

(c) in respect of any stamp duty payable on the copy of the policy.

11. Declaration of value of a non-monetary

In declaring to the Registrar the value in money of a funeral or other non-monetary benefit for which provision is made in a funeral policy to which section 57 (5) of the Act relates, a registered insurer shall furnish to the Registrar a detailed description of each benefit and reasonable evidence that the sum of money declared by him approximates to the value in money of the benefit.

12. Fees

The fees payable in terms of section 72 (1) and (2) of the Act shall be—

- (a) for the inspection of any document, twenty tambala;
- (b) for the inspection and copying of any document, forty tambala; and
- (c) for a certified copy of or abstract from any document, forty tambala for every hundred words or part thereof.

13. Where sum stated in foreign currency

If in a document furnished to the Registrar in terms of these Regulations a sum of money is not stated in the currency of Malawi, the appropriate rate of conversion of the sum of money to Malawi currency shall be stated in the document or in an annexure to the document.

FIRST SCHEDULE reg. 2

PRESCRIBED FORMS 6 of 1990

Form 1

MALAWI

INSURANCE ACT [s. 6 (1)]

INSURANCE REGULATIONS [reg. 3 (a)]

APPLICATION FOR REGISTRATION AS AN INSURER BY A PERSON WHO IS NOT AN ASSOCIATION OF UNDERWRITERS

Name under which applicant seeks registration as an insurer

.....

Address of applicant's head office

.....

Names of Directors

.....

.....
.....
.....
.....
.....

Name of General Manager or Secretary

Name and qualifications or applicant's actuary (if any)

.....

If applicant has an actuary whether or not his services are continuously retained by the applicant

.....

Name and qualifications of applicant's auditor

.....

.....

Countries in which the applicant carries on insurance business

.....

Class of insurance business with respect to which application for registration is made

.....

.....

Chairman

.....

Director

Date

Principal Officer (if appointed)

Form 2

MALAWI

INSURANCE ACT s. 6 (1)

INSURANCE REGULATIONS reg. 3 (b)

APPLICATION FOR REGISTRATION AS AN INSURER BY AN ASSOCIATION OF UNDERWRITERS

Name under which applicant seeks registration as an insurer

Address of applicant's chief office and country in which constituted

.....

Names of members of the committee, council or governing body of the applicant

.....

.....

.....

.....

.....

.....

.....

.....

.....

Class of insurance business with respect to which application for registration is made

.....

.....

Chairman

Date

Director

SECOND SCHEDULE G.N. 38/1991, s. 60C

FEES FOR INSURANCE LICENCES

K t

(a) For an insurance insurer's licence—

(i) for a local insurer, per annum	300	00		
(ii) for an external insurer, per annum	360	00		
(b) For an insurance broker's licence—				
(i) for a local insurer, per annum	204	00		
(ii) for an external insurer, per annum	252	00		
(c) For an insurance agent's licence, for a local insurer, per annum			108	00

	Local Insurer	External Insurer		
	K t			
(d) For an insurance broker's licence from—				
(i) 1st April to 30th June	50	00	62	00
(ii) 1st July to 30th September	100	00	125	00
(iii) 1st October to 31st December		150	00	187 50
(iv) 1st January to 31st March	200	00	250	00
(e) For an insurance agent's licence from—				
(i) 1st April to 30th June	25	00	—	
(ii) 1st July to 30th September	50	00	—	
(iii) 1st October to 31st December		75	00	—
(iv) 1st January to 31st March	100	00	—	

Form 3

MALAWI

INSURANCE ACT [s. 6(1) and 17(1)]

INSURANCE REGULATIONS [reg. 4(1) and 6]

CERTIFICATE AS TO SOLVENCY OF AN INSURER, OTHER THAN AN ASSOCIATION OF UNDERWRITERS,
WHO CARRIES ON INSURANCE BUSINESS WHICH IS NOT LIFE INSURANCE BUSINESS

We hereby certify that to the best of our knowledge and belief the value of the assets in respect of all classes of insurance business carried on by

.....

..... exceeds the amount of the liabilities (calculated in accordance with section 13 (2) of the Insurance Act) in respect of those classes of insurance business by the appropriate amount specified in section 13 (1) (a) of the Insurance Act.

.....

Chairman

.....

Director

.....

Principal Officer

Date.....

Auditor

Form 4

MALAWI

INSURANCE ACT [s. 6(1) and 17(1)]

INSURANCE REGULATIONS [reg. 4(1) and 6]

CERTIFICATE AS TO SOLVENCY OF AN INSURER, OTHER THAN AN ASSOCIATION OF UNDERWRITERS, WHO CARRIES ON LIFE INSURANCE BUSINESS ONLY

I hereby certify that to the best of my knowledge and belief the liabilities under unexpired life, funeral, industrial and sinking fund policies issued by

.....

..... do not exceed the amount of the life insurance fund.

Date.....

Actuary of the Insurer

Form 5

MALAWI

INSURANCE ACT [s. 6(1) and 17(1)]

INSURANCE REGULATIONS [reg. 4(1) and 6]

CERTIFICATE AS TO SOLVENCY OF AN INSURER, OTHER THAN AN ASSOCIATION OF UNDERWRITERS,
WHO CARRIES ON BOTH LIFE INSURANCE BUSINESS AND OTHER CLASSES OF INSURANCE BUSINESS

PART I

I hereby certify that to the best of my knowledge and belief the liabilities under unmatu-
red life, funeral, industrial and sinking fund policies issued by

.....

..... do not exceed the amount of
the life insurance fund.

Date.....

Actuary of the Insurer

PART II

We hereby certify that to the best of our knowledge and belief the value of the assets in
respect of all the classes of insurance business carried on by

..... exceeds the amount of the life insurance fund
together with the liabilities other than liabilities in respect of unmatu-
red life, funeral, industrial and sinking fund policies (calculated in accordance with section 13 (2) of the Insurance Act) by the
appropriate amount specified in section 13 (1) (c) (ii) of the Insurance Act.

.....

Chairman

.....

Director

.....

Principal Officer

Date.....

Auditor

Form 6

MALAWI

INSURANCE ACT [s. 17(1)]

INSURANCE REGULATIONS [reg. 6]

BALANCE SHEET

showing the Financial Position of the Insurance Business of an Insurer, other than an Association of Underwriters, at the close of the financial year ended, 19.....

Name of Insurer

LIABILITIES	Total	ASSETS	In Malawi £	Total
Shareholders' capital paid up (if any)	Mortgages on property	....	....
Life Insurance Fund (if any)	Loans on insurance policies	....	....
Other funds (if any), to be specified	Loans on stocks and shares	....	....
.....	Loans on personal security	....	....
.....	Malawi Government securities	....	....
.....	Securities of other Governments	....	....
.....	Municipal and other Local Government securities	....	....
.....			
.....	Other debentures and debenture stocks	....	....
Balance of Profit and Loss Account	Preference stocks and shares	....	....
.....	Ordinary stocks and shares	....	....
.....		
*Claims admitted or intimated but not paid:	
Life Insurance (if any)

.....
.....
.....
TOTAL	TOTAL			

Date.....

.....
 Chairman Director Principal Officer Auditor

NOTE 1.—A balance sheet in this form shall be rendered in respect of each separate fund for which separate investments are made, and every such balance sheet shall, if it relates to business of a kind which the insurer transacts in Malawi, be in the following form.

NOTE 2. — This balance sheet shall state how the values of the stock exchange securities listed are arrived at, and a certificate shall be attached signed by the persons who sign this balance sheet to the effect that, in their belief, the assets set forth in the balance sheet are, in the aggregate, fully of the value stated therein, less any investment reserve fund taken into account. In the case of a balance sheet which is in respect of life insurance business and no other business, this certificate is to be given on the occasion only when an investigation into the financial position of the insurer is made in terms of section 33 of the Act.

NOTE 3.—Assets in Malawi must be shown at their value in the currency of Malawi.

NOTE 4.—The “In Malawi” column shall include—

- (a) all assets that are shown against the item “Malawi Government securities”;
- (b) all assets shown against the item “Municipal and other Local Government securities” that relate to municipalities or other local government bodies in Malawi;
- (c) all assets shown against the next four items that represent securities, stocks, shares, etc., issued in Malawi by public utility, building society, company, or other association incorporated under any law.

As respects the assets included in the “In Malawi” column in accordance with the foregoing requirements, the particulars indicated in the following table are to be furnished:—

Securities, stocks, shares, etc., issued in Malawi	Securities, stocks, shares, etc., issued outside Malawi
--	---

Malawi Government Securities

Municipal and other Local Government Securities

.....

Form 7

MALAWI

INSURANCE ACT [s. 17(1)]

INSURANCE REGULATIONS [reg. 6]

PROFIT AND LOSS ACCOUNT

in respect of Insurance Business carried on by an Insurer, other than an Association of Underwriters, in the financial year ended, 19.....

Name of Insurer.....

Balance of last year's account Dividends and bonuses to shareholders

Interest, dividends and rents not carried to other accounts: Expenses not charged to other accounts Taxes paid:

In Malawi

In Malawi

Outside Malawi

Outside Malawi

Profit transferred (accounts to be specified) Loss transferred (accounts to be specified)

.....

Other revenue (accounts to be specified) Other expenditure (accounts to be specified)

Balance as per the balance sheet

TOTAL TOTAL

Date.....

.....

Chairman Director Principal Officer Auditor

Form 8

MALAWI

INSURANCE ACT [s. 17(1)]

INSURANCE REGULATIONS [reg. 6]

REVENUE ACCOUNT

in respect of Life Insurance Business carried on by an Insurer, other than an Association of Underwriters, in the financial year ended, 19.....

Name of Insurer.....

Business in Malawi	Total	Business in Malawi	Total
--------------------	-------	--------------------	-------

Amount of Life Insurance Fund at the end of the preceding year £

—

Claims under policies paid and outstanding: £

Premiums:

By death

Gross —

By maturity

Deduct: Reinsurances

—

By disability

Net

Gross

—

Consideration for annuities granted:

Deduct: Reinsurance recoveries

—

Gross —

Net claims

Deduct: Reinsurances

—

Surrenders, including surrenders of bonus

Net

Interest, Dividends and Rents

Other revenue (accounts to be specified)

Annuities

	Bonuses in cash or in reduction of premiums	
	Commission	
	Expenses of management	
	Other expenditure (accounts to be specified)	—
	Amount of Life Insurance Fund at the end of the year, as per balance sheet	—
TOTAL	TOTAL	

NOTE 1.—A revenue account shall be rendered in respect of each part of the life insurance business for which a separate fund is maintained, and every such revenue account shall, if it relates to business of a kind which the insurer transacts in Malawi, be in the above form.

NOTE 2.—If any sum has been deducted from the expenses of management account, and taken credit for in the balance sheet as an asset, the sum so deducted shall be separately shown in this account.

NOTE 3.—Expenses of management in respect of the “Business in Malawi” column shall be the expenses incurred within or without Malawi which relate to business in Malawi.

NOTE 4.—The value of business in Malawi shall be shown in the currency of Malawi.

NOTE 5.—Except as otherwise shown, items in this account shall be net amounts after deduction of the amounts paid and received in respect of reinsurance of the insurer’s risks.

NOTE 6.—In the analyses into “Gross”, “Reinsurances”, “Net”, in respect of the “Business in Malawi” column, the figures for reinsurances, although they relate to reinsurances of Malawi Government business, must include reinsurances of such business wherever placed.

NOTE 7.—Amount paid within Malawi in respect of Expenses of Management: £ s. d.

Date.....

.....

Chairman Director Principal Officer Auditor

Form 9

MALAWI

INSURANCE ACT [s. 17(1)]

INSURANCE REGULATIONS [reg. 6]

SUPPLEMENTARY STATEMENT OF LIFE INSURANCE BUSINESS

other than business in connexion with funeral, industrial and sinking fund policies, carried on in Malawi by an insurer, other than an Association of Underwriters, in the financial year ended, 19.....

Name of Insurer.....

A. Statement of Revenue and Expenditure during the year ended19....., in respect of business in Malawi—

	Individual	Group
REVENUE:		
Premiums
Considerations for annuities granted
EXPENDITURE:		
Claims under policies paid and outstanding:		
By death
By maturity
By disability
Surrenders, including surrenders of bonus, bonuses in cash and bonuses in reduction of premiums
Annuities

B. Statement of New Life Insurance and New Annuities effected in Malawi during the year ended, 19.....

Individual Group

INSURANCES:

Number of policies	.....	.....
Sums insured	.....	.....
Annual premiums	.....	.....
Single premiums	.....	.....
	Immediate	Deferred	Immediate	Deferred

ANNUITIES:

Number of policies	.....	.....	.....	.....
Amount per annum	.....	.....	.....	.....

NOTE 1.—All the above figures shall be net figures after deduction of reinsurances.

NOTE 2.—All sums of money mentioned above must be stated in the currency of Malawi.

NOTE 3.—Figures for group endowment assurance schemes must be included under “Individual”.

Date..... Chairman

Director

Principal Officer

Form 10

REPUBLIC OF MALAWI

INSURANCE ACT [s. 17 (1)]

INSURANCE REGULATIONS [reg. 6]

REVENUE ACCOUNT

in respect of * Insurance Business carried on by an Insurer, other than an Association of Underwriters, in the financial year ended, 19.....

Name of Insurer.....

BUSINESS IN MALAWI

WORKMEN'S COMPENSATION OTHER MISCELLANEOUS

Business † in Malawi	Total	Business † in Malawi	Total
Amount of* .....Insurance Fund at the end of the preceding year £			
Claims under policies paid and outstanding £			
Provision for unexpired risks	—	Gross	—
	Deduct: Reinsurances		—
Additional reserves (if any)	—	Net	
Premiums:	Commission		
Gross	—	Expenses of Management	
Deduct: Reinsurances	—	Other Expenditure (Accounts to be specified)	—
Net		Transferred to Profit and Loss Account	—
Interest, Dividends and Rents		Amount of *Insurance Fund at the end of the	
year as per balance sheet:			
Other Revenue (Accounts to be specified)	—		
Transferred from Profit and Loss Account	—	Provision for Unexpired risks,	
being..... % of premium income for the year	—		
	Additional Reserves (if any)		—
TOTAL	TOTAL		

NOTE 1.—If any sum has been deducted from the expenses of management account, and taken credit for in the balance sheet as an asset, the sum so deducted shall be separately shown in this account.

NOTE 2.—Expenses of management in respect of the “Business in Malawi” column shall be the expenses incurred within or without Malawi which relates to business in Malawi.

NOTE 3.—The value of business in Malawi shall be shown in the currency of Malawi.

NOTE 4.—Except as otherwise shown items in this account shall be net amounts after deduction of the amounts paid and received in respect of reinsurance of the insurer’s risks.

NOTE 5.—In the analysis into “Gross”, “Reinsurances”, “Net” in respect of the “Business in Malawi” Column, the figures for reinsurance, although they relate to reinsurances of Malawi business, must include reinsurances of such business wherever placed.

NOTE 6.—Amount paid within Malawi in respect of expenses of Management. £ s. d.

Date..... Chairman

Director

Principal Officer

Auditor

Form 11

MALAWI

INSURANCE ACT [s. 17 (1)]

INSURANCE REGULATIONS [reg. 6]

REVENUE ACCOUNT

in respect of Transport Insurance Business carried on by an Insurer, other than an Association of Underwriters, in the financial year ended....., 19.....

Name of Insurer.....

Business in Malawi	Total	Business in Malawi	Total
--------------------	-------	--------------------	-------

Amount of Transport Insurance Fund at the end of the preceding year, including additional reserves, if any £

—

Claims paid (less salvages, refunds and reinsurance recoveries) £

Expenses of Management

Premiums (less brokerage, discount, commission and returns): —

Gross

Date.....

.....
Chairman Director Principal Officer Auditor

Form 12

MALAWI

INSURANCE ACT [s. 33 (3) and (5)]

INSURANCE REGULATIONS [reg. 9 (1)]

ABSTRACT OF A REPORT OF AN ACTUARY ON AN INVESTIGATION INTO THE FINANCIAL POSITION OF
A LIFE INSURER OTHER THAN AN ASSOCIATION OF UNDERWRITERS

Abstract of report on an investigation into the financial position of
.....

NOTE.—Separate returns signed by the actuary of the insurer shall be furnished for life policies, funeral policies, industrial policies and sinking fund policies provided, however, that life policies and sinking fund policies may be included in one return.

The abstract shall be prepared in numbered paragraphs containing the information required in the following form:—

1. The date to which the insurer's accounts are made up for the purpose of the investigation.
2. The general principles adopted in the valuation and the method followed in the valuation of the particular classes of insurance, including a statement of the method by which the net premiums have been arrived at, and whether these principles were determined by the insurer's articles of association or by his regulations, or how otherwise, together with a statement of the manner in which policies on under-average lives are dealt with.
3. The table or tables of mortality used in the valuation. In cases where the tables employed are not published, specimen policy values shall be given at the rate of interest employed in the valuation in respect of whole-life insurance policies effected at the respective ages of 20, 30, 40 and 50, and having been respectively in force for five years, ten years and upwards at intervals of five years respectively; with similar specimen policy values in respect of endowment insurance policies, according to age at entry, original term of policy and duration.
4. The rate or rates of interest employed in the calculations.
5. The actual proportion of the annual premium income, if any, reserved as a provision for future expenses and profits, separately specified in respect of insurances with immediate profits, with deferred profits, with discounted bonuses and without profits. If no proportion of the annual

premium income is reserved as a provision for future expenses and profits, how this provision is made shall be stated.

6. The liabilities of the insurer under life policies and annuities at the date referred to in paragraph 1, showing the number of policies, the amount insured, and the amount of premiums payable annually under each class of policy, both with and without participation in profits. These returns shall be furnished in Form 13. Separate returns shall be furnished for liabilities in Malawi and for total liabilities.

7. A statement of the principles upon which the distribution of profits, if any, among the shareholders and policy-owners is made, giving the number of years' premiums required to be paid before a bonus—

- (a) is allotted; and
- (b) vests.

The statement shall specify whether the principles upon which the distribution of profits is made were determined by the insurer's articles of association or by his regulations, or how otherwise.

8. A statement of the results of the valuation, giving the total amount of profit made by the insurer since the last valuation (including any amount carried forward from that valuation) allocated as follows—

- (a) as interim bonuses;
- (b) among the policy-owners with immediate participation;
- (c) among the policy-owners with deferred participation;
- (d) among the policy-owners with discounted bonuses;
- (e) among the shareholders, if any;
- (f) to reserve funds or other accounts;
- (g) carried forward unappropriated.

Date.....

Actuary of the Insurer

Form 13

MALAWI

INSURANCE ACT [s. 33 (3)]

INSURANCE REGULATIONS [reg. 9 (1)]

SUMMARY AND VALUATION OF THE LIABILITIES OF A LIFE INSURER

Other than an Association of Underwriters, in respect of Life Insurance Business at
....., 19.....

(See paragraph 6 of the abstract of the report of the Actuary in Form 12)

Name of Insurer.....

NOTE.—All particulars may be stated net of reinsurances if preferred

Particulars of the Policies for Valuation Valuation

Number of Policies	Sums Insured and Bonuses	Office Yearly Premiums	Net Yearly
Premiums	Sums Insured and Bonuses	Net Yearly Premiums	Net Liability

INSURANCES:

1. With immediate participation in profits—

For the whole term of life

Other classes (to be specified)

Extra premiums payable

2. With deferred participation in profits—

For the whole term of life

Other classes (to be specified)

Extra premiums payable

3. With discounted bonuses—

For the whole term of life

Other classes (to be specified)

Extra premiums payable

TOTAL INSURANCES WITH PROFITS

4. Without participation in profits—

For the whole term of life

Other classes (to be specified)

Extra premiums payable

TOTAL INSURANCES WITHOUT PROFITS

TOTAL INSURANCES

Deduct: Reinsurances (to be specified according to class in a separate statement)

NET AMOUNT OF INSURANCES

Adjustments, if any (to be separately specified)

ANNUITIES ON LIVES:

Immediate—

(i) individual

(ii) group

Other classes (to be specified)—

(i) individual

(ii) group

TOTAL ANNUITIES:

Deduct: Reinsurances (to be specified according to class in a separate statement)

NET AMOUNT OF ANNUITIES

Adjustments, if any (to be separately specified)

TOTAL OF THE RESULTS

NOTE 1.—The term “extra premium” means the charge for any risk not provided for in the minimum contract premium.

NOTE 2.—If separate valuations of any portion of the business are required under insurance laws of countries outside Malawi, a summary statement shall be furnished showing the total net liability in respect of the business so valued in each country.

NOTE 3.—The information for “individual” and “group” under the heading “Annuities on Lives” is required only in respect of liabilities in Malawi.

NOTE 4.—In the separate return for liabilities in Malawi, all sums must be stated in the currency of Malawi.

NOTE 5.—Separate particulars in the above form must be given of Malawi liabilities which have been reinsured (except on the risk premium plan) with an insurer who is not a registered insurer.

Date.....

Actuary of the Insurer

Form 14

MALAWI

INSURANCE ACT [s. 33 (3)]

INSURANCE REGULATIONS [reg. 9 (2)]

STATEMENT OF THE LIFE INSURANCE BUSINESS OF A LIFE INSURER OTHER THAN AN ASSOCIATION OF UNDERWRITERS

Statement relating to the valuation of the liabilities under life policies and annuities of.....

NOTE.—Separate returns signed by the actuary of the insurer shall be furnished for life policies, funeral policies, industrial policies and sinking fund policies provided however, that life policies and sinking fund policies may be included in one return. For information relating solely to business in Malawi, all sums of money shall be stated in the currency of Malawi. The expression “office yearly premium” is to be regarded as excluding any extra premium as defined in Note 1 to Form 13.

The statement shall be prepared in paragraphs numbered to correspond with those appearing below. Statements of reinsurances corresponding to statements in respect of insurances shall be given throughout:

Provided, however, that a single statement giving particulars net of reinsurances may be prepared.

1. The published tables or table of premiums for insurances for the whole term of life and for endowment insurances which are in use in Malawi at the date to which the insurer’s accounts are made up for the purpose of the investigation.

2. Particulars of a kind which would enable an independent actuary to estimate the liability shall be furnished in respect of policies under which the aggregate liability of the insurer is not less than 90 per centum of the total liabilities as shown in Form 13; in calculating this percentage, any

liabilities shown against the item "Adjustments, if any (to be separately specified)" in Form 13 shall be ignored. If, in accordance with the foregoing provision, an insurer elects to furnish particulars of any of the kinds of policies described in paragraphs 3 to 6 below, then such particulars must be as stipulated in those paragraphs. Separate returns shall be furnished for business in Malawi and for total business. Separate information shall be furnished for "individual" and "group deferred annuity" business in respect of liabilities in Malawi.

3. The total amount insured on lives for the whole term of life which are in existence at the date referred to in paragraph 1 of Form 12, distinguishing the portions insured with immediate profits, with deferred profits, with discounted bonuses and without profits, stating separately the total reversionary bonuses and specifying the particulars for each age or for each group of five ages, the basis of division as to immediate and deferred profits being stated.

4. The amount of office and net yearly premiums for each age or each group of five ages, after deducting the abatements made by the application of bonuses in respect of the respective insurances referred to in paragraph 3. A separate statement shall be given of premiums payable for a limited number of years, classified according to the number of years' payments remaining to be made or according to attained age, and in either case five-year grouping may be used if desired. If premiums payable for a limited number of years are classified according to attained age, the valuation constants are to be given for each age or group of ages together with an explanation of the method by which they have been calculated.

5. The following particulars are to be given in respect of endowment insurances, and are to be separately stated for policies with immediate profits, with deferred profits, with discounted bonuses and without profits; the sums insured, the reversionary bonuses (to be separately specified), the office yearly premiums, and the net yearly premiums, in respect of each year or group of five years in which the policies will mature for payment, or in respect of each year or group of five years of attained age. If any of these particulars are classified according to attained age, the corresponding valuation constants are to be given for each age or group of ages, together with an explanation of the method by which they have been calculated.

6. The total amount of immediate annuities on lives, distinguishing the amount for each age or group of five ages, and distinguishing male and female lives.

7. The average net rate of interest yielded by the assets, whether invested or uninvested, constituting the life insurance fund of the insurer calculated upon the mean fund of each year during the period since the last investigation. It shall be stated whether or not the mean fund upon which the average net rate of interest is calculated includes reversionary investments.

8. A table of minimum values used in Malawi, if any, allowed for the surrender of policies for the whole term of life and for endowment insurances, or a statement of the method pursued in Malawi in calculating such surrender values, with instances of the application of such method of policies of different durations and taken out at various interval ages.

Date

Actuary of the Insurer

Form 15

MALAWI

INSURANCE ACT [s. 29 (1)]

INSURANCE REGULATIONS [reg. 7]

APPLICATION FOR REGISTRATION AS AN AGENT FOR BROKERS

Name under which applicant seeks registration as agent for brokers

.....

Address of applicant

.....

.....

Names of Directors

.....

.....

Period of applicant's financial year

Name and address of brokers through whom the applicant will transact insurance business

.....

.....

.....

Name and address of the association of underwriters with whom the applicant will transact insurance business

.....

.....

Have you under any law within or without Malawi relating to bankruptcy or insolvency, been adjudged or otherwise declared bankrupt or insolvent, and not been rehabilitated or discharged; or made an assignment to, or composition with, creditors, which has not been rescinded or set aside ?

.....

Have you been convicted by any court wheresoever situate of any offence involving dishonesty, or been convicted of an offence against section 80 or 81 of the Insurance Act, an appeal against which conviction not having been brought, or, if brought, having been abandoned or dismissed?

.....

Signed Date

Applicant

In the presence of

Witness

Form 16

MALAWI

INSURANCE ACT [s. 30 (b)]

INSURANCE REGULATIONS [reg. 8]

RETURN BY AGENTS FOR BROKERS OF INSURANCE TRANSACTIONS PLACED BY HIM

Name of Agent for Brokers Business during financial year ended19.....

A. Business placed with an Association of Underwriters.

Name and address of the Association of Underwriters with whom the Agent for Brokers has transacted business—

.....

Type of Insurance Business	Gross Premiums	Claims Paid	Commission or Other Remuneration Received
----------------------------	----------------	-------------	---

Fire

Transport

Other

TOTAL £

B. Business Placed with other Registered Insurers—

Type of Insurance Business Remuneration Received	Gross Premiums	Claims Paid	Commission or Other
Fire	—	—	
Transport	—	—	
Other	—	—	
TOTAL	£		

C. Business Placed with Other Insurers (in terms of section 80 (3) of the Act)

Type of Insurance Business Remuneration Received	Gross Premiums	Claims Paid	Commission or Other
Fire			
Transport			
Other			
TOTAL	£		

Date.....

Agent for Broker

Form 17

MALAWI

INSURANCE ACT

(CAP. 47:01)

APPLICATION FOR LICENCE

(SECTIONS 60D, 60E)

(Registered insurers or registered agents for brokers need not complete items 4 to 7)

1. Name of applicant

2. Place and address of premises where business is to be conducted

.....
.....

3. If a registered insurer or registered agent for brokers, state date of such registration

.....
.....

4. Name of Insurance Companies to be represented

.....
.....

5. Have you, under any law within or without Malawi relating to bankruptcy or insolvency, been adjudged or otherwise declared bankrupt or insolvent, and not been rehabilitated or discharged, or made an assignment to, or arrangement or composition with, creditors, which has not been rescinded or set aside

.....

6. Have you been convicted by any court wheresoever situate of any offence involving dishonesty, or been convicted of an offence against section 80 or 81 of the Insurance Act, an appeal against conviction not having been brought, or, if brought, having been abandoned or dismissed ?

.....

7. What, if any, business, trade or profession, other than that of an insurance agent, is, or is proposed to be, carried on during the period for which a licence under the Insurance Act is sought ?

.....
.....
.....

Signed Date

Applicant

In the presence of

Witness

Form 18

INSURANCE LICENCE NO.

MALAWI

INSURANCE ACT

(CAP. 47:01)

INSURANCE LICENCE

(SECTION 60B)

..... (Name of licensee) of
..... (address) is hereby licensed to carry on
business as an insurance agent on behalf of

.....
(inset name of Insurance Companies represented) until 31st March, 20.....

Previous licence No. (if renewal)

Fee paid

(in words)

K t

Date of issue Signature

[Registrar of Insurance]

INSURANCE (DELEGATION OF MINISTER’S POWERS AND DUTIES) ORDER

under s. 85

G.N. 23/1991

1. Citation

This Order may be cited as the Insurance (Delegation of Minister’s Powers and Duties) Order.

2. Interpretation

In this Order—

“Bank” means the Reserve Bank of Malawi established by the Reserve Bank of Malawi Act. Cap. 44:02

3. Delegation of certain powers and duties under the Act

All such powers and duties expressly or impliedly conferred by the Act on the Minister as relate to the regulation and supervision of the conduct, by an insurer, of banking business within the meaning of section 85 of the Act are hereby delegated to the Bank.

[Chap4702]CHAPTER 47:02

COOPERATIVE SOCIETIES

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36 of 1998

G.N. 10/2000

An Act to consolidate the law relating to the constitution and regulation of cooperative societies and for other matters incidental thereto or connected therewith

[1ST APRIL 2000]

PART I

PRELIMINARY

[Ch4702s1]1. Short title

This Act may be cited as the Cooperative Societies Act.

[Ch4702s2]2. Interpretation

In this Act, unless the context otherwise requires—

“apex society” means a registered society under this Act, the membership of which is restricted to cooperative unions and includes a society established to serve the cooperative movement by providing facilities for banking, insurance and the supply of goods or services;

“bonus” means a share of the surplus of a registered society divided among its members in proportion to the volume of business done with the society by them from which the surplus of the society was derived;

“by-laws” means the registered by-laws made by a society in the exercise of any power conferred by this Act, and includes a registered amendment of such by-laws;

“committee” means the governing body of a registered society to which the management of its affairs is entrusted and includes a Board of Directors;

“Commissioner” means the Commissioner for Cooperative Development and includes the Deputy Commissioner for Cooperative Development and Assistant Commissioner for Cooperative Development when acting for the Commissioner;

“cooperative” means an autonomous association of persons united voluntarily to meet their common economic and social needs in accordance with cooperative principles through a jointly owned and democratically controlled enterprise;

“cooperative principles” means—

- (i) membership of a society is voluntary and open;
- (ii) the management of the society is carried out democratically whereby each member has one vote and there is no voting by proxy;
- (iii) the distribution of surplus is done justly in proportion to the amount of the business contribution of each member;
- (iv) there is payment of limited return on capital;
- (v) there is self-reliance;
- (vi) race, creed, ethnic origins, language or political beliefs are no bar to voluntary membership and membership is open to all who can use the services of the society;

“cooperative union” means a registered society under this Act, the membership of which is restricted to primary societies;

“date of dissolution” means the date on which the Registrar’s order cancelling the registration of a society takes effect;

“dividend” means share of surplus of a registered society divided among its members in proportion to the share capital held by them;

“member” includes a person or a registered society joining in the application for the registration of a society and a person or registered society admitted to membership after registration in accordance with the by-laws;

“officer” includes a Chairman, Secretary, Treasurer, member of committee, employees, or other person empowered under any regulations made under the provisions of this Act or by-laws of a registered society to give directions in regard to the business of a registered society.

“primary society” means a registered society under this Act, the membership of which consists of individual persons and includes any body of persons and other bodies approved by the Registrar under section 16; of this Act.

“registered society” means a cooperative society registered under this Act;

“Registrar” means the Registrar of cooperative societies appointed under section 3 and includes any person when exercising such powers of the Registrar as may have been conferred upon him under that section;

“secondary society” means a registered society under this Act, the membership of which is restricted to primary societies;

“society with limited liability” means a society the liability of whose members is limited by its by-laws to—

- (a) the amount if any unpaid on the shares respectively held by them; or
- (b) such amount as the members may each undertake to contribute to the assets of the society in the event of its being wound up;

“society with unlimited liability” means a society not having limited on the liability of its members;

“winding-up” means all proceedings subsequent to the cancellation of the registration of a society.

PART II

REGISTRATION

[Ch4702s3]3. Registrar and assistant registrar

(1) There shall be a Registrar for cooperative societies who shall also be the Commissioner for Cooperative Development for the purposes of this Act.

(2) The Registrar shall be a public officer responsible for providing and administering services required by societies under this Act.

(3) There shall be assistant registrars who shall be assistant commissioners, who shall assist the Registrar in the administration of cooperative societies and the implementation of the provisions of this Act.

[Ch4702s4]4. Societies which may be registered

Subject to the provisions of this Act, a society may be registered under this Act with or without limited liability:

Provided that a cooperative union or any apex society shall be registered with limited liability.

[Ch4702s5]5. Conditions of registration

(1) No society shall be registered under this Act unless—

(a) in the case of a primary society, it consists of at least ten persons all of whom are qualified for membership of the society under section 14; or

(b) in the case of a secondary society, it consists of at least two registered primary societies among its registered members;

(c) in the case of a tertiary society, it consists of at least two registered secondary societies among its registered members;

(d) in the case of an apex society, it consists of two or more secondary societies.

(2) All cooperative societies registered under this Act shall conform to the cooperative principles.

(3) When for the purposes of this section any question arises as to residence or occupation of land constituting the qualification of any person, that question shall be decided by the Registrar.

[Ch4702s6]6. Application for registration

(1) For the purpose of registration an application to register registration shall be made to the Registrar.

(2) The application shall be signed—

(a) in the case of a primary society, by at least ten persons qualified for membership of the society under section 14; and

(b) in the case of a secondary, tertiary or apex society, by a person duly authorized in that behalf by each registered society, as the case may be, who is a member of that society.

(3) The application shall be accompanied by three copies of the proposed by-laws of the society and the persons by whom or on whose behalf such an application is made shall furnish such information in regard to the society as may be prescribed under regulations made under this Act.

(4) An application for the registration of a society shall be accompanied by such registration fees as may be prescribed by regulations made under this Act.

[Ch4702s7]7. Registration of Society

(1) If the Registrar is satisfied that a society has complied with the provisions of this Act and regulations made thereunder and that its proposed by-laws are not contrary to the provisions of this Act, he shall register the society and its by-laws.

(2) The Registrar shall register a society within thirty days from the date the application is submitted failing which the society shall be deemed to have been registered.

[Ch4702s8]8. Indication of registration

(1) A society which is registered under section 7 shall state in legible letters in all its receipts, letter-heads, notices, advertisements or other official publications that it is registered and shall indicate the same on a signboard in a conspicuous position outside any premises or office in which it carries on its business.

(2) If a society registered under section 7 contravenes or fails to comply with the provisions of this section that society and any officer or person who purports to act on its behalf commits an offence and shall be liable after conviction to a fine not exceeding K3,000 and in the case of a continuing offence to a further fine not exceeding K500 for each day on which the offence is continued after conviction thereof.

[Ch4702s9]9. Cancellation of registration

(1) At any time during the period of registration of a society under section 7, the Registrar may, after giving notice in writing to the person responsible for the running of the society, cancel the registration of such society stating reasons for such cancellation and the society shall, from the date of service of the notice, cease to be a registered society.

(2) The cancellation referred to in subsection (1) shall be Published in the Gazette.

[Ch4702s10]10. Amendment of by-laws of a registered society

(1) Any registered society may, subject to the provisions of this Act, amend its by-laws, including the by-law which declares the name of the society.

(2) No amendment of the by-laws of a registered society shall be valid until the amendment has been registered under this Act or regulations made under this Act.

(3) If the Registrar is satisfied that an amendment of the by-laws is not contrary to the provisions of this Act, he shall register the amendment.

(4) An amendment which changes the name of a registered society shall not affect any right or obligation of the society or any of its members or past members, and any legal proceedings pending may be continued by or against the society.

(5) When the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him which shall be conclusive evidence of the fact that the amendment has been fully registered.

(6) If it appears to the Registrar that an amendment of the by-laws of a society is necessary or desirable in the interest of such society, he may call upon the society, subject to any regulations made under this Act, to make the amendment within such time as he may specify.

(7) If the society fails to comply with the Registrar's directive, the Registrar may cancel the registration of the Society under section 73 (c).

(8) With effect from the date of registration of an amendment under this Act, the by-laws shall be binding on the society and its members.

[Ch4702s11]11. Appeal to the Minister

From every refusal of the Registrar to register a society or its by-laws or any amendment of its by-laws, an appeal shall lie to the Minister.

[Ch4702s12]12. Name of society to be different from others

(1) No society shall be registered under a name identical to any other existing society, or under any name likely to mislead members of the public as to its identity.

(2) The word “cooperative” shall form part of the name of every society registered under this Act, and the word “Limited” shall be the last word in the name of every society with limited liability registered under this Act.

[Ch4702s13]13. Evidence of registration

(1) A certificate of registration signed by the Registrar shall be conclusive evidence that the society mentioned therein is duly registered unless it is proved that the registration of the society has been cancelled.

(2) If the Registrar is satisfied that a society’s original certificate of registration has been lost or destroyed, he may issue a duplicate certificate.

PART III

RIGHTS AND LIABILITIES OF MEMBERS

[Ch4702s14]14. Qualifications for membership

In order to be qualified for membership of a society, a person, other than a registered society shall—

- (a) have attained the age of eighteen years; and
- (b) be a resident within or in occupation of land within the society’s area of operation as prescribed by the relevant by-laws;
- (c) qualify under a common bond as specified by-laws.

[Ch4702s15]15. Restriction on shareholding

No member shall hold more than one-fifth of the paid-up share capital of any cooperative society.

[Ch4702s16]16. Restriction on shareholding

No company incorporated under the Companies Act, and no unincorporated body of persons, shall be entitled to become a member of a registered society except with the written permission of the Registrar. Cap. 46:03

[Ch4702s17]17. Member not to exercise rights until due payment made

No member of a registered society shall exercise any of the rights of a member unless and until he has made such payment to the society in respect of membership or has acquired such interest in the society as may be prescribed by any regulations made under this Act or by the by-laws of the society.

[Ch4702s18]18. Restriction of membership in more than one society

(1) No person shall be a member of more than one registered society with unlimited liability.

(2) Save with the written consent of the Registrar, no person be a member of more than one registered society having the same or similar objects:

Provided that a person who is a member of a registered society and carries on business on land or at premises outside the area of operation of that registered society, may be a member of a registered society in whose area of operations that land or those premises are situated notwithstanding that its objects are the same as or similar to those of the list mentioned society.

[Ch4702s19]19. Vote of members

Each member of a registered society shall have one vote only as a member in the affairs of the registered society:

Provided that a registered society, a cooperative union or an apex society which is a member of any registered society shall have as many votes as may be prescribed by the by-laws of such other society, and may, subject to such by-laws, appoint any number of its committee members, not exceeding the number of such votes, to exercise its voting power.

[Ch4702s20]20. Restriction on shares or interest

(1) The transfer of the share or interest of a transfer of member in the capital of a registered society shall be subject to the conditions as to maximum holding for which provision is made in section 15.

(2) In the case of a society registered with unlimited liability, a member shall not transfer or charge any share held by him, or his interest in the capital of the society or any part thereof, unless—

- (a) he has held such share or interest for not less than one year; and
- (b) the transfer or charge is made to the society or to a member of the society.

PART IV

DUTIES OF REGISTERED SOCIETIES

[Ch4702s21]21. Address of societies

(1) Every registered society shall have a registered address to which notices and communications may be sent and shall send to the Registrar notice of every change thereof within one month of such change.

(2) Every registered society shall display its name and address on a signboard in a conspicuous position outside its place of business.

[Ch4702s22]22. Copy of the Act, regulations, by-laws, etc., to be open for inspection

Every registered society shall keep a copy of this Act and of the Regulations made thereunder and of its by-laws and a list of members open to inspection by any member, fee of charge, and any other person at a fee to be determined by the Society, at all reasonable times during business hours at the office of the society.

[Ch4702s23]23. Audit and annual returns and accounts

(1) It shall be the duty of every registered society to cause its accounts to be audited at least once in every year by an auditor from a list of registered auditors appointed by the annual general meeting and the cost of such audit shall be borne by the society:

Provided that—

(a) no auditor chosen by a registered society to audit its books shall perform that function for more than three consecutive annual audits;

(b) where the registered society is unable to appoint its own auditors, the Registrar may appoint such auditors or carry out the audit at a fee.

(2) Audits, shall be conducted in accordance with generally accepted professional auditing standards and shall include audit of management efficiency.

(3) The auditor shall at all times have access to all books, accounts, papers and securities of a registered society, and every officer of the society shall furnish such information in regard to the transactions and working of the society as the auditor may require.

(4) Every auditor appointed under subsection (1) shall submit a detailed audit report on the financial statements to the committee and a true copy of such financial statements to the Registrar within three months after its financial year and shall include the auditor's opinion on whether or not the business administration of the society has been conducted—

(a) efficiently;

(b) in accordance with cooperative principles and the auditing and accounting provisions of this Act; and

(c) in accordance with its objectives, by-laws and any other decisions made by the annual general meeting.

(5) The audited financial statements referred to in subsection (4) shall be open for inspection by any member of the public upon payment of such fee as may be fixed by the Registrar.

(6) Where a registered society fails to cause its accounts to be audited in accordance with subsections (1), (2) and (4), the committee of that society shall be deemed to have relinquished its office; and the Registrar shall convene a special general meeting to elect a new committee unless the Registrar is satisfied that the failure was due to circumstances beyond the committee's control.

[Ch4702s24]24. Qualifications of auditors

(1) No person shall be appointed or approved as an auditor for the audit of the accounts of a registered society unless that person, or in the case of a firm, is a member of a recognized accounting body.

(2) The Minister may, in consultation with the Registrar and by notice published in the Gazette, amend the qualifications of auditors specified in this section.

[Ch4702s25]25. Estimates and expenditure

(1) Every committee of a registered society shall cause estimates of the society's income and expenditure of both revenue and capital to be prepared for the coming twelve months at least three months before the end of its financial year. A copy of such estimates shall be sent to the Registrar.

(2) If a society contravenes or fails to comply with any provision of this section, every member of that Committee and any officer or person who purports to act on its behalf commits an offence and shall, upon conviction, be liable to a fine not exceeding K3,000 and in the case of a continuing offence to a further fine not exceeding K500 for each day on which the offence is continued.

[Ch4702s26]26. Voluntary amalgamation of societies

(1) Any or more registered societies (hereinafter referred to as the "amalgamating societies") may, by special resolution with the approval of the Registrar, (in this section referred to as the "preliminary resolution"), resolve to amalgamate as a single society (hereinafter referred to as the "amalgamated society").

(2) A copy of the preliminary resolution shall be sent to all the members and creditors of each of the societies, and to all other persons whose interest in any of the societies will be affected by the amalgamation.

(3) Any member of any of the societies concerned may, notwithstanding any by-law to the contrary, by notice in writing given to his society at least one month before the date specified as the date of amalgamation, intimate his intention not to become a member of the amalgamated society.

(4) Any creditor of any of the societies concerned may, notwithstanding any agreement to the contrary, by notice in writing given to such society at least one month before the date specified as the date of amalgamation, intimate his intention to demand the payment of any money due to him.

(5) Any other person whose interest will be affected by the amalgamation may, by notice in writing given to the society concerned not less than one month before the date specified as the date of amalgamation, object to the amalgamation unless his claim is satisfied.

(6) Not less than three months after the date of the meeting at which the preliminary resolution is passed, a further special general meeting of each of the societies shall be held to consider the preliminary resolution and any notices received under this section.

(7) At the special general meeting held under subsection (6) of this section, provision shall be made by a further resolution of the society (in this section referred to as the “secondary resolution”) for—

(a) the repayment of the share capital of any member who has given notice under subsection (3);

(b) the satisfaction of any claims by creditors who have given notice under subsection (4); and

(c) the satisfaction of the claims of such other persons who have given notice under subsection (5) of this section as the Registrar determines, or the securing of their claims in such manner as the Registrar directs:

Provided that no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (8).

(8) Each society may, by further resolution passed by a two-thirds majority of the members present and voting, confirm the preliminary resolution.

(9) If, within such time as the Registrar considers reasonable, the Registrar is satisfied that the provisions of the secondary resolutions of each of the societies, and the provisions of this section, have been complied with, he may register the amalgamated society and the by-laws of such thereupon—

(a) the registration of all the amalgamating societies shall be cancelled, and the amalgamating societies shall be dissolved;

(b) the registration of the amalgamated society shall be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society;

(c) the remaining members of the amalgamating societies shall become members of the amalgamated society and subject to its by-laws in accordance with section 30; and

(d) any creditors of the amalgamating societies or any other persons who have claims against the amalgamating societies, and whose claims were not satisfied in accordance with the secondary resolution, may pursue such claims or causes of action against the amalgamated society.

[Ch4702s27]27. Transfer of assets and liabilities to another society

(1) Any registered society may by a resolution transfer its assets and liabilities to any other society which agrees to accept them.

(2) The transfer of liabilities referred to in subsection (1) shall not be made to any society without giving notice in writing of ninety days to the creditors of both or more societies concerned in the transfer of the liabilities.

(3) If a creditor objects to an amalgamation decided upon under section 26 or a transfer of liabilities under this section and gives notice in writing of one month before the date fixed for the amalgamation or transfer of liabilities to the society concerned, the amalgamation or transfer shall not take place until liabilities of the creditor have been satisfied or until an agreement for payment of the liabilities has been made by the society and the creditor.

(4) Any creditor who is not satisfied with the liabilities paid to him or who does not accept to enter into an agreement with the society concerned as provided under subsection (3) may appeal to the Registrar within ninety days from the date of his disagreement with the society.

[Ch4702s28]28. Voluntary division of a society

(1) Any registered society may, with the prior written approval of the Registrar, divide itself into two or more societies in accordance with the procedure laid down by regulations made under this Act.

(2) A division of a society referred to under subsection (1) shall not take place unless—

- (a) a general meeting of the members of the society has been called;
- (b) each member of the society has had a written notice of at least fifteen days of the meeting; and
- (c) a resolution has been passed by a two-thirds majority of the members present at the meeting in support of the division.

(3) A resolution passed under subsection (2) (hereinafter referred to as a “preliminary resolution”) shall contain proposals for the distribution of the assets and liabilities of the divided society among the societies in which it is proposed to be divided and shall prescribe the area of operation of, and specify the members who may constitute each of, the new societies.

(4) a copy of the preliminary resolution shall be sent to all the members of the society and its creditors and any other person whose interests may be affected by the division shall be informed in writing by the society.

(5) Any member of the divided society may notify the society in writing, within three months from the receipt of the preliminary resolution, of his intention not to belong to any of the new societies and any creditor may demand from the society within the said period a repayment of the amount due to him.

(6) Any other person whose interests are affected by the division of the society may submit his claim in writing to the society.

(7) After the period of three months from the sending of the resolution under subsection (4) to the members and creditors of the society, a special general meeting of the society shall be called to consider the preliminary resolution.

(8) A special meeting of the society shall not be held under subsection (7) unless each member of the society has had a notice of fifteen days in writing informing him of the meeting.

(9) If, at the meeting called under subsection (7), a preliminary resolution is confirmed by a two-thirds majority of the members present, either without any change or with such changes, which, in the opinion of the Registrar, are not material, the Registrar may register the new societies and their by-laws and on such registration, the registration of the old society shall be deemed to have been cancelled and the society shall be deemed to be dissolved from the date of the cancellation.

(10) At the special general meeting of the society held under subsection (7), provision shall be made by another resolution for—

(a) the repayment of the share capital of all the members who have given notice under subsection (5);

(b) the satisfaction of the claims of all the creditors who have given notice under subsection (5);

(c) the satisfaction of the claims of any other person who has given notice under subsection (6):

Provided that no member, creditor or any other person shall be entitled to any repayment or satisfaction until the preliminary resolution is confirmed under subsection (9).

(11) The registration of new societies under subsection (9) shall be sufficient to vest the assets and liabilities of the divided society in the new societies in accordance with the provisions of the preliminary resolution.

PART V

DUTIES AND PRIVILEGES OF SOCIETIES

[Ch4702s29]29. Societies to be bodies corporate

A society on registration shall become a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold moveable and immoveable property of every description, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purpose of its constitution.

[Ch4702s30]30. Registered by-laws to bind members

(1) The by-laws of a registered society shall, when registered, bind the society and the members thereof to the same extent as if they were signed by each member, and contain obligations on the part of each member, his heirs, executors, administrators and assignees, to observe all the provisions of the by-laws.

(2) No member of a registered society shall contest any suit, claim, action or proceedings between such member and the society or any other member of the society on the ground that any by-laws of the society constitutes a contract in restraint of trade.

[Ch4702s31]31. Contract with members

(1) A registered society, having as one of its objects the disposal of any agricultural produce, may contract with its members either in its by-laws or by a separate document, that they shall dispose of all their produce, or of such amounts or descriptions as may be stated therein, to or through the society, and may in contract provide for payment of a specific sum per unit of weight or other measure as liquidated damages for infringement of the contract, and such sum shall be a debt due to the society.

(2) Any such contract as is mentioned in subsection (1) shall create in favour of the society a first charge upon all produce mentioned therein, whether existing or future.

(3) The covenants obligations imposed by any contract as is mentioned in subsection (1) shall run with any assets and shall be binding on all assignees and transferees and any transfer or conveyance of property subject to such contract shall be deemed to operate also as alike transfer or assignment of the contract.

(4) No contract entered into under the provisions of this section shall be contested in any court on the ground that it constitutes a contract in restraint of trade.

[Ch4702s32]32. Imposition of fines upon members

(1) The by-laws of a registered society may subject to the provisions of any regulations made under this Act, provide for the imposition of fines on its members for any infringement of its by-laws but no such fine shall be imposed upon any member until written notice of intention to impose the fine and the reason therefor has been served on him and he has had an opportunity of showing cause against the imposition of the fine, and if he so desires, of being heard with or without witnesses.

(2) Any such fine may be recovered by legal proceedings in a court of law.

(3) The whole or any part of such fine may be set-off against any moneys due to such member in respect of produce delivered by him to the society.

(4) A member shall not be deemed to have infringed the by-laws of a registered society by reason of his having failed to deliver produce to the society if such failure was due to the fact that before becoming a member of the society such member had contracted to deliver such produce to some other person.

(5) It shall be the duty of every person applying for membership of a registered society to disclose to the society particulars of all such contracts as are mentioned in subsection (4).

[Ch4702s33]33. Charge on produce and certain other materials and articles

Subject to the prior claims of the Government on property of its debtors and of landlords in respect of rent, or any money recoverable as rent, or to any prior charge duly registered under this Act or under any other law for the time being in force, a registered society shall have a first charge—

(a) upon produce of a member or past member, at any time within two years from the date when seed or fertilizer as advanced, or services were supplied, or money was lent to such

member or past members in respect of the unpaid portion of such advance, supplies services on loan;

(b) in respect of the supply of agricultural or industrial implements or machinery, or raw material for manufacturing or building or for the loan of money for the purchase of any of such implements to be supplied or purchased in whole or in part from any such loan or any articles manufactured from raw materials supplied or purchased.

[Ch4702s34]34. Charge and set-off in respect of shares or interest of member

A registered society shall have a first charge upon the shares or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus or accumulated funds payable to a member or past member in respect of any debt due from such member or past member to the society, and may set-off any sum credited or payable to such member or past member in or towards payment of any such debt.

[Ch4702s35]35. Share or interest not liable to attachment

Subject to the provisions of section 33, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and a trustee in bankruptcy under the law relating to bankruptcy for the time being in force shall not be entitled to or have any claim on such share or interest:

Provided that where a society is dissolved, the property in the shares of any member who has been adjudicated as bankrupt under the provisions of any such law relating to bankruptcy shall vest in the trustee in bankruptcy.

[Ch4702s36]36. Liability of past member

The liability of a past member for the debts of a registered society as they existed at the time when he ceased to be a member shall continue for a period of two years from the date of his ceasing to be a member.

[Ch4702s37]37. Liability of estate of deceased

The estate of a deceased member shall be liable for a period of one year from the time of his demise for the debts of a registered society as they existed at the time of his death.

[Ch4702s38]38. Transfer of interest on death of member

(1) On the death of a member, a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with any regulations made under this Act, or, if there is no person so nominated, to such person as may appear to the committee of the society to be the legal personal representative, of the deceased member or may pay to such nominee or legal person representative as the case may be, a sum representing the value of such member's share or interest, ascertained in accordance with any regulations made under this Act or the by-laws of the society:

Provided that—

(a) in the case of a society with unlimited liability, such nominee or legal personal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained in the manner mentioned in this subsection; or

(b) in the case of a society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee or legal personal representative, as the case may be, being qualified in accordance with any regulations made under the provisions of this Act and the by-laws for membership of the society, or, on his application within one month of the death of the deceased member, to any person specified in the application who is so qualified.

(2) A registered society shall pay all other moneys due to the deceased member from the society to such nominee or legal personal representative, as the case may be.

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

[Ch4702s39]39. Registers and books shall be received in evidence in certain circumstances

(1) Any register or list of members or of shares, which is kept by any registered society shall be prima facie evidence of any of the following particulars entered therein—

(a) the date on which the name of any person was entered in such register or listed as a member;

(b) the date on which any such person ceased to be a member.

(2) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in accordance with any regulations made under this Act, be received in any suit or legal proceedings as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matter, transactions and accounts therein accorded in every case where, and to the same extent as the original entry itself is admissible

[Ch4702s40]40. Restriction on the production of societies books

No officer of a registered society shall, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books the contents of which can be proved under section 39, or to appear as a witness to prove the matter, transactions and accounts therein recorded unless by order of the court made for special cause.

[Ch4702s41]41. Power to remit or refund revenue

(1) The Minister responsible for finance may, by order published in the Gazette, in the case of a registered society or class of registered societies, remit or refund—

(a) any duty or tax which, under any law for the time being in force, may be payable in respect of the accumulated funds of the society or of the dividends or other payments received by members of the society on account of accumulated funds;

(b) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society or any class of such instruments are respectively chargeable.

(c) any fee payable under any law relating to registration for the time being in force;

(d) the customs and excise duty on any development goods ordered or purchased by a registered society. For purposes of this paragraph “development goods” means agricultural equipment, vehicles and other goods which the Minister responsible for finance may declare to be development goods.

(2) In the case of a division, an amalgamation or transfer of some or all of the assets of a registered society, the Minister responsible for finance shall remit the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of such society or by its officer or member and relating to the business of such society or any class of such instruments are respectively chargeable.

PART VI

PROPERTY AND FUNDS OF REGISTERED SOCIETIES

[Ch4702s42]42. Restrictions on loans

A registered society shall not make a loan to any other person than a member:

Provided that—

(a) with the general or special sanction of the general meeting, a registered society may make loans to another registered society; and

(b) subject to the prior written approval of a general meeting and subject to such conditions as may be imposed, a registered society may stand surety for a loan to be granted to an employee of the society where such a loan is for the benefit of that society.

[Ch4702s43]43. Restrictions on borrowing

(1) A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as the general meeting of members may, from time to time, by resolution, approve.

(2) A depositor or lender shall not be required to know whether the resolution has been approved.

(3) For the purposes of this section, credit on current account for a period of more than ninety days and a deposit of money under a hire-purchase agreement shall be deemed to be a loan within the meaning of this section.

[Ch4702s44]44. Restriction on other transactions with non-member

(1) Save as provided in section 42 and 43 transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as the general meeting may, from time to time, in writing, direct.

(2) The total value of transactions entered into by a registered society in respect of a particular kind of produce with persons other than members shall not exceed, in any one year, one-half of all transactions entered into by it in respect of that kind of produce.

(3) The net amount of all profits accruing from transactions with persons other than members shall be credited to the society's statutory reserve fund and shall not be available for distribution among members.

[Ch4702s45]45. Investments of funds

A registered society may invest or deposit its funds only—

- (a) in a registered cooperative bank;
- (b) in any registered society, company or statutory corporation approved in writing by the Registrar;
- (c) in any bank or financial institution incorporated in Malawi;
- (d) in and upon such investment and securities as are by law allowed for the investment of trust funds; and
- (e) in such other mode as specified by the by-laws of the society and approved by members in a general meeting.

[Ch4702s46]46. Dividend or bonus

(1) No registered society shall pay a dividend or bonus or distribute any part of its accumulated funds without the prior approval of the annual general meeting.

(2) No society shall pay a dividend to its members exceeding the maximum rate prescribed by the by-laws of the society.

(3) No society with unlimited liability shall advance money or goods to any member in excess of money or goods deposited by him.

[Ch4702s47]47. Reserve and provident fund

(1) Every society which does or can derive a surplus from its transactions shall maintain a reserve fund.

(2) A society which advances money or goods to any member in excess of money or goods deposited by him shall carry at least one-fourth of the net surplus in each year to the reserve fund.

(3) All societies other than societies referred to in subsection (2) shall carry to the reserve fund such portion of the net surplus in each year as may be prescribed by any regulations made under this Act or by-laws of the registered society.

(4) Every society shall, with the approval of the general meeting, establish a contributory provident fund for payment of pensions to its permanent employees at the time of their retirement.

[Ch4702s48]48. Distribution of net balance

Subject to the provisions of sections 46 and 47 the net balance of each year, with any sum available for distribution from previous years, may be distributed as may be prescribed by any regulations made under this Act or by the by-laws of the registered society.

PART VII

NATIONAL COOPERATIVE EDUCATION FUND

[Ch4702s49]49. Establishment of the Fund

(1) There is hereby established a National Cooperative Education Fund (in this Act otherwise referred to as the "Fund").

(2) Every registered society shall contribute one per centum per annum of its net profit to the Fund.

[Ch4702s50]50. Fund Committee

(1) The Fund shall be vested in a Fund committee which shall consist of—

- (a) a chairman elected from the cooperative movement; and
- (b) three other persons elected from the cooperative movement; and
- (c) the Registrar who shall provide secretarial services.

(2) The Fund committee shall administer the moneys in the Fund and shall—

- (a) prepare an annual budget for the approval of the Minister; and
- (b) submit an annual report on the Fund to the Minister.

(3) Three members of the Fund Committee shall constitute a quorum.

(4) Subject to the approval of the Minister, the Fund Committee shall determine its own procedure.

[Ch4702s51]51. Account and audit

(1) The Fund Committee shall cause proper books of accounts of the Fund to be kept together with adequate financial and other records relating to the Fund.

(2) The Fund Committee shall within three months after the end of the financial year have the books of the Fund audited by an auditor appointed by the Fund Committee and approved by the Minister.

[Ch4702s52]52. Financial year

The financial year of the Fund shall be the period of twelve months ending on 30th June in each year.

[Ch4702s53]53. Disbursement from the Fund

The Fund Committee may authorize payment from the Fund for educational costs and any reasonable and necessary expenses arising from the maintenance of the Fund.

[Ch4702s54]54. Holdings of the Fund

(1) All moneys received on behalf of the Fund shall be paid into a bank account and no moneys shall be withdrawn there from except by means of cheques signed by such persons as are authorized in that behalf by the Fund Committee.

(2) Any part of the Fund not immediately required for the purpose of the Fund may be invested as agreed upon by the Fund Committee.

PART VIII

CHARGES BY SOCIETIES

[Ch4702s55]55. Power to charge property

(1) A registered society may, from time to time, with the consent of the Registrar, charge the whole or any part of its property, if its by-laws expressly empower it to do so and to the extent to which its by-laws empower it to do so.

(2) The chargee shall not be required to know whether the consent of the Registrar has been obtained or that the society's by-laws empower the society to charge its property.

[Ch4702s56]56. Registration of charges

(1) Subject to this Part, every charge to which this section applies created by a registered society shall, so far as any of the society's property is thereby charged, be void against the liquidator and any creditor of the society unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are delivered to the Registrar for registration within thirty days after the date of the creation of the charge or within three months after commencement of this Act, whichever is the later, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge so becomes void under this section the money secured thereby shall immediately become payable.

(2) this section shall apply to the following charges—

- (a) a charge for the purpose of securing an issue of debentures;
- (b) a charge created or evidenced by an instrument which, if executed by an individual, would require registration;
- (c) a charge on immoveable property wherever situated;

- (d) a charge on book debts of the society; and
- (e) a floating charge on the property of the society.

(3) In this Part, “charge” includes a mortgage.

(4) Where a negotiable instrument has been given to secure the payment of any book debts of a registered society, the deposit of the instrument shall, for the purpose of this section, be treated as a charge on those book debts.

(5) The holding of debentures entitling the holder to a charge on immoveable property is not itself an interest in immoveable property for the purposes of this section.

(6) Where a series of debentures containing, or specifying by reference to any other instrument, any charges to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a registered society, it shall for the purpose of this section be sufficient if there are delivered to the Registrar within thirty days after the execution of the deed containing the charges (or, if there is no such deed, after the execution of any debentures of the series), or within three months after the commencement of this Act, whichever is the later, the following particulars—

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined;
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders, together with the deed containing the charge or a certified copy thereof, or if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for registration, within thirty days after the date of each issue or within three months after the commencement of this Act, whichever is the later, particulars of the date and the amount of the issue, but an omission to do so shall not affect the validity of the debentures issued.

[Ch4702s57]57. Duty of society to register charges created by society

(1) It shall be the duty of a registered society to send to the Registrar for registration the particulars of every charge created by it to which section 55 applies, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the registered society, that person shall be entitled to recover from the society the amount of any fees properly paid by him to the Registrar on registration.

(3) If any registered society fails to send to the Registrar within the prescribed time for registration the particulars of any charge created by it to which section 55 applies, then, unless the registration has been effected by some other person within such time, the society and every officer

thereof shall be guilty of an offence and liable to a fine not exceeding K3,000 for every day during which the default continues.

[Ch4702s58]58. Duty of society to register charges existing on property acquired

(1) Where a registered society acquires any property which is subject to a charge to which section 55 would apply if the charge had been created by the society, the society shall cause the prescribed particulars of the charge, together with a certified copy of the instrument, if any, by which the charge was created or evidenced, to be delivered to the Registrar for registration within thirty days after the date on which the acquisition is completed or within three months after the commencement of this Act, whichever is the later.

(2) If default is made in complying with this section, the registered society and every officer thereof shall be guilty of an offence and liable to a fine not exceeding K3,000.

[Ch4702s59]59. Register of charges

(1) The Registrar shall, with respect to each registered society, keep a register in such form as may be prescribed under this Act of all charges requiring registration under this Part, and shall enter in the register, with respect to every charge, the following particulars—

- (a) if the charge is a charge created by the society, the date of its creation, and if the charge was a charge existing on property acquired by the society the date of the acquisition of the property;
- (b) the amount secured by the charge;
- (c) short particulars of the property charged; and
- (d) the persons entitled to the charge;

(2) The Registrar shall issue a certificate under his hand of the registration of any charge registered under this Part, stating the amount secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee.

(4) The Registrar shall keep a chronological index containing the particulars of the charges entered in the register.

[Ch4702s60]60. Endorsement of certificate of registration on debenture

(1) Every registered society shall cause every certificate of registration issued under section 59 to be endorsed on the debenture or certificate of debenture stock which is issued by the society, and the payment of which is secured by the charge so registered:

Provided that nothing in this subsection shall require a society to cause a certificate of registration of any charge so given to be endorsed on any debenture stock issued by the society before the charge was created.

(2) If any person knowingly and willfully authorizes or permits the delivery of any debenture or certificate of debenture stock which has not endorsed on it the certificate of registration required by sub-section (1), he shall, without prejudice to any other liability, be guilty to an offence and liable on conviction to a fine not exceeding K3,000.

[Ch4702s61]61. Entry of satisfaction

The Registrar may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the registered society concerned with a copy thereof.

[Ch4702s62]62. Rectification of register of charges

The Registrar, on being satisfied that the omission to register a charge within the time required by this Act, or that the omission or mis-statement of any particulars with respect to any such charge or in a memorandum of satisfaction, was accidental or due to inadvertence or some other good cause, or is not of a nature to prejudice the position of creditors or members of the registered society, or that on other grounds it is just to grant relief, may, on the application of the registered society or any person interested, and on such terms and conditions as seem to the Registrar fair, order that the time for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

[Ch4702s63]63. Registration of appointment of receiver

(1) If any person obtains an order for the appointment of a receiver or manager of the property of a registered society, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give written notice of the fact to the Registrar, and the Registrar shall enter the notice in the register of charges.

(2) Where any person appointed receiver or manager of the property of a registered society under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give written notice of the fact to the Registrar, and the Registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding K3,000 for every day during which the default continues.

[Ch4702s64]64. Copy of instrument creating charge to be kept by society

Every registered society shall cause a copy of every instrument creating a charge which is required by this Part to be registered to be kept at the registered address of the society.

[Ch4702s65]65. Society's register of charges

(1) Every registered society shall keep at the registered address of the society a register of charges in which shall be entered all charges specifically affecting property of the society and all

floating charges on the property or assets of the society, giving in each case a short description of the property charged, the amount of the charge and the name of the person entitled thereto.

(2) If any officer of a registered society knowingly omits, or permits the omission of any entry required to be made in any register in pursuance of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding K3,000.

[Ch4702s66]66. Right to inspect copies of instruments creating charges and society's register of changes

(1) The copies of the instruments creating charges which are required by this Part to be registered, and the register of charges kept by the registered society under section 65 shall be open to inspection during business hours by any creditor or member of the society without fee (subject to such reasonable restrictions as the society in general meeting and may impose, so, however, that not less than two hours in each day shall be allowed for inspection), and the register of charges shall also be open to changes inspection by any other person on payment of the prescribed fee.

(2) Any officer of the registered society who refuses to allow inspection of the register of charges or of copies of the instruments creating charges in accordance with subsection (1) or who permits such refusal, shall be guilty of an offence and liable to a fine not exceeding K3,000 for every day during which the refusal or permission continues, and the court may order an immediate inspection of such register or copies.

PART IX

SUPERVISION AND INSPECTION OF AFFAIRS

[Ch4702s67]67. Production of cash and books of society

Any officer, agent, servant or member of a registered society who is required by the Registrar, or any person authorized in writing by the Registrar, so to do shall, at such place and such time as the Registrar may direct, produce all moneys, securities, books, accounts and documents the property of, or relating to the affairs of, such society which are in custody of such officer of such society, agent, servant or member and which are under his control.

[Ch4702s68]68. Ad hoc committee of inquiry

(1) The Registrar may hold an inquiry or direct any person authorized by him by order in writing in that behalf to hold an inquiry into the constitution, working and financial conditions of a registered society.

(2) On receipt of a resolution demanding an inquiry passed by not less than two-thirds of the members present at a general meeting of the society which has been duly advertised, the Registrar shall cause such an inquiry.

(3) during the period of inquiry referred to in subsections (1) and (2), the chief executive and other officers or employees may be suspended from duty by the Registrar if evidence is uncovered showing breach of this Act, regulation, rules or by-laws of the society by any of them to facilitate the smooth holding of the inquiry.

(4)(a) Where the chief executive has been suspended in accordance with subsection (3) a caretaker manager shall be appointed by the Registrar in consultation with the committee.

(b) Such caretaker manager shall remain in office until either the former chief executive is reinstated or a new one is appointed:

Provided, that he shall not stay in that office for more than three months after the report of the committee of inquiry has been submitted.

(5) If during the course of inquiry cause arises to dissolve the committee of the society, the Registrar shall dissolve such a committee and convene within thirty days, a special general meeting to replace such a committee.

(6) All officers and members of the society shall produce such cash, accounts, books, documents and securities of the society and furnish any information in regard to the affairs of the inspected society as the Registrar or such person authorized by the Registrar may require.

[Ch4702s69]69. Inspection of books of indebted society

(1) The Registrar may, if he thinks fit, on the application of a creditor or a registered society, direct a person authorized by him in writing in that behalf to inspect the books of the society:

Provided that—

(a) the application satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

[Ch4702s70]70. Cost of inquiry

Where an inquiry is held under section 68 or an inspection is made under section 69, the Registrar may make an award apportioning the costs or such part of the costs as he may think fit, between the society, the members or creditor demanding an inquiry or inspection, and the officer or former officers of the society.

[Ch4702s71]71. Recovery of an award under section 70

Any award under section 70 may be recovered in any court of competent jurisdiction in the same manner as a judgment of such court.

PART X

DISSOLUTION OF A REGISTERED SOCIETY

[Ch4702s72]72. Cancellation of registration after inquiry or inspection

(1) If the Registrar, after holding an inquiry under section 68 or after making an inspection under section 69, or on receipt of an application made by two-thirds of the members of a registered

society, is of the opinion that the society ought to be dissolved, he may make an order for the cancellation of the registration of society.

(2) Any member of a registered society may, within two months from the date of an order made under subsection (1), appeal from such order to the Minister.

(3) Where no appeal is presented within two months from the making of an order under subsection (1) cancelling the registration of a society, the order shall take effect on the expiry of that period.

[Ch4702s73]73. Cancellation for other reasons

(1) The Registrar may, on his own motion or after hearing representations from the Society, by order in writing cancel the registration of any society, if satisfied that—

- (a) the registration was obtained by fraud or mistake; or
- (b) the society exists for illegal purposes; or
- (c) the society has willfully, after notice by the Registrar, contravened any of the provisions of this Act, the regulations made thereunder or the by-laws or any direction given by the Registrar;
- (d) the society is no longer operating in accordance with cooperative principles; or
- (e) the number of members of the society has fallen below the minimum required by this Act; or
- (f) the society has not commenced operations or has ceased to operate for one year.

(2) A society shall be liquidated when two-thirds of its share capital has been lost, unless the Registrar is satisfied that the loss will be made good within six months from the date of discovery of the insolvency.

(3) An appeal against an order made under subsection (1) or (2) shall be lodged with the Minister within sixty days from the date of receipt of the order.

(4) Where the Minister hears an appeal from the Registrar pursuant to subsection (3), the Minister may reverse the order, confirm the order or refer the order back to the Registrar.

[Ch4702s74]74. Winding-up

(1) Where the Registrar, after an inquiry has been held under section 68 is of the opinion that the society ought to be wound up, he may make an order directing it to be wound up and may appoint a liquidator for the purpose and fix his remuneration which shall be paid out of the funds of the society.

(2) Pending the appointment of the liquidator, the assets and liabilities of the society shall vest in the Registrar.

[Ch4702s75]75. Application of certain provisions of Companies Act

Upon the winding-up of any registered society, the Minister may, by notice published in the Gazette, declare certain provisions of the Companies Act applicable to the society as if such society was registered under that Act. Cap. 46:03

[Ch4702s76]76. Effect of cancellation

Where the registration of a society is cancelled, the society shall cease to exist as a corporate body as from the date of cancellation.

[Ch4702s77]77. Copy of order to be filed by Registrar

On the making of an order to cancel the registration of a society, a copy of such order shall be placed on the file maintained by the Registrar in respect of the society and another copy shall be published in the Gazette.

[Ch4702s78]78. Appointment of liquidator

Where the registration of a society is cancelled under section 73 or 74, the Registrar may appoint a liquidator of the society and all the property of the society shall vest in such liquidator with effect from the date of cancellation:

Provided that if the society is to be wound up voluntarily, the members may appoint a liquidator.

[Ch4702s79]79. Powers of liquidator

A liquidator appointed under section 78 shall, subject to the guidance and control of the Registrar and to any limitation imposed by the Registrar or by an order made under section 80, have the following powers—

- (a) to appoint a day, in the manner prescribed by regulations made under this Act, before which the creditor whose claims are not already recorded in the books of the society shall state their claims for admission, or be excluded from any distribution made before they have proved them;
- (b) to institute and defend suits and other legal proceedings by and on behalf of the society by his name of office and appear in court as litigant in person on behalf of the society;
- (c) to refer disputes to arbitration in the manner prescribed by regulations made under this Act;
- (d) to determine from time to time the contributions to be made by the members and past members, and by the estate of deceased members of the society, respectively, to the assets of the society;
- (e) to investigate all claims against the society and, subject to the provisions of this Act, decide questions of priority arising between claimants;
- (f) to call such meetings of members as may be necessary for the proper conduct of the liquidation;

- (g) to sell by public auction the assets of the society;
- (h) to carry on the business of the society so far as may be necessary for the proper liquidation of the affairs of the society;
- (i) to determine, from time to time, by what persons and in what proportion the costs of the liquidation are to be borne;
- (j) to take possession of books, documents and assets of the society;
- (k) to arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Registrar;
- (l) to give such directions in regard to the disposal of the books and documents of the society as may appear to him to be necessary for winding-up the affairs of the society;
- (m) to compromise, with the approval of the Registrar, any claim by or against the society; and
- (n) to apply to the Registrar for his discharge from the duty of liquidator after completion of the liquidation proceedings.

[Ch4702s80]80. Powers of Registrar in liquidation

- (1) A liquidator shall exercise his powers subject to the control and revision by the Registrar.
- (2) The Registrar may—
 - (a) rescind or vary any order made by a liquidator and make whatever new order if required;
 - (b) remove a liquidator from office for good cause and appoint a new liquidator;
 - (c) call for all books, documents and assets of the society;
 - (d) by order in writing, limit the powers of a liquidator under section 79;
 - (e) require accounts to be rendered to him by the liquidator;
 - (f) procure the auditing of the liquidator's accounts and to authorize the distribution of the assets of the society;
 - (g) make an order for the remuneration of the liquidator;
 - (h) grant a discharge to the liquidator on application by him after completion of the liquidation proceedings;
 - (i) require any member of a society and any trustee, banker, receiver, agent or officer of the society to pay, deliver, convey, surrender or transfer forthwith, or within such time as he shall direct, to the liquidator any money, property or books and papers in his hands to which the society is prima facie entitled;

(j) appoint a special manager of the business of a society whose registration has been cancelled and determine his remuneration and what, if any, security he shall give for the proper performance of his duties; or

(k) refer any subject of dispute between a liquidator and any third party to arbitration if that party shall have consented in writing to be bound by the decision of the arbitrator provided that the decision of an arbitrator on any matter shall be binding upon the parties and shall be enforceable in like manner as an order made by the Registrar under paragraph (a).

[Ch4702s81]81. Appeal against an order of a liquidator or the Registrar

Any person aggrieved by an order of a liquidator or the Registrar given under section 79 or paragraph (a) of section 80 may appeal against such order to the Minister.

[Ch4702s82]82. Closure of liquidation

(1) In the liquidation of a society whose registration has been cancelled, the funds, including the reserve fund, shall be applied first to the costs of liquidation including the remuneration of the liquidator, then to the discharge of the liabilities of the society, then to the payment of the share capital and then, if the by-laws of the society so permit, to the payment of a dividend at a rate not exceeding ten per centum per annum for any period for which no disposal of the net surplus was made.

(2) When the liquidation of a society has been closed, the claim of any creditor of that society who has not received what is due to him under the approved scheme of distribution shall be barred by prescription on the expiry of one year from the date of the order cancelling the registration of the society.

(3) Any surplus remaining after the application of the funds to the purposes specified in subsection (1), and any sums unclaimed under subsection (2) shall—

(a) be distributed amongst the members at the time of dissolution or their legal personal representatives in proportion to the value of the business of each such member with the society during the three years immediately preceding the date of dissolution or, if the society has not existed for such period, during the existence of the society, or if the society has done no business during these three years, then in proportion to the share capital held by them at such date;

(b) if it is impracticable to make a distribution in accordance with paragraph (a) whether through insufficiency of funds or otherwise, be paid, either in whole or as to any residue of a partial distribution, into the Fund.

[Ch4702s83]83. Commission of offence

If the liquidator of a society whose registration has been cancelled alleges that any offences have been committed, he shall report the facts to the Registrar who shall forward a copy of such report to the Director of Public Prosecutions for the institution of such proceedings as may be necessary.

[Ch4702s84]84. Convicted officers not to be officers of a society

(1) Any person convicted of an offence under this Part shall not be eligible for appointment as an officer of a registered society or in any way whether directly or indirectly be concerned in or take part in the management of a society for a period of five years from the date he is released from prison or he pays a fine.

(2) Any person acting in contravention of the provisions of subsection (1) commits an offence and shall be liable on conviction to imprisonment for a period not exceeding two years.

[Ch4702s85]85. Offences

Offences under this Part shall be tried by a court having jurisdiction over the place in which the alleged offence was committed.

PART XI

SURCHARGE AND ATTACHMENT

[Ch4702s86]86. Powers of Registrar to surcharge officers, etc.

(1) Where it appears that any person who has taken part in the organization or management of a registered society or any past or present officer of the society has misapplied or retained or become liable or accountable for any money or property of that society or has been guilty of misfeasance, or breach of trust in relation to the society, the Registrar may, on his own motion or on the application of the liquidator or of any creditor or member, enquire into the conduct of that person and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retainer, dishonesty or breach of trust as the Registrar thinks just.

(2) Any moneys, including interest, awarded by an order made under subsection (1) to be repaid or contributed to a registered society shall, without prejudice to any other mode of recovery, be a civil debt recoverable summarily in any competent court.

(3) This section shall apply notwithstanding that the act in respect of which the Registrar has made an order under subsection (1) may constitute an offence under any other law for the time being in force.

[Ch4702s87]87. Appeal to Minister

Any person aggrieved by an order of the Registrar made under section 86 may appeal to the Minister.

[Ch4702s88]88. Attachment of property

Where the Registrar is satisfied that any person, with intent to defraud or delay the execution of any order which may be made against him under section 79 or section 86, or of any decision that may be given in a dispute referred to the arbitrators under the provisions of this Act or any other written law and for the time being in force, is about to dispose of the whole or any part of his property, the Registrar may, unless adequate security is furnished, order the conditional

attachment of such property and such attachment shall have the same effect as if made by a competent court.

PART XII

SETTLEMENT OF DISPUTES

[Ch4702s89]89. Settlement of disputes

(1) If any dispute touching the business of a registered society arises—

(a) among the members, past members or person claiming through members, past members and deceased members; or

(b) between a member, past members and persons claiming through a member, past member or deceased member and the society, its committee or nay officer or past officer of the society; or

(c) between the society or its committee and any officer or past officer of the society;
or

(d) between the society and any other registered society,

such dispute shall be referred to an arbitrator for decision.

(2) A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative or a deceased member, whether such debt or demand be admitted or not, shall be deemed to be a dispute within the meaning of subsection (1).

(3) The parties to a dispute may agree upon an arbitrator or arbitrators for purposes of deciding the dispute.

(4) Where there is failure of agreement upon an arbitrator or arbitrators, each party shall appoint one arbitrator and the Registrar shall appoint a third arbitrator who will be the chairman to decide the dispute.

(5) If an appointed arbitrator refuses or neglects to act, or is incapable of acting or dies or is removed, the Registrar shall fill the vacancy.

(6) The provisions of the Arbitration Act shall, to the extent that they are not inconsistent with this Act, apply to an arbitration under this Act. Cap. 6:03

(7) Any party aggrieved by an award made under this section may Appeal to the Registrar within Sixty days from the date of the award.

(8) An arbitrator appointed under the provisions of this section may—

(a) summon witnesses and call for any accounts, books, documents or any information which he considers relevant to the matter in question;

(b) administer an oath or affirmation to any witness giving evidence before him;

- (c) refer any point of law to the High Court for its decision; and
- (d) amend the terms of the order of reference with the consent of the parties to the dispute.

(9) When the arbitrator has made his award, he shall sign it, and shall give notice to the parties of the making thereof, and of the amount of the fees and charges payable to him in respect of the arbitration and award.

(10) The arbitrator shall, at the request of any party to the arbitration or any person claiming under him, and upon payment of the fees and charges due in respect of the arbitration and award, and of the costs and charges of filing the award, cause the award, or a signed copy of it to be filed in the court and notice of the filing shall be given to the parties by the arbitrator.

(11) Where the arbitrator refers a case to court on a point of law under paragraph (c) of subsection (8), the court shall make its decision and if the decision affects the amount of the award, it shall be increased or reduced, as case may be.

(12) The award of an arbitrator under this section shall, if no appeal is preferred to the Registrar under subsection (7) or if such appeal is abandoned or withdrawn, be final and shall be enforced in the same manner as if the award had been a judgment of a court.

(13) Notwithstanding the provisions of this section, any debt arising out of embezzlement, loss of cash or misappropriation of a registered society's funds shall not be the subject of settlement by arbitration, but shall be referred by the arbitrator to the Director of Public Prosecutions.

(14) The provisions of subsections (1) to (13) shall not apply to a cooperative bank, for the purpose of transacting banking or credit institution business in as far as the matter relates to that business.

[Ch4702s90]90. Protection of arbitrator

No matter or thing done by the arbitrator under section 89 shall, if it is done bona fide for the purpose of executing any provisions of the said section, subject the arbitrator to any civil liability.

[Ch4702s91]91. Appeal to court from decision of the Minister

(1) Any decision of the Minister on an appeal to him from a decision of the arbitrator under section 89, or by virtue of any other provisions of this Act shall be subject to an appeal to a court of law.

(2) The Chief Justice may make rules of court regulating the procedure and practice of the hearing of appeals by a court under this section.

PART XIII

REGULATIONS

[Ch4702s92]92. Regulations

(1) The Minister may make regulations for the carrying out of the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such application;

(b) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and the rescission of by-laws, and the conditions to be satisfied prior to such making, alteration or rescission;

(c) prescribe the conditions to be complied with by persons applying for admission or admitted as members and provide for the election and admission of members, and the payment to be made and the interest to be acquired before the exercise of the right of membership;

(d) regulate the manner in which funds may be raised by means of shares or debentures or otherwise;

(e) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;

(f) provide for the appointment, suspension and removal of members of a committee and other officers and for the procedure at meetings of a committee, for the powers to be exercised and the duties to be performed by a committee and other officers;

(g) provide for audit of the accounts and books to be kept by a society and the charges if any to be made for such audit;

(h) provide for the form of the final accounts and the balance sheet to be prepared annually and any other statements and schedules relating thereto;

(i) provide for the establishment of a supervision and audit fund;

(j) provide for the periodical publication of a balance sheet showing the assets and liabilities of a society;

(k) provide for the persons by whom and the form in which copies of entries in books of societies may be certified;

(l) provide for the inspection of documents and registers at the Registrar's office and the fees to be paid therefor and for the issue of copies of such documents or registers;

(m) provide for the formation and maintenance of a register of members and, where the liability of members is limited by shares, of the register of shares;

(n) provide for the resignation and expulsion of members and for the payments, if any, to be made to members who resign or are expelled and for the liabilities of past members;

(o) provide for the mode in which the value of deceased member's interest shall be ascertained and, subject to the provisions of section 38, for the nomination of a person to whom such interest may be paid or transferred;

(p) provide for the mode in which the value of the interest of a member who has become of unsound mind and incapable of managing his affairs shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;

(q) fix the conditions under which a society may grant loans to its members and the maximum amount of such loans and prescribe the payments to be made and the conditions to be complied with by members applying for loans the period for which the loans may be made and the amount which may be lent to an individual member;

(r) provide for the manner of formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any fund under the control of the society;

(s) prescribe the extent to which a society may limit the number of its members;

(t) prescribe the conditions under which accumulated funds may be distributed to the members of a society with unlimited liabilities, and subject to the provisions of subsection (2) of section 47, prescribe the maximum rate of dividend which may be paid by societies;

(u) prescribe the procedure to be followed in appeals made to the Registrar or the Minister under the provisions of this Act;

(v) prescribe the returns to be submitted by a society to the Registrar and the person by whom and the form in which such returns shall be submitted;

(w) prescribe the fees to be paid on applications, registrations and other acts undertaken by the Registrar or his representative under the provisions of this Act; and

(x) prescribe anything required by this Act to be prescribed.

(3) The Minister may cause any regulations made under this section to be translated into a language with which such members are acquainted and be made known to such members in a manner customary for the community to which such members belong:

Provided that on any matter of interpretation the English version of the regulations shall prevail.

PART XIV

MISCELLANEOUS PROVISIONS

[Ch4702s93]93. Remuneration of officers

(1) An officer or member of a registered society shall not receive any remuneration, commission or other payment from the society for services rendered to the society unless the

society has, by resolution passed at a general meeting of the society, approved the payment of such remuneration, commission or other payment.

(2) An officer or member of a registered society shall not receive any remuneration, commission or other payment from any person other than the society in respect of any business or transaction entered into by the society:

Provided that in special circumstances the society may, by a resolution passed at a general meeting of the society, consent to such remuneration, salary, commission or other payment being made.

(3) Any officer or member of a registered society who receives any remuneration, salary, commission or other payment in contravention of the provisions of subsection (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding K10,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment and shall, if convicted for contravening the provisions of subsection (1), be ordered to repay the remuneration, salary, commission or other payment received from the society, and default in such payment shall be treated in the same manner as default in paying a fine imposed by a competent court.

(4) Notwithstanding the provisions of subsections (1) and (2), where in the opinion of the Registrar a registered society has improperly paid or consented to the payment to an officer or member of any remuneration, salary, commission or other payment, the Registrar may report the matter to the Minister.

(5) If the Minister is satisfied that such remuneration, salary, commission or other payment has been improperly paid, or payment has been improperly consented to, he may declare that the society shall not, for a period to be stated, pay or consent to the payment to an officer or member of the society of any such remuneration, salary, commission or other payment except with the approval of the Registrar.

(6) Any society which contravenes any such order and any officer or member who is knowingly a party to such contravention commits an offence and shall be liable on conviction, to a fine not exceeding K10,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

[Ch4702s94]94. Prohibition of the use of the word “cooperative”

(1) No person other than a registered society shall trade or carry on business under any name or title of which the word “cooperative” is part.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding K2,000 for each day on which the offence is continued after conviction.

[Ch4702s95]95. Offences and penalties

(1) It shall be an offence under this Act if—

(a) a registered society or an officer or a member thereof fails to do or to allow to be done any act or thing which is required to be done by this Act or by any regulations made under this Act;

(b) a registered society or an officer or member thereof does anything prohibited by this Act or by regulations made under this Act;

(c) a registered society or an officer or member thereof neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Registrar, or any person duly authorized in that behalf by the Registrar;

(d) a registered society or any officer or member thereof makes a false return or furnishes false information;

(e) any person knowingly or without reasonable excuse disobeys any summons, requisition or lawful order issued under the provisions of this Act, or does not furnish any information lawfully required from him by a person authorized to do so, or which he is required to furnish, under the provisions of this Act;

(f) any person acts or purports to act as an officer of a registered society when not entitled to do so;

(g) a registered society or an officer or member thereof performs any act which requires the consent or approval of the Registrar without having first obtained such consent or approval.

(2) Every society, officer or member of a registered society or other person guilty of an offence under this section shall be liable on conviction, where no other penalty is provided under this Act, to a fine not exceeding K10,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

[Ch4702s96]96. Penalty for soliciting violation of contracts

Any person, firm or company having knowledge or notice of the existence of a contract described in section 31 who solicits or persuades or assists any person to sell or deliver a product or service in violation of that contract commits an offence and shall be liable on conviction to a fine not exceeding K10,000 for each offence and shall in addition be ordered to pay the society concerned such damages as the court may see fit to award.

[Ch4702s97]97. Application of other laws

(1) Nothing in this Act shall be deemed to relieve any society from any of its obligations under any other written laws governing or regulating its business activities.

(2) Where such written laws conflict with this Act, this Act shall be construed with such modifications, adaptation and qualifications as are necessary to enable the society to conform to the laws governing or regulating its business activities.

[Ch4702s98]98. Certain laws not to apply

(1) Subject to section 75 of this Act, the provisions of the Companies Act, the Business Names Registration Act and the Labour Relations Act shall not apply to a registered Society. Cap. 46:03, Cap. 46:02

(2) No society registered under this Act shall be deemed to be a trade union.

[Ch4702s99]99. Repeal and savings

(1) The Cooperative Societies Act is repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1) in force immediately before the commencement of this Act— Cap. 47:02

(a) shall, unless in conflict with this Act, continue in force 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 agreement or similar arrangement made pursuant to the provisions of the Act repealed by subsection (1) shall continue in force until terminated in accordance with terms and conditions thereof.

(4) Any society and any by-law of a society registered under the Act repealed by subsection (1) shall be deemed to have been registered under this Act.

(5) Any orders, directions, appointments and other acts lawfully done under the Act repealed by subsection (1) and in force immediately before the commencement of this Act shall be deemed to have been made under the corresponding provisions of this Act and shall continue to have effect accordingly.

SUBSIDIARY LEGISLATION

COOPERATIVE SOCIETIES REGULATIONS

ARRANGEMENT OF REGULATIONS

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G.N. 15/2002

COOPERATIVE SOCIETIES REGULATIONS

under s. 92

1. Citation

These Regulations may be cited as the Cooperative Societies Regulations.

2. Register of societies

(1) The Registrar shall keep or cause to be kept at his office a Register to be called "the Register of Cooperative Societies" (hereinafter referred to as "the Register") wherein shall be entered particulars relating to the registration of societies and their by-laws and any amendments thereto.

(2) Every entry in the register shall be made by or under the direction of the Registrar and shall be signed by him.

3. Alterations, etc.

Every alteration, interlineations or erasure in the Register shall be initialed by the Registrar.

4. Inspection

The Register shall be open to inspection by the public at all reasonable times and free of charge.

5. Application

(1) An application for registration of a society under section 6 of the Act shall be made to the Registrar using Form I in the First Schedule and shall be accompanied by an appraisal in writing of the viability of the society.

(2) Three copies of the by-laws in English or the local language which the society proposes to adopt shall be submitted together with the application.

6. Registration

The Registrar shall register a society which meets the prescribed requirements, and its by-laws, in the Register.

7. Forwarding of papers

Upon the registration of a society, the Registrar shall forward to the society—

- (a) a certificate of registration in Form II in the First Schedule hereto;
- (b) a copy of the by-laws of the society as approved and certified by him; and
- (c) a copy of the Act and of the Regulations in English, together with an explanatory memorandum in the vernacular, where the Registrar considers it necessary.

8. Refusal of registration

Where the Registrar refuses to register a proposed society or its by-laws, he shall give the applicant his reasons in writing for such refusal.

9. Register of members

Every registered society shall keep a register to be called “the Register of Members” wherein shall be entered—

- (a) the name, address and occupation of each member and a statement of the shares if any, held by him;
- (b) the date on which each member’s name was entered in the register;
- (c) the date on which any member ceased to be a member; and
- (d) a nominee, if any, appointed under regulation 15.

10. Election of members

The election and admission of members to a registered society, other than original members, shall be in such a manner and on such conditions as prescribed by the by-laws.

11. Withdrawal by members

A member may withdraw from a registered society by giving written notice to the secretary of the registered society but such withdrawal shall be without prejudice to section 36 of the Act.

12. Expulsion of members

(1) Any member who acts in contravention of these regulations or the by-laws of the registered society or acts in any way detrimental to the interest of the registered society, may be expelled by a vote of two-thirds of the members present at a general meeting.

(2) The committee shall send to such a member the charge in writing not less than one week before the meeting.

(3) Any expulsion under these regulations shall be without prejudice to any liabilities of the person under section 36 of the Act.

13. Loss of qualification

Any member of a registered society who ceases to qualify for membership shall forthwith cease to be a member of such registered society and the committee shall direct the secretary of the registered society to strike his name off the Register of Members.

14. Number of members

No registered society shall fix a limit to the number of its members.

15. Nominees

(1) Every member of a registered society may upon admission appoint his nominee.

(2) Every appointment of a nominee by any member of a registered society shall be made in writing and signed by the member in the presence of two attesting witnesses.

(3) No member of a registered society shall be entitled to appoint more than one nominee unless that member holds more than one share.

(4) In any case where more than one nominee is appointed by any Member the number of shares to be transferred to each of these nominees shall be specified at the time of appointment.

(5) Every appointment of a nominee shall be recorded in the Register of members of the registered society.

(6) For the purposes of a transfer to a nominee, the value of any share or interest shall be represented by the sum actually paid for that share or interest by the member holding it unless the by-laws of the registered society provides otherwise.

(7) Where any money is paid to a nominee who is a minor, a receipt given either by the minor or by his guardian shall be sufficient discharge to the society.

(8) Where on the death of a member a nominee does not exist, the society may pay any money due to the deceased member to the personal representative or recognized heirs of that deceased member.

(9) In the event of any person so nominated dying or of the member desiring to cancel any such nomination, the member may nominate in writing another person in the same manner, and necessary alteration shall be made in the Register of Members.

16. Division of profits

(1) Unless otherwise authorized under section 46 of the Act, no dividend or payment on account of profits shall be made by a society registered with unlimited liability until the reserve fund has reached a proportion of not less than one-tenth of the total liabilities of the registered society.

(2) No registered society shall pay a dividend if the rate of interest on loans granted by it to its members exceeds ten per centum per annum.

(3) No registered society shall pay a dividend on share capital exceeding five per centum per annum on the capital actually paid up.

(4) A bonus based on wages or on the value of the products of a member, or a bonus or rebate on patronage calculated in proportion to the amount of the business done by each member with the registered society may be distributed periodically to the members from surplus funds after the deduction of all expenditure and after making provision for bad and doubtful debts and making allocation to the reserve fund.

17. Maximum liability

(1) Every registered society shall, from time to time, at a general meeting, fix the maximum liability it may incur in loans or deposits whether from members or non-members.

(2) The maximum liability fixed under subregulation (1) shall be subject to the approval of the Registrar, who may at any time reduce it.

(3) No registered society shall receive loans or deposits which will make its liability exceed the limit approved by the Registrar.

18. Supreme authority

(1) The supreme authority in a registered society shall be vested in the general meeting, at which every member has the right to attend vote on all questions, unless the by-laws of the society provide for some alternative form of representation.

(2) Every member shall have one vote which shall be exercised in person and not by proxy.

19. First meeting

The first meeting of members shall have the same powers as are given to the annual general meeting, and shall be held immediately or not later than one month after the receipt of the certificate of registration of the society.

20. Annual general meeting

(1) The committee shall convene the annual general meeting on receipt of the report of the audit of the accounts of the registered society from the Registrar or any person authorized by the Registrar in accordance with regulation 59:

Provided that the Registrar may at any time after the audit of the accounts has been completed convene the annual general meeting which shall proceed as if it has been convened by the committee.

(2) At least fifteen days notice shall be given before any annual general meeting is held.

21. Functions of annual general meeting

The functions of the annual general meeting shall be—

(a) to confirm the minutes of the previous annual general meeting and of any special general meeting;

(b) to consider the reports of the committee and the balance sheet together with the report of the audit of the accounts of the registered society for the previous year;

(c) to approve the accounts or if the accounts are not approved, cause to the secretary to notify the registrar who shall consider the matter and make his decision thereon, and such decision as to the correctness of the accounts shall be final and conclusive;

(d) to hear and decide upon any complaints brought by members aggrieved by a decision of the committee; and

(e) to transact any other general business of the registered society.

22. Special general meeting

(1) A special general meeting may be convened at any time by the committee on receipt of a demand stating the object of the proposed meeting signed or attested by one fourth of the persons who are members of the registered society.

(2) It shall be the duty of the chairman of the committee to convene such a meeting giving eight days notice.

(3) Where the chairman of the committee fails to convene a meeting within fourteen days from the receipt of a demand as aforesaid, the members applying for such a meeting shall have the right to convene the meeting by notice which shall contain the object of the proposed meeting and a statement to the effect that the meeting is convened on the failure of the chairman to convene the meeting.

(4) Notwithstanding the provisions of subregulations (1), (2) and (3), the Registrar or a person authorized by him may at any time—

(a) summon a special general meeting of the registered society in such manner and at such time and place as he may direct; and

(b) direct what matters shall be discussed at the meeting, and such meeting shall have all the powers of a meeting called according to these regulations.

23. Quorum at general meeting

(1) When a registered society consists of not more than forty members, one-half of the number of the members or ten members, whichever is the less, shall form a quorum for the purposes of the annual or special general meeting, and when a registered society consists of more than forty members, one-fourth of the total number of the members of such society shall form a quorum for the purposes of the annual or special general meeting.

Provided that—

(a) When any meeting is summoned by the Registrar, any members present at such meeting shall be deemed to form a quorum;

(b) in the case of a society of which a registered society is a member or of which there are branches, the quorum at an annual general meeting of the society shall be as provided for in the by-laws of the society.

(2) If within one hour after the time fixed for a general meeting other than a meeting convened by the Registrar the members present are not sufficient to form a quorum, such meeting shall be considered as dissolved if convened on the demand of members; in all other cases it shall stand adjourned to the same day in the next week at the same time and place and a notice to that effect shall be posted by the secretary within twenty-four hours, and if at the subsequent meeting a quorum is still not formed, the members present shall form a quorum.

24. Chairman of the general meeting

(1) The chairman of the committee or in his absence any other person elected by a majority of those present shall preside at the annual or special general meeting.

(2)(a) the secretary of the committee or in his absence any other person nominated in writing by the chairman of the committee shall act as secretary at the meeting; and

(b) the chairman of the committee, if necessary, may nominate other officers to assist at the meeting.

(3) The chairman may by the decision of the meeting adjourn the meeting to a different time and place but no other business shall be transacted at such a meeting other than the business left unfinished at the preceding meeting.

(4) The chairman shall have the right to order the closure of a discussion and put a matter to vote.

25. Voting at general meetings

Any question submitted to the decision of the members present at a general meeting unless otherwise dealt with in these Regulations, shall be decided by a majority of votes.

26. Method of voting

(1) At any meeting a resolution put to the vote shall be decided on a show of hands unless voting by call of names or a ballot is demanded by the least five of the members present before the declaration of the result of the show of hands, and in such case voting by call of names or a ballot shall be taken as the case may be.

(2) The chairman of the committee shall have a deliberative vote and in case of an equality of votes, shall be entitled to a casting vote.

In the case of a meeting convened by the Registrar and presided over by him or his representative, he or his representative shall not be entitled to vote except on an equality of votes, in which case he shall have a casting vote.

(3) In respect of every resolution put to the vote—

(a) the chairman shall declare whether it has been carried or lost, whether on a show of hands, by call of names or by ballot and whether unanimously by a particular majority; and

(b) an entry to that effect in the minute book shall be conclusive evidence of anything therein contained.

27. Minutes of general meeting

Minutes of the meetings shall be entered in the minute book and signed for by the chairman and secretary and shall contain the following particulars—

(a) the number of the members present at the meeting and the name of the chairman or the person who presided over the meeting;

(b) time fixed for the meeting and the time the meeting commenced;

(c) the total number of members on the date on which the meeting was held; and

(d) all resolutions passed or decisions made at the meeting.

28. Election of committee

(1) The committee shall be elected at the first meeting of the registered society and, subject to regulation 35, its members shall hold office until the election of a new committee and they shall be eligible for re-election.

(2) The committee shall consist of such number of members as may be provided in the by-laws of the registered society, which shall also specify the tenure and what number of members shall constitute a quorum.

29. Chairman of committee

(1) The committee shall elect its own chairman, who shall have a deliberative vote and on an equality of votes shall be entitled to a casting vote.

(2) In the temporary absence of the chairman, the committee shall elect one of their number to perform the chairman's duties.

30. Duties of committee

(1) The committee shall have the following functions and powers—

(a) represent the registered society before all competent public authorities and in all dealings and transactions with third persons;

(b) institute or defend suits brought in the name of or against the registered society;
and

(c) generally carry out such functions in the management of the affairs of the registered society as have not been specially assigned by these Regulations or the by-laws of the registered society to general meetings or to an officer of the registered society.

(2) The committee shall always keep a copy of the latest annual balance sheet of the registered society together with latest audit report of the registered society for inspection during office hours by any member of the registered society.

31. Meetings of committee

(1) The committee shall meet as often as the business of the registered society may require and in any case not less frequently than once a month.

(2) The meetings of the committee shall be summoned by the secretary in writing.

32. Procedure at meetings of committee

At each committee meeting, the secretary shall—

(a) read the minutes of the preceding meeting;

(b) produce the cash book, details of the entries of receipts and payments made since the last meeting;

(c) together with the treasurer, produce cash in their possession for verification by the committee;

(d) produce a statement showing the loans due and unpaid, for determination by the committee as to what action to be taken in each case;

(e) produce applications for loans, if any, for determination by the committee in accordance with the priority of receipt; and

(f) submit any other business for consideration by the committee.

33. Voting at meetings of committee

Any question submitted to the committee for its decision shall be decided at a meeting by a majority of votes of those members present at the meeting.

34. Minutes of meetings of committee

Minutes of committee meetings shall be recorded by the secretary in the minute book and shall be signed by the chairman or the person who presided over the meeting and by the secretary and shall contain the following particulars.

- (a) the name of the chairman or the person who presided over the meeting;
- (b) the names of the members present and the date of the meeting; and
- (c) a summary of all matters discussed and decisions made and a record as to whether each decision was made unanimously or by a majority.

35. Failure to attend meetings of committee

Any member of the committee who has had notice and without good reason in the opinion of the committee, fails to attend at least three consecutive meetings of the committee shall be deemed to have vacated his office which shall thereupon be filled as provided by regulation 36.

36. Vacancies on committee

(1) The remaining members of the committee shall fill vacancies occurring on the committee within thirty days by election.

(2) Any member elected under subregulation (1) shall hold office until the expiration of the term of office of the committee member who has vacated.

37. Borrowing powers

The committee may borrow money on behalf of the registered society to an amount not exceeding such total amount as may have been fixed in accordance with regulation 17.

38. Banking account

- (1) The committee may open a banking account.
- (2) All cheques shall be signed by two members of the committee and the treasurer.

39. Employees

The committee may—

- (a) appoint such employees as it considers necessary; and
- (b) fix the salaries, wages or remuneration of every employee, subject to any scales laid down by a resolution the members in a general meeting.

40. Application for a loan

Members who desire to obtain a loan from a registered society shall—

- (a) submit an application to the committee stating the amount and the purpose for which the loan is required;
- (b) the term for which it is asked;
- (c) whether it shall be repaid by instalments; and
- (d) the names of the proposed sureties or any other security which is offered.

41. Approval of a loan

(1) The committee shall consider at a meeting every application for a loan and if the committee is satisfied with the trustworthiness of the applicant, the sufficiency of the security offered, and the prospects of advantage to the borrower in the way of increased production, or economy or otherwise, it may approve the loan.

(2) No person other than members of the committee and the secretary shall be present at any meeting of the committee when an application for a loan is under consideration.

(3) A member of the committee who applies for a loan or who is proposed as a surety for a loan shall withdraw while the relevant application is being discussed.

(4) Where there is a difference of opinion concerning the approval of a loan, the matter shall be put to vote by ballot.

(5) The proceedings with regard to loans at a committee meeting shall be kept secret, and any member of the committee or officer of the registered society who infringes this regulation shall be liable to immediate expulsion.

42. Security for loans

Loans approved by the committee shall only be granted to members who are able to obtain two sureties or who can give other security approved by the committee.

43. Purpose of loans

(1) No loan shall be granted except for a purpose approved in each case by the committee.

(2) All loans granted shall be applied by the borrowing members to such purpose as approved by the committee.

44. Documents relating to loans

When a loan is approved by the committee, a notice shall be sent to the borrower to that effect, and before the amount is advanced, the borrower and his sureties shall execute an instrument in writing setting out the terms of repayment of the loan and containing such other terms and conditions as the committee may consider necessary.

45. Restrictions on loans to defaulters

A member who—

- (a) is in default in the payment of a loan or of an instalment of a loan; and
- (b) does not satisfy the committee that such default is due to a good cause,

shall not be entitled to receive another loan from the registered society.

46. Extension of a loan

Where by reason of any reasonable cause, a member is unable to discharge his obligations to the registered society and notifies the secretary in writing before a loan is due, the committee may extend the time fixed for payment on such conditions as it thinks fit.

47. Misapplication of a loan

Where the committee is satisfied that a member of the registered society who obtained a loan has applied the proceeds thereof to a purpose other than the purpose which was stated in the application thereof, the committee may, by notice in writing to such a member, demand payment of the loan before the agreed date of payment.

48. Recovery of loans

The committee shall take steps to recover a loan by referring the matter to the Registrar as provided under section 89 (2) of the Act where—

- (a) a loan or an instalment of a loan has not been paid on the date on which it became due; and
- (b) no extension for the repayment thereof has been given to the debtor by the committee under regulation 46.

49. Suspension and resumption of loans

Where the Registrar is of the opinion that the manner in which loans are being made by credit societies as disclosed by an examination or investigation under the Act, or that the amount of loans being made threaten the financial stability of the credit societies and interest of its members, he may—

- (a) by written notice sent or delivered to the chairman and treasurer or the manager of the registered society, as the case may be, order the suspension of loaning operations during such period as he may prescribe;
- (b) appoint an officer of a credit society or some other competent person as an administrator to collect loans in arrears, place other loans outstanding in a condition to ensure repayment and take charge of other operations of the credit society; and
- (c) permit the resumption of loan operations after the financial position of the credit society has been restored to a satisfactory basis, under the direction of its own officer or subject to assistance from such special directors or other special officers as he may appoint.

50. Marketing

(1) Every member of the society shall deliver to the society at such place as the committee shall direct such amount of articles produced or obtained by him as may be prescribed in the by-laws or in the relevant contract to be disposed of by the society.

(2) Any member who is approved or adjudged in accordance with section 89 of the Act to be guilty of a breach of the by-laws or a contract, as the case may be, shall pay to the registered society as liquidated damages such sums as may be specifically assessed or ascertained in a manner prescribed by the by-laws or by the relevant contracts and such sum shall be deemed to be a debt due to the registered society.

51. Bad debts

The committee may, with the approval of the Registrar, cause bad debts to be written off the books of the registered society.

52. Preparation of annual accounts and report

The committee shall in every year and as soon as conveniently possible within such time as the Registrar may direct—

(a) cause the secretary to prepare and send to the Registrar accounts and the yearly balance sheet closed on the last working day of the report preceding year together with a detailed statement of the profit and loss account; and

(b) prepare a report on the year's activities of the registered society to be presented to the annual general meeting.

53. Duties of manager

Where the committee appoints a manager to manage the business and the property of a registered society, the duties of the secretary or treasurer, may be modified or altered in accordance with allotment of such duties as may be assigned by the committee to the manager and other officers.

54. Appointment of officers

(1) The committee shall appoint a secretary to the registered society who may be either a member of the committee or a paid employee of the registered society:

Provided that where the secretary is a paid employee of the Registered society, he shall not become a voting member of the Committee.

(2) The committee may, if it thinks fit, require the secretary or any other officer, on appointment, to give such security as it may determine.

55. Duties of a secretary

The duties of a secretary of a registered society shall be as specified in the by-laws of the society.

56. Treasurer

The committee shall appoint one of the members of the committee, not being the chairman, to be the treasurer.

57. Security by treasurer

The treasurer may be required to give security for such amount as may be determined by, and to the satisfaction of, the committee.

58. Duties of treasurer

The duties of the treasurer shall be—

(a) to receive from the secretary money collected by the secretary on behalf of the registered society, and to give the secretary a receipt;

(b) to advance money to the secretary necessary for the affairs of the registered society and obtain from the secretary a receipt;

(c) to deposit in the account of the registered society in its bank any amount not immediately required as determined by the committee;

(d) to keep separate the money belonging to the registered society and on no account to mix it with any other money;

(e) to produce at all times when called upon by the committee, the Registrar or any person authorized by the Registrar, the money in his possession which belongs to the registered society; and

(f) to keep a record of the money received by him from the secretary and of the money paid to the secretary.

59. Audit of accounts

(1) Every registered society shall keep accounts in such a manner as may from time to time be prescribed by the Registrar.

(2) Every registered society shall cause its accounts to be audited by an auditor authorized by the Registrar at least once in every year.

(3) The auditor shall—

(a) have access to all the books and accounts of the registered society;

(b) examine every balance sheet and annual return of the receipts and expenditures, funds, and other effects of the registered society, and verify the balance sheet and annual return of receipts and expenditures with the accounts and vouchers relating thereto; and

(c) either—

(i) sign the balance sheet and annual return of receipts and expenditures as found by him to be correct, duly vouched for and report to the Registrar accordingly; or

(ii) report to the Registrar in what respects he finds the same incorrect, unvouched for or not in accordance with the Act.

(3) The Registrar shall thereupon forward the report of the auditor to the committee.

60. Audit and supervision fund

(1) There shall be constituted a fund to be known as the Audit and Supervision fund (“the Fund”) and every registered society shall, when called upon to do so by the Registrar, make an annual contribution to the Fund at a rate and in a manner as determined by the Minister by notice published in the Gazette.

(2) The fund shall be held and administered by the Registrar for the benefit of the contributing registered societies, and he shall make such payments from the Fund as he shall deem necessary.

(3) The Registrar shall report every year to the Minister in respect of the income derived from contributions, the expenditure he made from the Fund, and the balance.

61. By-laws

(1) A registered society shall make by-laws in respect of the following matters—

(a) its name;

(b) its registered office and postal address;

(c) the area to which its operations and membership shall be confined;

(d) the objects of the society;

(e) the purpose for which its funds may be applied;

(f) the disposal of its accumulated funds;

(g) the qualifications for membership, the terms of admission of members, and the mode of their admission;

(h) the withdrawal and expulsion of a member and the payment, if any to be made to such a member and time within which such payment shall be made;

(i) the rights, liabilities and obligations of members;

(j) the transfer of shares or interest thereof of members;

(k) the manner of raising funds, including the maximum rate of interests on deposit;

(l) its committee meetings, the procedure and quorum at such meetings, the powers of such meetings and representation and voting at such meetings;

(m) the appointment, suspension and removal of members of the committee and officers;

(n) powers and duties of the committee and officers;

(o) the period of its financial year;

(p) the authorization of the officers to sign on its behalf; and

(q) the settlement of disputes.

(2) Where the objects of the society include the creation of funds to be lent or advanced to its members, the by-laws shall also be made in respect of the conditions on which loans or advances may be made to its members including—

(a) the rate of interest;

(b) maximum amount which will be lent to a member;

(c) extension, renewal and recovery of loans;

(d) the period and purpose of the loans;

(e) security for loans; and

(f) the consequence of default in the repayment of any sums due.

62. Amendment of by-laws

(1) Where a registered society intends to amend its by-laws, the proposed amendment shall only be made—

(a) where the members of the society were given notice of the amendment of at least 15 clear days; and

(b) by a resolution of the members at a general meeting.

(2) a resolution under paragraph (b) of subregulation (1) shall not be valid and effective unless—

(a) in the case of the registered society with unlimited liability, half of the members of the society are present at the meeting and three quarters of them vote in favour of the resolution; or

(b) in the case of a registered society with limited liability, a majority of members present at the meeting vote in favour of the resolution;

(3) Notwithstanding subregulations (1) and (2) above, where an amendment has received prior approval of the Registrar, such amendment may be adopted by a two-thirds majority of the members present and voting at the meeting.

(4) An amendment sent to the Registrar shall be accompanied by a certificate in Form IV in the First Schedule to these Regulations together with a copy of the amendment in quadruplicate.

(5) The Registrar may by a written notice, call upon a registered society to make such amendments to its by-laws as he considers necessary or desirable in its own interest, within a period not exceeding two months from the date of the notice.

(6) The notice shall state the exact amendment which the society shall make.

(7) Where the registered society fails to make the amendment under subregulations (5) and (6) within the specified period, the Registrar may, after considering any objection put forward by the society in writing not later than fourteen days after the expiry of the specified period, proceed to make and register the amendment.

63. Copies of entries

(1) A copy of an entry in the book of a registered society may be certified on the copy, by declaring that it is a true copy of such entry and that the book containing the entry is still in the custody of the registered society.

(2) A declaration made under subregulation (1) shall be dated and signed by the secretary and one member of the committee.

64. Reference of dispute to the Registrar for decision

(1) The following may refer a dispute to the Registrar for his decision—

- (a) the committee;
- (b) the registered society in pursuance of a resolution in that behalf taken in a general meeting;
- (c) any party to the dispute;
- (d) any member of the registered society; or
- (e) a liquidator.

(2) Where a matter is being referred to the Registrar, it shall—

- (a) be dated;
- (b) specify the dispute;
- (c) set out full particulars of the dispute; and
- (d) be signed by the party making it.

65. Reference to arbitration by the Registrar

(1) Where the Registrar decides to refer a dispute to arbitration, he shall make an order of reference.

(2) Every order of reference shall—

(a) specify the name, surname, place of abode and occupation of the arbitrator or arbitrators;

(b) set out the dispute and full particulars thereof; and

(c) limited the time within which the award shall be forwarded by the arbitrator or arbitrators to the Registrar.

(3) Where the Registrar decides to refer a dispute to more than one arbitrator, such reference shall be made to three arbitrators, each party to the dispute shall nominate one arbitrator and the third arbitrator shall be nominated by the Registrar and shall act as chairman.

(4) Where reference is made to three arbitrators, the following provisions shall apply—

(a) if a party to the dispute fails to nominate an arbitrator within such time as the Registrar may specify, the Registrar may make the nomination himself;

(b) if an arbitrator nominated by one of the parties to the dispute dies, or refuses or neglects to act, or by absence or otherwise becomes incapable of acting, the Registrar shall call upon the party concerned to nominate a new arbitrator within such time as the Registrar may specify and if no new arbitrator is nominated accordingly, the Registrar may nominate one himself; and

(c) if the arbitrator who dies, or refuses or neglects to act, or becomes incapable of acting, was nominated by the Registrar, a new arbitrator shall be nominated in his place by the Registrar.

66. Proceedings before an arbitrator or arbitrators

(1) The proceedings before an arbitrator or arbitrators shall, as nearly as possible, be conducted in the same way as proceedings before a court of law, and in particular the following provision shall apply—

(a) the Registrar shall give at least ten days notice in writing to the parties in respect of the time and venue of the proceedings;

(b) a record of the evidence adduced before the arbitrator or arbitrators shall be made, dated and signed by the arbitrator or arbitrators;

(c) documents produced as exhibits before the arbitrator or arbitrators shall be marked, dated and initialed by the arbitrator or arbitrators and shall be attached to the file of the proceedings; and

(d) in the absence of any party duly notified to attend, the dispute may be decided by the arbitrators ex parte.

(2) The award of the arbitrator or arbitrators shall—

(a) in the case of three arbitrators, be reached by a majority;

(b) be in writing;

(c) be dated and signed by the arbitrator or arbitrators; and

(d) state the amount of the costs and expenses of the arbitration, if any, and by which party or parties to the dispute the costs and expenses are to be paid.

(3) Upon the completion of the proceedings, the arbitrator or arbitrators, shall forward to the Registrar, the file of the proceedings and the award.

67. Proceedings before the Registrar

Where the Registrar exercises the power of deciding a dispute himself, the proceedings before him in relation thereto shall, as nearly as possible, be conducted in the same way as proceedings before a court of law and regulation 66 shall apply, mutatis mutandis, to such proceedings.

68. Control of registered society by the Registrar

(1) Where it appears to the Registrar that the committee of a registered society is unable to properly discharge its duties, or is unable to adequately safeguard the property and business interests of its members, he may assume control of such society and may exercise all or any of the powers and perform all or any of the functions of the committee of such society until such a time as he is satisfied that such committee is able to resume proper control of such society.

(2) Where the Registrar, assumes control of a registered society, the committee of such society may thereupon cease to exercise all or any of its powers or any of its functions.

(3) Whenever the Registrar assumes control of a registered society, he shall record such fact in writing and shall make a similar record when the control of such society is resumed by its committee

(4) The Registrar shall submit a report to the members of a registered society on his management of such society at the first available opportunity and at such times thereafter as are required by the Act.

69. Restriction of the taking of legal and other proceedings against Registrar

(1) No action, suit, or other legal proceedings whatsoever, whether civil or criminal, shall be instituted against the Registrar and no claim to compensation or indemnity shall be entertained regarding any act, matter or thing done or purported to be done, in good faith by the Registrar under these Regulations.

(2) Subregulation (1) shall not prevent the institution of any proceedings, whether civil or criminal, by or on behalf of the Government or of the Registrar.

70. Fees and Forms

The fees specified in the Second Schedule shall be payable for the matters to which they relate, and the forms set out in the Third Schedule and such particulars contained in those forms and not particularly prescribed by the act are hereby prescribed as particulars required under the Act.

FIRST SCHEDULE

FORMS

FORM I

THE COOPERATIVE SOCIETIES ACT

(CAP. 47:02)

reg. 5(1)

APPLICATION FOR REGISTRATION OF A COOPERATIVE SOCIETY

1. We, the undersigned,

.....

.....

.....

.....

.....

.....

(insert name, address and occupation of at least ten persons, or at least two officers of each society if application is made by registered cooperative societies) desire to form a cooperative society under the Cooperative Societies Act, and hereby apply for registration.

2. The name of the proposed society is (insert proposed name)

.....

.....

3. The registered office of the society is to be at (insert proposed address)

.....

.....

and its postal address will be

4. Enclosed are three copies of the proposed by-laws which specify the objects of the society.

5. These proposed by-laws were approved by persons willing to become members, at a general meeting held at on,
.....

6. persons, including the undersigned, are now willing to become members and have made the payment necessary for admission to membership as prescribed in the enclosed by-laws.

7. The registration fee is enclosed.

8. We, the undersigned, have consented to direct the affairs of the proposed society as required by regulation 29 (1) of the Cooperative Societies Regulations, until our successors are elected at the first annual general meeting held after registration of the society.

Dated at the day of

Witness
.....
.....
.....

Certified correct
.....

Acting Chairman

.....

Acting Secretary

.....

Acting Treasurer

FOR USE OF REGISTRAR ONLY

1. Application for registration approved

2. Approval deferred pending receipt of further information
.....

3. Application refused with reasons therefore given to the Minister and to the applicants, and registration fee refunded (regulations 8)
.....

GOVERNMENT OF MALAWI
COOPERATIVE SOCIETIES ACT
(CAP. 47:02)

CERTIFICATE OF REGISTRATION

reg. 7

This is to certify that

I have today the
registered the Cooperative Society Limited
as a Cooperative Society with limited liability under the provisions of the Cooperative Societies Act
(Cap. 47:02), of the Laws of Malawi.

.....

Registrar of Cooperative Societies

FORM III

THE COOPERATIVE SOCIETIES ACT

(CAP. 47:02)

reg. 52

ANNUAL RETURN FOR THE YEAR

(To be submitted within four months of the end of the financial year)

1. Name of the registered society

2. Registered number

3. Date of registration

4. Registered address

5. Type of society

6. The liability of the members is—

(i) limited to the nominal value of each share held;

(ii) limited to times the nominal value of
each share held;

(iii) unlimited.

7. The number of members of the society is

8. The number of shares issued is

9. The nominal value of one share is MK

10. The maximum liability which the society may incur in loans or deposits is MK
.....

.....

11. The total indebtedness of the society secured by registered charges is MK
.....

.....

12. The date the annual general meeting was held

13. Particulars of officers for the financial year fromto
..... are as follows—

Title of office	Name of Holder
-----------------	----------------

Chairman
----------	-------

Vice-Chairman
---------------	-------

Secretary
-----------	-------

Committee members
-------------------	-------

14. A certified true copy of the audited accounts and balance sheet is filed herewith.

Dated this..... Day of.....

(Signed).....

Secretary

FORM IV

THE COOPERATIVE SOCIETIES ACT

(CAP. 47:02)

CERTIFICATE OF AMENDMENT OF BY-LAWS

reg. 62

We

Chairman and secretary of Cooperative Society Limited hereby certify—

(1) that the enclosed amendment of the by-laws was made at a general meeting held on,

(2) that on that date there were members of the society of whom were present at the meeting;

(3) that members voted for the amendment;

(4) that proper notice of the meeting and the proposed amendment were given to all members of the society;

(5) that a voting paper was duly issued to every member;

(6) that the amendment has received the prior approval of the Registrar.

.....

Chairman

.....

Secretary

.....

Treasurer

Date

SECOND SCHEDULE reg. 70

FEES

K t

1. On registration of society	250	00
2. On registration of union	500	00
3. On registration of federation	1,000	00
4. On inspection of by-laws by Registrar	100	00
5. On registration of an amendment	150	00
6. Replacement of lost certificate	100	00

THIRD SCHEDULE

GENERAL FORMS

FORM A

THE COOPERATIVE SOCIETIES ACT

(CAP. 47:02)

reg. 70

PARTICULARS OF CHARGE CREATED BY A REGISTERED SOCIETY

To: The Registrar of Cooperative Societies

P.O. Box 30366

Lilongwe 3

Name of registered society

Registered number

Date and description of the instrument creating or evidencing the mortgage or charge
.....

.....

Amount secured by the mortgage or charge MK

Short particulars of the property mortgaged or charged—

.....

.....

.....

Land Registry particulars—

.....

.....

.....

Names, addresses and description of the mortgages or persons entitled to the charge—

.....

.....

.....

.....
.....

Dated this day of

.....

Secretary

FORM B

THE COOPERATIVE SOCIETIES ACT

(CAP. 47:02)

REGISTER OF CHARGES

reg. 70

Name of registered society

Registered number

Date of charge

Date of acquisition of property

Amount secured by charge

Particulars of property charged

Person entitled to charge

Date of resolutions authorizing issue of series of debentures—

.....

Date of registration

Memorandum of satisfaction

Registration of notice of appointment of receiver or manager—

.....

Remarks

.....

.....

.....

.....
.....
.....

FORM C

THE COOPERATIVE SOCIETIES ACT

(CAP. 47:02)

CHRONOLOGICAL INDEX OF CHARGES

s. 59

Serial No.
Register of Charges folio number
Date of charge
Amount of charge
Particulars of charge
Person entitled to charge
Name of society creating the charge
.....
Date of registration
Remarks
.....
.....

[Chap4703]CHAPTER 47:03

GAMING

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

GAMING BOARD

3. Establishment of Board
4. Powers of the Board

PART III

CONTROL AND LICENSING OF GAMING

5. Application for licences
6. Provision of licences
7. Display of licence and surrender, suspension or cancellation
8. Duration of licence
9. Books to be kept by licensee
10. Submission of accounts by licensees
11. Licences not to be transferred
12. Fees
13. Offences relating to unlicensed gaming premises
14. Board may license public gaming premises
15. Offences relating to licensed gaming premises
16. Gaming with young persons an offence
17. Gaming tax
18. Small gaming parties [Repealed by 21 of 1998]
19. Provision for clubs [Repealed by 21 of 1998]
20. Gaming at entertainments [Repealed by 21 of 1998]

21. Gaming machines
22. Board may authorize use of gaming machine
23. Gaming in street an offence

PART IV

MISCELLANEOUS PROVISIONS

24. Obtaining of money by cheating at a game
25. Appeals from decision of Board
26. Power to enter and inspect land or premises
27. Cancellation of licence on conviction, etc.
28. Penalty for late payment of tax
29. Power of court to deal with anything produced to it
30. Power of Board to sue for recovery of any moneys due
31. Funds, accounts and audit
32. Regulations
33. Immunity
34. Penalty for an offence against a Regulation

26 of 1996

21 of 1998

G.N. 55/1998

56/1998

An Act to provide for the regulation of gaming; for the control and licensing of gaming premises; for the imposition and recovery of a tax on gaming; and for matters connected with or incidental to the foregoing

[1ST AUGUST 1998]

PART I

PRELIMINARY

[Ch4703s1]1. Short title

This Act may be cited as the Gaming Act.

[Ch4703s2]2. Interpretation

21 of 1998In this Act, unless the context otherwise requires—

“Board” means the Gaming Board established under section 3 (1);

“Chairman” means the person designated as such under section 3 (2);

“game of chance” includes a game of chance and skill combined or a pretended game of chance, but does not include an athletic game or sport;

“gaming” means the playing of a game of chance for winnings in money or money’s worth;

“gaming machine” means a machine for playing a game of chance, being a game which requires no action by a player other than the actuation or manipulation of the machine;

“gaming premises” means premises which are kept or used (whether on one occasion or more) for gaming, and to which the public has access for the playing therein of a game of chance, whether the game of chance be an unlawful game or not;

“instruments of gaming” includes cards, dice, counters, coins, tickets, gaming tables, boards, boxes, birds and animals, used for the purpose of gaming;

“licensed gaming premises” means premises licensed under section 14 as premises which the public may use for the purpose of gaming;

“licensee” means a person issued with a licence under section 14;

“money” includes a cheque, bank note, postal order or money order;

“newspaper” includes a journal, magazine or other periodical publication;

“tax” means the tax payable under section 17;

“unlawful game” means a game of chance the chances of which are not alike to all players, including the banker or other person or persons by whom the game is managed or against whom the other players stake or play;

“winning” includes winnings of any kind and a reference to the amount or to the payment of winnings shall be construed accordingly.

PART II

GAMING BOARD

[Ch4703s3]3. Establishment of Board

21 of 1998(1) There is hereby established a board to be known as the Gaming Board (in this Act otherwise referred to as the "Board"), which shall be a body corporate having perpetual succession and a common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.

(2) The Board shall consist of not more than nine and not less than seven members, to be appointed by the Minister.

(3) The Minister shall designate one of the members appointed under subsection (1) as Chairman.

(4) In making an appointment under this section, the Minister may require the person to be appointed to declare whether he has any, and if so what, financial interest in any gaming undertaking operating in Malawi.

(5) The members of the Board shall be paid such remuneration and allowances as the Minister may determine.

(6) The members of the Board shall hold office for a period of three years but shall be eligible for re-appointment.

(7) In the event of the Chairman being absent from any meeting of the Board, the members present shall elect from among themselves a person to act as chairman for that meeting.

(8) At all meetings of the Board, one-half of the Board members shall form a quorum.

(9) Meetings of the Board shall be held at least once in every three months and at such other times and at such places as the Chairman may determine.

(10) The Chairman shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(11) The Board may invite, for such length of time as it thinks fit, any person whose knowledge or advice it may require, but a person so invited shall not be entitled to vote at any meeting of the Board or be counted as a member for the purpose of forming a quorum.

(12) There may be seconded to the service of the Board such number of public officers as the Board may request and a public officer so seconded shall perform his duties solely under the directions of the Board.

(13) All permits and licences issued under this Act, and all communications from the Board, shall be under the hand of the Chairman or of some person duly authorized by him, and shall be published in the Gazette.

(14) The Chairman shall submit to the Minister for publication an annual report of the proceedings of the Board containing particulars with respect to such matters as the Minister may direct.

21 of 1998(15) In order to carry out its purposes and exercise its powers the Board shall appoint a Chief Executive Officer and such other officers and servants as may be necessary for the due and proper carrying out of its purposes or the appropriate exercise of its powers.

21 of 1998(16) The Board shall, with the approval of the Minister, fix the terms and conditions of service for the Chief Executive Officer and all its other officers and servants.

[Ch4703s4]4. Powers of the Board

21 of 1998(1) The Board shall have power—

- (a) to issue licences in accordance with this Act and any regulations made thereunder;
- (b) during the subsistence of a licence to vary, or, for good cause, to suspend or cancel it: Provided that the Board shall not suspend, cancel or vary a licence without giving—
 - (i) reason for its decision; and
 - (ii) the licensee an opportunity to show cause against the suspension, cancellation or variation;
- (c) to inquire into complaints against licensees.

(2) Subject to any general or special direction by the Minister, the Board shall regulate its own procedure.

(3) The Board may authorize the Chief Executive Officer and other officers and servants of the Board to exercise on its behalf, at any time when it is not meeting, such of its powers as it may specify:

Provided that the exercise of those powers shall, to the extent required by the Board, be reported by the Chairman, without unreasonable delay, at the next meeting of the Board.

PART III

CONTROL AND LICENSING OF GAMING

[Ch4703s5]5. Application for licences

21 of 1998(1) Any person who desires to obtain, renew, transfer or vary a licence under this Act shall make an application to the Board in the form and manner prescribed.

(2) On receipt of an application under subsection (1), the Board may make such investigations or require the submission of such declaration or further information as it may deem necessary to enable it examine the application.

(3) After making the investigations and considering any information or declaration as may have been required in terms of subsection (2), the Board may grant, renew or, with reasons, vary a licence, or refuse a licence or renewal or variation thereof:

Provided that no licence shall be issued under this act unless—

(a) the Board has satisfied itself that the applicant is a fit and proper person to hold the licence and, that the premises in respect of which the application is made are suitable for the purpose;

(b) the Board has sent a copy of the application for the licence to the local authority within whose area of jurisdiction the applicant proposes to conduct his business and, has given the local authority reasonable opportunity to make representations with respect to the application, and such representations shall be submitted within twenty-one days from the date of the application from the Board; and

(c) the applicant has furnished the Board with prescribed non-refundable deposit:

Provided that the security shall be refunded or cancelled on the expiration or cancellation of the licence in respect of which it has been deposited or given unless it is forfeited under section 27.

(4) Any person who makes a false statement or declaration in an application for, or a renewal or variation of, a licence shall be guilty of an offence and liable to a fine not exceeding K10,000 and to imprisonment not exceeding two years.

[Ch4703s6]6. Provision of licences

21 of 1998(1) Every licence issued under this Act shall state the precise location and extent of the premises, if any, to which it relates and shall be endorsed with every condition imposed by the Board under this Act.

(2) A licensee who wishes to transfer the conduct of his business to premises other than those authorized in terms of his licence may apply to the Board for authority to do so.

(3) Upon receipt of such an application in accordance with subsection (2) the Board may vary the licence so as to authorize the conduct of the licensee's business at the premises the subject of the application.

[Ch4703s7]7. Display of licence and surrender, suspension or cancellation

21 of 1998(1) Every licence issued by the Board under this Act shall, during the period of its validity, be prominently displayed by the licensee at his place of business in a part to which the public have access.

(2) On notification to a person that his licence has been cancelled or suspended, that person shall surrender his licence to the Board.

(3) Any person who, without reasonable cause or excuse, fails to comply with this section, or who displays a licence which is not currently valid, shall be guilty of an offence and liable to a fine not exceeding K2,000 and to imprisonment not exceeding six months.

[Ch4703s8]8. Duration of licence

21 of 1998Every licence issued under this Act shall, unless therein otherwise provided, expire on the 31st March next following the date of issue.

[Ch4703s9]9. Books to be kept by licensee

21 of 1998(1) A licensee shall enter regularly, in a book kept for that purpose, all such particulars as may be prescribed.

(2) A licensee who—

(a) contravenes subsection (1);

(b) keeps any book, record or account required to be kept under this section which is false in any material particular; or

(c) makes in any such book an entry which is false in a material particular,

shall be guilty of an offence and liable to a fine not exceeding K50,000 and to imprisonment not exceeding five years.

[Ch4703s10]10. Submission of accounts by licensees

21 of 1998(1) The Board shall at least once in every twelve months, require a licensee to submit to the Board a properly audited statement of accounts.

(2) The Board shall require accounts submitted to it under this section to be audited by an auditor qualified to audit under the Public Accountants and Auditors Act. Cap. 53:06

(3) Any person who, without the approval of the Board, refuses or fails to submit a statement of accounts when required by the Board, or who submits a false or misleading statement, shall be guilty of an offence and liable to a fine not exceeding K50,000 and to imprisonment not exceeding five years.

[Ch4703s11]11. Licences not to be transferred

21 of 1998Any person who, without the approval of the Board, transfers or purports to transfer a licence issued under this Act to another person shall be guilty of an offence and liable to a fine not exceeding K5,000 and to imprisonment not exceeding twelve months.

[Ch4703s12]12. Fees

21 of 1998There shall be paid to the Board for every licence issued by the Board a fee to be prescribed by the Board.

[Ch4703s13]13. Offences relating to unlicensed gaming premises

21 of 1998(1) Subject to this Act, any person who—

(a) being the owner or occupier of premises, or having the use of premises, keeps or uses the premises as unlicensed gaming premises;

(b) permits premises of which he is the owner or occupier, or of which he has the use, to be used as unlicensed gaming premises;

(c) has the care or management of, or in any manner assists or is engaged in the management of, premises kept or used as unlicensed gaming premises; or

(d) announces or publishes or causes to be announced or published, either orally or by means of any print, writing, design, sign or otherwise, that any premises are opened, kept or used as unlicensed gaming premises, or in any manner invites or solicits any person to play in unlicensed gaming premises; or

(e) advances, furnishes or receives money for the purpose of establishing or conducting the business of unlicensed gaming premises,

shall be guilty of an offence and liable to a fine not exceeding K20,000 and to imprisonment not exceeding five years.

(2) Any person who games in unlicensed gaming premises shall be guilty of an offence and liable to a fine not exceeding K2,000 and to imprisonment not exceeding six months.

(3) Where a person found in unlicensed gaming premises, or is found leaving therefrom he shall be presumed, until the contrary is proved, to be or to have been gaming therein.

(4) Any person who occupies or has the use of premises which are kept or used by another person as unlicensed gaming premises shall be presumed until the contrary is proved to have permitted that place to be so kept or used.

[Ch4703s14]14. Board may license gaming premises

21 of 1998(1) The Board may, subject to any regulations made under this Act, issue a licence authorizing a person to organize and manage gaming on premises to which the public may resort for the purpose of gaming, not being unlawful gaming.

(2) A licence shall be issued in respect of each premises to be used for gaming and any licence to be issued under this section shall state the game or games which the licensee may, on the premises named therein, organize and manage.

(3) The Board shall, in respect of a licence issued under this section, impose conditions providing for—

(a) the manner in which a person may conduct his business and the suitability, condition and conduct of the premises and the hours during which the premises may be open for business;

(b) the protection of persons taking part in the gaming against fraud; and

(c) the payment of admission fees for persons using the premises.

(4) Where an admission fee is charged under subsection (3) (c) it shall be subject to the payment of tax.

[Ch4703s15]15. Offences relating to unlicensed gaming premises

21 of 1998(1) Where a licensee uses or permits the use of licenced gaming premises for the playing of games which—

- (a) are not authorized by the Board;
- (b) are similar to a game authorized by the Board and which is played in a manner that the chances therein are not equally favourable to all the players; or
- (c) contravene any condition imposed by the Board or by any regulations made under this Act,

the gaming shall be deemed unlawful gaming and the person shall be guilty of an offence.

(2) Any person who is present at gaming mentioned in subsection (1) for the purpose of taking part therein shall be guilty of an offence, and for the purpose of this subsection proof that a person was present at the gaming shall be evidence that he was present for the purpose of taking part therein unless he establishes the contrary.

(3) Any person who, in connexion with licensed gaming premises, without the approval of the Board—

- (a) holds himself out by advertisement, notice or public placard, as willing to provide members of the public with premises for gaming;
- (b) displays a written or printed placard notice relating to gaming so as to be seen in a public street or place; or
- (c) prints or publishes, or causes to be printed or published, an advertisement or other notice,

shall be guilty of an offence and is liable to a fine not exceeding K2,000 and to imprisonment not exceeding three months.

[Ch4703s16]16. Gaming with young persons an offence

21 of 1998(1) Any person who, on licensed gaming premises—

- (a) plays a game with, or permits the playing of a game by a young person;
- (b) allows a young person to come on to licensed gaming premises, whether for the purpose of gaming or otherwise; or
- (c) employs a young person in the organization or management of gaming,

shall be guilty of an offence and liable to a fine not exceeding K10,000 and to imprisonment not exceeding two years.

(2) In this section, “a young person” means a person who is under the age of eighteen years.

[Ch4703s17]17. Gaming tax

21 of 1998(1) Every licensee shall be liable, at such intervals as may be prescribed, to pay a gaming tax.

(2) A gaming tax referred to in subsection (1) shall be calculated on such basis and at such rate as may be prescribed by the Board and payable in such manner and before such date as may be prescribed:

Provided that different rates may be prescribed in respect of different types of licences.

(3) Any payment of the gaming tax referred to in subsection (1) shall be accompanied by a return in such form as may be determined by the Board.

(4) There shall be no period of grace for payment of the gaming tax referred to in subsection (1).

(5) If the gaming tax referred to in subsection (1) is not paid on the prescribed date, the Board shall suspend the licence until the gaming tax and the penalty payable under section 28 have been paid.

[Ch4703s18-20]18–20.

[Repealed by 21 of 1998].

[Ch4703s21]21. Gaming machines

21 of 1998(1) Any person who—

- (a) uses or permits the use of an unauthorized gaming machine;
- (b) allows premises to be used for the purpose of gaming by means of an unauthorized gaming machine; or
- (c) knowing or having reasonable cause to believe that premises would be used for gaming by means of an unauthorized gaming machine—
 - (i) caused or allowed the machine to be placed on the premises;
 - (ii) let the premises, or otherwise made the premises available, to a person by whom an offence in connexion with the machine was committed,

shall be guilty of an offence and liable to a fine not exceeding K5,000 and to imprisonment not exceeding six months.

(2) In this section, “unauthorized gaming machine” means a gaming machine in respect of which a licence has not been issued under this Act.

[Ch4703s22]22. Board may authorize use of gaming machine

21 of 1998(1) The Board may, subject to any regulations made under this Act, issue a licence authorizing the use of a gaming machine on premises approved by it.

(2) A licence issued under this section shall be on condition that—

- (a) the stake risked in order to play the game does not exceed one hundred kwacha at a time;
- (b) not less than ninety per cent of all stakes risked are applied, in the payment of winnings to a player of the game;
- (c) the premises on which the gaming machine is used are not wholly or mainly used by persons under the age of eighteen years; and
- (d) the Board may impose any other conditions it may deem fit.

(3) Any person who contravenes any conditions provided for in subsection (2), or imposed by the Board, shall be guilty of an offence and liable to a fine not exceeding K2,000 and to imprisonment not exceeding six months.

[Ch4703s23]23. Gaming in street an offence

21 of 1998(1) Subject to this Act, a person who takes part in gaming in a street to which, whether on payment or otherwise, the public have access, shall be guilty of an offence and liable to a fine not exceeding K2,000 and to imprisonment not exceeding six months.

(2) A police officer may arrest without warrant any person found in a street referred to in subsection (1) and whom the police officer suspects, with reasonable cause, to be committing an offence under this section.

(3) In this section, "street" means—

- (a) a bridge, road, lane, footway, square, court, alley or passage, which is for the time being open to the public; and
- (b) the doorway and entrances of premises bordering upon the ground adjoining and open to a street.

PART IV

MISCELLANEOUS PROVISIONS

[Ch4703s24]24. Obtaining of money by cheating at a game

21 of 1998Any person who—

- (a) by any fraud or unlawful device or ill-practice in playing at or with an instrument of gaming; or
- (b) in taking a part in the stakes or offence wagers on the sides or hands of those that are playing;
- (c) or in wagering on lawful gaming, sport, part-time or exercise, wins from another person for himself, or for or on behalf of another person, a sum of money or valuable thing,

shall be guilty of an offence and liable to a fine not exceeding K5,000 and to imprisonment not exceeding twelve months.

[Ch4703s25]25. Appeals from decision of Board

Any person aggrieved by a decision of the Board made under this Act may, within twenty-one days of the decision, apply to the High Court for review of the decision of the Board.

[Ch4703s26]26. Power to enter and inspect land or premises

21 of 1998(1) Any person who—

- (a) is authorized in writing in that behalf by the Board and on production of his authority if demanded;
- (b) is appointed by the Secretary, and on production of his authority if demanded; or
- (c) is a police officer of or above the rank of Assistant Inspector, may, on production of a warrant, enter and inspect premises in which he has reason to believe that an offence under this Act, or under any regulations made thereunder, has been or is about to be committed, and—
 - (i) examine and take copies of books, accounts and documents relating to or appearing to relate to gaming;
 - (ii) seize, remove or detain a book, account or document which he has reasonable cause to believe will reveal evidence of an offence under this Act or any regulations made thereunder;
 - (iii) require the owner or occupier of the premises to render such explanation and give such information relating to any betting transaction, lottery or gaming as may be reasonably required by him in the performance of his duties.

(2) The power to act under subsection (1) may be exercised without warrant—

- (a) if the person so acting has reasonable cause to believe that the delay occasioned in obtaining a search warrant would seriously hinder him in the performance of his duties; and
- (b) by or under the directions of a police officer of or above the rank of Inspector unless the person authorized in writing by the Board or the Secretary has reasonable cause to believe that the delay to be occasioned by the summoning of a police officer would defeat the purposes of this section.

(3) Any person who—

- (a) resists, hinders or obstructs a person acting in pursuance of any of the provisions of this section; or
- (b) on a requisition under subsection (1), wilfully withholds information, or gives information knowing or having reason to believe it to be false or misleading,

shall be guilty of an offence and liable to a fine not exceeding five thousand kwacha and to imprisonment not exceeding six months:

Provided that no person may be required to answer any question the answer to which may incriminate him.

(4) Before removing anything under subsection (1), the person removing it shall furnish the person in whose possession the article is at the time of removal with a written receipt therefor.

[Ch4703s27]27. Cancellation of licence on conviction, etc.

21 of 1998(1) Where any person issued with a licence under this Act is convicted of an offence under this Act or of an offence involving fraud or dishonesty, the court before which he is convicted may order that his licence be cancelled.

(2) Any person whose licence is cancelled in pursuance of an order under subsection (1) shall, by virtue of that order, be disqualified from holding or obtaining a licence for a period of five years from the date of the conviction which gave rise to the order:

Provided that, where it appears to the court making the order to be just in all the circumstances, the court may include in the order a direction that the period of disqualification shall be such period not exceeding five years.

(3) An organizer or manager of licensed gaming premises, or a servant or agent of his, who employs in his business any person known to him to be disqualified by subsection (2) shall be guilty of an offence and liable to a fine not exceeding K2,000 and to imprisonment not exceeding six months.

[Ch4703s28]28. Penalty for late payment of tax

Any person who fails to pay the whole of the tax due from him under this Act within the prescribed period shall be liable to pay, in addition to the amount in default, a penalty equal to five per centum of the amount for each week, or part thereof, during which the default continues.

[Ch4703s29]29. Power of court to deal with anything produced to it

The court before which any person is convicted of any offence under this Act may order anything produced to the court, and shown to the satisfaction of the court to relate to the offence to be forfeited and destroyed or dealt with in such other manner as the court may order.

[Ch4703s30]30. Power of Board to sue for recovery of any moneys due

Any fee due to the Board, and any tax or any penalty in respect thereof, may be sued for and recovered with costs by and in the name of the Board.

[Ch4703s31]31. Funds, accounts and audit

21 of 1998(1) The Funds of the Board shall consist of—

(a) such sums as may be appropriated by Parliament for the purposes of the Board;

(b) all moneys received or recovered under this Act by or on behalf of the Board by way of fees and taxes, including any penalty in respect of such taxes; and

(c) such other moneys and assets as may vest in or accrue to the Board, whether in the course of its functions or otherwise.

(2) The Board shall keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act. Cap. 37:01

(3) The accounts of the Board shall be examined and audited annually by auditors appointed by the Board and approved by the Minister.

[Ch4703s32]32. Regulations

The Minister may, in consultation with the Board, make regulations providing for—

(a) the procedure to be followed by the Board in exercising any powers conferred upon it by this Act;

(b) the procedure to be followed in the making of an application for the issue, renewal or variation of a licence or licence issued under this Act;

(c) the advertisement of an application for a licence under this Act and of proceedings of the Board to consider and determine any such application;

(d) the right of a person interested to object to an application for the issue, renewal or variation of a licence under this Act, and for the form and manner of any such objection;

(e) the form and manner in which returns or statements of accounts shall be furnished to the Board;

(f) securing the payment of any tax and fee; and

(g) generally, the carrying out of the provisions and purposes of this Act.

[Ch4703s33]33. Immunity

No member of the Board or any officer thereof shall be personally liable for any act or default done or omitted to be done, in good faith, in the course of his duties under the Act.

[Ch4703s34]34. Penalty for an offence against a Regulation

21 of 1998Any regulation made under this Act may, notwithstanding the provisions of the General Interpretation Act, prescribe a fine not exceeding K10,000 and imprisonment not exceeding two years for an offence committed against any provision of such regulation. Cap. 1:01

SUBSIDIARY LEGISLATION

GAMING REGULATIONS

under s. 32

G.N. 62/1998

PART I

PRELIMINARY

1. Citation

These Regulations may be cited as the Gaming Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“casino” means premises where casino games are played or available to be played for money or any other valuable consideration gambled on the possibility of winning a prize;

“casino game” means any game, played with playing cards, dice, machines or devices used to bring about the result of a wager by determining win or loss for money, property, cheque, credit or anything of value (other than an opportunity to play a further game), including, without derogating from the generality of the foregoing, roulette, bingo, blackjack and baccarat, but excluding any lottery;

“chip” means a non-metal representative of value, redeemable for cash, issued and sold by a licensee for use at the licensee’s licensed gaming premises;

“device” means any equipment or mechanical, electrical, mechanical or electronic device, component or machine used remotely or directly in connexion with a casino game;

“machine” means any electronic, electro-mechanical device, contrivance or equipment which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate on application of the element of chance or, may deliver or entitle the person playing or operating the machine or any other person to receive cash or anything of value (other than an opportunity to play a further game);

“member” means a member of the Board;

“junket agent” means a person who—

(a) approves or grants the extension of gaming credit on behalf of a casino licensee or collects a debt evidenced by a credit instrument; or

(b) contracts with a casino licensee or his affiliate to provide services outside of the country;

“token” means a metal representative of value, redeemable for cash, and issued and sold by a licensee for use in slot machines or for use in slot machines and at table games or counter games at the licensee’s licensed gaming premises.

PART II

LICENCES

3. Types of games

Licences issued by the Board under section 14 shall be in respect of the following games—

- (a) roulette;
- (b) black jack;
- (c) craps;
- (d) punto banco;
- (e) baccarat;
- (f) poker;
- (g) slot machines;
- (h) chemini de fer and
- (i) such other games as may be determined by the Board.

4. Licences

The Board shall have the power to issue the following licences—

- (a) casino licence;
- (b) gaming machine licence;
- (c) gaming machine site licence;
- (d) bingo operator licence;
- (e) junket agent licence;
- (f) manufacturer licence;
- (g) maintenance licence; and
- (h) supplier licence.

5. Casino licence

(1) A casino licence shall authorize the licensee to organize and manage the playing, in or on the licensed gaming premises or such part thereof as specified in the licence, of any game specified in the licence.

(2) A casino licence shall only be issued to an applicant who satisfies the Board that he—

- (a) has appropriate knowledge or experience, or is able to acquire such knowledge or experience, to operate a casino;

(b) shall have and maintain sole and exclusive legal possession of the gaming premises in respect of which the licence is to be granted; and

(c) has met all applicable requirements set out in these Regulations.

(3) A casino licence shall be in Form I set out in the First Schedule.

6. Gaming machine operator licence

(1) A gaming machine operator licence shall authorize the holder thereof to operate, in or on the licensed gaming premises of the holder of a gaming machine site licence, any gaming machine specified in the licence.

(2) A gaming machine operator licence shall only be issued to an applicant who satisfies the Board that he—

(a) has appropriate knowledge and experience, or is able to acquire such knowledge and experience, to operate gaming machines; and

(b) has met all applicable requirements set out in these Regulations.

(3) A holder of a gaming machine operator licence may enter into agreement with a holder of a gaming machine site licence for the placement of gaming machines by the holder of gaming machine operator licence on the premises of the holder of gaming machine site licence.

(4) The holder of a gaming machine operator licence shall, if required by the Board, link all gaming machines in respect of which the licence has been granted to an electronic monitoring system if so required by the Board.

(5) A gaming machine operator licence shall be in Form II set out in the First Schedule.

7. Gaming machine site licence

(1) A gaming machine site licence shall authorize the machine holder thereof to operate and keep, in or on the licensed gaming premises or such part thereof as specified in the licence, any gaming machine specified in the licence:

Provided that—

(a) the prize in respect of any one gaming machine shall not in the aggregate exceed the amount exhibited on the machine;

(b) there shall be displayed on any such gaming machine the value of the maximum prize prescribed under paragraph (a) which can be won by playing a game once by means of such a gaming machine; and

(c) any such gaming machine shall be placed in an area of the licensed gaming premises to which no child shall have access.

(2) A gaming machine site licence shall only be issued to an applicant who satisfies the Board that—

(a) he has met all requirements set out in these Regulations; and

(b) the premises in respect of which the licence is to be issued shall not be and are not primarily used for gaming:

Provided that this paragraph shall not apply to premises in respect of which a bingo operator licence has been issued.

(3) A gaming machine site licence shall be in Form III set out in the First Schedule.

8. Bingo operator licence

(1) A bingo operator licence shall authorize the holder thereof to organize and manage the playing of the game of bingo in or on the licensed gaming premises or such part thereof as specified in the licence.

(2) A bingo operator licence shall be in Form IV set out in the First Schedule.

9. Junket agent licence

(1) A junket agent licence shall authorize the holder thereof to receive commission on, or a share in, gaming profits raised by a junket.

(2) A holder of a junket agent licence may enter into agreement with a holder of a casino operator licence for the provision, by the holder of junket agent licence, of services consisting of arranging complimentary transport, food, lodging or similar benefits for one or more persons visiting the casino.

(3) A junket agent licence shall be in Form V set out in the First Schedule.

(4) No person shall, except under the authority of a junket agent licence, involve himself, directly or indirectly, in the planning, organization or operation of a junket for or on behalf of a holder of a casino licence.

10. Manufacturer licence

(1) A manufacturer licence shall authorize the holder thereof to manufacture, sell, distribute, import and market gaming machines and devices.

(2) A manufacturer licence shall only be issued to an applicant who satisfies the Board that he—

(a) has appropriate knowledge and experience, or is able to acquire such knowledge and experience, to conduct business under the licence; and

(b) has met all applicable requirements set out in these Regulations.

(3) Subject to regulation 12, no person shall, except under the authority of a manufacturer licence, maintain or repair any gaming machine or device.

(4) A manufacturer licence shall be in Form VI set out in the First Schedule.

11. Maintenance licence

(1) A maintenance licence shall authorize the holder thereof to maintain or repair gaming machines and devices.

(2) A maintenance licence shall only be issued to an applicant who satisfies the Board that he—

(a) has appropriate knowledge and experience, or is able to acquire such knowledge and experience, to conduct business under the licence; and

(b) has met all applicable requirements set out in these Regulations.

(3) No person shall, except under the authority of a maintenance licence, maintain or repair a gaming machine or device.

(4) A maintenance licence shall be in Form VII set out in the First Schedule.

12. Supplier licence

(1) A supplier licence shall authorize the holder thereof to sell, distribute, import and market gaming machines and devices.

(2) A supplier licence shall only be issued to an applicant who satisfies the Board that he—

(a) has appropriate knowledge and experience, or is able to acquire such knowledge and experience, to conduct business under the licence; and

(b) has met all applicable requirement set out in these Regulations.

(3) No person shall, except under the authority of a supplier licence, sell, distribute, import or market a gaming machine or device.

(4) A supplier licence shall be in Form VIII set out in the First Schedule.

PART III

APPLICATIONS FOR LICENCES

13. Application for a licence

(1) No person shall make an application for a licence, and no such application shall be entertained, unless the application is lodged pursuant to and in accordance with a notice inviting applications which notice shall be published by the Board in the Gazette and in such other manner as the Board may determine and which notice may state—

(a) the type and number of licences to be issued and any conditions that may apply;

(b) the area to which the licence will relate;

(c) the application fee;

- (d) any requirement that may be necessary or desirable; and
- (e) the evaluation criteria to be applied.

(2) An application shall be accompanied by the prescribed fee and such plans, documents, approvals and information as may be determined by the Board.

(3) Subject to subregulation (6), an applicant may in the application concerned identify any document or information included in the application which in his opinion is confidential or should for any reason not be disclosed to the public, and show cause why the Board may determine that such document or information should not be open to public inspection.

(4) An application for a gaming machine operator licence and a gaming machine site licence shall be in the form set out in the Second Schedule.

(5) An application for a casino licence shall be in the form set out in Part I of the Third Schedule and there shall be attached to the application—

(a) a “Company Release Authorization” which shall be in the form set out in Part II of the Third Schedule; and

(b) a casino business proposal which shall be in the form set out in Part III of the Third Schedule.

(6) A “Company Release Authorization” and a casino business proposal shall not be open to public inspection.

(7) An application for a bingo operator licence shall be in the form set out in the Fourth Schedule.

(8) An application for a junket agent licence, manufacturer licence, maintenance licence and a supplier licence shall be made to the Board in writing.

(9) Nothing in this regulation shall preclude the Board from requiring an applicant to produce such further documents or such other evidence as the Board may deem necessary for the purpose of being satisfied as to any matter related to the application.

14. Amendment of an application

(1) An application submitted to the Board may, with the approval of the Board, be amended in any respect at any time prior to its being determined by the Board.

(2) Where an application has been amended pursuant to subregulation (1), the application shall be deemed to have been made on the date the amendment was effected.

(3) Any person who, prior to his application being determined by the Board, wilfully withholds information or gives information knowing or having reason to believe it to be false or misleading shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for one year.

15. Grounds for refusing to issue, renew or transfer a licence

(1) If, when considering any application for the issue, renewal or transfer of any licence, the Board is satisfied that the applicant—

- (a) is not a fit and proper person;
- (b) is not a person of good character and integrity;
- (c) is not a person of good financial standing;
- (d) is an unrehabilitated insolvent;
- (e) is a minor;
- (f) is of unsound mind; or
- (g) has within the last seven years been removed from an office of trust on account of misconduct,

then the Board may refuse to issue, renew or transfer the licence, as the case may be, or may issue, renew or transfer it subject to such conditions relevant to the said grounds as it may think fit.

(2) For the avoidance of doubt, it is hereby declared that the provisions of subregulation (1) relating to grounds for refusing to issue, renew or transfer a licence are in addition to, and not in derogation of, any other grounds set out in these Regulations.

16. Prohibited applications

(1) Any person whose—

- (a) application has been refused by the Board; or
- (b) licence has been revoked,

on any ground shall not apply again for any licence within one year from the date of such refusal or revocation.

(2) Any person who has a direct or indirect interest in the business, premises or licence of the person referred to in subregulation (1) shall not apply for any licence within one year from the date of the refusal or revocation referred to in subregulation (1).

(3) Any person whose—

- (a) application has been refused by the Board; or
- (b) licence has been revoked,

on any ground more than once shall not apply again for any licence within two years from the date of last refusal or revocation.

(4) Any person who has a direct or indirect interest in the business, premises or licence of the person referred to in subregulation (3) shall not apply again for any licence within two years from the date of such last refusal or revocation referred to in subregulation (3).

17. Representation by interested parties

(1) Any person wishing to make representations in relation to any application submitted to the Board shall make the representations to the Board within fourteen days of the submission of the application to the Board.

(2) The representations under subregulation (1) shall set fully—

(a) the name, address and telephone number of the person submitting the representations;

(b) the name of the applicant to whom the representation relates;

(c) the nature of the interest of the person submitting the representation;

(d) the facts upon which they are based; and

(e) the relief that is being sought.

(3) The representations made under subregulation (1) shall be accompanied by an affidavit verifying the facts set out therein.

(4) The representations and the relevant affidavit shall be served upon the applicant and any other person appearing from the register to be interested in the matter.

(5) At any time within ten days from the date of service of the representations on the applicant, the applicant or any other person who has a substantial interest in the matter and who wishes to oppose the representations shall deliver to the Board a counter statement, verified by affidavit, setting out fully the grounds on which the representations are opposed and copies of the same shall be served upon the person making the representations.

18. Application and objection to be open to public inspection

(1) Any application, objection and response lodged in terms of regulations 13 and 17 shall, subject to sub-regulation (2), be open to public inspection by interested persons during the normal office hours of the Board and the Board shall, at the request of any interested person, and payment of such fees as may be prescribed, furnish him with a copy of, or extract from, any such application, response or information.

(2) The Board may determine that any document or information relating to the financial capacity of any person participating in an application, the names of the prospective employees or the business plans of an applicant, shall not be open to public inspection, provided such document or information can be separated from the remainder of the application and is marked confidential.

19. Investigation and police reports

(1) In order to determine whether or not a licence should be granted to an applicant, the Board may, subject to any other law, gather such information from any source or person regarding the suitability of the applicant to hold the licence and the suitability of the premises in respect of which the application has been made.

(2) The Board may, upon receipt of an application for a licence, request the Police for a report stating—

(a) particulars of any convictions recorded against an applicant or any person who will be involved in the business in respect of whom the Board deems it necessary to obtain the police report; and

(b) such other matters which ought, in the opinion of the Police, to be taken into account in respect of the application.

(3) The report contemplated in regulation (2) shall be furnished to the Board within fourteen days or such extended period approved by the Board.

(4) For purposes of the report contemplated in subregulation (2), any member of the Police may require the applicant or person concerned to furnish such information and particulars (including any fingerprint or palmprint) as he may consider necessary.

20. Hearing of applications, etc.

When the Board has received any application, representations (if any) and counter statement (if any), the Chief Executive Officer shall, after taking directions from the Chairman, appoint a time and place for the hearing of the matter and shall give the parties at least ten days notice of the appointment.

21. Appearance before the Board

(1) Any applicant or other person entitled to appear before the Board may appear personally or, with the leave of the Board, by—

(a) a legal practitioner; or

(b) any other agent or representative authorized in writing.

(2) The leave referred to in subregulation (1) may be given on such terms as the Board thinks fit and may at any time be withdrawn.

22. Non-appearance

Should a party not appear within a reasonable period as the Board may determine and not file an explanation for his non-appearance the hearing may be proceeded with forthwith.

23. Summoning of witnesses

The Board has, as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders and other matters necessary

or proper for the due exercise of its functions, all such powers, rights and privileges as are vested in the High Court and, without limiting the generality of the foregoing, may—

(a) issue a summons to any person requiring him to appear at the time and place mentioned therein to testify to all matters within his knowledge relative to a subject matter before the Board and to bring with him and produce any document, book or paper that he has in his possession or under his control relative to such subject matter;

(b) administer oaths and examine any person upon oath or affirmation; and

(c) during a hearing receive such additional information as it may consider credible or trustworthy and necessary for dealing with the subject matter before it.

24. Proceedings in public

(1) Subject to subregulation (2), all proceedings before the Board shall be held in public.

(2) If the Board is satisfied, by reason of the confidential nature of the evidence or otherwise, that it is appropriate to do so, the Board may direct that a proceeding, or part of a proceeding, be held in private.

25. Procedure at hearing

The Board—

(a) shall act according to equity and the substantial merits of the case without regard to technicalities and legal forms;

(b) shall not be bound by rules of evidence and may inform itself on any matter as it thinks appropriate; and

(c) may give directions relating to procedure that it considers will enable delay and costs to be reduced and will facilitate a prompt hearing of the matter at issue.

26. Decision

(1) Subject to subregulation (3), after hearing the parties desiring to be heard or, if none of the parties desires to be heard, then without hearing, the Board shall decide the case.

(2) The decision of the Board may be given orally or in writing and in either event shall contain the reasons for the decision.

(3) If it appears to the Board that the representations made under regulation 17 are frivolous or vexatious, the Board may dismiss the representations summarily without calling on any person to attend the hearing of such representations.

27. Costs witnesses expenses

(1) Subject to the provisions of the Gaming (Tax and Fees) By-laws, 1998, no fees shall be payable for lodging any document.

(2) A person who appears as a party before the Board shall bear his own costs and the Board shall not award costs to or against a party.

(3) A person summoned under these Regulations to appear as a witness before the Board shall be entitled to be paid—

(a) where the witness was summoned on the application of a party to the proceedings, by that party; or

(b) in any other case, by the Board,

such allowances for his travelling, attendance and other expenses as are provided for in the Rules of the High Court.

28. Failure of a witness to attend

Any person served with a summons to appear as a witness before the Board who fails to attend as required by the summons, or having attended, fails to appear and report himself from day to day unless excused, or released from further attendance by the Board shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for six months.

29. Refusal to be sworn or answer questions

Any person appearing as a witness at a hearing who, without reasonable excuse—

(a) refuses or fails to be sworn or to make an affirmation;

(b) refuses or fails to answer a question lawfully put to him; or

(c) refuses or fails to produce a document that he was required to produce by a summons served on him,

shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for six months.

30. Contempt

Any person who—

(a) insults or disturbs a member in the exercise of his powers or the performance of his functions or duties as a member;

(b) interrupts a hearing;

(c) uses insulting language against a member;

(d) creates a disturbance, or takes part in creating or continuing a disturbance, in a place where the Board is holding a hearing; or

(e) does any other act or thing that would, if the Board were a court of record, constitute a contempt of that court,

shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for six months.

31. Validity of hearing not affected by defect in appointment or want of form

The validity of the proceedings of the hearing shall not be affected by any defect in the appointment of a member or by reason of the fact that a person not entitled to do so took part in the proceedings.

PART IV

REGISTRATION OF EMPLOYEES

32. Key employees

(1) The following employees of a licensee shall be classified as key employees for the purposes of these Regulations—

- (a) the senior management of the licensee;
- (b) if the licensee is a corporate body, every director and any other officer of such corporate body;
- (c) any person who has the authority to hire or terminate supervisory personnel;
- (d) any person who has the authority to supervise or direct a shift of each gaming or security activity, including but not limited to the supervision or direction of the entire pit operation, gaming machines or their gaming operations, and any person having authority to supervise or direct such persons;
- (e) any person having authority or the responsibility to manage one or more of the following types of departments or functions of the operation, including, but not limited to—
 - (i) the accounting department;
 - (ii) credit and collections department;
 - (iii) cage department;
 - (iv) personnel department;
 - (v) internal audit department;
 - (vi) security department; and
 - (vii) surveillance department;
- (f) any person who has been specifically represented to the Board by a licensee, officer or director as being important or necessary to the operation of the establishment;
- (g) all persons who individually or as part of a group formulate management policy; and
- (h) any person holding a job position which upon written notification by the Board is considered to be a key position for purposes of these Regulations.

(2) For purpose of subregulation 1 (h), the Board shall not be restricted by the title of the job performed but shall consider the functions and responsibilities of the person or position involved.

(3) Subject to regulation 33, a licensee shall not employ a key employee until such time as the prospective employee has applied for and been granted registration as a key employee by the Board.

(4) A licensee shall, within 14 days of termination of the employment of a key employee, notify the Board in writing of such termination and the reasons thereof.

33. Temporary registration

(1) Where application for registration has been made and the Board is satisfied that—

(a) the operation of the licensee's business will be seriously prejudiced or disadvantaged by a delay in the employment of the applicant; and

(b) the commencement of the employment of the applicant will not prejudice the integrity and proper operation of the licensee's business,

the Board may issue the applicant with a temporary certificate, pending the outcome of such applicant's application for registration.

(2) If the application for registration by the holder of a temporary certificate is denied by the Board, the licensee by whom such a person is employed shall summarily terminate the employment of that person in any capacity in which he is required to be so registered, without liability on the part of the licensee.

(3) The provisions of subregulation (2) shall be a condition of employment.

34. Proof of registration on employment record

A licensee shall in respect of every employee required to be registered in terms of this Part keep a copy of such employee's certificate on the employment record of that employee.

35. Suspension or revocation of registration

(1) If an employee required to be registered in terms of this Part—

(a) has his registration revoked by the Board, the licensee by whom such a person is employed shall summarily terminate the employment of that person in any capacity in which he is required to be so registered; or

(b) has his registration suspended by the Board, the licensee by whom such a person is employed shall summarily suspend the employment of that person in any capacity in which he is required to be so registered, for the period of suspension by the Board,

without liability on the part of the licensee.

(2) The provisions of subregulation (1) shall be a condition of employment.

36. Registration of certain personnel

(1) No person shall—

- (a) perform any act pertaining to any gaming occupation;
 - (b) be engaged in the manufacture, sale, lease, making available, distribution, importing, marketing, maintenance or repair of any gaming machine or gaming device; or
 - (c) be engaged in any other occupation, as may be determined by the Board,
- unless the person is registered with the Board.

(2) Any person desiring to be registered as contemplated in regulation (1) shall make application for registration to the Board.

(3) A licensee shall not employ any person to perform any act or be engaged in any activity or occupation contemplated in subregulation (1) unless the person is registered with the Board as provided in subregulation (1).

(4) Any person who contravenes regulation (1) shall be guilty of an offence.

37. Disqualified persons not to be registered

(1) No application for registration contemplated in regulation 36 (2) shall be granted if the applicant is subject to any disqualification contemplated in regulation 15 which shall apply mutatis mutandis.

(2) The Board shall not refuse an application for registration without giving the applicant the opportunity of being heard.

(3) Where the Board refuses an application for registration, it shall, on request, furnish the applicant concerned in writing with the reasons for such refusal.

38. Certificate of registration

(1) Where the Board grants an application for registration contemplated in regulation 36 (2), it shall issue to the applicant a certificate of registration in the form determined by the Board.

(2) The Board may grant an application for registration subject to such conditions as the Board may determine.

39. Duration of validity of registration

(1) Registration in terms of this Part shall, subject to the provisions of sub-regulation (2) and regulation 40, endure indefinitely.

(2) The Board may determine that any particular applicant shall be registered for a specified period only:

Provided that—

(a) the Board shall, on request, furnish the applicant in writing with the reasons for such determination;

(b) the period so specified shall be stated in the certificate of registration issued in terms of regulation 38 (1); and

(c) a person who has been registered for a specified period may apply for the extension of such period or the substitution for such registration for an indefinite period, and if the Board grants such extension or substitution, the Board shall make the necessary alteration on the certificate of registration.

(3) The Board shall keep and maintain a register in which it shall enter the name and particulars prescribed or determined by the Board of each person to whom a certificate of registration has been issued in terms of this Part.

40. Suspension and revocation of registration

The Board may at any time suspend for a specified period or revoke the registration of any person in terms of this Part after giving the person concerned an opportunity of being heard—

(a) if any information contained in the application for registration was false in any material respect or was subject to any material omission;

(b) if the person registered has become subject to a disqualification contemplated in regulation 15, as applied mutatis mutandis by regulation 37 (1);

(c) if the person registered has performed any act or been engaged in any activity or occupation contemplated in regulation 36, whether as agent or employee or otherwise, for or on behalf of a person who is not a licensee; or

(d) if the person registered has contravened a provision of these Regulations or a condition of his registration.

PART V

CASINOS

41. Approval of chips and tokens

(1) A licensee shall not issue any chip or token for use on his licensed gaming premises or sell or redeem such chip or token, unless the chip or token has been approved in writing by the Board.

(2) A licensee shall not issue any chip or token for use on his licensed gaming premises or sell or redeem any such chip or token that is a modification of a chip or token previously approved by the Board unless the modification has been approved in writing by the Board.

42. Application for approval of chips, tokens, etc.

(1) An application for approval of a chip, token or modification to previously approved chip or token shall be made, processed and determined in such manner and using such forms as the Board may determine.

(2) Each application shall include, in addition to such other items or information as the Board may require—

(a) an exact drawing, in colour, of each side and edge of the proposed chip or token, drawn to actual size or drawn to larger than actual size and in scale, and showing the measurements of the proposed chip or token in each dimension;

(b) written specifications for the proposed chip or token;

(c) the name and address of the manufacturer; and

(d) the licensee's intended use of the proposed chip or token.

(3) If, after receiving and reviewing the items and information described in sub-regulation (2), the Board is satisfied that the proposed chip or token conforms with the requirements of this Part, the Board shall notify the licensee in writing and shall request, and the licensee shall thereupon submit, a sample of the proposed chip or token in final manufactured form.

(4) If the Board is satisfied that the sample conforms with the requirements of this Part and with the information submitted with the licensee's application, it shall approve the proposed chip or token and notify the licensee in writing.

(5) As a condition of approval of chips or tokens issued for use at a specific table or counter game, the Board may prohibit the licensee from using the chip or token other than at the specified game.

(6) The Board may retain the sample chips and tokens submitted in terms of this regulation.

43. Specifications for chips and tokens

(1) Chips and tokens shall be designed, manufactured and constructed in compliance with all applicable Laws of Malawi and these Regulations and so as to prevent counterfeiting of the chips and tokens to the extent reasonably possible.

(2) Chips and tokens shall not deceptively resemble any current or past coinage of Malawi or any other state.

(3) In addition to such other specifications as the Board may approve—

(a) the name of issuing licensee shall be inscribed on each side of each chip and token and the city or other locality where the establishment is located shall be inscribed on at least one side of each chip and token, other than chips used exclusively at roulette;

(b) the value of the chip or token shall be inscribed on each side of each chip and token, other than chips used exclusively at roulette;

(c) the manufacturer's name or a distinctive logo or other mark identifying the manufacturer shall be inscribed on at least one side of each chip and token, other than chips used exclusively at roulette; and

(d) each chip shall be designed so that when stacked with chips and tokens of other denominations and viewed on closed-circuit television, the denominations of the chip can be distinguished from that of the other chips and tokens in the stack.

44. Additional specification for tokens

Tokens shall not be manufactured from material possessing sufficient magnetic properties so as to be accepted by a coin mechanism, other than that of a gaming machine.

45. Use of chips and tokens

(1) A licensee that uses chips or tokens at his licensed gaming premises shall—

(a) comply with all applicable laws of Malawi pertaining to chips or tokens;

(b) sell chips and tokens only to patrons of his licensed gaming premises and only at their request;

(c) promptly redeem his own chips and tokens from his patrons;

(d) post conspicuous signs at his establishment notifying patrons that the law prohibits the use of the licensee's tokens and that these Regulations prohibit the use of the licensee's chips, outside the premises for any monetary purpose whatever; and

(e) take reasonable steps, including examining chips and tokens and segregating those issued by other licensees to prevent sales to his patrons of chips and tokens issued by another licensee.

(2) A licensee shall not accept chips or tokens as payment for any goods or services, other than food and beverage, offered at his licensed gaming premises with the exception of the specific use for which the chips or tokens were issued and shall not give chips or tokens as change in any other transaction.

(3) A licensee shall not redeem his chips or tokens if presented by a person whom the licensee knows or reasonably should know is not a patron of his licensed gaming premises, except that a licensee shall promptly redeem his chips and tokens if presented by—

(a) another licensee who represents that he redeemed the chips and tokens from his patrons and received them unknowingly, inadvertently or unavoidably; or

(b) an employee of the licensee who presents the chips and tokens in the normal course of employment.

(4) A licensee shall not sell, use, permit the use of, accept or redeem chips or tokens issued by another licensee, except as follows—

- (a) a licensee may redeem tokens issued by another licensee if—
 - (i) the tokens are presented by a patron for redemption to a cashier of the licensee and the patron states that he received the tokens at the licensee’s gaming premises from the payout chutes of gaming machines or from an employee of the licensee; or
 - (ii) the tokens are presented by a patron at a table game and the licensee redeems the tokens with tokens of his own, places the redeemed tokens in the table’s drop box, and separates and properly accounts for the redeemed tokens during the count performed in terms of the licensee’s system of internal control; and
- (b) a licensee may redeem chips issued by another licensee if—
 - (i) the chips are presented by a patron for redemption at the cashier’s cage of the licensee’s gaming premises; or
 - (ii) the chips are presented by a patron at a table game and the licensee redeems the chips with chips of his own, places the redeemed chips in the table’s drop box, and separates and properly accounts for the redeemed chips during the count performed in terms of the licensee’s system of internal control.

(5) Chips whose use is restricted to uses other than at table games or other than at specified table games may be redeemed by the issuing licensee at table games or non-specified table games if the chips are presented by a patron, and the licensee redeems the chips with chips issued for use at the game, places the redeemed chips in the table’s drop box, and separates and properly accounts for the redeemed chips during the count performed in terms of the licensee’s system of internal control.

46. Redemption and disposal of discontinued chips and tokens

(1) A licensee that permanently removes from use or replaces approved chips or tokens at his licensed gaming premises or that ceases operating his licensed gaming premises whether because of closure or sale of the premises or any other reason shall prepare a plan for redeeming discontinued chips and tokens that remain outstanding at the time of discontinuance.

(2) The licensee shall submit the plan in writing to the Board not later than thirty days before the proposed removal, replacement, sale, or closure, unless the closure or other cause for discontinuance of the chips or tokens cannot reasonably be anticipated, in which event the licensee must submit the plan as soon as reasonably practicable.

(3) The Board may approve the plan or require reasonable modifications as a condition of approval and upon approval of the plan, the licensee shall implement the plan as approved.

(4) In addition to such other reasonable provision as the Board may approve or require, the plan shall provide for—

- (a) redemption of outstanding, discontinued chips and tokens in accordance with this Part for at least 120 days after the removal or replacement of the chips or tokens or for at least 120

days after operations cease, as the case may be, or for such longer or shorter period as the Board may for good cause approve or require;

(b) redemption of the chips and tokens at the licensed gaming premises or at such other location as the Board may approve;

(c) publication of notice of the discontinuance of the chips and tokens and of the redemption and the pertinent times and locations in at least two newspapers of general circulation in Malawi at least twice during each week of the redemption period, subject to the Board's approval of the form of the notice, the newspapers selected for publication and the specific days of publication;

(d) conspicuous posting of the notice described in paragraph (c) at the licensed gaming premises or other redemption location; and

(e) destruction or such other disposition of the discontinued chips or tokens as the Board may approve or require.

47. Destruction of counterfeit chips and tokens

(1) Unless a court of competent jurisdiction orders otherwise in a particular case, a licensee shall destroy or otherwise dispose of counterfeit chips and tokens discovered at his licensed gaming premises in such manner as the Board may approve or require.

(2) Unless the Board or a court of competent jurisdiction orders otherwise in a particular case, a licensee may dispose coins of Malawi or any other state discovered to have been unlawfully used at his licensed gaming premises by including them in his coin inventories or, in the case of foreign coins, by exchanging them for local currency or coins and including the same in their currency or coin inventories, or by disposing of them in any other lawful manner.

(3) Each licensee shall record, in addition to such other information as the Board may require—

(a) the number and denominations, actual or purported, of the coins and counterfeit chips and tokens destroyed or otherwise disposed of in terms of this Part;

(b) the month during which they were discovered;

(c) the date, place, and method of destruction or other disposition, including, in the case of foreign coin exchanges, the exchange rate and the identity of the bank, exchange company or other business or person at which or with whom the coins are exchanged; and

(d) the names of the persons carrying out the destruction or other disposition on behalf of the licensee.

48. Promotional and tournament chips and tokens

(1) Promotional chips and tokens shall be designed, manufactured, approved and used in accordance with the provisions of this Part applicable to chips and tokens, except as follows—

(a) promotional chips and tokens shall be of such shape and size and have such other specifications so as to be distinguishable from other chips and tokens as determined by the Board;

(b) each side of each promotional chip and token shall conspicuously bear the inscription "No Cash Value";

(c) promotional chips and tokens shall not be used, and licensees shall not permit their use, in transactions other than the promotions or tournaments for which they are issued; and

(d) the provisions of regulation 47 shall not apply to promotional chips and tokens.

49. Other value instruments

Other value instruments with which gaming is conducted shall be designed, manufactured, approved, used, discontinued, destroyed or otherwise disposed of in accordance with the provisions of this Part applicable to chips and tokens, except as follows—

(a) such other instruments shall be of such shape, size and design and have such other specifications as the Board may approve or require; and

(b) the Board, in its discretion, may deny approval of value instruments other than chips and tokens or may grant approval subject to such conditions as it considers appropriate.

50. Receipt of gaming chips or tokens from manufacturer or distributor

(1) When chips or tokens are received from the manufacturer or distributor thereof, they shall be opened and checked by at least three employees of the licensee from different departments.

(2) Any deviation between the invoice accompanying the chips or tokens and the actual chips or tokens received or any defects found in such chips or tokens shall be reported promptly to the Board.

(3) After checking the chips received, the licensee shall cause to be reported in a chip inventory ledger the denomination of the chips received, the number of each denomination of chips received, the description of all chips received, the date of such receipt and the signature of the employees who checked the chips.

(4) If any of the chips received are to be held in reserve and not utilized, at the gaming tables or at a cashier's cage, they shall be stored in a separate locked compartment either in the vault or in a cashier's cage and shall be recorded in the chip inventory ledger as reserve chips.

51. Inventory of chips

(1) Chips shall be taken from or returned to the reserve chip inventory in the presence of at least three employees from different departments.

(2) The denominations, number and amount of chips so taken or returned shall be recorded in the chip inventory ledger together with the date and signatures of the employees carrying out this process.

(3) Each licensee shall, on a daily basis, compute and record the unredeemed liability for each denomination of chips and cause to be made an inventory of chips in circulation and cause the result of such inventory to be recorded in the chip inventory ledger.

(4) On at least a monthly basis, each licensee shall cause an inventory of chips in reserve to be made and cause the result of such inventory to be recorded in the chip inventory ledger.

(5) The procedures to be utilized to compute the unredeemed liability and to inventory chips in circulation and reserve shall be submitted to the Board for approval.

(6) A physical inventory of chips in reserve shall be required at least annually if the inventory procedures incorporate the sealing of the locked compartment.

(7) During non-gaming hours all chips in the possession of the licensee shall be stored in a vault or in the cashier's cage, except that chips representing the table bankroll may be locked in a secure compartment:

Provided that there is adequate security as approved by the Board.

52. Surveillance and security

(1) The Board may, in its discretion, require a licensee to comply with surveillance system requirements that are more stringent than those set out in these Regulations.

(2) Every licensee shall install, maintain and operate at all times a surveillance system, comprised of cameras, monitors, video recorders and video printers, that provides the coverage required in these Regulations.

(3) The surveillance system shall include date and time generators that display on each video tape date and time of the recorded events and the displayed date and time shall not obstruct the recorded view.

(4) All machines that may be utilized to monitor or record views obtained by the surveillance system shall be and remain located in a room used exclusively for casino surveillance purposes and the entrance to the surveillance room shall be located away from the view of casino employees and the general public.

(5) Surveillance system room machines shall have total override capability over other satellite monitoring machines in other offices.

(6) The Board and its agents shall at all times be provided with access to the surveillance room and other surveillance areas.

(7) The surveillance system room shall be staffed and the surveillance machines monitored at all times by trained surveillance personnel who shall be employed and trained by the licensee exclusively for surveillance purposes and shall possess knowledge of all table games and the regulations and rules pertaining to gaming operators.

(8) The surveillance system and its machines shall be directly and securely wired in a way to prevent tampering and an auxiliary power source capable of providing uninterrupted power to the

surveillance system in the event of a power loss shall be available and provide sufficient lighting to operate the surveillance system.

(9) Each camera in the surveillance system located in a public area shall be placed behind a smoked glass dome, a one-way mirror or any other material which conceals the camera from view.

(10) Each monitor screen in the surveillance system shall be at least 30 centimetres, measured diagonally.

(11) The surveillance system may view and record in black and white except that pit transactions occurring at the casino cages, views of roulette tables, progressive jackpots, machines with bill validatory and soft count rooms shall be viewed and recorded in colour.

(12) The video printer used in the surveillance system shall have the capability to generate instantaneously, upon command, a clear still black and white or colour copy of photograph of the images depicted on a video tape recording.

(13) The licensees' shall have the capability of creating first generation copies of video surveillance tapes that are standard VHS format or such other format as may be approved by the Board.

53. Surveillance system on count rooms and casino cages

(1) Every licensee shall install, maintain and operate at all times a surveillance system that monitors and records clear unobstructed view of all areas and transactions within—

(a) the hard count room and any area where uncounted coin is stored during the drop and count process, including walls, doors, scales, wrapping machines, coin sorters, vaults, cages and general work surfaces;

(b) the soft count room, including walls, doors, drop boxes, vaults, safes and count surfaces that shall be transparent; and

(c) the casino cage, including customer windows, employees' windows, cash drawers, vaults, safes, counters, chip storage and till windows.

(2) All transactions within the hard count room, soft count room and casino cage shall be recorded with sufficient clarity to permit identification of each employee and his movements and to permit identification of all currency, coins and paperwork.

(3) The soft count room shall have audio monitoring capabilities.

(4) The soft and hard count room tapes shall be retained for at least thirty days after the recording.

54. Surveillance systems on table games and card rooms

(1) Every licensee who operates table games or a card room shall install, maintain and operate at all times a surveillance systems that possesses the capability to monitor and record clear and unobstructed views of the following—

(a) all table games and card room areas with sufficient clarity to permit identification of all dealers, patrons, spectators and fit personnel;

(b) all table games or card table surfaces, including table bank trays, with sufficient clarity to permit identification of all chips, cash, dice and card values and the outcome of the game;

(c) roulette tables and wheels with sufficient clarity so as to permit views of both the table and the wheel on one monitor screen;

(d) all drop boxes and table numbers; and

(e) all card room of podium banks, including any drawers, cabinets and safes contained therein:

Provided that, for each table, all table game play activities shall be individually monitored and recorded by a dedicated fixed camera.

(2) The surveillance system shall have the capability to view and record simultaneously the table game area and the table game surface.

55. Electronic monitoring

(1) The Board may approve a central computer or such other monitoring system connected to all machines exposed to play to record and monitor the activities in such machines.

(2) A licensee may not, without the prior approval of the Board, alter or modify the approved monitoring system contemplated in subregulation (1).

(3) The monitoring systems contemplated in sub-regulation (1) shall provide—

(a) on-line real-time monitoring and data acquisition capability in the format and media, approved by the Board;

(b) dial-up monitoring and data acquisition capability in the format and media, approved by the Board; or

(c) such other monitoring and data acquisition capability as the Board may determine in the conditions of licence.

(4) The central computer or any other monitoring system required by subregulation (1) shall be designed and operated to perform and report functions relating to machine meters and other functions as follows—

(a) record the number and total value of tokens or coins placed in each machine for the purpose of activating play;

(b) record the number and total value of coins or tokens deposited in the drop box or each machine;

(c) record the number and total value of tokens or coins automatically paid out by each machine;

- (d) record the number and total value of tokens to be paid normally;
- (e) identify any gaming machine taken off-line or placed on-line of the computer monitor system, including date, time and machine identification number;
- (f) be capable of reporting any revenue transaction not directly monitored by token coin meter, such as tokens or coins placed in the machine as a result of a hopper fill; and
- (g) record such other information as the Board may require.

(5) A gaming machine operator licensee shall store—

- (a) in machine-readable format, all information required by subregulation (4) for five years; and
- (b) such other documentation as the Board may require.

(6) The central computer communications system contemplated in subregulation (1) shall be used exclusively for the operation of the gaming machine operator's gaming network and shall be capable of disabling any gaming machine from play which does not comply with the provisions of these Regulations.

56. Illegal machines

(1) Any licensee or any other person who keeps or maintains any of the following machines which has not been separately approved and registered by the Board—

- (a) roulette tables;
- (b) roulette wheels;
- (c) blackjack tables;
- (d) craps tables;
- (e) punto banco tables;
- (f) baccarat tables;
- (g) poker tables;
- (h) gaming machines; and
- (i) such other machine as the Board may determine,

shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for one year and to a further fine of K500 per day for each day that the offence continues after conviction.

(2) A licensee shall not alter the operation of a registered machine without the prior approval of the Board and shall maintain all machines in suitable condition.

(3) Subject to subregulation (1), a licensee shall not display or expose for play any other machine which may be used for gaming other than a machine which—

(a) has been supplied by a licensed manufacturer or supplier; and

(b) is identical in all material aspects to a machine approved by the Board for distribution by the manufacturer or supplier.

(4) A licensee shall, in respect of a machine contemplated in subregulations (1) and (3), keep such records as the Board may require or approve.

PART VI

GAMING MACHINES

57. Machine devices and games to be approved

(1) A licensee shall not distribute any gaming machine, device or game unless it has, on application in the manner and form determined by the Board, been approved by the Board and shall not maintain or repair any machine or device that is not registered with the Board in terms of these Regulations.

(2) Only machines, devices and games meeting the published technical standards of the Board shall be approved for distribution.

(3) The Board may require submission of not more than two working models of any new machine, devices or game to the designated testing laboratory of the Board for review and inspection.

(4) The licensee seeking approval of a machine, device or game shall pay to the designated testing laboratory the cost of inspection and investigation.

(5) the testing laboratory may dismantle the models and may destroy components in order to fully evaluate the machine, device or game.

(6) The Board may require that the licensee seeking approval of a machine, device or game provides specialized equipment or the services of an independent technical expert to evaluate the machine, device or game.

58. Alteration and modification prohibited

A licensee shall not alter the operation of, or modify, any gaming device, machine or game without prior written approval of the Board.

59. Summary suspension of approval

(1) The Board may issue a summary order, with or without notice to the relevant licensee, suspending approval of a machine or device if—

(a) it determines that the machine or device does not operate as approved by the Board; or

(b) the manufacturer misrepresented the manner in which the machine or device operates.

(2) Where approval of a machine or device is suspended under subregulation (1), the Board shall direct the licensee to take corrective measures.

(3) If a direction given under subregulation (2) is not complied with within the time stipulated by the Board or, if no time is stipulated, within a reasonable time after the direction is given or if the licensee cannot be found, the Board may destroy the machine or device.

(4) No compensation shall be payable where a machine or device is destroyed pursuant to subregulation (3).

(5) After issuing an order in terms of subregulation (1), the Board may seal or seize all models of the machine or device.

PART VII

MISCELLANEOUS

60. Disposal of gaming machines and devices

(1) A holder of a casino licence, gaming machine operator licence, gaming machine site licence or bingo operator licence may—

(a) with the approval of the Board, dispose of, by way of sale in a manner approved by the Board, any or all of his gaming machines and devices; and

(b) maintain or repair to the extent approved by the Board, any or all of his gaming machines and devices.

(2) The Board shall, when requested so to do, approve, on payment of such fees as may be determined by the Board that any or all of gaming machines and devices of a licence holder be disposed of by way of sale in a manner approved by the Board, by any of the following persons in any of the following events—

(a) in the case of the death of the licence holder, the widow, widower or the legal personal representative of the deceased licence holder;

(b) in the case of the bankruptcy of the licence holder or assignment for the benefit of his creditors generally, the lawful appointed trustee or assignee;

(c) in the case of a company in liquidation, the lawfully appointed liquidator; and

(d) in any case where the licence holder becomes subject to any legal disability, any person lawfully appointed to administer his affairs.

61. Cheating

(1) No person shall at a licensed gaming premises use, or possess with the intent to use, any machine or device to assist—

- (a) in projecting the outcome of a game;
- (b) in keeping track of the cards played;
- (c) in analysing probability of the occurrence of an event relating to a game; or
- (d) in analysing the strategy for playing or betting to be used in a game except as approved by the Board in writing, upon the written request of a licensee.

(2) The provision of subregulation (1) shall not be deemed to prohibit—

(a) the making of and referring to handwritten records of the cards played at punto banco or baccarat; or

(b) the making of and referring to handwritten records of roulette results.

(3) No person shall—

(a) alter or misrepresent the outcome of a casino game or other event on which wagers have been made after the outcome is determined but before it is revealed to the players;

(b) place, increase or decrease a bet or determine the course of a play after acquiring knowledge, not to all players, on the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet or aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome;

(c) claim, collect or take, or attempt to claim, collect or take money, or anything of value in or from any gaming activity with the intent to defraud without having made a wager contingent thereon, or claim, collect or take an amount greater than the amount won;

(d) place or increase a bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet;

(e) reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet; and

(f) manipulate with the intent to cheat any component or a gaming device in a manner contrary to the designed and normal operation purpose for the component, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game.

(4) No person shall use counterfeit chips or other counterfeit wagering instruments in a casino game or have such chips or wagering instruments in his possession.

(5) In addition to acts of cheating set out in sub-regulations 1, 3 and 4, the Board may, by written notice, declare other acts that, in its opinion, constitute cheating.

(6) No person shall engage in an act that has been declared, by the Board under sub-regulation (5), as constituting cheating.

62. Offences and penalties

(1) Any person who fails to comply with any requirement of these Regulations, any condition of any licence issued under these Regulations or any order, requisition, or direction lawfully issued by the Board under these Regulations shall be guilty of an offence.

(2) Any person who is guilty of an offence under these Regulations shall, where no other penalty is provided, be liable to a fine of K2,000 and to imprisonment for six months.

(3) If any statement required to be furnished under these Regulations contains any matter which is false in any material particular to the knowledge of any person signing it that person shall be guilty of an offence.

FIRST SCHEDULE

FORM I reg. 5 (3)

CASINO LICENCE

Name: is hereby authorized, subject to the Gaming Act and regulations made thereunder and upon the conditions specified overleaf to organize and manage the following games—

.....
.....
.....

at

(Premises)

This licence shall expire on

Date of issue

Fee paid

.....

Chairman, Gaming Board

FORM II reg. 6 (5)

GAMING MACHINE OPERATOR LICENCE

Name: is hereby authorized, subject to the Gaming Act and regulations made thereunder and upon the conditions specified overleaf, to operate the following gaming machine(s)—

.....

.....

.....

at

(Plot No., Street, Town)

This licence shall expire on

Date of issue

Fee paid

.....

Chairman, Gaming Board

FORM III reg. 7 (3)

GAMING MACHINE SITE LICENCE

Name: is hereby authorized, subject to the Gaming Act and regulations made thereunder and upon the conditions specified overleaf, to operate and keep the following gaming machine(s)—

.....

.....

.....

at

(Premises)

This licence shall expire on

Date of issue

Fee paid

.....

Chairman, Gaming Board

FORM IV reg. 8 (2)

BINGO OPERATOR LICENCE

Name: is hereby authorized, subject to the Gaming Act and regulations made thereunder and upon the conditions specified

overleaf, to organize and manage the playing of the game of bingo at

.....

(Premises)

This licence shall expire on

Date of issue

Fee paid

.....

Chairman, Gaming Board

FORM V reg. 9 (3)

JUNKET AGENT LICENCE

Name:

of

(Address)

is authorized, subject to the Gaming Act and regulations made thereunder and upon conditions specified overleaf, to receive commission on, or a share in, gaming profits raised by a junket.

This licence shall expire on

Date of issue

Fee paid

.....

Chairman, Gaming Board

FORM VI reg. 10 (4)

MANUFACTURER LICENCE

Name:

of

(Address)

is authorized, subject to the Gaming Act and regulations made thereunder and upon conditions specified overleaf, to manufacture, sell, distribute, import and market gaming machines and devices.

This licence shall expire on

Date of issue

Fee paid

.....

Chairman, Gaming Board

FORM VII reg. 11 (4)

MAINTENANCE LICENCE

Name:

of

(Address)

is authorized, subject to the Gaming Act and regulations made thereunder and upon conditions specified overleaf, to maintain and repair gaming machines and devices.

This licence shall expire on

Date of issue

Fee paid

.....

Chairman, Gaming Board

FORM VIII reg. 12 (4)

SUPPLIER LICENCE

Name:

of

(Address)

is authorized, subject to the Gaming Act and regulations made thereunder and upon conditions specified overleaf, to sell, distribute, import and market gaming machines and devices.

This licence shall expire on

Date of issue

Fee paid

.....

Chairman, Gaming Board

SECOND SCHEDULE reg. 13 (4)

APPLICATION FOR A GAMING MACHINE OPERATOR/SITE LICENCE*

To: The Chief Executive Officer

The Gaming Board

1. In accordance with the Gaming Act and the regulations made thereunder—

.....

(Full Name)

of

(Address)

*(duly authorized in that behalf by the following society/partnership/body corporate)
hereby apply* (for and on behalf of the said society/partnership/body corporate) for the
issue/renewal* of Licence authorizing the use of the following gaming machines—

(Give sufficient particulars of machines and purposes thereof)

.....

on the premises—

.....

(Plot No., Street, Town)

2. State whether there are any other gaming machines made available for play in the same building in which your premises are situated.

3. What are your premises used for?

.....

4. To what extent are your premises used by persons under the age of eighteen years?

5. Please give particulars of the manner in which the stakes hazarded by means of the gaming machines are to be applied (i.e. the percentage to be paid by way of winnings and the percentage to be applied for purposes other than private gain)—

.....

.....

Date 20.....

.....

(Signature)

.....

(Description)

Where the application is made for and on behalf of a partnership, society or body corporate it must be signed by a partner or the secretary of the society or body corporate, as the case may be.

THIRD SCHEDULE reg. 13 (5)

PART I

APPLICATION FOR A CASINO LICENCE

To: The Chief Executive Officer

The Gaming Board

1. In accordance with the Gaming Act and the regulations made thereunder—

.....

(Full Name)

of

(Address)

*(duly authorized in that behalf by the Partnership/body corporate specified in paragraph (2)) hereby apply *(for and on behalf of the said partnership/body corporate) for a licence to organize and manage gaming at—

.....

(Plot No., Street, Town)

2. Name under which business will be conducted—

.....

Date and place of registration

3. Full names of all partners, directors, secretary and managers, if any, of body corporate—

(i)

(Name and address)

.....

(Description, e.g. a director, secretary, etc.)

(ii)

(Name and address)

.....

(Description, e.g. a director, secretary, etc.)

(iii)

(Name and address)

.....

(Description, e.g. a director, secretary, etc.)

4. Have you or any of the person named above ever been—

(a) convicted of any criminal offence involving fraud or dishonesty;

(b) bankrupt, or entered into any agreement with creditors? If so, give particulars—

.....

.....

5. Give particulars of games you propose to organize and manage and state briefly the manner in which each game will be organized and managed—

.....

.....

.....

6. What do you expect will be the amount of the gross turnover for the first twelve months of the gaming business in respect of which this application is made

.....

.....

7. State the name and address of the accountant you wish to appoint for the purpose of auditing your statement of accounts under section 10 of the Gaming Act.

.....

Date 20.....

.....

(Signature)

.....

(Description)

Where the application is made for and on behalf of a partnership or a body corporate it must be signed by a partner or the secretary to the body corporate, as the case may be.

(N.B.—A separate application must be made in respect of each premises on which the applicant wishes to organize and manage gaming.)

FOR OFFICIAL USE ONLY

Application forwarded to

(Local authority)

on 20

Recommendation of local authority received on 20.....

PART II reg. 13 (5) (a)

COMPANY RELEASE AUTHORIZATION

To: All courts, probation departments, employers, educational institutions, banks, financial and other institutions, all agencies without exception, both foreign and domestic, and to whom else this authorization may be duly presented.

From:

.....

(Identification Number)

(Telephone Number)

As a requirement of making or involvement in proposal/application for a casino licence in Malawi, the above-named company agrees to allow the Gaming Board (the Board) to conduct an investigation into the background of the company.

The company HEREBY AUTHORIZES the Board and any person authorized by original letter of authority signed by the Board's Chief Executive Officer to inspect and obtain copies of—

(a) any credit report, other report, legal or commercial, information derived from those reports that has any bearing on the company's credit worthiness, credit history, credit standing or credit capacity;

(b) any loan information, cheque account records, savings deposit records, safe deposit box records, passbook records and bank statement sheets pertaining to the company provided to the Board under a letter of authority from the company to its bankers;

(c) any records relating to investigations of the operations or activities of the company conducted by any police force, crime investigation agencies, corporation regulatory agencies or any gaming or casino regulatory bodies;

(d) any records relating to any present or past civil or criminal court proceedings to which the company is a party; and

(e) any other document, record or correspondence pertaining to the company.

You are HEREBY AUTHORIZED to release to the Board or any of its authorized agents, all the documents, reports and information requested by any of them.

This Authorization shall supersede and countermand any prior request or authorization to the contrary. A photocopy of this Authorization will be considered as effective and valid as the original.

Dated the day of

The Common Seal of was hereto affixed in

.....

(Director) (Secretary)

.....

(Name) (Name)

PART III reg. 13 (5) (b)

CASINO BUSINESS PROPOSAL

1. Full name of company
2. Previous names of company
3. Registered office of the company
4. Physical business address of the company
.....
.....
.....
5. Postal address of the company

.....
.....
.....

- 6. Telephone number
- 7. Facsimile number
- 8. Date of incorporation of company
- 9. Place of incorporation of company
- 10. Company Registration No.

Signed

Name

Designation

Date

11. Is the company a wholly or partly owned subsidiary of another company or partnership?

If 'yes' please give details of all holdings, subsidiary and associate entities of the holding company—

Name of Company	Registration number and place of incorporation	Nature of Business
	Relationship to company, e.g. holding co., co. subsidiary, associate, etc.	Percentage Holding

NOTE—A corporate 'family tree' diagram detailing the relationship of the holding company to the company, subsidiary and associate, must accompany the declaration.

Signed

Name

Designation

Date

12. Is the company a parent company of a group of companies? If 'yes' please give details of all subsidiary and associate companies of the group—

Name of Company	Registration number and place of incorporation	Nature of business	% shareholding of company, subsidiary of associate, entities
-----------------	--	--------------------	--

NOTE—A corporate 'family tree' diagram detailing the relationship of the company to subsidiaries and associate entities must accompany the declaration.

Signed

Name

Designation

Date

13.—(a) Names, addresses and shareholdings of shareholders holding 5% or more of the issued share capital of the company—

Name	Address	Shareholding	Percentage
------	---------	--------------	------------

(b) Number of other shareholders with less than 5 percent shareholding

Signed

Name

Designation

Date

14. Names and addresses of any lenders, mortgagees or other persons providing finance, and the terms under which they have undertaken to provide funding in respect of this application—

Name	Address	Account/ Ref. No.	Type of Facility	Amount of Facility	Repayment Period
------	---------	-------------------	------------------	--------------------	------------------

Repayment Terms

Signed

Name

Designation

Date

15. Provide details of any agreements relating to the ownership, operation of the casino development or its facilitatngs or any right or interest therein—

.....
.....
.....
.....
.....

16. Has the company or any other company named in this declaration, or any director, manager or officer of such company while acting as such, ever been convicted of an offence?

18. Details of any civil action taken by or against the company during the past five years for amounts exceeding K500,000—

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Signed

Name

Designation

Date

19. Details of any civil action pending by or against the company for amounts exceeding K500,000—

.....
.....
.....
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.....
.....

20. Has the company or any subsidiary or associate entity ever been, or is it currently being investigated by any statutory or government body in Malawi or abroad?

.....

If 'yes' please give details below— Statutory body/ Department Address

.....

.....
.....

21. Name and address of the company auditors—

Name

Address

.....

.....

Telephone

NOTE—If change in auditors took place during the last five years, also supply details of previous auditors.

22. Details of all bank accounts, including foreign accounts, held by the company at any time during the last five years—

Bank	Account No.	Address	Contact Names
------	-------------	---------	---------------

Signed

Name

Designation

Date

23. Details of directors, officers and senior management personnel of the company—

Name	Address	Identity Number	Date of Birth	Place of Birth	Position
------	---------	-----------------	---------------	----------------	----------

Provide full details of any current or prior association by any of the above-named persons with ownership, administration or management of a gambling related business.

24. Details of directors who have ceased to hold office during the last five years—

Name	Address	Identity Number	Date of Birth	Place of Birth
------	---------	-----------------	---------------	----------------

Signed

Name

Designation

Date

25. Names and addresses of the company's lawyers/legal advisors and consultants engaged with respect to this casino development—

.....
.....
.....
.....

.....
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.....
.....

26. Does the company have any interest, financial or otherwise, in any other company or with any person or business, or has the company ever provided any financial assistance or other support to any other company, business or other body, involved with the ownership, administration or management of a gambling-related business?

.....

If 'yes' provide full details—

.....
.....
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.....
.....

Signed

Name

Designation

Date

28. Has the listed company, or any association entity, ever been fined, suspended or reprimanded for breaches of Stock Exchange Listing Rules on any exchange?

.....

If 'yes' provide full details—

.....

.....
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.....

Signed

Name

Designation

Date

The following must accompany this form—

1. Copies of the audited financial statements of the company and any holding company for the last ten years;
2. Details of any substantial change in the financial position of the company since the last audited financial statements;
3. Copies of the tax returns and assessments of the company for last two years;
4. Details of any joint venture arrangements between the company and any party, in relation to the casino development;
5. Details of the number, value and classes of share capital including voting rights, both unauthorized and issued;
6. A copy of the Memorandum and Articles of Association of the company and the Certificate of incorporation;
7. Details of any judicial manager, liquidator or provisional liquidator appointed to the company or any of its associated entities or any winding up petitions in respect of the company or any of its associated entities;
8. Details of any gambling related licences currently or previously held by the company, its affiliates or any director or office bearer anywhere in the world;

9. Details of any application by the company or any of its associated entities for a gambling related licence anywhere in the world, and the outcome of such application;

10. Copies of all reports and announcements to any Stock Exchange since 1st January, 1996;

11. An affidavit in which the Applicant attests to the validity and accuracy of all information contained in this proposal;

NOTE—

(a) Applicants should use attachments in instances where the space provided on the form is insufficient;

(b) Applicants are welcome to submit any additional information which might further support the proposal.

FOURTH SCHEDULE reg. 13 (7)

APPLICATION FOR A BINGO OPERATOR LICENCE

To: The Chief Executive Officer

The Gaming Board

1. In accordance with the Gaming Act and the regulations made thereunder—

.....

(Full name)

of

(Address)

*(duly authorized in that behalf by the partnership/body corporate specified in paragraph 2) hereby apply * (for and on behalf of the said partnership/body corporate) for a licence to organize and manage the game of bingo—

.....

(Plot No., Street, Town)

2. Name under which business will be conducted—

.....

Date and place of registration

3. Full names of all partners, directors and secretary of body corporate, managers, if any—

(i)

(Name and address)

.....

(Description e.g. a director, secretary, etc.)

(ii)

(Name and address)

.....

(Description e.g. a director, secretary, etc.)

(iii)

(Name and address)

.....

(Description e.g. a director, secretary, etc.)

4. Have you or any of the persons named above ever been—

(a) convicted of any criminal offence involving fraud or dishonesty;

(b) bankrupt, or entered into any agreement with creditors? If so give particulars—

.....

.....

.....

5. Give particulars of games you propose to organize and manage and state briefly the manner in which each game will be organized and managed—

.....

.....

.....

6. What do you expect will be the amount of the gross turnover for the first twelve months of the gaming business in respect of which this application is made?

.....

.....

7. State the name and address of the accountant you wish to appoint for the purpose of auditing your statement of accounts under section 10 of the Gaming Act—

.....

.....

Date 20.....

.....

(Signature)

.....

(Description)

Where the application is made for and on behalf of a partnership of a body corporate it must be signed by a partner or the secretary to the body corporate, as the case may be.

(N.B—A separate application must be made in respect of each premises on which the applicant wishes to organize and manage gaming.)

FOR OFFICIAL USE ONLY

Application forwarded to

(Local authority)

on 20.....

Recommendation of local authority received on
20.....

[Chap4704]CHAPTER 47:04

LOTTERIES

ARRANGEMENT OF SECTIONS

SECTION

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- 3. Establishment of the National Lotteries Board

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7. Tenure and vacation of office of members
8. Meetings of the Board
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9 of 2003

An Act to provide for the regulation of National Lotteries and other lotteries; for the control and licensing of other lotteries, for the generation of funds for economic development and matters connected with or incidental thereto

[19TH SEPTEMBER 2003]

PART I

PRELIMINARY

[Ch4704s1]1. Short title

This Act may be cited as the Lotteries Act.

[Ch4704s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Board” means the National Lotteries Board established under section 3;

“Chairperson” means the person designated as Chairperson of the Board under section 6;

“date” means in relation to a lottery, the date on which the winners of that lottery are determined;

“licensee” means the person to whom the licence for the National Lottery has been issued under subsection (1) of section 2;

“lottery” includes any game, scheme, arrangement, system plan, promotional competition or device of distributing prizes by lot or chance and any game, scheme, arrangement, system, plan, competition or device, which the Minister may by notice in the Gazette declare to be a lottery;

“National Lottery” means the lottery contemplated in section 21 and includes all the lotteries conducted under the licence for the National Lottery, taken as a whole;

“net proceeds of the National Lottery” means the sums that are payable to the Board under paragraph (e) of subsection (3) of section 22 but not the sums which are paid in prizes of the National Lottery;

“newspaper” includes a journal, magazine or other periodical publication;

“participant”, in relation to a lottery, means a person who is in possession of a valid ticket in that lottery;

“place” means any place, whether or not it is a public place and includes any premises, building, dwelling, flat, room, office, shop, structure, vehicle, vessel or aircraft;

“prescribe” means prescribe by the Minister by regulation;

“political office” means the office of a Cabinet Minister, a Member of Parliament, a Member of a City, Town or District Council, as the case may be;

“prize” means the prize awarded to the winner of a lottery;

“promoters” means persons promoting other lotteries referred to in section 36;

“software” means a set of instructions fixed or stored in any manner and which, when used directly or indirectly in a computer, directs its operation to bring about a result;

“subscription” means the payment, or delivery of any money goods article, matter or thing, including any ticket, coupon or entry form, for the right to compete in a lottery;

“ticket” means, in relation to a lottery, any symbol, sign, token, coupon, warrant, card, printed paper, document or list or any other means or device which confers or purports to confer the right to take part in a lottery and which is issued by or on behalf of the lottery in question.

PART II

ESTABLISHMENT OF NATIONAL LOTTERIES BOARD

[Ch4704s3]3. Establishment of the National Lotteries Board

There is hereby established a Board to be known as the National Lotteries Board (hereinafter referred to as the "Board") which shall be a body corporate with perpetual succession and a common seal and shall have the capacity of suing and being sued and, subject to the provisions of this Act, of doing all such acts as a body corporate may by law perform.

[Ch4704s4]4. Composition of the Board

(1) The Board shall consist of not more than nine (9) and not less than six (6) members to be appointed by the Minister.

(2) In order for the Board to fulfill its mandate effectively the composition of the Board shall include—

- (a) a person with a business and an accounting background;
- (b) a person with a social rehabilitation background who has been in practice for not less than five (5) years;
- (c) a person with a legal background and is registered to practice in Malawi;
- (d) a person with law enforcement experience not below the rank of Commissioner;
- (e) a person with knowledge and experience in the operation of lotteries and who is not in any gainful employment with any lottery operator; and
- (f) four ex officio members.

(3) In making an appointment under this section, the Minister shall require the person to be appointed to declare whether he has any, and if so what, financial interest in any lottery undertaking operating in Malawi.

[Ch4704s5]5. Qualifications of members

The person to be appointed as a Member of the Board shall be—

- (a) a Malawian of not less than twenty-five (25) years of age;
- (b) a person who has not been declared bankrupt for the last five (5) years;
- (c) a person who has not been convicted of any criminal offence for the past five (5) years; and
- (d) a person who is not holding a political office.

[Ch4704s6]6. Chairperson of the Board

The Minister shall designate one of the members appointed under section 4, other than an ex officio member, as Chairperson.

[Ch4704s7]7. Tenure and vacation of office of members

(1) The members of the Board, other than ex officio members, shall hold office for a period of three years but shall be eligible for re-appointment for one more term.

(2) Any member of the Board, other than an ex officio member, may at any time, by notice in writing to the Minister, resign from his office.

(3) The office of a member, other than an ex officio member shall become vacant—

- (a) upon his death;
- (b) if he is adjudged bankrupt;
- (c) if he is convicted of an offence and sentenced to imprisonment;
- (d) if he is mentally or physically incapable of performing his duties as a member of the Board;
- (e) if he is guilty of gross misconduct and is so notified in writing by the Minister; or
- (f) if he is absent from three consecutive meetings of the Board, for which he has had notice, without any reasonable excuse.

[Ch4704s8]8. Meetings of the Board

(1) The Chairperson shall preside over every meeting of the Board, but in the event of the Chairperson being absent from any meeting of the Board, the members present shall elect from among their number a person to preside over that meeting.

(2) At all meetings of the Board, six (6) members shall form a quorum.

(3) Meetings of the Board shall be held at least once in every three months and at such other times and at such places as the Chairperson may determine.

(4) The Chairperson shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(5) The Board may invite, for such a period of time as it thinks fit, any person whose knowledge or advice it may require, but a person so invited shall not be entitled to vote at any meeting of the Board or be counted as a member for the purpose of forming a quorum.

[Ch4704s9]9. Remuneration

The members of the Board shall be paid such remuneration and allowances as the Minister may determine.

[Ch4704s10]10. Functions of the Board

The Board shall have the following functions—

- (a) issue one licence to conduct the National Lottery as contemplated in subsection (1) of section 21 and any matter contemplated in paragraph (g) of subsection (3) of section 22;

- (b) ensure that—
 - (i) the National Lottery is conducted with all due propriety and strictly in accordance with the provisions of the Constitution, this Act, all other applicable laws and the licence for the National Lottery together with any agreement pertaining to that licence;
 - (ii) the interest of every participant in the National Lottery are adequately protected; and
 - (iii) subject to subparagraphs (i) and (ii), the net proceeds of the National Lottery are as large as possible;
- (c) monitor, regulate and police all lotteries;
- (d) advise the Minister of percentages of money to be allocated or review the percentage under paragraph (e) of subsection (3) of section 22 as required;
- (e) advise the Minister on the efficacy of legislation pertaining to lotteries and ancillary matters;
- (f) administer and invest the money paid to the Board in accordance with this Act and the licence for the National Lottery;
- (g) perform such additional duties in respect of lotteries as the Minister may assign to the Board;
- (h) ensure that arrangements are made as may be specified in the licence for the protection of prize monies and sums for distribution;
- (i) advise the Minister on any matter relating to the National Lottery and on any other matter upon which the Minister requires the advice of the Board; and
- (j) set up a fund for prize money.

[Ch4704s11]11. Powers of the Board

The Board shall have the following powers to—

- (a) acquire and dispose of assets of the Board;
- (b) set up a secretariat and employ management staff with appropriate qualifications;
- (c) generate revenue;
- (d) ensure that the winners in a lottery are paid their prize money promptly;
- (e) ensure that part of the funds generated are channeled towards poverty reduction programs, including to sectors such as sports, culture, small medium enterprises and social welfare services; and
- (f) develop guidelines for the operation of the National Lottery business in Malawi.

[Ch4704s12]12. Secretariat of the Board

The Secretariat of the Board shall consist of a chief executive officer and other employees of the Board appointed under this Act.

[Ch4704s13]13. The Executive Director

(1) The Board shall appoint, on such terms and conditions as it may determine, an Executive Director of the Board who shall be the Secretary of the Board as well as the Chief Executive Officer of the Board and in addition shall perform such duties as the Board shall assign to his office and ensure the effective administration and implementation of this Act.

(2) Without derogation from the generality of the responsibilities and duties of the Executive Director conferred under subsection (1), the Executive Director shall be responsible for the day-to-day administration of the Board.

(3) The Executive Director or such other officer of the Board as the Executive Director may designate, shall attend meetings of the Board and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Executive Director or such other officer to withdraw from such meetings.

[Ch4704s14]14. Other employees

(1) The Board may appoint, on such terms and conditions as it may determine, such other employees, subordinate to the Executive Director, as it considers necessary for the performance of its functions and to assist the Executive Director in discharging his duties.

(2) The Board may delegate to the Executive Director the appointment of employees of such junior ranks, as the Board shall specify.

[Ch4704s15]15. Procedures for the Board

(1) The Chairperson or another person duly authorized by the Board shall sign all licences issued under this Act and all communications from the Board, and such documents may be published in the Gazette.

(2) The application of the seal of the Board shall be authenticated by the signatures of the Chairperson or some other members of the Board duly authorized by the Board to authenticate the application of the seal thereof.

[Ch4704s16]16. Annual Report

(1) The Board shall, within three months after the end of each financial year, furnish to the Minister the full report on the exercise and performance of its functions during that year and such report shall include financial statements duly audited, the report of the auditors and such other information as the Minister may by notice in writing to the Board, require.

(2) The Minister shall, after receiving the Report referred to in subsection (1), present it to Parliament at its next sitting.

PART III

FINANCIAL PROVISIONS

[Ch4704s17]17. Funds of the Board

(1) The funds of the Board shall consist of—

- (a) such sums as may be appropriated by Parliament;
- (b) subject to the provisions of this Act, the proceeds from the sale of tickets in any National Lottery;
- (c) other money lawfully paid to the Board excluding any prize money paid by the licensee to the Board; and
- (d) the payments to the Board in terms of section 35.

(2) Subject to the provisions of sections 72 and 73 of the Public Finance Management Act, the Board may with the approval of the Minister, borrow either temporarily, by way of overdraft or otherwise, such sum as it may require, for meeting its obligations or discharging its functions under this Act. Cap. 37:02

[Ch4704s18]18. Finances

There shall be paid out of payments made to the Board in terms of section 35 such sums as are necessary to defray any expenses incurred by the Board, including the remuneration, allowances and other employment benefits of the Executive Director and members of staff of the Board.

[Ch4704s19]19. Accounts and audit

(1) The Board and the licensee shall keep proper books of accounts and records of all their transactions in respect of the National Lottery.

(2) The Minister shall appoint independent auditors at the end of each financial year to examine and audit the accounts and all relevant documents of the Board.

[Ch4704s20]20. Financial year

The financial year of the Board shall be the period commencing on the date of commencement of this Act and ending on the following 30th June and thereafter it shall be a period of twelve months ending on 30th June every year.

PART IV

LICENSING OF THE NATIONAL LOTTERY

[Ch4704s21]21. Licence to conduct National Lottery

(1) The Board shall issue one licence at any one time authorizing a person to conduct the National Lottery which for purposes of section 46 will constitute a lottery, in accordance with the provisions of this Act.

(2) Before a licence is granted under this section—

(a) the Board shall, by notice in the Gazette and in not less than two newspapers, invite interested parties to apply in writing for a copy of a request for proposal or any other document which may be made public and the Board shall require payments for such documents;

(b) the Board shall, before granting a licence, be satisfied that—

(i) the applicant for the licence contemplated in subsection (1) has sufficient and appropriate knowledge or experience to conduct the National Lottery, or has unconstrained and continuous access thereto, and shall be able to conduct the National Lottery strictly in accordance with this Act, the licence of the National Lottery and any agreement pertaining to the licence;

(ii) the applicant has the necessary financial and other resources to conduct the National Lottery; and

(iii) no political party in the country or political office bearer has any direct financial interest in the applicant or is a shareholder of the applicant.

(3) In considering whether to grant the licence, the Board shall take into account—

(a) whether any person who appears before the Board is likely to manage the business or any part of the business of the National Lottery under the licence, is a fit and proper person to do so;

(b) whether any person for whose benefit that business is likely to be conducted is a fit and proper person to benefit from it; and

(c) whether any person who is likely to manage the business or any part of the business of the National Lottery under the licence, shall—

(i) do so with all due propriety and strictly in accordance with the Constitution, this Act, all other applicable laws and the licence for the National Lottery together with any agreement pertaining to the licence;

(ii) ensure that the interests of every participant in the National Lottery are adequately protected; and

(iii) subject to subparagraphs (i) and (ii), ensure that the net proceeds of the National Lottery are as large as possible.

(4) A licence granted under this section shall include the conditions contemplated in section 22.

(5) The licence contemplated in subsection (1) may allow the licensee to appoint another person to conduct certain lotteries of the National Lottery on behalf of the licensee only with the written approval of the Board.

(6) The Minister shall inform Parliament regarding the person to whom a licence to conduct the National Lottery has been granted.

[Ch4704s22]22. Requirements and conditions of licence

(1) A licence granted under section 21 shall—

- (a) be in writing;
- (b) specify the conditions attached to it; and
- (c) be granted for a maximum period of five (5) years and may be renewed for a further period of five (5) years.

(2) The Board may, in a case where the licence has been granted for less than five (5) years, and at least one year before expiry of that licence, extend that licence for such further period as would, together with the initial period which that licence was granted, not exceed five (5) years:

Provided that the licensee shall have no rights or legitimate expectation in respect of an extension of the period of validity of the licence other than the rights afforded by this subsection.

(3) The conditions contemplated in subsection (1) shall include such conditions as the Board shall determine and shall in particular include conditions requiring the licensee to—

- (a) obtain the consent of the Board before doing anything specified in the licence;
- (b) refer specific matters to the Board, as the case may be, for approval;
- (c) ensure that such requirements the Board may, from time to time, determine or approve in terms of the licence are complied with, including the imposition of penalties in the event of the licensee not complying with any provision of this Act or the licence;
- (d) provide the Board, at times specified by the Board, with such information as the Board may require;
- (e) make such arrangements as may be specified in the licence for the payment of such sums out of the net proceeds of the National Lottery as may be so specified to the Fund or the Board, at such times as may be specified;
- (f) do such things in terms of the licence including the transfer of property or any rights, excluding intellectual property rights or proprietary software as the Board may require, upon the expiration of the licence;
- (g) obtain the approval of the Board for any lottery and the rules thereof before the lottery is conducted under the licence for the National Lottery;

(h) allow the Board or any person designated by it to enter any premises or facility belonging to or under the control of the licensee or a member of the management of the licensee or, premises to which the licensee has a right of access at any reasonable time if such entry is necessary for the protection of the integrity of the National Lottery and to—

(i) examine or inspect anything, machine, document or data captured in any form, excluding proprietary software, found on or in the premises or facility, and make copies of or make extracts from that thing, machine, document or data;

(ii) seize, for the purpose of further examination or security information, anything, machine, document or data, excluding proprietary software, on or in such premises or facility which has a bearing on the conduct of the National Lottery;

(iii) seal or otherwise secure any such premises, facility, thing or machine on or in which any document or data which has a bearing on the conduct of the National Lottery is stored or captured; and

(iv) take such steps as may be reasonably necessary to protect the integrity and conduct of the National Lottery;

(i) secure a valid and enforceable undertaking in a written form from—

(i) the person controlling the licensee in any way whatsoever not to change that control of the licensee for the duration of the licence without the consent of the Board; and

(ii) the person controlling the licensee in any way whatsoever not to transfer, cede or in any other way encumber the licence to another person.

(4) On—

(g) requesting a copy of any document under paragraph (a) subsection (2) of section 21;

(h) applying for the licence to be issued under subsection (1) of section 21; or

(i) the granting of the licence under section 21,

the person requesting a copy of a document, the applicant or the licensee, as the case may be, shall pay to the Board the prescribed fee.

[Ch4704s23]23. Variation of conditions of licence

(1) The Board may vary any condition in the licence granted under section 21—

(a) to the extent provided for in the proviso to subsection (1) of section 22; or

(b) other than a condition contemplated in paragraph (a) only if the licensee consents to that variation, or if the licensee does not consent to that variation, only if—

(i) that variation is provided for in this Act or to the extent provided for in the licence; and

(ii) the licensee has been given a reasonable opportunity to make representations to the Board, as the case may be, in respect of the intended variation.

(2) If the Board, after consideration of the licensee's representations to it, decides to vary a condition in accordance with that licence but without the consent of the licensee, the Board, shall cause a notice to be served on the licensee in which the licensee shall be informed of the variation and the date on which that variation shall take effect, which date shall not be less than twenty-one (21) working days after the date of service of such notice, unless the licensee agrees to a shorter period in writing.

(3) The provisions of the licence to vary a condition in the licence under subsection (1) may allow the Board to add a condition to the licence.

[Ch4704s24]24. Enforcement of conditions of licence

(1) If the Board has reason to believe—

- (a) that a person has contravened a condition in the licence granted under section 21;
- (b) that a person has contravened such a condition and there is a reasonable likelihood that the contravention will continue or be repeated; or
- (c) that a person has contravened such a condition and that the contravention can be remedied,

the Board, may apply to the High Court for an order prohibiting the contravention or, as the case may be, requiring the licensee and any other person who appears to the court to have been a party to the contravention, to take such steps as the court may direct.

(2) The liability of the licensee to pay any money in terms of this Act or the licence or agreement pertaining thereto shall not be affected by the licence ceasing to be valid for any reason and such money may not be set off by the licensee against any amount due and payable.

[Ch4704s25]25. Grounds for revocation of licence

The licence granted under section 21 may be revoked by the Board on the following grounds if—

- (a) the licensee is no longer a fit and proper person to conduct the National Lottery, whether because of the commission of an act or insolvency, liquidation or for any other valid reason;
- (b) a condition contained in the licence has been materially contravened;
- (c) any information given by the licensee, any person who in any way controls the licensee or an agent or representative of the licensee to the Board—
 - (i) in or in connexion with the application for the licence;
 - (ii) in accordance with a condition in the licence; or

(iii) in making representations under subsection (1) of section 26, in respect of financial matters regarding the National Lottery or in respect of any aspect of the management of the National Lottery, is materially false;

(d) any person who is managing the business or any part of the business of the licensee or who is a supplier of goods or services to the licensee is not a fit and proper person to do so, whether because of the commission of an act or insolvency, liquidation, incarceration in a prison or other institution or for any other relevant reason, unless the licensee immediately takes steps to effectively disassociate himself or itself from that person;

(e) any person for whose benefit the licence has been acquired or who is a holding company of the licensee or who in any other way controls the licensee, is not a fit and proper person to benefit from it, whether because of insolvency, liquidation, incarceration in a prison or other institution or for any other relevant reason;

(f) the licensee has failed to take adequate steps to prevent the commission of fraud by his or its employees, agents, representatives, suppliers or by participants in the National Lottery after having been alerted to or becoming aware of conditions conducive to the commission of fraud or to instances of fraud or dishonesty;

(g) the licensee, or any of his or its employees, agents representatives or suppliers prevent the Board or any person designated by it from exercising his or its rights contemplated in paragraph (h) of subsection (3) of section 22;

(h) application has been made to the High Court for the sequestration or liquidation, as the case may be, of a person who in any way controls the licensee;

(i) the licensee or his representative contravenes the law; or

(j) the licensee or his representative gives information in the application for a licence or on financial matters regarding the lottery which is materially false.

[Ch4704s26]26. Notice of revocation

(1) If the Board is satisfied that grounds exist for the revocation of the licence granted under section 21, it shall notify the licensee in writing of the existence of such grounds and call upon the licensee to furnish reasons within fourteen (14) days of service of that notice, sent to the registered physical address of the licensee, as to why the licence should not be revoked, failing which the licence will cease to be valid upon the expiration of the said period of fourteen (14) days.

(2) If the licence for the National Lottery ceases to be valid in terms of subsection (1), the Board shall forthwith inform the licensee in writing of that fact and of the date upon which the licence ceased to be valid.

[Ch4704s27]27. Suspension of licence

(1) The Board may order a suspension of the licence in the notice contemplated in subsection (1) of section 26 as from the date of service of that notice for a period of not longer than thirty (30) days after the licensee has furnished those reasons:

Provided that the Board or whoever acts under this section, shall inform the other of his or its actions.

(2) If the Board decides to suspend the licence under subsection (1) the Minister shall forthwith inform Parliament of that fact and of the grounds for the suspension, and if Parliament is not then in session, on the first day of the next session of Parliament.

(3) The licence shall immediately cease to be valid if it is suspended for a second time.

[Ch4704s28]28. Revocation of licence

(1) If reasons are furnished by the licensee as contemplated in subsection (1) of section 26, the Board, shall after considering such reasons—

(a) decide whether or not to revoke the licence;

(b) call upon the licensee to appear before the Board on a specified date to make oral representations in support of any written representations made by the licensee or to answer any questions which the Board may have with regard to such written representations, thereafter the Board shall consider the matter and decide whether or not to revoke the licence.

(2) If the Board decides to revoke the licence, it shall by written notice served at the registered head office of the licensee notify the licensee of that fact, of the grounds for the revocation and of the date on which the revocation shall take effect.

(3) If the Board decides to revoke the licence in terms of subsection (1), it shall inform the Minister and the Minister shall inform Parliament of that fact and of the grounds for the revocation forthwith and if Parliament is not then in session, on the first day of the next session of Parliament.

PART V

ESTABLISHMENT OF NATIONAL LOTTERY DISTRIBUTION FUND

[Ch4704s29]29. Establishment of National Lottery Distribution

There is hereby established a fund to be known as the National Lottery Distribution Fund (hereinafter referred to as “the Fund”) which shall be managed by the Board.

[Ch4704s30]30. Fund to vest in and administered by the Board

(1) The Fund shall vest in and be administered by the Board.

(2) The Minister shall include in his Report to Parliament information regarding the operations of the Fund.

[Ch4704s31]31. Revenue of the Fund

The Fund shall consist of—

(a) the sums paid to the Fund in terms of paragraph (e) of subsection (3) of section 22;

(b) interest and dividends derived from the investment of money standing to the credit of the Fund; and

(c) other money lawfully paid into the Fund.

[Ch4704s32]32. Banking account

(1) Money in the Fund shall, pending the application thereof in terms of this Act be deposited into an account to be known as “The National Lottery Distribution Fund” at a financial institution.

(2) The financial institution where the account referred to in subsection (1) is maintained, shall not in respect of any liability of the Board, not being a liability arising out of or in connexion with any such account, have or obtain recourse to any rights, whether by set-off, counter-claim, charge or otherwise, against money standing to the credit of such an account.

[Ch4704s33]33. Investment of money not immediately required

(1) Any money of the Fund or the Board which is not immediately required for allocation may be invested with a financial institution or in any manner the Board deems fit and approved by the Minister.

(2) Any unexpended balance of the money of the Fund at the end of any financial year shall be carried forward as a credit to the next financial year.

[Ch4704s34]34. Allocation of money in the Fund

(1) The Minister, in consultation with the Board shall prescribe the amount of money and the manner in which the money in the Fund shall be allocated to different sectors, and other good causes for the welfare of the general public and contribution to the national economy.

(2) The Minister in consultation with the Board shall allocate an amount from the Fund to the Board under section 35.

[Ch4704s35]35. Payments from Fund in respect of expenses

(1) At such times as the Minister deems appropriate, payments shall be allocated to the Board out of money in the Fund held under subsection (2) of section 34 in respect of the Board’s expenses.

(2) In determining what amounts are sufficient for meeting payments referred to in subsection (1), the Minister shall take into account sums paid or to be paid to the Board in terms of paragraph (e) of subsection (3) of section 22.

PART VI

AUTHORIZATION OF OTHER LOTTERIES

[Ch4704s36]36. Authorization of other lotteries

(1) The Board may, in its absolute discretion authorize the promotion and conduct of a lottery, not being a lottery contemplated under the provisions of section 21—

(a) which is intended to raise funds for social service, public welfare, relief of distress or patriotic purposes or to provide recreational or sporting facilities;

(b) of which at least one-quarter of the gross proceeds is to be devoted to the object for which the lottery is promoted; and

(c) in respect of which an application, which shall state in detail the purposes for which the lottery is to be promoted, is made by the intended promoters to the Board.

(2) The Board may, in its absolute discretion and subject to such conditions as it may think fit to impose, authorize the promotion and conduct of any lottery not otherwise authorized or permitted under the provisions of this Act.

(3) Where in the case of a lottery authorized under the provisions of subsection (1), less than one-quarter ($\frac{1}{4}$) of the gross proceeds of the lottery is devoted to the object for which such lottery is promoted or any of the proceeds are devoted to any purpose, other than expenses and prizes, which is not such an object, each promoter of such lottery commits an offence and on conviction shall be liable to a fine of K100,000 and to twelve (12) months imprisonment.

[Ch4704s37]37. Powers of the Board in respect of other lotteries

(1) The Board may—

(a) make such investigation, or require the submission of such information, as it may deem necessary, in order to enable it to examine any application made to the Board under the provisions of subsection (1) of section 36;

(b) impose, in respect of any authorization granted under the provisions of the said subsection such conditions as it may deem necessary in order to ensure that the lottery concerned is promoted and conducted as efficiently as possible in the interest of the purposes for which it is being promoted and of the public in general;

(c) take such steps, as it may deem necessary, in order to ensure that any conditions imposed under paragraph (b) have been or are being complied with;

(d) require any lottery which it has authorized to render accounts to the Board in such form and within such periods as it may specify;

(e) guide and coordinate the proper and equitable distribution of the charitable funds from any lottery authorized by it;

(f) make recommendations from time to time to the Minister for the better control of lotteries with particular regard to the protection of the public from fraud.

(2) If any condition, imposed under the provisions of subsection (2) of section 36 or of paragraph (b) of subsection (1), is broken, each of the promoters of the lottery concerned and, where the person by whom the condition is broken is not one of the promoters, that person also,

commits an offence and on conviction shall be liable to a fine of K100,000 and to twelve months imprisonment:

Provided that it shall be a defence for a person charged only by reason of his being a promoter of the lottery to prove that the offence was committed without his knowledge.

[Ch4704s38]38. Imposition of condition in respect of other lotteries

Without prejudice to the generality of paragraph (b) of subsection (1) of section 37, the Board may, in respect of any lottery authorized by it, impose conditions under the said paragraph—

(a) providing for the amount, not exceeding twelve and one-half per cent (12½ per cent) of the gross proceeds of the lottery, which the promoters thereof may deduct from such proceeds in respect of operating expenses:

Provided that, in the case of a series of lotteries proposed to be promoted by the same persons, the Board may, in its discretion, allow the deduction of an amount in excess of the aforesaid percentage in respect of all or any of the lotteries drawn within the period of twelve months from the date of the draw of the first lottery in such series;

(b) providing for the protection of purchasers of tickets or chances in the lottery against fraud;

(c) providing for the submission of accounts to the Board by the promoters of the lottery;

(d) restricting the amount of the proceeds of the lottery which may be used for the purposes of such lottery outside Malawi, which amount shall not exceed one-fifth (1/5) of the total amount devoted to the object for which the lottery is promoted; and

(e) relating to the provision by the promoters of the lottery of guarantors to cover the expected proceeds, or any part thereof, of such lottery.

[Ch4704s39]39. Utilization of gross proceeds of a lottery for certain purposes

(1) Where the promoters of a lottery authorized under section 36 wish to—

(a) build up a reserve fund for prize stabilization;

(b) create a reserve to meet extraordinary expenditure not attributable to any particular draw;

(c) acquire premises for the purposes of providing office or staff accommodation; or

(d) incur capital expenditure,

they shall apply to the Board for permission to do so setting out in such application details of their proposal.

(2) Where an application is made to the Board under the provisions of subsection (1), the Board may, if it is satisfied that the application is made in respect of a recurrent lottery and that the

lottery concerned would, if the application were approved, be promoted and conducted more efficiently in the interest of the purpose for which it is being promoted and of the public in general, approve the application.

(3) Where the Board approves an application under the provisions of subsection (2), it may authorize the promoters of the lottery to utilize a portion of the gross proceeds of one or more future lotteries for such of the purposes set out in subsection (1) as are referred to in the said application:

Provided that the Board shall not authorize the promoters to utilize an amount in excess of one-twentieth (1/20) of the gross proceeds of any lottery for such of the said purposes as are referred to in the said application.

(4) Notwithstanding the provisions of section 38, any amount which the promoters are authorized to utilize under the provisions of subsection (3) shall be in addition to any amount deducted from the gross proceeds in accordance with the provisions of paragraph (a) of section 38.

(5) The Board may attach such conditions, as it may deem necessary, to any approval or authority given under the provisions of this section.

(6) In the event of the promoters ceasing to promote further lotteries, any assets acquired with funds utilized in accordance with the provisions of this section shall be sold and the proceeds of such sale disposed of in meeting winding up expenses and accrued liabilities, not otherwise provided for, and any residue remaining after any such expenses or liabilities have been met shall be disposed of in such manner as the Board may direct.

[Ch4704s40]40. Prescribed fees

(1) The promoters of any lottery authorized under the provisions of section 36 shall pay the Board such fee or fees in respect of such authorization as may from time to time be prescribed.

(2) For the purposes of any condition imposed upon the authorization of a lottery of the limitation of operating expenses, any fee paid under the provisions of this section shall be deemed to be part of such expenses.

[Ch4704s41]41. Invalid conditions by promoters

For the purposes of any civil proceedings brought in respect of any ticket or chance in any lottery authorized under the provisions of section 36, a condition imposed by the promoters of the lottery requiring that tickets or chances in the lottery shall not be sold or prizes awarded, to any specified class or classes of persons shall be deemed to be null and void

[Ch4704s42]42. Power to require incorporation of promoters

Before authorizing the promotion of a lottery under the provisions of subsection (1) of section 36, the Board may require the promoters of the lottery to become a body corporate under any written law for the time being in force relating to incorporation.

[Ch4704s43]43. Lotteries incidental to certain entertainment

(1) A lottery may be promoted and conducted as an incident of any entertainment to which this section applies provided that all the conditions specified in subsection (2) are observed in connexion with the promotion and conduct of the lottery.

(2) The conditions referred to in subsection (1) are that—

(a) the whole proceeds of the entertainment, including the proceeds of the lottery, after deducting—

(i) the expenses of the entertainment excluding the expenses incurred in connexion with the lottery;

(ii) the expenses incurred in printing tickets in the lottery; and

(iii) such sum, if any, as the promoters of the lottery think fit to appropriate on account of any expenses incurred by them in providing or purchasing prizes in the lottery, shall be devoted to the purpose other than private gain;

(b) tickets or chances in the lottery shall not be sold, or issued, nor shall the result of the lottery be declared, except on the premises on which the entertainment takes place and during the progress of the entertainment; and

(c) the facilities provided for participating in lotteries shall not be the only, or the only substantial, inducement to persons to attend the entertainment.

(3) If any of the conditions specified in subsection (2) is broken or not complied with, every person concerned in the promotion or conduct of the lottery commits an offence and on conviction shall be liable to a fine of K100,000 and to twelve months imprisonment:

Provided that in any proceedings instituted under the provisions of this subsection it shall be a defence to prove that the offence was committed without the knowledge of the person against whom such proceedings are brought.

(4) The entertainments to which this section applies are bazaars, sales or work, fetes, chances and other entertainments of a similar character, whether limited to one day or part thereof or extending over two or more days.

[Ch4704s44]44. Private lotteries

(1) In this section—

“private lottery” means a lottery within Malawi which is promoted for, and in which the sale of tickets or chances by the promoters is confined to, either—

(a) members of one club or association established for social or common interest or recreational purposes only;

(b) persons all of whom work in the same organization; or

(c) persons all of whom reside in the same building,

and which is promoted by persons each of whom is a person to whom, under the foregoing provisions, tickets or chances may be sold to by the promoters and, in the case of a lottery promoted for the members of a club or association, is a person authorized in writing by the governing body of the club to promote the lottery.

(2) A private lottery may be promoted and conducted provided that all the conditions specified in subsection (3) are observed in connexion with the promotion and conduct of the lottery.

(3) The conditions referred to in subsection (2) are that—

(a) the whole proceeds, after deducting only expenses incurred for printing and stationery, shall be devoted to the provision of prizes for purchasers of tickets or chances or, in the case of a lottery promoted for the members of the club or association, shall be devoted either to the provision of prizes as aforesaid or to purposes which are purposes of the club or association, or, as to part, to the provision of prizes as aforesaid and as to the remainder, to such purposes as aforesaid;

(b) there shall not be exhibited, published or distributed any written notice or advertisement of the lottery other than—

(i) a notice thereof exhibited on the premises of the club or association for whose members it is promoted or, as the case may be, within the organization or in the building which the persons for whom it is promoted work or reside; and

(ii) the announcement or advertisement thereof as is contained in the tickets, if any;

(c) the price of each ticket or chance shall be the same, and the price of any ticket shall be stated on the ticket;

(d) every ticket shall bear upon the face of it the names and addresses of the promoters of the lottery and a statement of the persons to whom the sale of tickets or chances by the promoters is restricted, and a statement that no prize won in the lottery shall be paid or delivered by the promoters to any person other than the person whom the winning ticket or chance was sold, and no prize shall be paid or delivered except in accordance with the statement;

(e) no ticket or chance shall be issued or allotted by the promoters except by way of sale and upon receipt of the full price thereof, and no money or valuable thing so received by a promoter shall in any circumstances be returned; and

(f) no ticket in the lottery shall be sent through the post or any electronic devices.

(4) If any of the conditions specified in subsection (3) is broken, each of the promoters of the lottery and, where the person by whom the condition is broken is not one of the promoters, that person also, commits an offence and on conviction shall be liable to a fine of K100,000 and to imprisonment for twelve (12) months:

Provided that it shall be a defence for a person charged only by reason of his being a promoter of the lottery to prove that the offence was committed without his knowledge.

PART VII

OFFENCES AND PENALTY

[Ch4704s45]45. Offences by bodies corporate

Where a person convicted of an offence under this Act is a body corporate, every person who at the date of the commission of the offence was a director or officer of such body corporate shall also be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge.

[Ch4704s46]46. Unauthorized lotteries

(1) Any lottery promoted or conducted otherwise than in accordance with the provisions of this Act shall be deemed to be an unauthorized lottery.

(2) Any person who opens, keeps or uses any place for carrying on an unauthorized lottery commits an offence and upon conviction shall be liable to a fine of K200,000 and to imprisonment for two (2) years.

(3) Any person who prints or publishes, or causes to be printed, or published, any advertisement or other notice of, or relating to an unauthorized lottery, whether promoted within Malawi or elsewhere, or relating to the sale of any ticket or chance in any such lottery, commits an offence and upon conviction shall be liable to a fine of K200,000 and to imprisonment for two (2) years.

(4) Where any person is convicted of an offence under the provisions of this section, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture of any instrument, apparatus or device used in connexion with the lottery.

[Ch4704s47]47. General offences

(1) Any person who—

- (a) participates in a lottery; or
- (b) conducts, facilitates, promotes or derives any benefit from a lottery unless such lottery is or has been authorized by or under this Act, commits an offence.

(2) Any person who—

- (a) contravenes or fails to comply with any provision of this Act;
- (b) forges or in any other fraudulent way changes any ticket or any other document or thing pertaining to any lottery;
- (c) knowingly sells or in any other way disposes of any forged ticket or any other document or thing pertaining to any lottery; or

(d) with intent to defraud, alters any number or figure on any ticket or any other document or thing pertaining to any lottery;

(e) obtains any direct or indirect financial gain which is not solely a share in the prize payout, by forming, conducting or in any other way promoting a syndicate for the purchase of a ticket; or

(f) sells a ticket—

(i) at a price higher than that which is printed on the ticket;

(ii) on condition that the seller of the ticket shares in the prize in the event of a ticket sold by him being the ticket in respect of which a prize was paid;

(iii) on any condition not provided for in the rules of the lottery concerned;

(iv) on credit with the financial assistance in any form of the seller; or

(g) conducts, organizes, promotes, derives or manages any scheme, plan, competition, arrangement, system, game or device which directly or indirectly provides for betting, wagering, gambling, or any other game of risk on any outcome of any lottery unless authorized by or under this Act or any other law,

commits an offence,

[Ch4704s48]48. Offences relating to National Lottery

(1) Any person who—

(a) advertises or offers the opportunity to participate in a lottery, promotional competition, competition or game of another description and who gives, by whatever means, a false indication that it is a lottery, competition or game forming part, or is otherwise connected with, the National Lottery;

(b) with intent to defraud, falsely makes, forges, utters, passes or counterfeits a National Lottery ticket;

(c) influences or attempts to influence the winning of a prize through the use of coercion, fraud or deception, or through tampering with lottery equipment, systems, software, data, tickets or materials; or

(d) fails to comply with any regulation made under section 50, commits an offence.

[Ch4704s49]49. Penalties

Any person convicted of an offence under this Act, for which no penalty is provided for, shall be liable to a fine of K500,000 and to imprisonment for four (4) years.

PART VIII

MISCELLANEOUS PROVISIONS

[Ch4704s50]50. Regulations in respect of National Lottery and other lotteries

(1) The Minister may, in consultation with the Board make regulations for the proper conduct of the National Lottery, other lotteries and generally for the carrying into effect of this Act.

(2) Without prejudice to the generality of the foregoing, the Minister, in consultation with the Board, may make regulations regarding—

- (a) the conduct of the National Lottery or other lotteries including—
 - (i) the minimum age of persons to whom or by whom tickets or chances may be sold;
 - (ii) the persons or categories of persons who shall be disqualified from participation;
 - (iii) the places where or circumstances or manner in which tickets or chances may be sold or persons who may be invited to buy such tickets or chances;
 - (iv) the circumstances under which lotteries may be advertised and the information that is to appear in an advertisement for a lottery;
 - (v) the places where or circumstances or manner in which signs relating to a lottery may be displayed;
 - (vi) application and licensing fees referred to in paragraph (a) of subsection (2) of section 21;
 - (vii) in general any other matter which may be necessary or expedient to prescribe in order to achieve or promote the objects of this Act;
- (b) the making of oral representations as contemplated in paragraph (b) of subsection (1) of section 28;
- (c) prescribing the form in which any application for the authorization under the provisions of section 36 shall be made;
- (d) prescribing the amount of fees payable under section 40; or
- (e) management of the National Lottery Distribution Fund referred to in section 29.

[Ch4704s51]51. Savings

Nothing in this Act shall apply in relation to any lottery or competition in respect of which there is no subscription.

[Ch4704s52]52. Lottery debts enforcement

Any lottery debt lawfully incurred by a person in the course of any lottery shall, notwithstanding provisions of any law or the common law, be enforceable in a court of law.

[Ch4704s53]53. Confidentiality

(1) Subject to the provisions of the Constitution, any legislation which may be enacted in pursuance of the Constitution or any other relevant law, no person, including the Minister, a member or employee of the Board or the Department, or a former member or employee of the Board or the Department, may—

(a) in any way disclose any information submitted by any person in connexion with any application for any licence, certificate or appointment under this Act, or;

(b) publish any information obtained in contravention of paragraph (a), unless ordered to do so by a court of law or unless the person who made such application consents thereto in writing.

(2) Any person who contravenes subsection (1) commits an offence.

SUBSIDIARY LEGISLATION

LOTTERIES (PROMOTIONAL COMPETITIONS) REGULATIONS

under s. 50

G.N. 16/2006

19/2008

1. Citation

These Regulations may be cited as the Lotteries (Promotional Competitions) Regulations.

2. Interpretation

G.N. 19/2008 In these Regulations, unless the context otherwise requires—

“advertising material” excludes material which refers to a promotional competition printed or displayed on any individual item of the goods promoted by that competition and which are for sale to the public;

“goods or services” mean goods or services which are ordinarily manufactured, sold, supplied, distributed or delivered or in any other way form a substantial part of the business of the promoter involved in a particular promotional competition in the calendar year during which that promotional competition is held;

“permit” means a permit which authorizes a promotional competition;

“promoter” means a person who holds, conducts, promotes, organizes or is in any other way directly associated with the management or execution of a promotional competition;

“promotional budget” shall consist of the total of the value of the prizes and all the advertising costs;

“promotional competition” means a lottery for the promotion of a trade or business;

“value of prize” means a price at which a person reasonably expects to purchase the prize in the absence of a discount or special incentive but is not connected to the monetary component of a prize.

3. Application of Regulations

(1) These Regulations shall apply to the administration and conduct of promotional competitions.

(2) These Regulations shall not apply in respect of any operation authorized by the licence issued under section 21 (1) of the Act.

4. Lawful promotional competition

A promotional competition shall be lawful if—

(a) the consideration payable in respect of the purchase of goods or the use of services in respect of which that promotional competition is conducted—

(i) is the price usually or ordinarily paid, excluding discounts, for such or similar goods or services without the opportunity of taking part in a promotional competition;

(ii) is not increased by the opportunity to participate in that promotional competition; and

(iii) is the only consideration payable for those goods or services and includes consideration for the right to compete;

(b) the opportunity of participating in the promotional competition is not the only or the only substantial inducement to a person to purchase or use the goods or services to which the promotional competition relates;

(c) the promotional competition is conducted in accordance with these Regulations;

(d) the Minister has not declared that kind of promotional competition unlawful;

(e) the goods or services manufactured, sold, supplied, distributed or delivered in connexion with the right to participate in a promotional competition are usually or ordinarily manufactured, sold, supplied, distributed or delivered by the person for whose benefit the promotional is held; and

(f) the consideration paid for the purchase of the goods or the use of the services promoted by a promotional competition is not increased by the opportunity to take part in that promotional competition to such an extent that the promotional competition does not mainly serve as a means, method or mechanism of promoting the relevant goods or services, but substantially as consideration for the opportunity to take part in that promotional competition.

5. Application for permit

G.N. 19/2008(1) Any person who wishes to conduct a promotional competition shall submit an application, in duplicate, for a permit to the Board in the prescribed form contained in the First Schedule hereto and shall pay the prescribed application fees contained in the Second Schedule hereto.

(2) Where the Board is satisfied with the application it shall grant the applicant a permit to conduct a promotional competition upon payment of the fees contained in the Second Schedule hereto.

(3) The Board may revise the fees in the Second Schedule hereto from time to time.

(4) Where the payment of the fees is effected on a date later than the indicated starting date of the competition, interest shall be charged on the fees due from the indicated date to date when it is paid inclusive at 3 per cent above the base rate for the time being of the Reserve Bank of Malawi or such other clearing bank as the National Lotteries Board (NLB) may from time to time determine.

(5) The Board shall only issue a permit for a specific period up to three months and where a promoter wishes to conduct a promotion for a longer term upon the expiry of the term, he shall apply in writing to the Board for a renewal and shall pay an additional fee as contained in the Second Schedule.

6. Minimum age of participants

(1) A promoter shall not offer or award to a person under a particular age, a prize or benefit comprising or consisting of or involving goods or services which under any written law shall not—

- (a) be sold or supplied to;
- (b) be used by; or
- (c) in any other way benefit,

a person under that age.

(2) No person shall direct at persons under the age contemplated in subregulation (1) an advertising material in respect of a promotional competition or which offers or awards goods or services referred to in subregulation (1).

7. Conditions of entry

G.N. 19/2008(1) A person who is an employee, agent or consultant of the promoter or his immediate family members shall not be eligible to participate in a promotional competition held by that promoter.

(2) Any advertising material in respect of a promotional competition shall be adequately noticeable and legible in order to alert prospective participants in that promotional competition to the prohibition referred to in subregulation (1).

(3) A promoter shall ensure that all information designed to or likely to induce a person to enter the promotional competition includes—

- (a) the name and address of the business for whose benefit the promotional competition is conducted;
- (b) the rules, terms and conditions of entry;
- (c) the period of the competition including the closing date for receipt of entries;
- (d) details of the drawing of prizes;
- (e) the method used to decide prize winners;
- (f) any arrangements for a second chance draw for unclaimed prizes; and
- (g) details of each prize and its recommended retail value and where a prize in the competition consists of one of the following terms, the additional information in the Third Schedule shall be included in the terms and conditions.

(4) The promoter may publish the terms and conditions of a promotional competition in any advertising material and where it may not be possible to do so, the advertising material shall state where the full terms and conditions are to be found.

8. Nature of prizes

(1) A promoter shall not offer or award goods, services or benefits as prizes to a participant in a promotional competition—

- (a) in respect of which the sale, possession, use, distribution, rendering or delivery is unlawful;
- (b) in respect of which the possession, use, rendering, distribution or delivery is dependent on the payment of a fee or any consideration to any other person in order to fully possess or use the prize unless all the initial costs have been met by the promoter;
- (c) in respect of which any licence, approval, endorsement, sanction, consent, agreement or any form of authorization by—
 - (i) any branch of Government;
 - (ii) a person's legal guardian; or
 - (iii) any other person,

is required for the lawful possession or use of those goods, services or benefits; or

(d) if, subject to subregulation (2) the winner of the prize is expected or obliged to endorse, promote or advertise the goods or services of the promoter, unless that winner after being publicly announced as a winner of the promotional competition is informed of such in writing and he consents in writing to endorse, promote or advertise the goods or services of the promoter.

(2) If the winner referred to in subregulation (1) (d) is a person under the age of sixteen years, any consent given by that person is not sufficient without the written consent of that person's legal guardian.

9. Rules relating to winners

G.N. 19/2008(1) The rules of a promotional competition relating to the manner and date of announcing the winners of the competition shall be published in advertising material promoting that competition.

(2) A promoter shall inform the Board of the time frame within which he shall award the prize to the winner:

Provided that the duration within which the promoter shall award the prize to the winner shall not exceed sixty days from the date, the winner of the promotional competition is announced.

10. Witnessing a draw by the Board

G.N. 19/2008(1) Every draw of a promotional competition authorized by the Board shall be witnessed by a person nominated by the Executive Director to represent the Board in that respect.

(2) Prize draws shall take place within the period stipulated on the permit and at the exact time and location indicated in the terms and conditions of the competition.

(3) A promoter shall not require participants to attend a draw as a prerequisite for eligibility in the draw unless—

(a) entry to the competition is only available in the premises in which the draw is to take place; and

(b) the draw is to take place within twenty-four hours after the commencement of the competition.

10A. Redraw

G.N. 19/2008(1) A promoter may conduct a redraw on the following conditions—

(a) that the winner of a prize is not readily identified; and

(b) reasonable efforts have unsuccessfully been made to identify the winner of the prize;

(2) The redraw shall be conducted if the terms and conditions of entry provide that the promoter may draw additional entrants:

Provided the additional name or names that have been drawn shall be substituted for the name of the winner of that prize.

11. Inspection

(1) A member of the Board or any person designated by the Chairperson of the Board in writing may, for purposes of monitoring compliance with the Act or these Regulations, and on the authority of a warrant issued under subregulation (2), enter any premises and—

- (a) inspect or search those premises;
- (b) examine any object found in or upon those premises;
- (c) examine or make copies of or take extracts from any book or document found on those premises; or

(d) seize any book, document or any object, if he wishes to retain it for safe custody or for further examination, and if it appears to provide proof of non-compliance with the Act.

(2) A warrant referred to in subregulation (1) shall be issued by a judge of the High Court or a magistrate who has jurisdiction in the area where the premises are situated, if it appears to the judge or magistrate from information under oath or affirmation that there are reasonable grounds for believing that—

(a) an exercise of a power referred to in subregulation (1) is necessary for the purpose of appropriate and applicable law enforcement in terms of the Act or these Regulations; and

(b) an object, book or document relating to such law enforcement is likely to be upon or in such premises.

(3) A warrant referred to in subregulation (1)—

(a) shall specify which of the acts mentioned in subregulation (1) may be performed thereunder by the person to whom it is issued;

(b) shall be executed during day time unless the person who issued the warrant authorizes the execution thereof during night time which in the circumstances are reasonable;

(c) may be issued on any day and shall be in force until—

- (i) it has been executed;
- (ii) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; or
- (iii) the expiry of seven days from the date of its issue.

(4) Any person who acts on the authority of a warrant referred to in subregulation (1)—

(a) shall, subject to subregulation (5), immediately before commencing with the execution—

(i) audibly demand admission to the premises from the person who appears to be in control of the premises;

(ii) identify himself to the person who appears to be in control of the premises, if such person is present, and hand to such person a copy of the warrant, or, if such person is not present, affix such copy in a prominent place on the premises; and

(iii) if such person is present, state the purpose for which he seeks entry;

(b) may subject to subregulation (3) (a), use such force as may be reasonably necessary, including the breaking of any door, window or other barrier—

(i) to overcome any resistance against the entry and search; or

(ii) if no person replies to the demand contemplated in paragraph (a) (i), in order to gain entry to the premises.

(5) Subregulation (4) (a) is not applicable if the person acting on the authority of that warrant has reasonable grounds to believe that any object, book or document which is the subject of the search may be destroyed, tampered with or disposed of if subregulation (4) (a) is first complied with.

(6) A person from whose possession or control a book or document has been removed under this regulation may make copies thereof at any reasonable time, at his own expense and under the supervision of a member of the Board or any other person designated by the Board.

12. Offences and penalties

(1) A promoter who contravenes any of the provisions of these Regulations commits an offence.

(2) Any person who knowingly participates in a promotional competition in contravention of regulation 7 commits an offence.

(3) Any person who hinders, obstructs or otherwise prevents any person acting on the authority of a warrant issued under regulation 11 from exercising his powers or from performing his duties authorized by that warrant, commits an offence.

(4) Any person convicted of an offence under this regulation shall be liable to a fine of K1,000 or to imprisonment for three months or to both a fine and imprisonment.

FIRST SCHEDULE reg 5 (1), G.N. 19/2008

APPLICATION FOR A PERMIT TO CONDUCT PROMOTIONAL COMPETITIONS

1. In accordance with the Lotteries Act and these Regulations made thereunder:

I,

(insert full name of applicant)

of

(address)

.....
hereby apply (with due authority) on behalf of which is the body corporate specified in paragraph 2 hereto, for a permit to conduct the following promotional competition:

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(State the details of the competition)

2. Name of corporate body conducting the promotional competition

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.....

3. Date and Place of Registration

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4. Full Particulars of all partners, directors and secretary of the body corporate—

(a)

(Name and address)

(b)

(description, i.e. partner, director or secretary)

(a)

(Name and address)

(b)

(description, i.e. partner, director or secretary)

(a)

(Name and address)

(b)

(description, i.e. partner, director or secretary)

(a)

(Name and address)

(b)

(description, i.e. partner, director or secretary)

(a)

(Name and address)

(b)

(description, i.e. partner, director or secretary)

5. Have you or any of the persons named in paragraph 4 ever been convicted of any criminal offence involving fraud or dishonesty; declared bankrupt, or entered into any agreement with creditors?

If yes, give particulars:

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6. State the dates including the duration within which the promotional competition is to be conducted:

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7. The proposed closing date:

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8. The proposed date of draw:

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9. The proposed method of draw:

10. Time and place of draw:

11. Proposed duration within which winners may claim and collect their prize:

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12. What method is proposed for the distribution of prizes, will the winners be required to claim the prizes themselves or will they be contacted by the promoters? Explain:

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13. Are the promoters of the proposed promotional competition prepared to provide any guarantee to the Board to cover for any default (failure to pay prizes) should the Board put such a condition? If not, state reasons:

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14. Provide a complete breakdown of advertising expenses (Please attach supporting documentation):

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15. Provide details of prizes (Please attach further information if the competition offers more than ten levels of prizes. All information provided should have attached supporting documentation):

Description of the Prizes	Quantity	Retail Value of Each Prize	Total Value
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16. The name and address of the accountant you shall appoint for the purpose of auditing your statement of accounts:

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Date:, 20..... Signature:

.....

(Designation)

NOTE: For the applicant: (Please ensure that the application should be accompanied by the prescribed application fees upon submission).

FOR OFFICIAL USE ONLY

Date when application is received:

Attachments received:

Name and signature of Receiving officer of the Board:

.....

.....

SECOND SCHEDULE reg. 5, G.N. 19/2008

FEES FOR PROMOTIONAL COMPETITIONS

Type of Permit Permit Fee

1. Where the duration for the proposed promotional competition is a period not exceeding three months part thereof 5% of the promotional competition budget.
2. For a period in excess of three months 5% of the promotional competition budget.

THIRD SCHEDULE reg 7 (3) (g), G.N. 19/2008

DETAILS OF PRIZES

Type of Prize Additional Information Required

1. Machinery or an electrical appliance Detailed description including — make, model and accessories.
2. Motor vehicle including motorcycle Detailed description including — new or second hand, make, model and accessories.

NOTE: All on-road costs must be included in the prize.

3. House and land Detailed description including — exact location, size, valuation, and nature (freehold, leasehold) (fully furnished), separate garage, landscaped garden, paved driveway.

NOTE: All legal, government and transfer costs must be included in the prize.

4. Travel and accommodation Detailed description including — destination, number of people (whether adults or children), duration (days and nights), mode and class of transport, amount of spending money, transfer costs, type of accommodation (if meals or entertainment is included), validity period for prize, prize restrictions (availability, peak or non-peak periods, transferability).

[Chap4801]CHAPTER 48:01

SALE OF GOODS

ARRANGEMENT OF SECTIONS

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17. Sale by sample

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[28TH JULY 1967]

PART I

PRELIMINARY

[Ch4801s1]1. Short title

This Act may be cited as the Sale of Goods Act.

[Ch4801s2]2. Interpretation

(1) In this Act, except where the context otherwise requires—

“action” includes counterclaim and set-off;

“buyer” means a person who buys or agrees to buy goods;

“contract of sale” includes an agreement to sell as well as a sale;

“delivery” means voluntary transfer of possession from one person to another;

“document of title to goods” includes any bill of lading, dock warrant, warehouse-keeper’s certificate or warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

“fault” means wrongful act or default;

“future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale;

“goods” includes all chattels personal other than things in action and money, and all emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

“minor” means an unmarried person under the age of twenty-one years;

“plaintiff” includes defendant counterclaiming;

“property” means the general property in goods, and not merely a special property;

“quality of goods” includes their state or condition;

“sale” includes a bargain and sale as well as a sale and delivery;

“seller” means a person who sells or agrees to sell goods;

“specific goods” means goods identified and agreed upon at the time a contract of sale is made;

“warranty” means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

(2) A thing is deemed to be done in good faith within the meaning of this Act when it is in fact done honestly, whether it be done negligently or not.

(3) A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not.

(4) Goods are in a deliverable state within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

PART II

FORMATION OF THE CONTRACT

Contract of Sale

[Ch4801s3]3. Sale and agreement to sell

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price.

(2) There may be a contract of sale between one part owner and another.

(3) A contract of sale may be absolute or conditional.

(4) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but, where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(5) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

[Ch4801s4]4. Capacity to buy and sell

(1) Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property:

Provided that, where necessaries are sold and delivered to a minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

(2) Necessaries in this section means goods suitable to the condition in life of such minor or other person, and to his actual requirements at the time of the sale and delivery.

Formalities of the Contract

[Ch4801s5]5. Contract of sale, how made

Subject to this Act and any written law in that behalf, a contract of sale may be made in writing (either with or without seal) or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties:

Provided that nothing in this section shall affect the law relating to corporations.

[Ch4801s6]6. Contract of sale for ten pounds or more to be in writing

(1) A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer accepts part of the goods so sold, and actually receives the same, or gives something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract is made and signed by the party to be charged or his agent in that behalf.

(2) This section shall apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

(3) There shall be an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale whether there be an acceptance in performance of the contract or not.

Subject Matter of Contract

[Ch4801s7]7. Existing or future goods

(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract shall operate as an agreement to sell the goods.

[Ch4801s8]8. Sale of perished goods

Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract shall be void.

[Ch4801s9]9. Goods perished after agreement to sell

Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement shall be thereby avoided.

The Price

[Ch4801s10]10. Ascertainment of price

(1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner thereby agreed, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer must pay a reasonable price; and what is a reasonable price shall be a question of fact dependent on the circumstances of each particular case.

[Ch4801s11]11. Agreement to sell at valuation

(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement shall be avoided:

Provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

Conditions and Warranties

[Ch4801s12]12. Stipulations as to time

(1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment shall not be deemed to be of the essence of a contract of sale.

(2) Whether any other stipulation as to time is of the essence of the contract or not shall depend on the terms of the contract.

(3) In a contract of sale, "month" means prima facie calendar month.

[Ch4801s13]13. When condition to be treated as warranty

(1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(2) Whether a stipulation in a contract of sale is a condition the breach of which may give rise to a right to treat the contract as repudiated, or a warranty the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, shall depend in each case on the construction of the contract; and a stipulation may be a condition, though called a warranty in the contract.

(3) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any conditions to be fulfilled by the seller can only be treated as a breach of warranty

and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract express or implied, to that effect.

(4) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

[Ch4801s14]14. Condition and warranties implied in contracts of sale

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there shall be—

(a) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;

(b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

[Ch4801s15]15. Conditions implied by description

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

[Ch4801s16]16. No implied warranty as to fitness, except in certain cases

Subject to this Act and any written law in that behalf, there shall be no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows—

(a) where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there shall be an implied condition that the goods shall be reasonably fit for such purpose:

Provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there shall be no implied condition as to its fitness for any particular purpose;

(b) where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there shall be an implied condition that the goods shall be of merchantable quality:

Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed;

(c) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;

(d) an express warranty or condition shall not negative a warranty or condition implied by this Act unless inconsistent therewith.

Sale by sample

[Ch4801s17]17. Sale by Sample

(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample there shall be—

(a) an implied condition that the bulk shall correspond with the sample in quality;

(b) an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) an implied condition that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of sample.

PART III

EFFECTS OF THE CONTRACT

Transfer of Property as between Seller and Buyer

[Ch4801s18]18. Property in unascertained goods

Where there is a contract for the sale of unascertained goods, no property in the goods shall be transferred to the buyer unless and until the goods are ascertained.

[Ch4801s19]19. Property in specific or ascertained goods passes when intended to pass

(1) Where there is a contract for the sale of specific or ascertained goods, the property in them shall be transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

[Ch4801s20]20. Rules for ascertaining intention as to time when property passes

Unless a different intention appears, the following rules shall apply for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer—

(a) where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods shall pass to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both be postponed;

(b) where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property shall not pass until such thing be done, and the buyer has notice thereof;

(c) where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property shall not pass until such act or thing be done, and the buyer has notice thereof;

(d) when goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein shall pass to the buyer—

(i) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(ii) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, or, if no time has been fixed, on the expiration of a reasonable time;

(e) (i) where there is a contract for the sale of unascertained or future goods by description, and goods of that description, and in a deliverable state, are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon shall pass to the buyer; such assent may be express or implied, and may be given either before or after the appropriation is made;

(ii) where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodian (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he shall be deemed to have unconditionally appropriated the goods to the contract.

[Ch4801s21]21. Reservation by seller of right of disposal

(1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled; and in such case notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee or custodian for the purpose of transmission to the buyer, the property in the goods shall not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller shall be prima facie deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer shall be bound to return the bill of lading if he does not honour the bill of

exchange, and if he wrongfully retains the bill of lading the property in the goods shall not pass to him.

[Ch4801s22]22. Risk prima facie passes with property

Unless otherwise agreed, the goods shall remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods shall be at the buyer's risk whether delivery has been made or not:

Provided that—

(a) where delivery has been delayed through the fault of either buyer or seller the goods shall be at the risk of the party in fault as regards any loss which might not have occurred but for such fault;

(b) nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.

Transfer of Title

[Ch4801s23]23. Sale by person not the owner

(1) Subject to this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer shall acquire no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in this Act shall affect—

(a) any written law enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

(b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

[Ch4801s24]24. Sale under voidable title

When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer shall acquire a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

[Ch4801s25]25. Revesting of property in stolen goods on conviction of offender

(1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen shall revert in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale or otherwise.

(2) Notwithstanding any written law to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to theft, the property in such goods shall not revert in

the person who was the owner of the goods or his personal representative, by reason only of the conviction of the offender.

[Ch4801s26]26. Resale of goods in certain cases

(1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

(2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents to title under any sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(3) In this section, "mercantile agent" means a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

[Ch4801s27]27. Effect of writs of execution

(1) A writ of fieri facias or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ to endorse upon the back thereof the hour, day, month and year when he received the same:

Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.

(2) In this section, "sheriff" includes any officer charged with the enforcement of a writ of execution.

PART IV

PERFORMANCE OF THE CONTRACT

[Ch4801s28]28. Duties of seller and buyer

It shall be the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

[Ch4801s29]29. Payment and delivery concurrent conditions

Unless otherwise agreed, delivery of the goods and payment of the price shall be concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

[Ch4801s30]30. Rules as to delivery

(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer shall be a question depending in each case on the contract, express or implied, between the parties; and apart from any such contract, express or implied, the place of delivery shall be the seller's place of business, if he have one, and if not, his residence:

Provided that if the contract is for the sale of specific goods which, to the knowledge of the parties when the contract is made, are in some other place, then that place shall be the place of delivery.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller shall be bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there shall be no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour; and what is a reasonable hour shall be a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

[Ch4801s31]31. Delivery of wrong quantity or description

Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole; and if the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) This section shall be subject to any usage of trade, special agreement or course of dealing between the parties.

[Ch4801s32]32. Delivery by instalments

(1) Unless otherwise agreed, the buyer of goods shall not be bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments and to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it shall be a question in each case, depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

[Ch4801s33]33. Delivery to carrier as buyer's agent

(1) Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to the carrier, whether named by the buyer or not, for the purpose of transmission to the buyer shall prima facie be deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case; and if the seller omits so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit.

[Ch4801s34]34. Risk where goods delivered elsewhere than at place of sale

Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

[Ch4801s35]35. Buyer's right of examining the goods

(1) Where goods are delivered to the buyer which he has not previously examined, he shall not be deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he shall be bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

[Ch4801s36]36. Acceptance

The buyer shall be deemed to have accepted the goods when he intimates to the seller that he has accepted them or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

[Ch4801s37]37. Buyer is not bound to return rejected goods

Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he shall not be bound to return them to the seller, but it shall be sufficient if he intimates to the seller that he refuses to accept them.

[Ch4801s38]38. Liability of buyer for neglecting or refusing delivery of goods

When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he shall be liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods:

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

PART V

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

[Ch4801s39]39. Unpaid seller defined

(1) The seller of goods shall be deemed to be an unpaid seller within the meaning of this Act—

- (a) when the whole of the price has not been paid or tendered;
- (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Part, “seller” includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

[Ch4801s40]40. Rights of unpaid seller

(1) Subject to this Act and any written law in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, shall have by implication of law—

- (a) a lien on the goods or right to retain them for the price while he is in possession of them;

(b) in case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;

(c) a right of resale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller shall have, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer.

Unpaid Seller's Lien

[Ch4801s41]41. Seller's lien

(1) Subject to this Act, the unpaid seller of goods who is in possession of them shall be entitled to retain possession of them until payment or tender of the price in the following cases, namely—

(a) where the goods have been sold without any stipulation as to credit;

(b) where the goods have been sold on credit, but the term of credit has expired;

(c) where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee or custodier for the buyer.

[Ch4801s42]42. Lien after part delivery

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on the remainder unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

[Ch4801s43]43. Termination of lien

(1) The unpaid seller of goods shall lose his lien or right of retention thereon—

(a) when he delivers the goods to a carrier or other bailee or custodier for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(b) when the buyer or his agent lawfully obtains possession of the goods;

(c) by waiver thereof.

(2) The unpaid seller of goods, having a lien or right of retention thereon, shall not lose his lien or right of retention by reason only that he has obtained judgment or a decree for the price of the goods.

Stoppage in Transitu

[Ch4801s44]44. Right of stoppage in transitu

Subject to this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods shall have the right of stopping them in transitu, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

[Ch4801s45]45. Duration of transit

(1) Goods shall be deemed to be in course of transit from the time when they are delivered to a carrier by land, air or water, or other bailee or custodian for the purposes of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee or custodian.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit shall be at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodian acknowledges to the buyer, or his agent, that he holds the goods on his behalf and continues in possession of them as bailee or custodian for the buyer, or his agent, the transit shall be at an end, and it shall be immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer, and the carrier or other bailee or custodian continues in possession of them, the transit shall not be deemed to be at an end, even if the seller has refused to receive them back.

(5) When the goods are delivered to a ship chartered by the buyer, it shall be a question, depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier, or as agent to the buyer.

(6) Where the carrier or other bailee or custodian wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit shall be deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

[Ch4801s46]46. Mode of stoppage in transitu

(1) The unpaid seller may exercise his right of stoppage in transitu either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee or custodian in whose possession the goods are; and such notice may be given either to the person in actual possession of the goods or to his principal; and in the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in transitu is given by the seller to the carrier, or other bailee or custodian in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller; and the expenses of such redelivery must be borne by the seller.

Resale by Buyer or Seller

[Ch4801s47]47. Effect of subsale or pledge by buyer

Subject to this Act, the unpaid seller's right of lien or retention or stoppage in transitu shall not be affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:

Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage in transitu shall be defeated, and, if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transitu shall only be exercised subject to the rights of the transferee.

[Ch4801s48]48. Effect on sale of exercise of lien or stoppage in transitu

(1) Subject to this section, a contract of sale shall not be rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage in transitu.

(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage in transitu resells the goods, the buyer shall acquire a good title thereto as against the original buyer.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to resell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may resell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

(4) Where the seller expressly reserves a right of resale in case the buyer should make default, and, on the buyer making default, resells the goods, the original contract of sale shall thereby be rescinded, but without prejudice to any claim the seller may have for damages.

PART VI

ACTIONS FOR BREACH OF CONTRACT

Remedies of the Seller

[Ch4801s49]49. Action for price

(1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract.

[Ch4801s50]50. Action for non-acceptance

(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2) The measure of damages shall be the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages shall prima facie be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

Remedies of the Buyer

[Ch4801s51]51. Action for non-delivery

(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

(2) The measure of damages shall be the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages shall prima facie be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

[Ch4801s52]52. Right to specific performance

(1) In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages.

(2) The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment or decree.

[Ch4801s53]53. Remedy for breach of warranty

(1) Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer shall not by reason only of such breach of warranty be entitled to reject the goods; but he may—

(a) set up against the seller the breach of warranty in diminution or extinction of the price; or

(b) maintain an action against the seller for damages for the breach of warranty.

(2) The measure of damages for breach of warranty shall be the estimated loss directly and naturally resulting, in the ordinary course of events from the breach of warranty.

(3) In the case of breach of warranty of quality, such loss shall prima facie be the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price shall not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

[Ch4801s54]54. Interest and special damages

Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

PART VII

SUPPLEMENTARY

[Ch4801s55]55. Variation, etc., of implied rights

Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

[Ch4801s56]56. Reasonable time

Where, by this Act, any reference is made to a reasonable time, the question what is reasonable time shall be a question of fact.

[Ch4801s57]57. Rights, etc., enforceable by action

Where any right, duty or liability is declared by this Act, it may, unless otherwise by this Act provided, be enforced by action.

[Ch4801s58]58. Auction sales

(1) In the case of sale by auction—

(a) where goods are put up for sale by auction in lots, each lot shall prima facie be deemed to be the subject of a separate contract of sale;

(b) a sale by auction shall be complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner; and until such announcement is made any bidder may retract his bid;

(c) where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale,

or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

(d) a sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.

(2) Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

[Ch4801s59]59. Savings

(1) The rules in bankruptcy relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Act contained.

(2) The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake or other invalidating cause, shall continue to apply to contracts for the sale of goods.

(3) Nothing in this Act shall affect any written law relating to bills of sale or any other written law relating to the sale of goods.

(4) The provisions of this Act relating to contracts of sale shall not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

[Chap4802]CHAPTER 48:02

BILLS OF EXCHANGE

ARRANGEMENT OF SECTIONS

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15 of 1967

An Act relating to Bills of Exchange, Cheques and Promissory Notes, and Matters Incidental thereto

[28TH JULY 1967]

PART I

PRELIMINARY

[Ch4802s1]1. Short title

This Act may be cited as the Bills of Exchange Act.

[Ch4802s2]2. Interpretation

In this Act, unless the context otherwise requires—

“acceptance” means an acceptance completed by delivery or notification;

“action” includes counter claim and set off;

“banker” includes a body of persons whether incorporated or not who carry on the business of banking;

“bankrupt” includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy;

“bearer” means the person in possession of a bill or note which is payable to bearer;

“bill” means bill of exchange, and “note” means promissory note;

“delivery” means transfer of possession, actual or constructive, from one person to another;

“holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof;

“indorsement” means an indorsement completed by delivery;

“issue” means the first delivery of a bill or note, complete in form to a person who takes it as a holder;

“value” means valuable consideration;

“written” includes printed, and “writing” includes print.

PART II

BILLS OF EXCHANGE

Form and Interpretation

[Ch4802s3]3. Bill of exchange defined

(1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with—

(a) an indication of a particular fund out of which the drawee is to re-imburse himself or a particular account to be debited with the amount; or

(b) a statement of the transaction which gives rise to the bill, is unconditional.

(4) A bill is not invalid by reason—

(a) that it is not dated;

(b) that it does not specify the value given, or that any value has been given therefor;

(c) that it does not specify the place where it is drawn or the place where it is payable.

[Ch4802s4]4. Inland and foreign bills

(1) An inland bill is a bill which is or on the face of it purports to be both drawn and payable within Malawi, or drawn within Malawi upon some person resident therein. Any other bill is a foreign bill.

(2) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

[Ch4802s5]5. Effect where different parties to bill are the same person

(1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

[Ch4802s6]6. Address to drawee

(1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

[Ch4802s7]7. Certainty required as to payee

(1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being

(3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

[Ch4802s8]8. What bills are negotiable

(1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

[Ch4802s9]9. Sum payable

(1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(a) with interest;

(b) by stated instalments;

(c) by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;

(d) according to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable,

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

[Ch4802s10]10. Bill payable on demand

(1) A bill is payable on demand—

- (a) which is expressed to be payable on demand, or at sight, or on presentation; or
- (b) in which no time for payment is expressed.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

[Ch4802s11]11. Bill payable at a future time

(1) A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

- (a) at a fixed period after date or sight;
- (b) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

(2) An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

[Ch4802s12]12. Omission of date in bill payable after date

Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly:

Provided that—

- (a) where the holder in good faith and by mistake inserts a wrong date; and
- (b) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

[Ch4802s13]13. Ante-dating and post-dating

(1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

[Ch4802s14]14. Computation of time of payment

Where a bill is not payable on demand the day on which it falls due is determined as follows—

(a) three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace:

Provided that—

(i) when the last day of grace falls on Sunday, Christmas Day, or Good Friday, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day;

(ii) when the last day of grace is a public holiday (other than Christmas Day or Good Friday) or when the last day of grace is a Sunday and the second day of grace is a public holiday (other than Christmas Day), the bill is due and payable on the succeeding business day;

(b) where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment;

(c) where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery;

(d) the term “month” in a bill means calendar month.

[Ch4802s15]15. Case of need

The drawer of a bill and any endorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

[Ch4802s16]16. Optional stipulations by drawer or indorser

The drawer of a bill, and any indorser, may insert therein an express stipulation—

(a) negating or limiting his own liability to the holder;

(b) waiving as regards himself some or all of the holder’s duties.

[Ch4802s17]17. Definition and requisites of acceptance

(1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely—

(a) it must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient;

(b) it must not express that the drawee will perform his promise by any other means than the payment of money.

[Ch4802s18]18. Time for acceptance

(1) A bill may be accepted—

- (a) before it has been signed by the drawer, or while otherwise incomplete;
- (b) when it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

(2) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

[Ch4802s19]19. General and qualified acceptances

(1) An acceptance is either general or qualified.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

- (a) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;
- (b) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (c) local, that is to say, an acceptance to pay only at a particular specified place. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere;
- (d) qualified as to time;
- (e) the acceptance of some one or more of the drawees, but not of all.

[Ch4802s20]20. Inchoate instruments

(1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a prima facie authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact:

Provided that if any such instrument after completion is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

[Ch4802s21]21. Delivery

(1) Every contract on a bill, whether it be the drawer's, the acceptor's or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto:

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(a) in order to be effectual must be made either by or under the authority of the party drawing, accepting or indorsing, as the case may be;

(b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill,

but if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Capacity and Authority of Parties

[Ch4802s22]22. Capacity of parties

(1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract:

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

[Ch4802s23]23. Signature essential to liability

No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such:

Provided that—

(a) where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name;

(b) the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

[Ch4802s24]24. Forged or unauthorized signature

Subject to this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority:

Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.

[Ch4802s25]25. Procuration signatures

A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

[Ch4802s26]26. Person signing as agent or in representative capacity

(1) Where a person signs a bill as drawer, endorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

The Consideration for a Bill

[Ch4802s27]27. Value and holder for value

(1) Valuable consideration for a bill may be constituted by—

- (a) any consideration sufficient to support a simple contract; or
- (b) an antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

[Ch4802s28]28. Accommodation bill or party

(1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

[Ch4802s29]29. Holder in due course

(1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely—

(a) that he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;

(b) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Act, when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or an illegal consideration or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

[Ch4802s30]30. Presumption of value and good faith

(1) Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value.

(2) Every holder of a bill is prima facie deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bills

[Ch4802s31]31. Negotiation of bill

(1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

[Ch4802s32]32. Requisites of a valid indorsement

An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

(a) it must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient. An indorsement written on an allonge, or on a “copy” of a bill issued or negotiated in a country where “copies” are recognized, is deemed to be written on the bill itself;

(b) it must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill;

(c) where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others;

(d) where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he thinks fit, his proper signature;

(e) where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved;

(f) an indorsement may be made in blank or special. It may also contain terms making it restrictive.

[Ch4802s33]33. Conditional indorsement

Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

[Ch4802s34]34. Indorsement in blank and special indorsement

(1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

[Ch4802s35]35. Restrictive indorsement

(1) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D. only", or "Pay D. for the account of X.," or "Pay D. or order for collection."

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorize him to do so.

(3) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

[Ch4802s36]36. Negotiation of overdue or dishonoured bill

(1) Where a bill is negotiable in its origin it continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is prima facie deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this subsection shall affect the rights of a holder in due course.

[Ch4802s37]37. Negotiation of bill to party already liable thereon

Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

[Ch4802s38]38. Rights of the holder

The rights and powers of the holder of a bill are as follows—

- (a) he may sue on the bill in his own name;
- (b) where he is a holder in due course, he holds the bill free from any defect of title or prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;
- (c) where his title is defective—
 - (i) if he negotiates the bill to a holder in due course that holder obtains a good and complete title to the bill; and
 - (ii) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

General Duties of the Holder

[Ch4802s39]39. When presentment for acceptance is necessary

- (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.
- (2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.
- (3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.
- (4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

[Ch4802s40]40. Time for presenting bill payable after sight

- (1) Subject to this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.
- (2) If he does not do so, the drawer and all indorsers prior to that holder are discharged.
- (3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

[Ch4802s41]41. Rules as to presentment for acceptance, and excuses for non-presentment

- (1) A bill is duly presented for acceptance which is presented in accordance with the following rules—

(a) the presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue;

(b) where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only;

(c) where the drawee is dead presentment may be made to his personal representative;

(d) where the drawee is bankrupt, presentment may be made to him or to his trustee;

(e) where authorized by agreement or usage, a presentment through the post office is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(a) where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill;

(b) where, after the exercise of reasonable diligence, such presentment cannot be effected;

(c) where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

[Ch4802s42]42. Non-acceptance

When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he does not, the holder shall lose his right of recourse against the drawer and indorsers.

[Ch4802s43]43. Dishonour by non-acceptance and its consequences

(1) A bill is dishonoured by non-acceptance—

(a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or

(b) when presentment for acceptance is excused and the bill is not accepted.

(2) Subject to this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

[Ch4802s44]44. Duties as to qualified acceptances

(1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

This subsection does not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

[Ch4802s45]45. Rules as to presentment for payment

(1) Subject to this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

(2) A bill is duly presented for payment which is presented in accordance with the following rules—

(a) where the bill is not payable on demand, presentment must be made on the day it falls due;

(b) where the bill is payable on demand, then, subject to this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable. In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case;

(c) presentment must be made by the holder or by some person authorized to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorized to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found;

(d) a bill is presented at the proper place—

(i) where a place of payment is specified in the bill and the bill is there presented;

(ii) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;

(iii) where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known; or

(iv) in any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence;

(e) where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required;

(f) where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all;

(g) where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found;

(h) where authorized by agreement or usage a presentment through the post office is sufficient.

[Ch4802s46]46. Excuses for delay or non-presentment for payment

(1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with—

(a) where, after the exercise of reasonable diligence presentment, as required by this Act, cannot be effected. The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment;

(b) where the drawee is a fictitious person;

(c) as regards the drawer where the drawee or acceptor is not bound as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;

(d) as regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented;

(e) by waiver of presentment, express or implied.

[Ch4802s47]47. Dishonour by non-payment

(1) A bill is dishonoured by non-payment—

(a) when it is duly presented for payment and payment is refused or cannot be obtained; or

(b) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

[Ch4802s48]48. Notice of dishonour and effect of non-notice

Subject to this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged:

Provided that—

(a) where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course, subsequent to the omission, shall not be prejudiced by the omission;

(b) where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

[Ch4802s49]49. Rules as to notice of dishonour

Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules—

(a) the notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill;

(b) notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not;

(c) where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given;

(d) where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given;

(e) the notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment;

(f) the return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour;

(g) a written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby;

(h) where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf;

(i) where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found;

(j) where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee;

(k) where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others;

(l) the notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter. In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(i) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill; or

(ii) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no post on that day then by the next post thereafter;

(m) where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder;

(n) where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour;

(o) where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

[Ch4802s50]50. Excuses for non-notice and delay

(1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with—

- (a) when, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged;
- (b) by waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived or after the omission to give due notice;
- (c) as regards the drawer in the following cases, namely—
 - (i) where drawer and drawee are the same person;
 - (ii) where the drawee is a fictitious person or a person not having capacity to contract;
 - (iii) where the drawer is the person to whom the bill is presented for payment;
 - (iv) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill;
 - (v) where the drawer has countermanded payment;
- (d) as regards the indorser in the following cases, namely—
 - (i) where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill;
 - (ii) where the indorser is the person to whom the bill is presented for payment;
 - (iii) where the bill was accepted or made for his accommodation.

[Ch4802s51]51. Noting or protest of bill

(1) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4) Subject to this Act, when a bill is noted or protested, it may be noted on the day of its dishonour and must be noted not later than the next succeeding business day. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6) A bill must be protested at the place where it is dishonoured:

Provided that—

(a) when a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day;

(b) when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(a) the person at whose request the bill is protested;

(b) the place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

[Ch4802s52]52. Duties of holder as regards drawee or acceptor

(1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties

[Ch4802s53]53. Funds in hands of drawee

A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument.

[Ch4802s54]54. Liability of acceptor

The acceptor of a bill, by accepting it—

- (a) engages that he will pay it according to the tenor of his acceptance;
- (b) is precluded from denying to a holder in due course—
 - (i) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;
 - (ii) in the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;
 - (iii) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

[Ch4802s55]55. Liability of drawer or indorser

(1) The drawer of a bill by drawing it—

- (a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;
- (b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill by indorsing it—

- (a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;
- (b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;
- (c) is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

[Ch4802s56]56. Stranger signing bill liable as indorser

Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

[Ch4802s57]57. Measure of damages against parties to dishonoured bill

Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows—

(a) the holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(i) the amount of the bill;

(ii) interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case;

(iii) the expenses of noting, or, when protest is necessary, and the protest has been extended the expenses of protest;

(b) in the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment;

(c) where by this Act interest may be recovered, as damages, such interest may, if justice requires it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

[Ch4802s58]58. Transferor by delivery and transferee

(1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it he is called a “transferor by delivery.”

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Discharge of Bill

[Ch4802s59]59. Payment in due course

(1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

“Payment in due course” means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged, but—

(a) where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill;

(b) where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

[Ch4802s60]60. Banker paying demand draft where an indorsement is forged

When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

[Ch4802s61]61. Acceptor the holder at maturity

When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

[Ch4802s62]62. Express waiver

(1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

[Ch4802s63]63. Cancellation

(1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged.

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the

burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

[Ch4802s64]64. Alteration of bill

(1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers:

Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and Payment for Honour

[Ch4802s65]65. Acceptance for honour supra protest

(1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour supra protest in order to be valid must—

- (a) be written on the bill, and indicate that it is an acceptance for honour;
- (b) be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

[Ch4802s66]66. Liability of acceptor for honour

(1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

[Ch4802s67]67. Presentment to acceptor for honour

(1) Where a dishonoured bill has been accepted for honour supra protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

[Ch4802s68]68. Payment for honour supra protest

(1) Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder does not on demand deliver them up he shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment supra protest he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments

[Ch4802s69]69. Holder's right to duplicate of lost bill

Where a bill has been lost before it is overdue the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill he may be compelled to do so.

[Ch4802s70]70. Action on lost bill

In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

Bill in a Set

[Ch4802s71]71. Rules as to sets

(1) Where a bill is drawn in a set each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws

[Ch4802s72]72. Rules where laws conflict

Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows—

(a) the validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance supra protest, is determined by the law of the place where such contract was made:

Provided that—

(i) where a bill is issued out of Malawi it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

(ii) where a bill, issued out of Malawi, conforms, as regards requisites in form, to the law of Malawi, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in Malawi;

(b) subject to this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill, is determined by the law of the place where such contract is made:

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of Malawi;

(c) the duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured;

(d) where a bill is drawn out of but payable in Malawi and the sum payable is not expressed in the currency of Malawi the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable;

(e) where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III

CHEQUES ON A BANKER

[Ch4802s73]73. Cheque defined

A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

[Ch4802s74]74. Presentment of cheque for payment

Subject to this Act—

(a) where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such

presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid;

(b) in determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case;

(c) the holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

[Ch4802s75]75. Revocation of banker's authority

The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

- (a) countermand of payment;
- (b) notice of the customer's death.

[Ch4802s76]76. Rights of bankers collecting cheques not indorsed by holders

A banker who gives value for, or has a lien on, a cheque payable to order which the holder delivers to him for collection without indorsing it, has such (if any) rights as he would have had if, upon delivery, the holder had indorsed it in blank.

[Ch4802s77]77. Unindorsed cheques as evidence of payment

An unindorsed cheque or other instrument to which section 78 (2) applies which appears to have been paid by the banker on whom it is drawn is evidence of the receipt by the payee of the sum payable by the cheque or other instrument, as the case may be.

[Ch4802s78]78. Protection of bankers paying unindorsed or irregularly indorsed cheques, etc.

(1) Where a banker in good faith and in the ordinary course of business pays a cheque drawn on him which is not indorsed or is irregularly indorsed, he does not, in doing so, incur any liability by reason only of the absence of, or irregularity in, indorsement and he is deemed to have paid it in due course.

(2) Where a banker in good faith and in the ordinary course of business pays any such instrument as the following namely—

- (a) a document issued by a customer of his which, though not a bill of exchange, is intended to enable a person to obtain payment from him of the sum mentioned in the document;
- (b) a draft payable on demand drawn by him upon himself, whether payable at the head office or some other office of his bank,

he does not, in doing so, incur any liability by reason only of the absence of, or irregularity in, indorsement, and the payment discharges the instrument.

[Ch4802s79]79. Protection of bankers collecting payment of cheques, etc.

(1) Where a banker, in good faith and without negligence—

- (a) receives payment for a customer of an instrument to which this section applies; or
- (b) having credited a customer's account with the amount of such an instrument, receives payment thereof for himself,

and the customer has no title, or a defective title, to the instrument, the banker does not incur any liability to the true owner of the instrument by reason only of having received payment thereof.

(2) This section applies to the following instruments, namely—

- (a) cheques;
- (b) any document issued by a customer of a banker which, though not a bill of exchange, is intended to enable a person to obtain payment from that banker of the sum mentioned in the document;
- (c) any draft payable on demand drawn by a banker upon himself, whether payable at the head office or some other office of his bank.

(3) A banker is not to be treated for the purposes of this section as having been negligent by reason only of his failure to concern himself with absence of, or irregularity in, indorsement of an instrument.

Crossed Cheques

[Ch4802s80]80. General and special crossings defined

(1) Where a cheque bears across its face an addition of—

- (a) the words "and company" or any abbreviation thereof between two parallel transverse lines either with or without the words "not negotiable"; or
- (b) two parallel transverse lines simply, either with or without the words "not negotiable",

that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

[Ch4802s81]81. Crossing by drawer or after issue

(1) A cheque may be crossed generally or specially by the drawer.

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

[Ch4802s82]82. Crossing a material part of cheque

A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing.

[Ch4802s83]83. Duties of banker as to crossed cheques

(1) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid:

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

[Ch4802s84]84. Protection to banker and drawer where cheque is crossed

Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

[Ch4802s85]85. Effect of crossing on holder

Where a person takes a crossed cheque which bears on it the words “not negotiable,” he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

[Ch4802s86]86. Application of certain provisions of this Act to instruments not being bills of exchange

The provisions of this Act relating to crossed cheques shall have effect in relation to instruments, other than cheques, to which section 79 applies as they have effect in relation to cheques.

[Ch4802s87]87. Government to be regarded as a customer of a banker

If the Government has an account with a banker, the Government shall, for the purposes of this Act be regarded as a customer of that banker.

[Ch4802s88]88. Construction

The foregoing provisions of this Act do not make negotiable any instrument which, apart from them, is not negotiable.

PART IV

PROMISSORY NOTES

[Ch4802s89]89. Promissory note defined

(1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker’s order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within Malawi is an inland note. Any other note is a foreign note.

[Ch4802s90]90. Delivery necessary

A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

[Ch4802s91]91. Joint and several notes

(1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenor.

(2) Where a note runs “I promise to pay” and is signed by two or more persons it is deemed to be their joint and several note.

[Ch4802s92]92. Note payable on demand

(1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2) In determining what is reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

[Ch4802s93]93. Presentment of note for payment

(1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

[Ch4802s94]94. Liability of maker

The maker of a promissory note by making it—

(a) engages that he will pay it according to its tenor;

(b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

[Ch4802s95]95. Application of Part II to notes

(1) Subject to this Part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes; namely, provisions relating to:—

(a) presentment for acceptance;

(b) acceptance;

(c) acceptance supra protest;

(d) bills in a set.

(4) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART V

SUPPLEMENTARY

[Ch4802s96]96. Good faith

A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

[Ch4802s97]97. Signature

(1) Where, by this Act, any instrument or writing is required to be signed by any person it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

[Ch4802s98]98. Computation of time

Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

“Non-business days” for the purposes of this Act means Sundays and public holidays. Any other day is a business day.

[Ch4802s99]99. When noting equivalent to protest

For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

[Ch4802s100]100. Protest when notary not accessible

Where a dishonoured bill or note is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in Schedule I to this Act may be used with necessary modifications, and if used shall be sufficient.

[Ch4802s101]101. Dividend warrants may be crossed

The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

[Ch4802s102]102. Savings

(1) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques shall continue to apply thereto notwithstanding anything in this Act contained.

(2) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

45 & 46 Vict. c.61, 33 of 1955, 5 of 1959(F)(3) Nothing in this Act or in the repeal of the Bills of Exchange Act 1882 of the United Kingdom, of the Bills of Exchange Act, 1882 (Amendment) Ordinance, 1955, and of the Cheques Ordinance, 1959, Shall affect—

(a) any law or enactment for the time being in force relating to stamp duties or other revenue;

25 & 26 Vict. c. 89(b) the provisions of any Act or Ordinance relating to joint stock banks or companies;

(c) the validity of any usage relating to dividend warrants, or the indorsements thereof.

SCHEDULE s. 94

Form of protest which may be used when the services of a notary cannot be obtained.

Know all men that I, A.B., of in the District of in Malawi, at the request of C.D., there being no notary public available, did on the day of 19..... at demand payment (or acceptance) of the bill of exchange hereunder written, from E.F., to which demand he may answer (state answer, if any) wherefore I, now in the presence of G.H. and J.K., do protest the said bill of exchange.

(signed)

A.B.

G.H. Witnesses.

J.K.

N.B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

[Chap4803]CHAPTER 48:03

BILLS OF SALE

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Application of Act
4. Certain instruments giving power of distress to be subject to this Act
5. Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument
6. Avoidance of certain duplicate bills of sale
7. Bill of sale to be void unless attested and registered
8. Mode of attesting and registering bills of sale
9. Renewal of registration
10. Bill of sale to have schedule of property attached
11. Bill of sale not to affect after-acquired property
12. Exception as to certain things
13. Limitation of causes of seizure
14. Form of bill of sale
15. Avoidance of bill of sale under £30
16. Rules as to situation and sale of chattels
17. Bill of sale not to protect chattels against rates, duties and taxes
18. Form of register
19. Rectification of register
20. Entry of satisfaction
21. Right of search and to have copies

22. Time of registration
23. Exclusion of certain debentures
24. Affidavits
25. Rules, fees
26. Savings

Schedule

29 of 1967

An Act to provide for Bills of Sale

[6TH NOVEMBER 1967]

[Ch4803s1]1. Short title

This Act may be cited as the Bills of Sale Act.

[Ch4803s2]2. Interpretation

(1) In this Act, unless the context otherwise requires—

“bill of sale” includes bills of sale, assignments, transfers, declarations of trust without transfers, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities or licences to take possession of personal chattels as security for any debt, and also any agreement whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, is conferred, but shall not include the following documents, that is to say—

(a) assignments for the benefit of the creditors of the person making or giving them, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods, in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, warehousekeepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented;

(b) an instrument charging or creating any security on, or declaring trusts of, imported goods, given or executed at any time prior to their deposit in a warehouse, factory or store, or to their being re-shipped or re-railed for export, or delivered to a purchaser not being the person giving or executing that instrument; or

(c) for the purposes of sections 7, 8 (1), 10 to 17 inclusive and 21, bills of sale or other instruments hereinbefore mentioned which may be given otherwise than by way of security for the payment of money;

“crops” means coffee berries, tea leaves, sisal leaves, sugar cane, tung nuts, timber, bark, cotton, tobacco, hemp, hops, wheat, maize, barley, oats and grass (whether for hay or for grain), and all cereal and root crops, fruit, nuts and all other crops grown above or below the ground;

“executed” means signed by the grantor or his attorney;

“factory” or “workshop” means any premises on which any manual labour is exercised by way of trade or for purposes of gain in or incidental to the making, altering, repairing, ornamenting, assembling, finishing or adapting for sale of any article or part of any article;

“personal chattels” means goods, furniture and other articles capable of complete transfer by delivery, and, when separately assigned or charged, fixtures and growing crops, but shall not include—

(a) chattel interests in real estate;

(b) fixtures, except trade machinery as hereinafter defined, when assigned or transferred together with a freehold, registered or leasehold interest in any land or building to which they are affixed;

(c) growing crops when assigned together with any interest in the land on which they grow;

(d) shares or interests in the stock, funds or securities of any government, or in the capital or property of incorporated or joint stock companies;

(e) things in action;

(f) any stock or produce upon any farm or land which, by virtue of any covenant or agreement or of the custom of the country, ought not to be removed from any farm where they are at the time of making or giving of the bill of sale;

“Registrar” means the Registrar General or the Deputy Registrar General;

“stock” includes any sheep, goats, cattle, horses, pigs, poultry, and any other living animals;

“trade machinery” means the machinery used in or attached to any factory or workshop, and machinery and plant used in connexion with the production, preparation or manufacture of agricultural products, but shall not include—

(a) the fixed motive powers, such as the waterwheels and steam and other engines and the steam boilers, donkey engines and other fixed appurtenances of the said motive powers;

(b) the fixed power machinery (such as the shafts, wheels, drums and their fixed appurtenances) for transmitting the action of the motive powers to the other machinery fixed and loose; or

(c) the pipes for steam, gas and water.

(2) Nothing in subsection (1) (b) shall affect the operation of section 40 of the Bankruptcy Act in respect of goods comprised in any instrument in this section described if those goods would otherwise be “goods” within the meaning of section 40 (iii) of the said Bankruptcy Act. Cap. 11:01

(3) Personal chattels shall be deemed to be in the “apparent possession” of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof has been taken by or given to any other person.

(4) Trade machinery as defined in subsection (1) shall, for the purposes of this Act, be deemed to be personal chattels and any disposition of trade machinery by the owner thereof which would be a bill of sale in respect of any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act, but any machinery and effects excluded from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

[Ch4803s3]3. Application of Act

This Act shall apply to every bill of sale (whether or not the same is absolute or subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

[Ch4803s4]4. Certain instruments giving power of distress to be subject to this Act

Every attornment, instrument or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress:

Provided that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement or hereditament which the mortgagee, being in possession, has demised to the mortgagor as his tenant at a fair and reasonable rent.

[Ch4803s5]5. Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument

(1) No fixtures or growing crops shall be deemed under this Act to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with the land or building, or land, if by the same instrument any freehold, registered or leasehold interest in the land or building to which those fixtures are affixed, or in the land on which those crops grow, is also conveyed, transferred or assigned to the same persons.

(2) The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors or execution of any process of a court, which takes place or is issued after the commencement of this Act.

[Ch4803s6]6. Avoidance of certain duplicate bills of sale

Where a subsequent bill of sale is executed within or on the expiration of fourteen clear days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved, to the satisfaction of the court having cognizance of the case, that the subsequent bill of sale was bona fide given for the purpose of correcting some material error in the prior bill of sale, and not for the purposes of evading this Act.

[Ch4803s7]7. Bills of sale to be void unless attested and registered

Every bill of sale shall be duly attested, and shall be registered within fourteen clear days after the execution thereof, or if it is executed in any place out of Malawi then within fourteen clear days after the time at which it would in the ordinary course of post arrive in Malawi if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein.

[Ch4803s8]8. Mode of attesting and registering bills of sale

(1) A bill of sale shall be attested and registered in the following manner—

(a) such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the Registrar within the period prescribed under section 7;

(b) if the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void;

(c) the execution by the grantor of every bill of sale shall be attested by a commissioner for oaths, not being the legal practitioner of the grantee, who shall personally explain to the grantor

the effect thereof, and attestation shall state that before the execution of the bill of sale the effect thereof was so explained as aforesaid.

(2) In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the time and date of their registration respectively as regards such chattels.

(3) A transfer or assignment of a registered bill of sale need not be registered.

[Ch4803s9]9. Renewal of registration

(1) The registration of a bill of sale must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal, as the case may be, the bill of sale shall become void.

(2) The renewal of a registration shall be effected by filing with the Registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

(3) Every such affidavit shall be in Form No. 1 in the Schedule.

(4) A renewal of registration shall not become necessary by reason only of transfer or assignment of a bill of sale.

[Ch4803s10]10. Bill of sale to have schedule of property attached

Every bill of sale shall have annexed thereto or written thereunder a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule, and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

[Ch4803s11]11. Bill of sale not to affect after acquired property

Save as hereinafter in this Act mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

[Ch4803s12]12. Exception as to certain things

Nothing hereinbefore in this Act contained shall render a bill of sale void in respect of any of the following things—

(a) any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed; and

(b) any fixtures separately assigned or charged and any plant or trade machinery where such fixtures, plant, or trade machinery are or is used in, attached to, or brought upon any land,

farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

[Ch4803s13]13. Limitation of causes of seizure

Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes—

(a) if the grantor makes default in payment of the sum or sums of money thereby secured at the time therein provided for payment or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security; or

(b) if the grantor becomes a bankrupt or suffers the said goods or any of them to be distrained for rent, rates, or taxes; or

(c) if the grantor fraudulently either removes or suffers the said goods or any of them to be removed from the premises; or

(d) if the grantor does not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes; or

(e) if execution has been levied against the goods of the grantor under any judgment at law:

Provided that the grantor may, within five clear days from the seizure or taking possession of any chattels on account of any of the abovementioned causes, apply to the High Court and the Court may, if satisfied that, by payment of money or otherwise, the said cause of seizure no longer exists, restrain the grantee from removing or selling the said chattels or may make such other order as may seem just.

[Ch4803s14]14. Form of Bill of sale

A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with Form No. 2 in the Schedule.

[Ch4803s15]15. Avoidance of bill of sale under £30

Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

[Ch4803s16]16. Rules as to situation and sale of chattels

All personal chattels seized or of which possession is taken under or by virtue of any bill of sale shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

[Ch4803s17]17. Bill of sale not to protect chattels against rates, duties and taxes

A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which, but for such bill of sale, would have been liable to distress under a warrant or order for the recovery of rates, duties and taxes imposed by law.

[Ch4803s18]18. Form of register

(1) The Registrar shall keep a book (in this act referred to as “the register”) for the purposes of this Act, and shall, on the filing of any bill of sale or copy under this Act, enter therein the name, residence and occupation of the person by whom the bill was made or given, or, in case the same was made or given by any person under or in the execution of process, then the name, residence and occupation of the person against whom such process was issued, and also the name of the person to whom or in whose favour the bill was given, and any other particulars prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates and times of their registration.

(2) On the registration of any affidavit of renewal, the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

(3) The Registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each grantor.

(4) The index referred to in subsection (3) shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be alphabetical.

[Ch4803s19]19. Rectification of register

The High Court on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence or occupation of any person, was accidental or due to inadvertence, may order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration, on such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter, as it thinks fit to direct.

[Ch4803s20]20. Entry of satisfaction

Subject to and in accordance with any rules made under this Act, the Registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt, if any, for which such bill of sale was made or given has been satisfied or discharged.

[Ch4803s21]21. Right of search and to have copies

(1) Any person shall be entitled to have an office copy or extract of any registered bill of sale and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, or

registered affidavit of renewal, on paying for the same at the like rate as for office copies of judgments of the High Court.

(2) Any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof, shall, in all courts and before all arbitrators or other persons, be admitted as prima facie evidence thereof and of the fact and date of registration as shown thereon.

(3) Any person shall be entitled at all reasonable times to search the register, on payment of such fee as may be prescribed, and subject to such rules as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of ten tumbala for each bill of sale inspected:

Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

[Ch4803s22]22. Time of registration

When the time for registering a bill of sale expires on a Sunday or other day on which the offices of the Registrar are closed, such registration shall be valid if made on the next following day on which the offices are open.

[Ch4803s23]23. Exclusion of certain debentures

23. Nothing in this Act shall apply to any debenture issued or charge created by a body incorporated by or under any law, and secured upon the capital, stock, goods, chattels, effects or other assets of such incorporated body, which debenture or charge is required to be registered under any written law relating to incorporated bodies.

[Ch4803s24]24. Affidavits

Every affidavit required for the purposes of this Act may be made before any commissioner for oaths or the Registrar. Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of perjury, and shall be liable to the penalties therefor.

[Ch4803s25]25. Rules, fees

The High Court may make rules for the better carrying into effect of the purposes of this Act, including the prescribing of fees payable in respect of matters or things done or which may be done under this Act.

[Ch4803s26]26. Savings

41 & 42 Vict. c.31 45 & 46 Vict. c. 43, 7 of 1916, 21 of 1965 Notwithstanding the repeal of the Bills of Sale Registration Ordinance and the Bills of Sale (Amendment) Act, 1965, and, in so far as they had effect in Malawi, the Bills of Sale Act, 1878, and the Bills of Sale Act, 1882, of the United Kingdom, nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and in respect of any such bill of sale any renewal of the registration of a bill of sale executed

before the commencement of this Act, and registered under the repealed Ordinance and Acts, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

SCHEDULE s.9

FORM No. 1

Affidavit of Renewal

I,..... of, do swear that a bill of sale bearing date the..... day of19....., and made between and which said bill of sale (or a copy of which said bill of sale), was registered on the day of19....., is still a subsisting security.

Sworn this..... day of, 19.....

FORM No. 2 s.14

Bill of Sale

This bill of sale made the day of..... 19....., between of..... of the one part, and ofof the other part, witnesseth that, in consideration of the sum of K....., now paid to by..... the receipt of which sum the saidhereby acknowledges (or whatever else the consideration may be), he, the said doth hereby assign unto his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of K and interest thereon at the rate of per cent. per annum. And the saiddoth further agree and declare that he will duly pay to the said the principal sum aforesaid, together with the interest then due, by payments of K by the day of 19..... And the said doth also agree with the saidthat he will (here insert terms as to insurance, payment of rent or otherwise, which the parties may agree to for the maintenance or defeasance of the security):

Provided always that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said for any cause other than those specified in section 13 of this Act.

In witness whereof the parties hereto have hereunto signed their names the day and year first above written.

Signed by the said

in the presence of me,

(add witness's name, address and description).

(add witness's name, address and description) after I had fully explained to him the nature and effect thereof.

ANNEXTURE TO BILL OF SALE

SCHEDULE

Particulars of Goods

SUBSIDIARY LEGISLATION

BILLS OF SALE RULES

under s. 25

G.N. 54/1968

13/2005

1. Citation

These Rules may be cited as the Bills of Sale Rules.

2. Form of attestation and registration

The attestation and registration of Bills of Sale under section 8 of the Act shall be in the following form:

AFFIDAVIT OF REGISTRATION OF BILL OF SALE ATTESTED BY A COMMISSIONER FOR OATHS

I,, make oath and say as follows:

or

I, of do solemnly, sincerely and truly declare and affirm as follows:

1. The paper writing hereto annexed and marked "A" is a true copy of a Bill of Sale and of every schedule and inventory thereto annexed or therein referred to and of every attestation of the execution thereof as made and given by (1)

2. The said Bill of Sale was made and given by the said (1) on the day of, 20..... to (2)

3. I was present and saw the said (1) duly execute the said Bill of Sale on the said day of, 20.....

4. The said (1) resides at (state residence at the time of making the affidavit) and is (state occupation).

5. The said (2) resides at (state residence at the time of making the affidavit) and is (state occupation).

6. The name subscribed to the said Bill of Sale is that of the witness attesting the due execution thereto and is in the proper handwriting of this deponent.

7. I am a Commissioner for Oaths and reside at

.....

8. Before the execution of the said Bill of Sale by the said (1), I fully explained to him (or her) the nature and effect thereof.

9. The said Bill of Sale was not prepared by me or by any person in my employment, nor am I the legal practitioner of the grantee thereto.

SWORN/AFFIRMED at on the day of, 20....., before me,

3. Fees

In respect of the registration of Bills of Sale under the Act the fees set out below shall be payable, provided always that the Registrar General may remit or reduce any of the prescribed fees in special cases for reasons to be recorded:

K t

On filing a Bill of Sale 500 00

On filing the affidavit of execution of a Bill of Sale 500 00

On the affidavit used for the purpose of re-registering a Bill of Sale (to include the fee for filing)
1,000 00

On searching the register 500 00

[Chap4804]CHAPTER 48:04

WEIGHTS AND MEASURES

ARRANGEMENT OF SECTIONS

SECTION

PRELIMINARY

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2. Interpretation

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4. Units of weight, length, capacity, area and volume in Malawi
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Schedule

Units of weight, length, capacity, area and volume

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Weights and Measures (Exemptions) Regulations
Weights and Measures (Sale of Articles) Regulations
Weights and Measures (Standards) Regulations
Weights and Measures (Licence of Competency) Regulations
Weights and Measures (Certificate of Approval) Regulations

18 of 1959(F)

15 of 1966

1 of 1969

17 of 1974

10 of 1981

G.N. 225 1963

219/1964(N)

An Act to provide for the uniformity of measures of weight, length capacity, area and volume, the assizing and re-assizing of weighing or measuring instruments, weights and measures, better protection of the public in relation to the sake of articles and other transactions by weight or measure and for other matters incidental thereto

[1ST JANUARY 1960]

PRELIMINARY

[Ch4804s1]1. Short title

10 of 1981 This Act may be cited as the Weights and Measures Act.

[Ch4804s2]2. Interpretation

In this Act, unless inconsistent with the context—

10 of 1981 “article” includes any liquids, foods, chattels, wares, merchandise, commodities and other goods of any description and, where necessary, any article and its package;

“assize” or “re-assize” in relation to an instrument, weight or measure means to examine, verify, test in the prescribed manner and when found correct stamp with the stamp of assize and

provide with a seal of assize, where prescribed, in accordance with this Act, and cognate expressions shall be construed accordingly;

“assizer” means a person appointed as an assizer in terms of section 11;

“authorized measure” means a unit of weight, length, capacity, area or volume referred to in section 4, and “unauthorized measure” shall be construed accordingly;

“Board” means the Assize Board established in terms of section 12;

“correct” in relation to an instrument, weight or measure, means correct within such limits of error and with such sensitiveness as may be prescribed;

“inspector” means a person appointed as an inspector in terms of section 11;

“instrument” means a weighing or measuring instrument;

“measuring instrument” means an instrument for the measurement of length, area, capacity, volume or quantity;

“police officer” means any member of the Malawi Police of the rank of Inspector or above;

“pre-packed”, in relation to an article, means packed or made up in advance ready for sale in a wrapper or container;

“purchaser” includes a person acting on behalf of a purchaser;

“rejected”, in relation to an instrument, weight or measure, means examined, tested and found not to comply with the requirements of this Act by an assizer and stamped with a prescribed rejection mark, and cognate expressions shall be construed accordingly;

“sale by retail” means a sale to a person buying otherwise than for the purpose of resale, but does not include a sale to a caterer or manufacturer for the purposes of his catering or manufacturing business, as the case may be, and “sell by retail” and “sold by retail” shall be construed accordingly ;

“seal of assize” means a prescribed seal of assize;

“sell” includes to offer, advertise, expose, keep, have in possession, or prepare for sale and to exchange or dispose of for valuable consideration, and cognate expressions shall be construed accordingly;

“stamp” includes to cast, engrave, etch, print or otherwise mark in such manner as to be as far as possible indelible, and cognate expressions shall be construed accordingly;

“stamp of assize” means a prescribed stamp of assize;

“standard” means a Malawi, Local or Working Standard, as the case may be, referred to in section 5;

“trade” includes any contract, bargain, sale, dealing and generally any transaction for valuable consideration in pursuance of which articles are weighed, measured or counted, but does not include any contract, or bargain for sale of or dealing in land or interest in land;

“unassized” means not assized, or, in relation to an instrument, weight or measure which under this Act should have been re-assized, not re-assized;

“use in trade”, in relation to an instrument, weight or measure, means the use thereof for weighing, measuring or counting in trade, and cognate expressions shall be construed accordingly;

“weighing instrument” includes scales, balances and all kinds of machines or instruments used for weighing, including those which also compute prices and those which count objects by weighing.

PART I

STANDARD WEIGHTS AND MEASURES

[Ch4804s3]3. Standard units of weight, length and capacity

10 of 1981(1) The standard unit of weight in Malawi shall be a kilogram equal in mass to the International Prototype Kilogram deposited at the International Bureau of Weights and Measures at Sèvres, France.

(2) The standard unit of length in Malawi shall be a metre equal in length to 1 650 763.73 wavelengths in vacuum of the radiation corresponding to the transition between the levels 2p₁₀ and 5d₅ of the krypton 86 atom.

(3) The standard unit of capacity in Malawi shall be a litre equal in volume to one cubic decimetre.

[Ch4804s4]4. Units of weight, length, capacity, area and volume in Malawi

10 of 1981The units of weight, length, capacity, area and volume in Malawi and their corresponding values shall be those specified in the Schedule, and such units of weight, length, capacity, area or volume of the Imperial system and their corresponding values as may for the time being be prescribed.

[Ch4804s5]5. Malawi, Local and Working standards

(1) The Minister shall procure standards representing such units of weight, length and capacity specified in the Schedule and such parts and multiples thereof as he may deem necessary, and shall direct which of the standards so procured shall be—

- (a) Malawi standards;
- (b) Local standards;
- (c) Working standards.

(2) The Malawi standards shall be deposited and kept in such places as the Minister shall determine, and shall be used solely for the purpose of verification of Local standards.

(3) The Local standards shall be kept in the custody of an assizer at such place as shall be prescribed, and shall be used for the purpose of verification of Working standards.

(4) Working standards shall be used for the assizing or reassizing of instruments, weights and measures.

[Ch4804s6]6. Replacement of standards

If at any time a standard is lost, destroyed, defaced, damaged or found by the Minister to be unsuitable, the Minister shall cause that standard to be replaced by a fresh standard.

[Ch4804s7]7. Authentication of standards

(1) Every standard shall be authenticated in such manner as may be prescribed.

(2) Judicial notice shall be taken of every standard authenticated in terms of this section.

[Ch4804s8]8. Verification of standards

(1) The Minister shall cause—

1 of 1969, 17 of 1974(a) all Malawi standards to be verified in such manner as he thinks fit, at intervals not exceeding twenty-five years;

(b) all Local standards to be verified in comparison with Malawi standards at intervals not exceeding five years;

(c) all Working standards to be verified in such manner and at such intervals as may be prescribed.

(2) Records of such verifications shall be kept in such form as the Minister may direct.

[Ch4804s9]9. Equipment for administration of the Act

The Minister shall procure such suitable instruments, appliances and facilities as may be necessary for the purposes of this Act, and shall provide for such repair, adjustment, maintenance, verification or replacement of the instruments, appliances and facilities as may be required.

PART II

ADMINISTRATION

[Ch4804s10]10. Arrangements with local authorities for administration of the Act

(1) Subject to section 11 (2), the Minister may enter into an agreement with any local authority, whereby arrangements are made for—

(a) the appointment by the Minister of any person employed by the Government or by a local authority as the case may be, as an assizer or an inspector;

(b) the provision by the Government or that local authority of such services or facilities as shall be agreed upon for the administration of this Act in any area within Malawi or within the jurisdiction of the local authority concerned.

(2) An agreement referred to in subsection (1) may contain provision for—

(a) the reimbursement from moneys provided for the purpose by Parliament to a local authority of the amount of any expenditure incurred by that local authority in pursuance of such agreement; or

(b) the payment from moneys provided for the purpose by Parliament to that local authority of an amount equal to that collected in fees in respect of assizing, re-assizing and rejecting of instruments, weights and measures in the area to which such agreement relates; or

(c) partly the one and partly the other.

(3) Any person appointed as an assizer or inspector in pursuance of an agreement referred to in subsection (1) shall have all the powers and duties of an assizer or inspector, as the case may be, under this Act but only within the area to which such agreement relates.

[Ch4804s11]11. Appointment of officers

(1) There shall be appointed, subject to any law relating to the public service, such assizers, inspectors and other officers as he may consider necessary for carrying out this Act.

(2) No person shall be appointed as an assizer unless he is the holder of an assizer's certificate issued to him by the Minister.

[Ch4804s12]12. Assize Board

(1) The Minister shall establish a board to be known as the Assize Board.

(2) The Board shall consist of not less than three and not more than five persons of whom at least one shall be an assizer. The chairman of the Board shall be appointed by the Minister from the members thereof.

(3) The members of the Board shall hold office for such period and shall be paid such remuneration or allowances as may be prescribed.

(4) The decision of the majority of the members present at any meeting of the Board shall constitute the decision of the Board.

(5) The functions of the Board shall be, when required by the Minister to do so, to make recommendations on—

(a) the examination of candidates for the assizer's certificate and the syllabus, conditions of and fees for such examinations;

(b) the circumstances in which a person may be issued with an assizer's certificate;

- (c) the issue of certificates in regard to the suitability of design or pattern of instruments, weights or measures for use in trade or the amendment of such certificates;
- (d) the limitations of the use in trade of any such design or pattern;
- (e) the exemption of any area or article or class of articles from all or any provisions of this Act;
- (f) any dispute or difference which may arise between an assizer and any person in regard to the assizing or re-assizing of any instrument, weight or measure or to the weighing, measuring, marking or packing of any article; and
- (g) any such other matter as may be referred to it by the Minister.

[Ch4804s13]13. Certificates in respect of design or pattern of instruments, etc.

(1) Any person may, on payment of the prescribed fee, make a written application to the Minister—

- (a) for the issue of a certificate in regard to the suitability for use in trade of any instrument, weight or measure of a design or pattern specified in the application; or
- (b) for the amendment of such certificate if that design or pattern is altered in a manner specified in the application without affecting the principle of the instrument, weight or measure.

(2) If the Minister is satisfied—

- (a) as to the suitability for use in trade of any instrument, weight or measure of a design or pattern specified in the application, he shall issue a certificate to that effect;
- (b) that the alteration of the design or pattern specified in the application does not affect the—
 - (i) suitability for use in trade; and
 - (ii) principle,

of the instrument, weight or measure, he shall amend the certificate accordingly:

Provided that the Minister may, in such certificate, limit the purposes of trade for which any instrument, weight or measure of that design or pattern may be used and restrict, or impose conditions upon, the use in trade of any such instrument, weight or measure.

(3) If the Minister at any time finds a design or pattern of an instrument, weight or measure in respect of which a certificate has been issued under this section to have some quality which might render it unsuitable for all or any purposes of trade or which has become obsolete he may—

- (a) cancel such certificate; or
- (b) cancel such certificate and, upon the payment of the prescribed fee, issue a fresh certificate in place thereof in which he may limit the purposes of trade for which the instrument,

weight or measure may be used or restrict or impose conditions upon the use in trade of such instrument, weight or measure.

PART III

ASSIZING OF INSTRUMENTS, WEIGHTS AND MEASURES

[Ch4804s14]14. Instruments, etc. used in trade to be assized

Subject to this Act, every instrument, weight and measure used in trade shall be assized or re-assized in accordance with this Act.

[Ch4804s15]15. Assizers to reject certain instruments, etc.

(1) An assizer shall reject in the prescribed manner any instrument, weight or measure which he finds to be false or defective or not to be correct or not to comply with the requirements of this Act.

(2) Where an assizer rejects an instrument, weight or measure in terms of subsection (1) he shall issue to the person in charge of such instrument, weight or measure, if required by him to do so, a written statement to the effect that it has been rejected.

[Ch4804s16]16. Instruments, etc., to be assized or re-assized

10 of 1981(1) An assizer may, by notice published in the Gazette and in such other manner, if any, as the Minister may direct, call upon all persons or any class of persons having instruments, weights or measures in use in trade within an area specified in that notice to produce the same to an assizer for the purpose of their being assized or re-assized at such time and place within that area as may be specified in that notice:

Provided that there shall be an interval of at least fourteen days between the date of publication of the notice in the Gazette and the first day on which any instrument, weight or measure is to be produced in terms of this section.

(2) Subject to subsection (3), any person who fails to comply with a notice referred to in subsection (1) shall be liable to a fine of K200 or, in default of payment, to imprisonment for three months.

(3) A person having, within an area specified in a notice referred to in subsection (1)—

(a) an instrument of measure which—

(i) is fixed; or

(ii) has a weighing capacity exceeding 250 kg; or

(iii) is of delicate construction; or

(b) an instrument, weight or measure which is ordinarily kept at a place which is not within forty kilometres (twenty-five miles) of any place specified in that notice,

shall not be guilty of an offence under this section if, upon the publication of that notice, he forthwith in writing notifies the assizer by whom that notice was published of the particulars of such instrument, weight or measure and the place where it is ordinarily kept and requests that such instrument, weight or measure be assized or re-assized at that place.

(4) An assized measure of capacity made of clear glass or an assized metal measure of length need not be re-assized unless the assizer has reasonable grounds for believing that it has materially altered since it was assized or re-assized for the last time or unless the stamp of assize has been defaced or become illegible.

(5) An assizer may demand that any person producing or submitting an instrument, weight or measure for assizing or re-assizing—

- (a) cause it to be taken sufficiently apart to enable him to examine the working parts;
- (b) provide auxiliary material necessary for the assizing or re-assizing of any such instrument, weight or measure;
- (c) provide transport for the carriage of and labour for the proper and expeditious handling of the standards or any material which is to be used for the assizing or re-assizing of any such instrument, weight or measure;
- (d) cause it to be cleaned if necessary;

and if such demand is not complied with may refuse to assize or re-assize such instrument, weight or measure.

[Ch4804s17]17. Powers of inspection and entry

10 of 1981(1) An assizer, inspector, magistrate or police officer may at all reasonable times—

- (a) enter into any place or vehicle where he has reasonable cause to believe there is any instrument, weight or measure which is used in trade and may inspect such instrument, weight or measure and cause it to be compared by an assizer with standards;
- (b) seize and detain any instrument, part of an instrument, weight or measure which he has reasonable cause to believe is used contrary to this Act.

(2) An assizer, inspector, magistrate or police officer may at all reasonable times—

- (a) enter any place or vehicle in or from which he has reasonable cause to believe any articles are sold or kept for delivery and may inspect and weigh or measure any article found therein;
- (b) order any person delivering any article to stop and may inspect and weigh or measure any such article;
- (c) for the purposes of paragraph (a) or (b) use any assized or re-assized instrument, weight or measure at the place or vehicle where such article is inspected;

(d) order the seller of any article to produce for inspection and, if he thinks it necessary, seize and detain any invoice, delivery note or other record kept by such seller relating to the weighing or measuring of such article;

(e) seize and detain any article in respect of which he has reasonable cause to believe that an offence has been committed under this Act;

(f) order any person mentioned in paragraph (b) or (d) or in charge of any place or vehicle mentioned in paragraph (a) to—

(i) provide labour for the handling and weighing in terms of this section of any article;

(ii) give his name and address and the name and address of his employer, if any.

(3) Any person who fails to comply with any order made in terms of this section shall be liable to a fine of K200 or, in default of payment, to imprisonment for three months.

(4) When exercising any powers conferred by this section an assizer or inspector shall, if so required, produce a written authority from the Minister.

PART IV

SALE OF ARTICLES AND USE OF INSTRUMENTS, WEIGHTS AND MEASURES

[Ch4804s18]18. Contracts to be made by reference to an authorized measure

10 of 1981(1) Subject to subsection (3), every contract made or effected in Malawi for any work, article, or thing other than land or interest in land shall, when the same has been or is to be done, sold, delivered, carried or agreed for by weight or measure, be made or effected by reference to an authorized measure. If not so made or effected any such contract shall be void.

(2) Subject to subsection (3), any person who sells any article by reference to an unauthorized measure shall be liable to a fine of K200 or, in default of payment, to imprisonment for three months.

(3) This section shall not apply to any contract made or effected with a view to the exportation from, or the importation into, Malawi of any article.

[Ch4804s19]19. Containers marked with unauthorized measure

Subject to this Act, no person shall sell any article in a wrapper or container marked with an unauthorized measure unless its correct equivalent in terms of an authorized measure is also marked on that wrapper or container—

(a) not less conspicuously than the unauthorized measure; or

(b) in the prescribed manner.

[Ch4804s20]20. Sale and delivery of articles

(1) Subject to subsection (4), no person shall sell any article by weight unless by net weight.

(2) Subject to subsections (3) and (4), a person who sells or has sold an article by weight or measure shall not deliver, cause to be delivered or have in his possession or charge for delivery to the purchaser such article without an invoice or delivery note showing the net weight or the measure of such article:

Provided that where a weight has been prescribed for a sack, bag or pocket of any article and that article is sold by such sack, bag or pocket it shall be sufficient if the invoice or delivery note contains only the number of such sacks, bags or pockets sold.

(3) Subsection (2) shall not apply to—

(a) bread or milk sold by retail; or

(b) any article weighed or measured in the sight and presence of the purchaser and delivered to him immediately thereafter; or

(c) any article sold in a wrapper or container on the outside of which or on a label securely attached to which is clearly and legibly written or printed the net weight or the measure of such article or the net weight or the measure of such article at the time of packing.

(4) This section shall not apply to any article for which weight is used for the purpose of designating grade or class only.

[Ch4804s21]21. Sale of prepacked articles

(1) Subject to subsection (2), no person shall sell any pre-packed article by weight or measure unless the net weight or the measure of that article is marked on the wrapper or container in the prescribed manner by reference to an authorized measure.

(2) Subsection (1) shall not apply to any article—

(a) weighed or measured in the sight and presence of the purchaser and delivered to him immediately thereafter; or

(b) in respect of which a weight has been prescribed for a sack, bag or pocket of that article and the article is sold by such sack, bag or pocket; or

(c) for which weight is used for the purpose of designating grade or class only.

[Ch4804s22]22. Provision and operation of weighing instruments

(1) Subject to this Act, where any person in a shop or store or in or from any vehicle sells by retail by weight any article he shall provide an assized weighing instrument and, where necessary, weights capable of weighing such article and shall keep and operate the same in such place and manner that the weighing and the weight indicated by the instrument are clearly visible to the purchaser at all times:

Provided that this subsection shall not apply to any person selling bread from a vehicle.

(2) Subject to this Act, any person responsible for the management of any mill, refinery, creamery, produce store or other place where agricultural or dairy produce is purchased shall provide an assized weighing instrument and, where necessary, weights capable of weighing such produce and shall keep and operate the same in such place and manner that the weighing and the weight indicated by the instrument are clearly visible to the person delivering such produce.

[Ch4804s23]23. Price lists

10 of 1981(1) Subject to subsection (2), no person shall print, publish, make, circulate, or cause to be printed, published, made or circulated any price list, catalogue or other paper containing a statement of prices current of articles for sale by weight or measure in Malawi in which measures of weight, length, capacity, area or volume of those articles are expressed otherwise than by reference to an authorized measure or denote or imply a greater or lesser measure of weight, length, area or volume than is denoted or implied by an authorized measure.

(2) Subsection (1) shall not apply to any price list, catalogue or other paper emanating from outside Malawi which—

(a) clearly shows that references to measures of weight, length or volume contained therein are not applicable to Malawi; or

(b) bears a statement showing the accurate equivalent by reference to an authorized measure of the measures contained in that price list, catalogue or other paper.

[Ch4804s24]24. False statements as to measure, weight, etc.

Any person who, by any means whatsoever, whether directly or indirectly—

10 of 1981(a) makes a false, incorrect or untrue declaration or statement as to the weight, length, gauge, width, area, capacity, volume or number of any article in connexion with its purchase, sale, weighing or measurement; or

(b) sells or causes to be sold anything by weight or measure short of the quantity demanded of, or represented by, the seller,

shall be liable to a fine of K1,000 and to imprisonment for six months.

[Ch4804s25]25. Prohibition of use and sale of certain instruments, etc.

(1) Subject to this Act, any person who knowingly uses in trade or has in his possession or charge for such use—

10 of 1981(a) any instrument, weight or measure the use in trade whereof is prohibited under this Act or which is false, defective or not correct;

(b) any unassized or rejected instrument, weight or measure;

(c) any instrument, weight or measure for any purpose of trade—

(i) for which according to a certificate issued under section 13 it may not be used; or

(ii) contrary to any restriction or condition imposed in such certificate.

shall be liable to a fine of K200 or, in default of payment, to imprisonment for three months.

(2) Any person charged with contravening—

(a) subsection 1 (a) or (b), shall be presumed to have known at the time when the offence was committed that the instrument, weight or measure to which the charge relates is such as is described in those paragraphs;

(b) subsection (1) (c), shall be presumed to have known at the time when the offence was committed the purposes of trade for which, and the restrictions or conditions subject to which, the instrument, weight or measure to which the charge relates, may be used,

unless the contrary is proved.

10 of 1981(3) Subject to subsection (4), a person shall not sell any weighing instrument unless such instrument bears a stamp of assize of the year of, or immediately preceding, the date of sale.

(4) Subsection (3) does not apply to a weighing instrument of a type which is not ordinarily assizable and which, when manufactured, was not designed for use in trade.

[Ch4804s26]26. Lawful use of certain unassized instruments, etc.

(1) Any person who has in his possession for use in trade any unassized instrument, weight or measure shall, without undue delay—

(a) cause that instrument, weight or measure to be assized or re-assized; or

(b) obtain a written authority for the use in trade of such instrument, weight or measure from an assizer in terms of subsection (2).

(2) An assizer may, upon the payment of the prescribed fee, issue a written authority for such period and subject to such conditions, if any, as he may specify therein to any person to use in trade any unassized instrument, weight or measure, if that person furnishes him with a written statement that to the best of his knowledge such instrument, weight or measure is assizable.

(3) A person who uses in trade or has in his possession or charge for such use an unassized instrument, weight or measure—

(a) in respect of which there is in force an authority issued under subsection (2); and

(b) in accordance with the conditions, if any, specified in that authority,

shall not be liable to criminal proceedings under this Act in respect of such use or possession of that instrument, weight or measure.

[Ch4804s27]27. Repairs to instruments, etc.

(1) Any person who mends or repairs an assized or rejected instrument, weight or measure shall first permanently obliterate the stamp of assize or the rejection mark thereon and before such instrument, weight or measure is thereafter used in trade, cause such instrument, weight or measure to be assized:

Provided that if such person cannot without undue delay cause such mended or repaired instrument, weight or measure to be assized, he may apply to an assizer for a written authority for the use in trade of such instrument, weight or measure in terms of subsection (2).

(2) An assizer shall, upon the payment of the prescribed fee, issue a written authority for such period and subject to such conditions, if any, as he may specify therein to any person to use in trade any instrument, weight or measure which has been mended or repaired and not subsequently assized if—

(a) he is satisfied that the person who mended or repaired such instrument, weight or measure is sufficiently competent to effect such mending or repairing; and

(b) the person who mended or repaired such instrument, weight or measure furnishes him with a written statement that to the best of his knowledge such instrument, weight or measure is correct and assizable.

(3) A person who uses in trade or has in his possession or charge for such use an instrument, weight or measure—

(a) in respect of which there is in force an authority issued under subsection (2); and

(b) in accordance with the conditions, if any, specified in that authority,

shall not be liable to criminal proceedings under this Act in respect of such use or possession of that instrument, weight or measure.

PART V

GENERAL

[Ch4804s28]28. Regulatory powers of Minister

10 of 1981(1) The Minister may by regulation, order or notice prescribe all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without derogation from the generality of subsection (1), the Minister may in regulations, orders or notices made in terms of that subsection provide for—

(a) the manner in which the process of assizing or re-assizing shall be carried out;

(b) the material, construction and marking of instruments, weights and measures for use in trade and the manner in which the denominations of standard units of weight, length or

capacity and any multiples or parts thereof may be represented on or by such instruments, weight or measures;

- (c) the placing, erection and protection of instruments, weights and measures;
- (d) instruments, weights or measures which, or circumstances in which, an assizer shall refuse to assize or re-assize;
- (e) prohibiting the use in trade of instruments, weights and measures which in his opinion are liable easily to become incorrect or generally unsuitable for use in trade;
- (f) limiting the purposes of trade for which certain instruments, weights or measures may be used and restricting, or imposing conditions upon the use in trade of instruments, weights and measures;
- (g) defining the limits of error which may be allowed and the sensitiveness required in any instrument, weight or measure and the limits of error which may be allowed in the weight or measure of any article;
- (h) particulars to be specified in an invoice or delivery note relating to any article or class of articles;
- (i) regulating and controlling the sale by weight, measure or number of any article, and requiring that the same shall be sold by such weight or measure only, or according to prescribed quantities;
- (j) regulating the manner in which an assizer, inspector, magistrate, or police officer shall carry out his duties under this Act;
- (k) the circumstances in which a person may be issued with an assizer's certificate by the Minister;
- (l) the examination of candidates for assizers' certificates and the syllabus, conditions of and fees for such examinations;
- (m) the conditions upon which any fluids may be sold by weight only or by capacity only;
- (n) the manner in which the weight, measure or number of an article shall be marked on packages or containers;
- (o) tables showing the equivalents which may be used in trade of one authorized measure in terms of another authorized measure;
- (p) the procedure of the Board and its quorum;
- (q) the forms to be used in connexion with this Act;
- (r) the quality and tolerance and the conditions for the supply, custody, care and verification of standards and associated equipment;

(s) exempting classes of instruments, weights or measures from all or any provisions of this Act;

(t) exempting, subject to such conditions as may be prescribed, any area or article or class of articles from all or any provisions of this Act;

(u) fees in respect of the assizing, re-assizing and rejection of instruments, weights and measures;

(v) the examination, testing, verification and stamping of any instrument, weight or measure belonging to or in use by the Government.

(3) Any regulation, order or notice may be made for the whole of Malawi or any part thereof.

(4) In regulations, orders or notices made in terms of subsection (1) the Minister may make different provisions for different classes of persons, articles or trade, and for different areas.

[Ch4804s29]29. Offences

(1) Any person—

10 of 1981(a) who makes use of any fraudulent art, device or contrivance for the purpose of evading this Act; or

(b) who forges or counterfeits or utters or unlawfully has in his possession a forged or counterfeit stamp or die for the assizing or re-assizing of an instrument, weight or measure; or

(c) who, save as is provided in section 27—

(i) tampers with an instrument, weight or measure; or

(ii) increases or diminishes a weight or measure; used in trade; or

(d) other than an assizer, who places on any instrument, weight or measure any stamp or mark purporting to indicate that such instrument, weight or measure has been assized or re-assized; or

(e) who wilfully commits or is a party to or aids in or incites any other person to the commission of any fraud or deception in the use of any instrument, weight or measure,

shall be liable to a fine of K1,000 and to imprisonment for six months.

(2) Any person—

(a) who hinders or obstructs any assizer, inspector, magistrate or police officer in the exercise of his functions under this Act; or

(b) who impersonates an assizer or inspector; or

(c) other than an assizer, and save as is provided in section 27, who obliterates or removes from any instrument, weight or measure any stamp or seal of assize or a part thereof; or

(d) who in any way alters any portion of the material or the weight or principle of construction of any instrument, weight or measure in respect of the design or pattern of which a certificate in terms of section 13 is in force and who, by any means whatsoever, whether directly or indirectly, represents such altered instrument, weight or measure to any person as an instrument, weight or measure in respect of the design or pattern of which such certificate is in force; or

(e) who contravenes or fails to comply with any provision of this Act with which it is his duty to comply,

shall, save as is otherwise specially provided in this Act, be liable to a fine of K250 or in default of payment to imprisonment for three months.

[Ch4804s30]30. Forfeiture

Upon conviction of a person under this Act, the court may, if it thinks fit, either in addition to or without inflicting any other penalty, order that any article, instrument, weight or measure in respect of which the offence was committed shall be forfeited, unless the owner of such article, instrument, weight or measure or any person acting on his behalf or having a right in that article, instrument, weight or measure shows cause to the contrary.

[Ch4804s31]31. Acts or omissions by managers, agents or employees

(1) Whenever any manager, agent or employee of any person (hereinafter referred to as the principal) does or omits to do any act which would be an offence under this Act for such principal to do or omit to do, then, unless it is proved that all reasonable steps were taken by the principal to prevent any act or omission of the kind in question, the principal shall be presumed himself to have done or omitted to do that act and be liable to be convicted and sentenced in respect thereof.

(2) Whenever any manager, agent or employee of a principal does or omits to do any act which would be an offence under this Act to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the principal.

(3) Any such manager, agent or employee may be so convicted and sentenced in addition to the principal.

[Ch4804s32]32. Safeguards to traders

(1) In any proceedings under this Act in respect of an alleged deficiency of weight or measure of any pre-packed article or of bread, the court shall disregard any inconsiderable variation in the weight or measure of a single article, and shall have regard to the average weight or measure of a reasonable number of other articles of the same kind, if any, sold by the accused, or in his possession for the purpose of sale, on the same occasion, and generally to all the circumstances of the case.

(2) It shall be a defence to any proceedings under this Act in respect of an alleged deficiency of weight, length, gauge, width, area, capacity, volume or number if the accused proves that such deficiency was due to a bona fide mistake or an accident, evaporation or drainage, or other causes beyond his control, and in spite of all reasonable precautions being taken by him to prevent the

occurrence of such deficiency, or was due to the action of some person over whom he had no control.

[Ch4804s33]33. Documents to be prima facie evidence

(1) A document purporting to be signed by an assizer and certifying that an instrument, weight or measure specified therein was inspected or examined and compared with standards by him on a specified date and the finding of his inspection or examination shall be received in any court on production by any person and without further proof as prima facie evidence of the facts therein stated.

(2) A document purporting to be signed by an assizer, inspector, magistrate or police officer and certifying that an article specified therein was weighed, measured or counted by him on a specified date and was found to be of a weight, measure or number therein stated shall be received in any court on production by any person and without further proof as prima facie evidence of the facts therein stated.

[Ch4804s34]34. Burden of proof

(1) In any proceedings under this Act in which it is necessary in order to establish the charge against a person to prove that he did at any time use in trade or have in his possession or charge for such use any instrument, weight or measure he shall, if it is proved that he carried on trade at that time and that such instrument, weight or measure was then in his possession or charge, be presumed, unless the contrary is proved, to have at that time used in trade or to have had in his possession or charge for such use, as the case may be, the said instrument, weight or measure.

(2) In any proceedings under this Act in which it is necessary in order to establish the charge against a person to prove that a notice under section 16 (1) should, in respect of any instrument, weight or measure have been complied with, such instrument, weight or measure shall be presumed, unless the contrary is proved, at all relevant times to have been used in trade by that person in the area to which the notice in question relates.

(3) Where an article is found in or on any place or vehicle which is used by any person for trade that article shall, unless the contrary is proved, be deemed, for the purposes of this Act, to be in or on that place or vehicle for sale.

(4) Where an article packed or made-up in a wrapper or container is found in or on any place or vehicle which is used by any person for trade, that article shall, unless the contrary is proved, be deemed, for the purposes of this Act, to be a pre-packed article.

[Ch4804s35]35. Recovery of fees

The Minister may by action in any court of competent jurisdiction recover the amount of a fee payable in terms of this Act.

10 of 1981 SCHEDULE ss. 4 and 5

UNITS OF WEIGHT, LENGTH, CAPACITY, AREA AND VOLUME

WEIGHT

Tonne = 1000 kilograms

Kilogram

Gram = 1/1000 kilogram

Metric carat = 1/5 gram

Decigram = 1/10 gram

Centigram = 1/100 gram

Milligram = 1/1000 gram

LENGTH

Kilometre = 1000 metres

Metre

Decimetre = 1/10 metre

Centimetre = 1/100 metre

Millimetre = 1/1000 metre

CAPACITY

Litre

Decilitre = 1/10 litre

Centilitre = 1/100 litre

Millilitre = 1/1000 litre

AREA

Square metre

Square decimetre = 1/100 square metre

Square centimetre = 1/0000 square metre

VOLUME

Cubic metre

Cubic decimetre = 1/100 cubic metre

Cubic centimetre = 1/1000 cubic decimetre

UNITS OF THE IMPERIAL SYSTEM

All such units of weight, length, capacity, area or volume of the Imperial system and their corresponding values as may for the time being be prescribed under section 4.

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WEIGHTS AND MEASURES (ASSIZE) REGULATIONS

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G.N. 269/1959(F)

347/1962(F)

192/1963(F)

269/1963(F)

225/1963

60/1964(M)

143/1968

49/1969

211/1971

17/1983

18/1989

4/1997

WEIGHTS AND MEASURES (ASSIZE) REGULATIONS

under s. 28

1. Citation

These Regulations may be cited as the Weights and Measures (Assize) Regulations.

2. Interpretation

In these Regulations, unless inconsistent with the context—

“approved” means approved by the Minister;

“assize” includes to re-assize;

“automatic weighing machine” means a weighing instrument in which special self-acting machinery is used to effect all or some of the following—

(a) an automatic feed;

(b) the rapid weighing of pre-determined quantities;

(c) the registration and summation of loads; or other similar purposes;

“beam scale” means an equal-armed weighing instrument, the pans of which are below the beam;

“bulk flowmeter” means a measuring instrument designed to measure liquid fuel or lubricating oil for individual deliveries of 200 litres or more, whether or not individual deliveries of less than 200 litres may also be made by means of the same instrument;

“capacity” means—

(a) in relation to a weighing instrument, the maximum load which it is constructed to weigh as marked on such instrument in accordance with regulation 7;

(b) in relation to a measure or measuring instrument, the maximum volume, quantity or length which it is constructed to contain or measure, as the case may be;

“compartment” in relation to a vehicle tank, means a subdivided portion of that tank;

“counter machine” means an equal-armed weighing instrument of a capacity not exceeding 50 kg, the pans of which are above the beam;

“crane machine” means—

(a) a suspended unequal-armed compound lever weighing instrument fitted with a loadhook suspended from knife edges, and provided with poises moving over graduated scales to indicate weight; or

(b) a suspended self-indicating, hydraulic or spring-actuated weighing instrument,

which has a capacity of not less than one ton;

“deadweight machine” means an equal-armed weighing instrument of a capacity exceeding 50 kg, the pans or platform of which are above the beam;

“difference chart” in relation to a weighing instrument, means a chart on which, by means of a pointer or other indicator, excess or deficiency from a pre-determined weight is indicated;

“error” in relation to an instrument, means the extent to which such instrument indicates in excess or deficiency of standard weight or measure;

“fabric-measuring instrument” means a measuring instrument designed and constructed to measure and to indicate the length of fabric or other material passed through it;

“liquid measuring device” means a measuring instrument provided with a measuring chamber or chambers designed for filling barrels, bottles, drums or other containers with pre-determined quantities of liquid or for dispensing liquids in small quantities from bulk;

“petrol pump” means a measuring instrument provided with either a meter or one or more measuring chambers, designed to measure liquid fuel or lubricating oil for individual deliveries of less than 200 litres, whether or not individual deliveries of more than 200 litres can also be made by means of the same instrument;

“platform machine” means a weighing instrument known as a platform machine, provided with a load-carrying platform or rails supported on or suspended from a compound lever system or an approved system and which indicates the weight of a load on one or more steelyards, on a chart or on both a steelyard and a chart, or by digital display, and includes a counter platform machine, dormant platform machine or overhead weigher;

“repaired” in relation to an instrument, means that the instrument has, since it was last assized, had an addition, replacement, repair or adjustment made to a part which is essential to the use of such instrument;

“self-indicating weighing instrument” means a weighing instrument other than a spring balance on which the whole or a part of the weight of the goods weighed is indicated by means of a pointer moving over a chart, or by means of a chart moving in relation to a fixed pointer, or by digital display;

“sensitiveness” in relation to a weighing instrument, means the actual weight which causes the beam or steelyard to turn;

“spring balance” means a weighing instrument having a capacity of less than 1,000 kg in which weight indications are dependent on the extension of springs and which is so constructed that the load is below the springs and is suspended directly from them;

“steelyard” means—

(a) a suspended unequal-armed single-lever weighing instrument, the shorter arm of which carries a loadhook suspended from knife edges, whilst the longer arm is provided with a poise moving over a graduated scale to indicate weight;

(b) a steelyard provided on a platform machine, weighbridge or other similar weighing instrument,

as the context requires;

“Table” means the appropriate table of allowances prescribed in the First Schedule;

“turn” in relation to a beam or steelyard, means to move from its position of equilibrium to the full extent of its travel each way between stops or to the limit of its graduated scale;

“vehicle tank” means a measure mounted on a motor vehicle or trailer and used for the measurement of liquid fuel;

“vibrating weighing instrument” means a weighing instrument so constructed that the beam or steelyard returns to or oscillates about the position of equilibrium when disturbed therefrom;

“wall beam” means an unequal-armed multi-lever weighing instrument designed to be affixed to a wall, having a loadhook suspended from knife edges on the lower lever, and provided with poises moving over graduated scales to indicate weight;

“weighbridge” means a weighing instrument known as a weighbridge, provided with a load-carrying platform or rails supported on or suspended from a compound lever system or an approved system and which indicates the weight of a load on one or more steelyards, on a chart or on both a steelyard and a chart, or by digital display.

PART I

GENERAL

3.

[Deleted by G.N. 4/1997]

4. Stamp of assize

The stamp of assize shall be—

(a) a stamp incorporating the cock symbol, the letters M.G. and a mark consisting of a letter and numeral or numerals identifying the assizer concerned; and

(b) in close proximity to the said cock symbol, a date mark consisting of numerals signifying the year of assize.

5. Seal of assize

The seal of assize shall be a lead seal bearing a stamp incorporating the cock symbol and the letters "M.G." and a date mark consisting of at least two numerals signifying the year of assize. G.N. 17/1983

6. Rejection mark

(1) The rejection mark shall be a mark of six-pointed star design.

(2) For the purposes of section 15 of the Act, an assizer shall reject an instrument, weight or measure—

(a) if such instrument, weight or measure bears a stamp of assize, by obliterating such stamp with a rejection mark;

(b) if such instrument, weight or measure does not bear a stamp of assize, by stamping the rejection mark in a suitable position thereon.

7. Marking of capacity or denomination

(1) The capacity of a weighing instrument shall be conspicuously, legibly and durably marked thereon.

(2) The capacity of a fabric-measuring instrument shall be clearly and conspicuously stamped thereon. G.N. 17/1983

(3) The denomination of a weight shall, except where the small size of it renders it impracticable, be clearly and conspicuously stamped on the upper surface of the weight.

(4) The capacity of a measure shall, unless otherwise prescribed, be clearly and conspicuously stamped on the outside of the measure or on a metal plate permanently secured thereto.

(5) When an instrument, weight or measure is marked with its capacity or denomination, as the case may be, the denomination of weight or measure shall be stated in full or, in respect of a denomination specified in the first column of the Second Schedule, in full or in the abbreviated form specified opposite thereto in the second column of the Second Schedule.

8. Graduations

(1) The graduations on an instrument or measure shall—

(a) be indelible, clear, distinct and legible;

(b) except in respect of a graduated glass measure, be uniformly spaced;

(c) in the case of denominated graduations, be distinguished by longer lines than the intermediate graduations.

(2) The graduations on a steelyard shall—

(a) consist of notches or incised or embossed lines so defined that the position of the poise with respect thereto is clearly indicated;

(b) be cut, incised or embossed in one plane, at right angles to the steelyard and parallel to each other.

9. Improper use of instruments, weights or measures

(1) No person shall use in trade an instrument which is erected or placed upon an unsuitable or insufficiently strong or stable base or foundation.

(2) No person shall use in trade a platform machine or weighbridge to ascertain the weight of any vehicle or other article unless such instrument— G.N. 17/1983

(a) has a platform or platforms or a rail or rails, as the case may be, of sufficient size to support completely such vehicle or other article; and

(b) is of sufficient capacity to permit of the weighing of such vehicle or other article when so supported on the platform or platforms, or rail or rails, as the case may be.

(3) No person shall use a counter machine or a self-indicating weighing instrument provided with a sliding or tare weight otherwise than for factory use.

(4) No person shall use in trade a spring balance—

(a) which is not of the circular suspended type;

(b) with a pan above the spring if its capacity exceeds 10 kg.

(5) Where a person uses in trade a dry measure of capacity for the measurement of any article he shall ensure that the article is neither heaped nor pressed in the measure, but is level with the brim.

(6) Where two or more measures of length are attached to a counter no person shall use in trade such measures unless they are contiguous or are not less than one and one-half metres.

(7) Where a person in a shop or other place sells by retail by weight any article which is weighed in the sight and presence of the purchaser and delivered to him immediately thereafter he shall use for such weighing a weighing instrument which is so sited that the weighing and the weight indicated by the instrument are clearly visible to the purchaser at all times.

10. Conditions for refusal to assize

(1) An assizer shall refuse to assize an instrument, weight or measure which—

(a) is not properly constructed or when, in his opinion, its material or mode of construction or any part thereof or its nature or condition appears likely to render it unsuitable for use in trade; G.N. 17/1983

(b) has unusual or novel features, unless it is of a design or pattern in respect of which a certificate has been issued in terms of section 13 of the Act;

- (c) is not sufficiently strong to withstand the wear and tear of ordinary use in trade;
- (d) is not complete in itself;
- (e) is not in a clean state;
- (f) bears a manufacturer's or other mark which might be mistaken for the stamp of assize;
- (g) having been rejected by the assizer as defective, has not been repaired by a person in possession of a current licence of competency issued under the Weights and Measures (Licence of Competency) Regulations. G.N. 49/1969

(2) An assizer shall refuse to assize an instrument which—

- (a) has interchangeable or reversible parts, unless the interchange or reversal does not affect the accuracy of the instrument;
- (b) has removable parts, the removal of which would affect the accuracy of the instrument, unless the parts are such that the instrument cannot be used without them.

(3) An assizer shall refuse to assize a weighing instrument which—

- (a) has a scoop, pan, plate or other part which is essential to its operation broken;
- (b) has a scoop, pan or plate of such size or shape as may lead to incorrect weighing either through its fouling the housing of the scale, or because proper contact between the knife edge and bearings is disturbed;
- (c) has a goods-plate which is readily absorbent on account of faulty glazing or on account of the extent to which it is cracked or chipped;
- (d) has a friction plate, stay, hook or loop which is not of hardened steel or an approved material;
- (e) has packing at the knife edges which, in the opinion of the assizer, is either excessive as to the number of pieces or is in other respects unsuitable for the purpose.

(4) An assizer shall refuse to assize an accelerating weighing instrument, other than an accelerating deadweight machine.

(5) (a) Subject to subregulation (b) an assizer shall refuse to assize a counter machine constructed on the open Beranger principle; G.N. 143/1968, 17/1983

(b) Notwithstanding subregulation (a) an open Beranger counter machine which—

- (i) was assized or re-assized prior to the 1st July, 1968; and
- (ii) has subsequently been re-assized in each year up to but not including the current year,

shall be re-assized as long as it otherwise continues to comply with these Regulations.

11.

[Revoked by G.N. 17/1983.]

PART II

WEIGHING INSTRUMENTS

12. Testing of weighing instruments

(1) Subject to this regulation, a weighing instrument shall be tested by the direct application of standard weights.

(2) An automatic weighing machine shall be tested—

- (a) where practicable, by the direct application of standard weights; and
- (b) by comparing the load delivered against standard weights.

(3) Subject to subregulation (5), a weighbridge shall be tested by the direct application—

- (a) of standard weights; or
- (b) of such other testing equipment as may be approved by an assizer.

(4) Subject to subregulation (5), a weighing instrument kept in stock for sale which is tested on the premises of a dealer in or repairer of scales shall be tested by the direct application—

- (a) of standard weights; or
- (b) of test weights provided by the dealer or repairer, as the case may be.

(5) When a weighing instrument is tested and sufficient standard or test weights are not available, auxiliary material may be used to make weight.

13. Limits of error and sensitiveness

(1) A weighing instrument shall be tested for error by ascertaining the weight required to overcome the error in that instrument. G.N. 17/1983

(2) A vibrating weighing instrument shall be tested for sensitiveness by loading the instrument to its capacity, or as near thereto as is practicable, with the beam or steelyard in a horizontal position and ascertaining that the addition of the amount shown in the appropriate table for an instrument of that class and capacity causes the beam or steelyard to turn.

(3) An accelerating deadweight machine shall be tested for acceleration by loading the instrument to its capacity, or as near thereto as is practicable, with the beam at the extremity of its travel, and ascertaining that the subtraction of the amount shown in the third column of Table VI for an instrument of that capacity causes the beam to return to its initial position.

(4) The limit of error allowed and the sensitiveness required in a weighing instrument of a particular class shall be—

(a) in the case of a new or repaired instrument, the appropriate limit of error and the sensitiveness prescribed in this Part;

(b) in the case of a weighing instrument which is not new or repaired, twice the appropriate limit of error and three times the appropriate sensitiveness prescribed in this Part.

(5) The limit of error allowed and the sensitiveness required in a weighing instrument of a capacity not specified in the appropriate table shall be the limit of error and the sensitiveness which bear the same proportion to the capacity of that instrument as the limits of error and sensitiveness for a similar instrument of the next lower capacity specified in the table bear to the capacity of such latter instrument.

(6) Where a weighing instrument is tested at graduations below the capacity of that instrument, the limit of error allowed shall be—

(a) below one-quarter of the capacity, one-quarter of the prescribed limit of error;

(b) one-quarter of the capacity or over but not exceeding three-quarters of the capacity, one-half of the prescribed limit of error;

(c) above three-quarters of the capacity, the prescribed limit of error.

14. Poises

(1) Where lead is used for adjusting purposes on any poise it shall not come into contact with the beam or steelyard.

(2) A poise shall be provided with an adjusting hole of such size, shape and design as to permit readily of necessary adjustment.

(3) A poise shall be so constructed that no part thereof can be detached without the use of a mechanical appliance.

15. Counterpoise weights

(1) A counterpoise weight shall be marked in equivalents of 5 kg, 10 kg, 20 kg, 25 kg, 50 kg or 100 kg. G.N. 17/1983

(2) A counterpoise weight used, or intended for use, on a platform machine used for weighing corrosive articles, including hides and skins, shall be made of brass, nickel-steel, or other corrosion-resisting metal.

(3) A counterpoise weight shall have only one undercut adjusting hole containing fixed lead sufficient to cover adequately the bottom of such hole, and with room to permit future adjustments.

(4) A counterpoise weight of an actual weight of less than 100 g shall be made of brass.

(5) Where more than one platform machine provided with counterpoise weights is kept or used by any person on any premises or on a public market, each such counterpoise weight shall be identified with the weighing instrument to which it belongs by—

(a) a number conspicuously and indelibly marked and corresponding to a number similarly marked on the pillar and on the counterbalance of the instrument; or

(b) a band of paint, of a colour in distinct contrast to the colour of the weight, on the edge of the weight, corresponding to a band of paint of the same colour on the pillar and on the counterbalance of the instrument.

(6) A counterpoise weight shall be circular or hexagonal in shape.

16. Knife edges and bearings

(1) Knife edges shall—

(a) be firmly secured in position;

(b) be in true parallelism; and

(c) bear throughout the entire length of the parts designed to be in contact with the bearings.

(2) Knife edges and bearings shall be of hardened steel, agate or an approved material and the load-carrying parts shall not show scratches when tested by means of the application of a superfine smooth file.

17. Balance

(1) A weighing instrument shall be in balance—

(a) when unloaded; and G.N. 17/1983

(b) where a loose receptacle or frame is used in conjunction with such instrument, when the receptacle or frame is attached thereto.

(2) Balance shall be indicated—

(a) in the case of a vibrating weighing instrument, by the beam or steelyard returning to the position of equilibrium when disturbed therefrom;

(b) in the case of a self-indicating weighing instrument or a weighing instrument provided with a graduated indicating plate or a difference chart, by the pointer coming to rest at the position of equilibrium or zero graduation with the bubble of any spirit level provided in its true position except that, in the case of weighing instrument fitted with a digital display, balance shall be indicated by zeros appearing in all windows of the display.

(c) in the case of a counter machine constructed on the Beranger principle, by two pointers, each attached to a subsidiary beam, coming to rest directly opposite each other;

(d) in the case of an accelerating deadweight machine, by the beam, on being released from the stop under the weights-pan, falling gently to the stop under the goods-pan.

(3) Balance shall not be affected when the load is removed from the instrument.

(4) Where a weighing instrument is provided with a balance box or a balance or gravity ball, such device shall be capable of adjustment only by the use of a mechanical appliance.

18. Automatic weighing machines

(1) In an automatic weighing machine—

(a) the integral parts shall in respect of principle of construction and material, satisfy such requirements of this Part as are applicable; G.N. 17/1983

(b) any beam shall be stamped with a number or mark which corresponds to a number or mark stamped elsewhere on the machine so as to identify it with the machine;

(c) any adjusting mechanism shall be suitably secured and protected so that it cannot readily be tampered with.

(2) An automatic weighing machine shall be tested with such number of continuous loads, but not less than twenty, as an assizer may consider necessary. In testing “totalizing” machines, thirty loads shall be passed over the machine, ten of which shall be minimum loads, ten maximum and ten of the mean between the minimum and the maximum.

(3) Subject to regulation 13, the limit of error allowed on an automatic weighing machine is—

(a) if the machine weighs amounts of 100 g or less, one per centum in excess only;

(b) if the machine weighs amounts in excess of 100 g, one-half per centum in excess only;

of the weight which it purports to deliver.

(4) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the beam or some other essential part of the machine.

19. Beam scales

(1) Beam scales shall be classified as follows— G.N. 17/1983

(a) Class 1, comprising precision balances provided with means for relieving all the knife edges and bearings;

(b) Class 2, comprising beam scales, other than Class 1 beam scales, used for weighing chemicals, drugs, fine seeds or precious metals or stones;

(c) Class 3, comprising beam scales other than Class 1 or Class 2 beam scales.

(2) A new or repaired Class 2 or Class 3 beam scale shall be stamped “Class 2” or “Class 3” as the case may be.

(3) Any device for adjusting the balance of a beam scale shall be permanently secured and so attached that it cannot readily be tampered with:

Provided that a Class 1 or Class 2 beam scale may be fitted with—

- (a) threaded balancing screws at the extremities of the beam;
- (b) flags; or
- (c) an approved balancing device.

(4) In a beam scale provided with a pointer moving across a graduated indicating plate or difference chart, the pointer shall travel beyond the extreme graduation on each side of the point of equilibrium or zero graduation. If the chart is graduated on the heavy side only the pointer shall travel beyond the extreme graduation on that side and for a corresponding distance on the ungraduated side.

(5) A beam scale shall be tested—

(a) with the pan loaded to half the capacity of the scale, and any difference in the accuracy of the instrument resulting from moving the knife edges or bearings laterally, or backwards or forwards, within the limits of movement, shall not exceed half the limit of error prescribed in subregulation (6);

(b) at capacity.

(6) Subject to regulation 13, the limit of error allowed and the sensitiveness required in a Class 1, Class 2 or Class 3 beam scale of a capacity specified in the first column of Table I, II or III, as the case may be, are those specified opposite thereto in the second and third columns respectively of Table I, II or III, as the case may be.

(7) On a beam scale the stamp of assize shall be stamped upon a lead plug inserted in the beam immediately under or over the fulcrum knife edge or as near thereto as is practicable or, where the beam is totally enclosed in a housing, upon a lead plug securely fitted in a cup rivetted to that housing.

20. Counter machines

(1) In a counter machine—

- (a) the supports for the pans shall be of rigid structure;
- (b) the centre fork shall be so secured that it cannot twist or get out of place.

(2) A counter machine constructed on the Beranger principle shall have— G.N. 143/1968

- (a) its working parts totally enclosed in a housing;
- (b) pans which, if interchangeable, do not offset the balance when interchanged.

(3) Material used for balancing purposes shall be contained in a balance box which is—

(a) securely fixed to the under surface of a fixed weights-pan or of the support for a weights-pan;

(b) capable of containing lead to a weight not exceeding one per centum of the capacity of the machine.

(4) On a counter machine the travel of the beam each way from the horizontal position shall be, where the capacity of the machine is— G.N. 17/1983

- (a) not over 2 kg, not less than 6 mm;
- (b) over 2 kg and not over 5 kg, not less than 7 mm;
- (c) over 5 kg and not over 10 kg, not less than 8 mm;
- (d) over 10 kg and not over 20 kg, not less than 10 mm;
- (e) over 20 kg, not less than 12 mm.

(5) A counter machine shall be tested—

(a) with the pan loaded to half the capacity of the machine and any difference in the accuracy of the instrument resulting from moving the knife edges or bearings laterally, or backwards and forwards, within their limits of movement, shall not exceed half the limit of error prescribed in subregulation (6);

(b) with a weight or weights equal to half the capacity of the machine placed on the goods-pan anywhere within a distance from the centre equal to one-third the greatest length of the pan, or, if the pan has a vertical side, against the middle of that side, and a similar weight placed in any position on the weights-pan, and the machine shall indicate the same weight within half the limit of error prescribed in subregulation (6);

(c) at capacity with the weights placed centrally on each pan, unless the goods-pan is in the form of a scoop in which case half the total weight shall be placed against the middle of the back of the scoop and the other half in any position on the scoop.

(6) Subject to regulation 13, the limit of error allowed and the sensitiveness required in a counter machine of a capacity specified in the first column of Table IV, are those specified opposite thereto in the second and third columns respectively of Table IV.

(7) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the beam:

Provided that in the case of a closed Beranger it may be stamped upon the housing or upon a lead plug inserted therein.

21. Crane machines

(1) In a crane machine the range of balance shall not exceed two per centum of the capacity of the machine.

(2) A crane machine shall be tested at as many numbered graduations as the assizer considers necessary.

(3) Subject to regulation 13, the limit of error allowed and the sensitiveness required in a crane machine of a capacity specified in the first column of Table V shall be double those specified opposite thereto in the second and third columns respectively of Table V.

(4) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous part of the steelyard or, where the machine has no steelyard, of the housing.

(5) An assizer shall refuse to assize a crane machine not constructed on the lever principle unless it is of a design or pattern in respect of which a certificate has been issued in terms of section 13 of the Act.

22. Deadweight machines

(1) In a deadweight machine—G.N. 17/1983

(a) any goods-platform shall not exceed in length the length of the beam and in width double the width of the beam and shall not be fitted with folding wings which increase such dimensions by more than one-third in either direction;

(b) any platform shall be made of metal or an approved material.

(2) Material used for balancing purposes shall be contained in a balance box securely fixed to the under surface of a platform.

(3) The travel of the beam from the horizontal position shall be not less than—

(a) in the case of an accelerating deadweight machine, 22 mm;

(b) in the case of a deadweight machine which is not an accelerating deadweight machine, 15 mm either way.

(4) A deadweight machine shall be tested—

(a) with weights equal to half the capacity of the machine placed successively at the middle of the front and of the back of each platform and centrally over the knife edges on each side, and the machine shall indicate the same weight within half the limit of error prescribed in subregulation (5);

(b) at capacity, and the weights shall be distributed evenly on the platforms.

(5) Subject to regulation 13, in a deadweight machine of a capacity specified in the first column of Table VI—

(a) which is an accelerating deadweight machine, the limit of error allowed and the weight required to bring the beam back from its position of maximum displacement are those specified opposite thereto in the second and third columns respectively of Table VI;

(b) which is not an accelerating deadweight machine, the limit of error allowed and the sensitiveness required are those specified opposite thereto in the second and fourth columns respectively of Table VI.

(6) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the beam.

23. Platform machines and weigh bridges

(1) In a platform machine or weighbridge—G.N. 17/1983

(a) the upper surface or edge of the steelyard shall be in a straight plane from the zero graduation to the nose end;

(b) there shall be no readily removable parts other than the counterbalance to support the counterpoise weights;

(c) adequate stops shall be provided to prevent any poise from travelling behind the zero graduation;

(d) provided with a load carrying rail or rails, such rail or rails shall be distant from any other rail or rails not less than 12mm.

(2) A weighbridge shall have—

(a) provision for adequate drainage and the pit kept free from any accumulation of water, mud or debris;

(b) its approaches smooth, straight and level for a distance not less than the length of the platform at each end of such weighbridge except that, if the platform is of sufficient length to accommodate the entire vehicle being weighed, it is sufficient if the approaches are smooth and straight at each end for a lesser distance.

(c) the building housing the chart or steelyard so constructed that the operator has a clear and unobstructed view of the entire platform or platforms.

(d) the platform so protected as to allow vehicles to pass on and off the platform at the ends only;

(e) foundations of adequate strength to support, without change of position, both the mechanism and a load equal to the capacity of the weighbridge.

(3) Where a platform machine or weighbridge is not provided with a tare-beam, the weight of any loose receptacle or frame used in conjunction with the instrument shall be accurately compensated for by means of a counterpoise weight distinctive in shape from any of the ordinary counterpoise weights belonging to the instrument. Such compensating weight shall have the words "TARE WEIGHT" legibly and conspicuously stamped on its edge.

(4) The range of balance—

(a) in a platform machine, shall not exceed one half per centum of the capacity of the machine and shall be not less than one-eighth per centum of such capacity each way from the centre of travel of the ball;

(b) in a weighbridge, shall be double the range permitted in a platform machine.

(5) The travel of the steelyard each way from the horizontal position shall be not less than—

(a) in a platform machine, 10 mm;

(b) in a weighbridge, 12 mm.

(6) A platform machine or weighbridge shall be tested—

(a) with a load which is equal to, or is as near as is practicable to, one-quarter of its capacity, and the machine shall indicate the same weight within half the limit of error prescribed in subregulation (7), whether the load is placed on the middle or near the ends or corners of the platform;

(b) at as many numbered graduations of the steelyard or chart or as many indications on the digital display as the assizer considers necessary, and also each individual counterpoise weight, drop weight, tare bar, weigh bar, or any other device used to increase the capacity of the machine shall be tested;

(c) at capacity or as near thereto as, in the opinion of an assizer, is practicable with the weights and materials evenly distributed on the platform;

(d) and the instrument shall be correct whether the test is forward or backward;

(e) in the case of a dormant platform machine, weighbridge or overhead weigher, in situ, and it shall be correct when the load is run on or off the platform or load-carrying rail, as the case may be;

(f) and it shall, if fitted with a locking handle or relieving gear, be correct when the machine is put slowly out of and into action.

(7) Subject to regulation 13, the limit of error allowed and the sensitiveness required are—

(a) in the case of a platform machine of a capacity specified in the first column of Table VII, those specified opposite thereto in the second and third columns respectively of Table VII;

(b) in the case of a weighbridge of a capacity specified in the first column of Table V, those specified opposite thereto in the second and third columns respectively of Table V.

(8) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible position on the instrument and the official date stamp shall be stamped upon the lead in the adjusting hole of any counterpoise or tare weight.

(9) An assizer shall refuse to assize—

(a) an instrument of the type known as Union scales;

(b) a platform machine having counterpoise weights which, when added to the full value of the steelyard reading, represent a weight greater or less than the capacity of the machine.

24. Self-indicating weighing instruments

(1) In a self-indicating weighing instrument—

(a) in which weight indications are dependent on the extension of a spring or springs, such spring or springs shall be iso-elastic or a temperature compensating device shall be incorporated; G.N. 17/1983

(b) other than a dormant platform machine, weighbridge, suspended self-indicating weighing instrument or a self-indicating weighing instrument specifically designed for use in an out-of-level position, a circular spirit level or cross spirit level shall be provided;

(c) error due to parallax shall not exceed the value of the smallest subdivision;

(d) the indicating wire or the extremity of the indicating pointer shall not exceed in width or thickness the width of any graduation, and the extremity of the pointer shall meet but not obscure the graduations;

(e) which is new or repaired and is provided with a cylindrical or revolving chart, any indicating wire shall be a single wire;

(f) in which the chart is partly enclosed, the aperture through which the indications are read shall be sufficiently large to permit the next lower numbered graduation to be read.

(2) The graduations on the chart shall—

(a) in the case of a platform machine or weighbridge—

(i) not exceed 0.8 mm or 1.5 mm in width in a platform machine or weighbridge respectively; and

(ii) be not less than 2.5 mm, measured from centre to centre, whether or not they are on opposite sides of a dividing line;

(b) in the case of a self-indicating weighing instrument other than a platform machine or weighbridge—

(i) not exceed 0.4 mm in width;

(ii) be not less than 1.5 mm apart, measured from centre to centre, whether or not they are on opposite sides of a dividing line:

Provided that a lens or other approved device may be fitted to the instrument for the purpose of magnifying the graduations so as to bring them in to conformity with this subsection.

(3) The weight value of the smallest subdivision of the chart shall, where the capacity of the chart is— G.N. 17/1983

- (a) not over 500 g, not exceed 5 g;
- (b) over 500 g and not over 2 kg, not exceed 10 g;
- (c) over 2 kg and not over 10 kg, not exceed 20 g;
- (d) over 10 kg and not over 25 kg, not exceed 50 g;
- (e) over 25 kg and not over 50 kg, not exceed 100 g;
- (f) over 50 kg and not over 100 kg, not exceed 200 g;
- (g) over 100 kg and not over 250 kg, not exceed 500 g;
- (h) over 250 kg and not over 500 kg, not exceed 1 kg;
- (i) over 500 kg and not over 2,000 kg, not exceed 2 kg;
- (j) over 2,000 kg and not over 5,000 kg, not exceed 5 kg;
- (k) over 5,000 kg and not over 10,000 kg, not exceed 10 kg;
- (l) over 10,000 kg and not over 25,000 kg, not exceed 20 kg;
- (m) over 25,000 kg, not exceed 50 kg.

(4) A self-indicating weighing instrument shall be tested—

(a) to ensure that the graduations indicating value in money are in alignment with those indicating weight, and a sufficient number of computations shall be checked to establish their accuracy;

(b) at as many graduations or indications as the assizer considers necessary, and the instrument shall be correct whether the test is forward or backward;

(c) to ensure that the instrument, if fitted with two charts indicating weight, shows the same indication on both;

(d) if it is specifically designed for use in an out-of-level position, with the instrument in a level position and again with the instrument in an out-of-level position.

(5) Subject to regulation 13, the limit of error allowed on a self-indicating weighing instrument is the weight corresponding to one-half of the smallest subdivision on the chart: G.N. 17/1983

Provided that in the case of a self-indicating weighing instrument with a digital display, the limit of error allowed shall be a weight corresponding to one increment.

(6) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the instrument.

25. Spring balances

(1) In a spring balance— G.N. 17/1983

(a) the chart shall—

- (i) be clearly and indelibly marked “TRADE SPRING BALANCE”
- (ii) bear a statement of the weight value of the smallest subdivision;
- (iii) be made of white enamel, polished brass, or an approved material so

protected that the graduations and other markings are clearly visible;

(b) the graduations on the chart shall not exceed 0.8 mm in width nor be less than—
G.N. 17/1983

- (i) 1.25 mm apart in the case of an instrument of not more than 15 kg capacity;
- (ii) 2 mm apart in the case of an instrument of over 15 kg but not more than 50 kg capacity;
- (iii) 2.5 mm apart in the case of an instrument of over 50 kg capacity;

(c) where a temperature compensating device or iso-elastic spring or springs are incorporated, it shall be capable of compensating temperature variations of 10 degrees celsius in balance and at load;

(d) any ball-bearing unit shall be protected against dust and dirt;

(e) the extremity of the indicating pointer shall not—

- (i) exceed in width or thickness the width of any graduation; and
- (ii) be more than 3 mm from the chart;

(f) a suitable balancing device capable of adjustment only by the use of a mechanical appliance shall be provided;

(g) back-balanced for use with a bag, sack, pan or other means of loading, such fact shall be clearly stated on the chart.

(2) The weight value of the smallest subdivision of the chart shall, where the capacity of the chart is— G.N. 17/1983

- (a) under 1 kg, not exceed 5 g;
- (b) 1 kg or over and under 5 kg, not exceed 10 g;
- (c) 5 kg or over and under 10 kg, not exceed 20 g;
- (d) 10 kg or over and under 20 kg, not exceed 50 g;
- (e) 20 kg or over and under 50 kg, not exceed 100 g;
- (f) 50 kg or over, not exceed one-half of one per centum of such capacity.

(3) The range of balance shall not exceed one per centum of the capacity of the spring balance.

(4) A spring balance shall be tested—

(a) at as many graduations as the assizer considers necessary, and it shall be correct whether the test is forward or backward;

(b) and the assizer may test the balance for efficiency or ability to recover by leaving on the pan or hook a load equal to the capacity of the balance for a period not exceeding twenty-four hours, and after the expiration of a further four hours testing for accuracy.

(5) Subject to regulation 13, the limit of error allowed on a spring balance is the weight corresponding to one-half of the smallest subdivision.

(6) The stamp of assize shall be stamped upon a lead plug inserted in the chart, or in a prominent position on the instrument.

26. Steelyards and wall beams

(1) In a steelyard or wall beam—

(a) the steelyard shall be made of wrought-iron, steel or an approved metal and shall be perfectly straight; G.N. 17/1983

(b) a stop to prevent excessive oscillation of the steelyard shall be provided;

(c) any load hook shall be securely attached to the instrument;

(d) end fittings to prevent the poise-carrier riding off the steelyard shall be securely attached;

(e) any poise shall move freely without risk of injury to the notches and there shall be a stop to prevent it travelling behind the zero graduation.

(2) In a wall beam—

(a) the frame and bracket shall be of adequate strength to support, without deflection, both the wall beam and a load equal to the capacity of the wall beam;

(b) on a swivel bracket, the steelyard shall be level in all positions;

(c) the range of balance shall not exceed one-half per centum of the capacity of the wall beam.

(3) The travel of the steelyard of a wall beam each way from the horizontal position shall be not less than 10 mm.

(4) A wall beam or steelyard shall be tested at as many graduations as the assizer considers necessary, and the instrument shall be correct whether the test is forward or backward.

(5) Subject to regulation 13, the limit of error allowed and the sensitiveness required are—

(a) in the case of a steelyard of a capacity specified in the first column of Table VII, double those specified opposite thereto in the second and third columns respectively of Table VII;

(b) in the case of a wall beam of a capacity specified in the first column of Table VII, those specified opposite thereto in the second and third columns respectively of Table VII.

(6) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the instrument and a date stamp shall be stamped upon the lead in the adjusting hole of the poise.

(7) An assizer shall refuse to assize—

(a) a counter steelyard;

(b) a steelyard of a capacity of less than 50 kg;

(c) a steelyard with three hooks.

PART III

WEIGHTS

27. Weights

(1) A weight shall—

(a) be free from flaws and, except for the marking of the denomination and the maker's name, be smooth on all its surfaces;

(b) if it is a new iron weight, be galvanized, oxidized, painted or protected by an approved process.

(2) If a weight is marked with the maker's name the size of the letters thereof shall not exceed one-half the size of the letters marking the denomination.

(3) A weight shall— G.N. 17/1983

(a) if it is of 50 g or over, be provided with an adjusting hole;

(b) if it is not made of iron, be of cylindrical or hexagonal form;

(c) if it is made of iron and is of 2 kg or under, be of cylindrical or hexagonal form;

(d) if it is made of iron and is of 5 kg or over, be of hexagonal or rectangular bar form:

Provided that, a weight of 500 mg or under may be in the form of wire.

(4) The adjusting hole of a weight shall—

(a) be undercut, on the under surface of the weight, and shall not extend to the upper surface of the weight;

(b) be plugged with lead which, in the case of an iron weight, is not less than 3 mm thick;

(c) in the case of a new weight, be in depth not less than two-fifths nor more than three-fifths of the centre thickness of the weight, with the lead plug not less than one-fifth of the centre thickness of the weight from the under surface of the weight.

(5) A weight shall be tested on an assizer's balance or beam scale against a standard weight.

(6) The limit of error allowed— G.N. 17/1983

(a) on a weight of a denomination specified in the first column of Table VIII—

(i) which is made of iron, is that specified opposite thereto in the second column of Table VIII;

(ii) which is not made of iron, is that specified opposite thereto in the third column of Table VIII;

(b) on a metric carat weight of a denomination specified in the first column of Table IX, is that specified opposite thereto in the second column of Table IX.

(7) The stamp of assize shall be stamped—

(a) if the weight is provided with an adjusting hole, upon the lead in that hole;

(b) if the weight is not provided with an adjusting hole, upon the upper surface of the weight on first submission and thereafter upon the under surface.

28. Weights not assizable

An assizer shall refuse to assize—

(a) a weight made of solder, tin or any other soft metal; G.N. 17/1983

(b) a cased weight or weight made of two or more unalloyed metals;

(c) a weight marked with a trade mark other than a maker's name;

(d) an iron weight under 100 grams;

(e) an iron weight with a removable or split ring;

(f) ring weight;

(g) a weight provided with more than one adjusting hole;

(h) a weight of a denomination not specified in Part I of the Third Schedule.

PART IV

MEASURES

29. Dry measures of capacity

(1) A dry measure of capacity—

(a) shall be made of aluminium, brass, bronze, copper, nickel, sheet iron, steel, tin plate, or an approved metal; G.N. 17/1983

(b) may be protected by electro-plating, galvanization, or an approved process;

(c) of 50 litres or under, shall be cylindrical in form with the internal diameter not differing by more than five per centum from the depth.

(2) The capacity of a dry measure of capacity shall be defined by the brim of the measure.

(3) A dry measure of capacity shall be tested either with water or in the following manner with fine seed—

(a) the standard shall be filled with seed passed through a hopper, a distance of 150 mm being left between the bottom of the hopper and the top of the standard;

(b) the seed in the standard shall then be passed through the hopper into the measure being tested, a distance of 150 mm being left between the bottom of the hopper and the top of the measure.

(4) The limit of error allowed in a dry measure of capacity of a capacity specified in the first column of Table XIII, is that specified opposite thereto in the second column of Table XIII.

(5) The stamp of assize shall be stamped near the brim of the measure directly above the position where the capacity is marked.

(6) An assizer shall refuse to assize a dry measure of capacity of a capacity not specified in paragraph 3 of Part II of the Third Schedule.

30. Liquid measures of capacity

(1) A liquid measure of capacity—

(a) shall be made of glass or of aluminium, brass, bronze, copper, nickel, pewter, sheet iron, silver, steel, tin plate, white metal, or an approved metal; G.N. 17/1983

(b) may be protected by anodising, electro-plating, enamelling, galvanization or tinning;

(c) made of brass, bronze or copper shall have the inside surfaces well tinned;

(d) which is electro-plated shall be uniformly coated and shall show no signs of peeling;

(e) shall not have a strengthening rib or ring which might be mistaken for a graduation;

(f) shall not have a false bottom;

(g) made of metal shall not have a bottom rim of a depth greater than is necessary to protect the bottom of the measure;

(h) shall not be provided with a lip or retaining edge which increases the capacity of the measure by more than ten per centum;

(i) shall drain completely when tilted to an angle of one hundred and twenty degrees from the vertical;

(j) if provided with a tap shall drain completely without a prolonged dribble when the tap is open and the measure is in a level position;

(k) shall not have its capacity stamped on the bottom, edge, handle, lip or rim of the measure;

(l) made of glass which has its capacity defined by a line, shall have its capacity stamped near that line.

(2) The capacity of a liquid measure of capacity shall be clearly defined—

(a) if the measure is provided with a lip or retaining edge, by the bottom of the lip or retaining edge;

(b) if the measure is in the form of a milk can, by the bottom of the neck of the measure;

(c) if the measure is a glass measure other than a graduated glass measure, by—

(i) the brim of the measure; or

(ii) an indelible line not less than 50 mm in length and distant not less than 12 mm and not more than 40 mm from the brim;

(d) if the measure is a measure not referred to in paragraph (a), (b) or (c), by the brim of the measure.

(3) A metal dipping measure of capacity shall—

(a) be of circular or elliptical section with vertical sides;

(b) be provided with a long handle;

(c) have sides the height of which do not differ by more than ten per centum from one and a half times the mean dimension of its section;

(d) not exceed one litre in capacity.

(4) A graduated glass measure shall—

(a) be of conical or cylindrical form;

(b) have a level base at right angles to the axis of the measure;

(c) have graduations which are—

- (i) parallel to the base of the measure;
- (ii) not less than 1.5 mm apart;
- (iii) in the case of back graduations, coincidental with the front graduations when the measure is standing in a level position.

(5) A liquid measure of capacity shall be tested against a standard measure. When testing a glass measure the capacity of which is defined by a line, the level of the water shall be taken at the bottom of the meniscus.

(6) The limit of error allowed on a liquid measure of capacity is—

(a) in the case of a graduated glass measure with an internal diameter at the graduation tested of approximately that specified in the first column of Table XI, that specified opposite thereto in the second column of Table XI:

Provided that in the case of a burette, glass flask or pipette, the limit of error allowed shall be half the limit specified in Table XI;

(b) in the case of a measure, other than a graduated glass measure of a capacity specified in the first column of Table XII, that specified opposite thereto in the second column:

Provided that in the case of a conical measure, the limit of error allowed shall be half the limit specified in Table XII.

(7) The stamp of assize shall be stamped—

(a) if the measure is a metal measure provided with a lip or retaining edge, at the bottom of the inside of the lip or retaining edge;

(b) if the measure is not a metal measure provided with a lip or retaining edge, near the position where the capacity is marked.

(8) An assizer shall refuse to assize a liquid measure of capacity of a capacity not specified—

(a) in the case of a graduated measure, in paragraph 1;

(b) in the case of a measure other than a graduated glass measure, in paragraph 2,

of Part II of the Third Schedule.

31. Measures of length

(1) A measure of length shall—

(a) be made of brass, hardwood, ivory, steel, woven tape or an approved material; G.N. 17/1983

(b) if it is a rigid measure, be straight and free from flaws;

(c) if it is a wooden measure, have both ends capped with metal and the tips riveted;

(d) if it is provided with hinges or sliding or caliper arms, have no more play than is required for easy movement.

(2) A measure of length shall not be sub-divided otherwise than into decimetres, centimetres and millimetres.

(3) A measure of length shall be tested—

(a) against a standard measure;

(b) in the case of a tape measure, whilst supported as far as practicable throughout its entire length on a plane and even base and subjected—

(i) in the case of a tape measure made wholly of metal, to 5kg;

(ii) in the case of a tape measure not made wholly of metal, to 1 kg,

tension or pull.

(4) The limit of error allowed on a measure of length shall be as specified in Table X of the First Schedule.

(5) The stamp of assize shall be stamped—

(a) if the measure is a tape measure, upon a metal label or disc securely fixed thereto;

(b) if the measure is not a tape measure, near the zero graduation.

(6) An assizer shall refuse to assize a measure of length of a denomination not specified in paragraph 5 of Part II of the Third Schedule.

32. Vehicle tanks

(1) A vehicle tank or compartment shall—

(a) be of cylindrical or elliptical section; G.N. 17/1983

(b) be fitted with a fixed-quantity indicator or provided with a dip-stick by means of which the liquid can be measured;

(c) if of elliptical section, have the length of the major axis of the section not more than one and a half times the length of the minor axis of the section;

(d) have a delivery outlet, pipe and valves which are completely separate from any other delivery outlet, pipe and valves on the same motor vehicle or trailer;

(e) have the delivery piping connected thereto of such design and construction that when the motor vehicle or trailer on which it is mounted is standing in a level position the tank or compartment can be completely drained;

(f) be effectively ventilated to prevent the formation of airpockets;

(g) if it is new, have the filler opening of such size and construction as to permit of internal inspection.

(2) In a vehicle tank or compartment fitted with a fixed quantity indicator—

(a) the marking of the capacity on the tank or compartment shall be preceded by the word “CAPACITY” and followed by the words “TO INDICATOR”;

(b) the tank or compartment shall be stamped with a number which corresponds to a number similarly stamped on the delivery outlet so as to identify it with that outlet;

(c) the indicator shall—

(i) be made of metal;

(ii) be fixed rigidly so as to indicate on the longitudinal axis and under the dome centrally situated on the top of such tank or compartment;

(iii) clearly and distinctly indicate, by means of a disc of at least 25 mm in diameter, the height to which the tank or compartment must be filled in order to contain its marked capacity;

(iv) if it is adjustable, be so constructed that it can be sealed so as to prevent any change in its position without the seal being broken.

(3) In a vehicle tank or compartment provided with a dip-stick—

(a) the tank or compartment shall have a guide tube for the dip-stick, fixed centrally so that the dip-stick indicates on the longitudinal axis;

(b) such dip-stick shall be—

(i) made of metal;

(ii) graduated to indicate the actual contents of the measure;

(iii) indelibly stamped with a number which corresponds to a number similarly stamped on the tank or compartment so as to identify it with that tank or compartment.

(4) The volume of a vehicle tank or compartment shall exceed the marked capacity of such tank or compartment by not less than one and one-half per centum of such capacity.

(5) A vehicle tank or compartment shall be tested—

(a) with the tank or compartment in a level position;

(b) against standard measures or with a bulk flowmeter assized immediately prior to the testing of the vehicle tank or compartment;

(c) if it is provided with an emergency valve for closing the delivery outlet, with such emergency valve open.

(6) The limit of error allowed on a vehicle tank, compartment or dip-stick is one-half per centum of its capacity at the indication tested.

(7) The stamp of assize shall be stamped—

(a) if the tank or compartment is fitted with a fixed-quantity indicator, upon a lead seal attached to the indicator;

(b) if the tank or compartment is provided with a dip-stick, upon solder studs or upon the metal at the top and bottom of the dip-stick.

(8) An assizer shall refuse to assize a vehicle tank or compartment provided with a dip-stick graduated to indicate different quantities unless an accurate full scale diagram of the graduations on the dip-stick has been supplied to him and such diagram—

(a) is on suitable drawing paper;

(b) bears a number which corresponds to the number stamped on the dip-stick so as to identify it with that dip-stick.

PART V

MEASURING INSTRUMENTS

33. Bulk flowmeters

(1) In a bulk flowmeter—

(a) an air separator shall be provided which— G.N. 17/1983

(i) prevents air passing through the meter to such an extent as to affect the accuracy of delivery; and

(ii) ensures non-registration when the supply of liquid fuel or oil fails;

(b) there shall be no leakage;

(c) the figures on any indicator shall be indelible, clear and legible;

(d) the maker's name shall be stamped on the instrument;

(e) the maximum and minimum rates of flow in litres per minute shall be shown;

(f) in respect of which a certificate has been issued in terms of section 13 of the Act, the reference number of such certificate shall be shown.

(2) A bulk flowmeter shall be tested—

(a) after any dry hose has been flushed and the instrument reset to zero;

(b) to ensure that whenever the instrument is reset to zero, the indicating pointer is in alignment with the zero indication;

(c) by passing the liquid through the meter into a standard measure in as many deliveries and of such quantities as the assizer considers necessary;

(d) with varying heads of liquid or with varying bore by manipulation of the delivery valve so far as is practicable.

(3) The limit of error allowed on a bulk flowmeter is one-half per centum of the quantity tested, in excess only.

(4) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the meter. A seal of assize shall be affixed where necessary to prevent access to the working parts or adjusting device without the seal being broken.

34. Fabric-measuring instruments

(1) In a fabric-measuring instrument—

(a) the measuring rollers shall, when in position for measuring, be in true parallelism;
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(b) a braking device shall be fitted which ensures non-registration when the supply of fabric fails;

(c) the rollers shall be free when the instrument is reset;

(d) the chart or charts shall, when the instrument is reset, return to zero either automatically or by the operation of a special handle or device provided for that purpose;

(e) the indications shall be by means of graduations not less than—

(i) 20 mm apart in the case of graduations of a length value of 100 mm;

(ii) 3 mm apart in the case of graduations of a length value of 25 mm,

or by counters.

(2) A fabric-measuring instrument shall be tested—

(a) by passing the standard or the fabric normally measured by that instrument through the instrument at right angles to the axis of the measuring rollers;

(b) and if it is necessary to remove the standard or fabric during the test, this shall only be done when an integral number of metres of the standard or fabric has passed through the instrument and the standard or fabric shall be re-inserted at the zero or initial graduation of the standard or fabric;

(c) and the instrument shall be correct whether the test is forward or backward;

(d) to ensure that—

(i) the instrument, if fitted with two charts, shows the same indication of length on both;

- (ii) any totalizing meter functions properly and correctly;
- (iii) the parts work freely throughout the range of the instrument;
- (iv) there is no back-lash in the mechanism.

(3) The limit of error allowed on a fabric-measuring instrument is, for each metre or portion thereof indicated, 2 mm deficiency and 4 mm in excess.

(4) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the instrument. A seal of assize shall be affixed where necessary to prevent access to the working parts or adjusting device without the seal being broken.

35. Liquid measuring devices

(1) In a liquid measuring device—

- (a) adequate provision to prevent the formation of airlocks shall be made; G.N. 17/1983
- (b) there shall be no leakage;
- (c) any valve shall work freely.

(2) A liquid measuring device shall be tested—

(a) after the device, and any delivery hose or measure used in the test has been flushed;

(b) in the case of each separate measuring chamber—

(i) by passing the liquid from the chamber into a standard measure or, where this is not practicable, into the barrel, bottle, drum or other container and then into a standard measure;

(ii) where it is not practicable to test the liquid with a standard measure, by ascertaining the net weight of the liquid delivered and converting such weight into volume, basing the computation on the specific gravity of the liquid.

(3) The limit of error allowed on a liquid measuring device is one-half per centum of the quantity purported to be delivered, in excess only:

Provided that the limit of error allowed on a 35 ml dispensing or measuring tap is 4 per cent of the capacity in excess or 2 per cent of the capacity in deficiency.

(4) The stamp of assize shall be stamped—

(a) upon a lead plug inserted in a conspicuous and easily accessible part of the device;
and

(b) if the device is provided with a metal displacer or displacers to alter the capacity of a measuring chamber, upon such displacer or displacers.

A seal of assize shall be affixed where necessary to prevent access to the working parts or adjusting device without the seal being broken.

36. Petrol pumps

(1) In this regulation—

“price indicator” means an indicator showing the value in money of the liquid fuel or oil delivered; G.N. 17/1983

“volume indicator” means an indicator showing the volume of liquid fuel or oil delivered.

(2) A petrol pump shall—

- (a) be constructed to deliver liquid fuel or oil at one outlet only;
- (b) be provided with a clear and legible volume indicator;
- (c) not have a counting or totalizing device which may be confused with the volume indicator;
- (d) not leak at any point;
- (e) not, unless written permission from an assizer has been obtained, be fitted with a delivery hose exceeding 5 m in length. When measuring the length of a delivery hose—
 - (i) the length of the nozzle shall be included;
 - (ii) the length of any swing or radial arm shall be excluded;
 - (iii) which is retractable, the hose shall be measured from the point where it emerges from the housing and when fully extended;
- (f) if it is of fixed type—
 - (i) be securely mounted on a solidly constructed, level base;
 - (ii) be so sited as to permit the purchaser to have a clear and unobstructed view of the volume indicator and any price indicator or measuring chamber provided;
 - (iii) be so sited that the adjusting mechanism and the plug for the stamp of assize are readily accessible;
- (g) if it is used to measure oil, have a delivery hose which is permanently filled to the nozzle.
- (h) if it is of the Carbox or Satam twin-container type, not be assized or re-assized after the 30th day of June, 1972.

(3) A petrol pump provided with a meter shall—

- (a) be incapable of operation until the volume indicator and any price indicator are reset to zero;
- (b) if it is used to measure liquid fuel, be—
 - (i) provided with a sight glass which clearly shows whether the delivery hose is completely filled before, during and after delivery; and
 - (ii) conspicuously marked “THIS GLASS MUST BE FULL BEFORE AND AFTER DELIVERY”;
- (c) not be fitted with a swing arm unless such arm—
 - (i) has a radius of swing not exceeding 2 m;
 - (ii) is provided with a sight glass of an approved pattern at the highest point of the swing arm or extension pipe immediately before the connexion to the flexible hose;
- (d) have a clear indication on the housing or dial of the position of the lead seals and the plug for the stamp of assize;
- (e) be provided with an air separator or cut-off valve which ensures non-registration when the supply of liquid fuel or oil fails.

(4) A petrol pump provided with one or more measuring chambers shall—

- (a) have any measuring chamber clearly visible and made of clear glass;
- (b) have the delivery hose so positioned as to allow complete discharge of the liquid measured from the delivery outlet of the pump;
- (c) if it has more than one measuring chamber, be provided with a valve to prevent the liquid flowing from one chamber into another;
- (d) have each measuring chamber denominated.

(5) In a petrol pump provided with a price indicator, the indicator shall incorporate a device which clearly indicates the price per litre and regulates the registration on such indicator.

(6) A petrol pump shall be tested—

- (a) if it is provided with one or more measuring chambers, after passing at least five litres of liquid through the delivery hose to prevent undue absorption during the test;
- (b) by passing the liquid into a standard measure in as many deliveries and of such quantities as the assizer considers necessary;
- (c) if it is provided with a meter, by a slow test which does not exceed a time limit of thirty seconds per litre on any quantity delivered;
- (d) to ensure that—

- (i) back-drainage does not exceed 25 ml per hour;
- (ii) it is correct, whether the pump is operated rapidly or slowly;
- (iii) the indications on the volume indicator are in agreement with those on the price indicator and with the price per litre indicated by the device referred to in subregulation (5), and a sufficient number of computations shall be checked to establish their accuracy;
- (iv) if it is fitted with a nozzle control valve, no liquid fuel or oil is delivered when such valve is open and the pump is at rest;
- (v) if it is fitted with two volume indicators, after delivery it shows the same indication of volume on both such indicators;
- (vi) if it is fitted with two price indicators, after a delivery it shows the same indication of value in money on both such indicators.

(7) The limit of error allowed on a petrol pump is one-half of one per centum of the quantity purported to be delivered, in excess only:

Provided that in a petrol pump used to measure lubricating oil, where the quantity purported to be delivered is one litre or less, the limit of error allowed is 2 per cent of the quantity purported to be delivered, in excess only.

(8) The stamp of assize shall be stamped upon a lead plug inserted in a conspicuous and easily accessible part of the pump. A seal of assize shall be affixed where necessary to prevent access to the working parts or adjusting device without the seal being broken.

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Tables Showing Limits of Error and Sensitiveness

TABLE I

Beam Scales—Class 1

Capacity	Error Allowed	Sensitiveness
10 grams	1 milligram	1 milligram
20 grams	4 milligrams	2 milligrams
50 grams	6 milligrams	3 milligrams
100 grams	8 milligrams	4 milligrams
200 grams	10 milligrams	5 milligrams
500 grams	12 milligrams	6 milligrams

1	kilogram	24	milligrams	12	milligrams
2	kilograms	50	milligrams	25	milligrams
5	kilograms	100	milligrams	50	milligrams
10	kilograms	150	milligrams	75	milligrams
20	kilograms	300	grams	150	milligrams

TABLE II

Beam Scales—Class 2

Capacity		Error Allowed	Sensitiveness		
50	grams	15	milligrams	15	milligrams
200	grams	25	milligrams	25	milligrams
500	grams	30	milligrams	30	milligrams
1	kilogram	60	milligrams	60	milligrams
2	kilograms	120	milligrams	120	milligrams
5	kilograms	250	milligrams	250	milligrams
10	kilograms	500	milligrams	500	milligrams
20	kilograms	1	gram	1	gram
50	kilograms	2	grams	2	grams

TABLE III

Beam Scales—Class 3

Capacity		Error Allowed	Sensitiveness		
500	grams	1	gram	1	gram
1	kilogram	2	grams	1	gram
2	kilograms	3	grams	1.5	grams

5	kilograms	5	grams	2.5	grams
10	kilograms	7	grams	3.5	grams
20	kilograms	10	grams	5	grams
50	kilograms	15	grams	8	grams

TABLE IV

Counter Machines

Capacity		Error Allowed		Sensitiveness	
500	grams	2	grams	1	gram
1	kilogram	4	grams	2	grams
2	kilograms	5	grams	2.5	grams
5	kilograms	7	grams	3.5	grams
7	kilograms	9	grams	4.5	grams
10	kilograms	10	grams	5	grams
15	kilograms	15	grams	8	grams
20	kilograms	20	grams	10	grams
50	kilograms	30	grams	15	grams

TABLE V

*Crane Machines and Weighbridges

Capacity		Error Allowed		Sensitiveness	
1	tonne	700	grams	350	grams
2	tonnes	1	kilogram	500	grams
5	tonnes	2	kilograms	1	kilogram
10	tonnes	3	kilograms	1.5	kilograms

20	tonnes 5	kilograms	2.5	kilograms
30	tonnes 6	kilograms	3	kilograms
40	tonnes 7	kilograms	3.5	kilograms
50	tonnes 9	kilograms	4.5	kilograms
60	tonnes 10	kilograms	5	kilograms
100	tonnes 12	kilograms	6	kilograms
200	tonnes 25	kilograms	12.5	kilograms

TABLE VI

Deadweight Machines

Capacity	Error Allowed	*Recovery	Sensitiveness
50	kilograms	30	grams 15
100	kilograms	50	grams 30
200	kilograms	80	grams 50
500	kilograms	120	grams 80

TABLE VII

Platform machines, *steelyards and wallbeams

Capacity of Machine	Error	Sensitiveness
50	kilograms	30
100	kilograms	60
150	kilograms	60
200	kilograms	90
250	kilograms	90
300	kilograms	100

400	kilograms	120	grams	60	grams
500	kilograms	150	grams	75	grams
1,000	kilograms	300	grams	100	grams
1,500	kilograms	400	grams	170	grams
2,000	kilograms	500	grams	250	grams
5,000	kilograms	1	kilogram	500	grams

TABLE VIII

Weights

Denomination of Weight		Iron	Error allowed in excess only Other		
20	kilograms	3	grams	1.5	grams
10	kilograms	2	grams	1	gram
5	kilograms	1	gram	500	milligrams
2	kilograms	600	milligrams	300	milligrams
1	kilogram	400	milligrams	200	milligrams
500	grams	200	milligrams	100	milligrams
200	grams	100	milligrams	50	milligrams
100	grams	40	milligrams	20	milligrams
50	grams	—	15	milligrams	
20	grams	—	10	milligrams	
Error allowed in excess of deficiency					
10	grams	—	5	milligrams	
5	grams	—	5	milligrams	
2	grams	—	5	milligrams	
1	gram	—	2	milligrams	
500	milligrams	—	2	milligrams	

200	milligrams	—	2	milligrams
100	milligrams	—	2	milligrams
50	milligrams	—	2	milligrams
20	milligrams	—	1	milligram
10	milligrams	—	0.5	milligram
5	milligrams	—	0.2	milligram
2	milligrams	—	0.2	milligram
1	milligram	—	0.1	milligram

TABLE IX

Metric carat weights

Denomination of Weight			Error allowed in excess only
500	metric carats	10	milligrams
200	metric carats	5	milligrams
100	metric carats	2	milligrams
50	metric carats	1	milligrams
20	metric carats	1	milligram
10	metric carats	1	milligram
5	metric carats	1	milligram
2	metric carats	1	milligram
1	metric carat	1	milligram
0.5	metric carat	0.5	milligram
0.25	metric carat	0.5	milligram
0.2	metric carat	0.5	milligram
0.1	metric carat or under	0.2	milligram

TABLE X

Measures of length

Denomination of measure		End measure in excess		Line measure in excess	
100	metres —	20	millimetres		
50	metres —	15	millimetres		
30	metres —	10	millimetres		
20	metres —	7.5	millimetres		
10	metres —	5.0	millimetres		
5	metres —	2.5	millimetres		
3	metres 3	millimetres	1.5	millimetres	
2	metres 2	millimetres	1.0	millimetre	
1	metre 1	millimetre	0.5	millimetre	
500	millimetres	0.8	millimetre	0.4	millimetre

TABLE XI

*Graduated glass measures

Approximate internal diameter of measure at the graduation tested			Error allowed in excess or deficiency
100	millimetres	1	1 millilitre
90	millimetres	1	1 millilitre
80	millimetres	0.8	0.8 millilitre
70	millimetres	0.8	0.8 millilitre
60	millimetres	0.6	0.6 millilitre
50	millimetres	0.6	0.6 millilitre
40	millimetres	0.4	0.4 millilitre
30	millimetres	0.3	0.3 millilitre

20	millimetres	0.15	0.15 millilitre
10	millimetres	0.05	0.05 millilitre

TABLE XII

*Liquid measures of capacity

Capacity of Measure	Error allowed in excess only
100 litres or above	$\frac{1}{2}$ of 1% of capacity
50 litres	125 millilitres
20 litres	100 millilitres
10 litres	75 millilitres
5 litres	50 millilitres
2 litres	25 millilitres
1 litre	15 millilitres
500 millilitres	10 0 millilitres
200 millilitres	5 millilitres
100 millilitres	2 millilitres
50 millilitres	2 millilitres
20 millilitres	1 millilitre
10 millilitres	0.5 millilitre
5 millilitres	0.25 millilitre
2 millilitres	0.1 millilitre
1 millilitre	0.05 millilitre

TABLE XIII

Dry measures of Capacity

Capacity of measure Error allowed in excess only

50	litres	125	millilitres
20	litres	100	millilitres
10	litres	75	millilitres
5	litres	50	millilitres
2	litres	25	millilitres
1	litre	15	millilitres
500	millilitres	10	millilitres
200	millilitres	5	millilitres
100	millilitres	2	millilitres

SECOND SCHEDULE reg. 7 (5), G.N. 17/1983

Abbreviations of Denominations

Weights

Denomination	Abbreviation
Kilogram	kg
Gram	g
Decigram	dg
Centigram	cg
Milligram	mg
Metric Carat	C.M.

Measures

Litre	l
Decilitre	dl
Centilitre	cl
Millilitre	ml

Metre	m		
Decimetre	dm		
Centimetre	cm		
Millimetre	mm		
Cubic Centimetre		c.c. or cm ³	
Cubic metre	cu.m or m ³		

THIRD SCHEDULE G.N. 17/1983, 18/1989, regs. 28, 29, 30 and 31

Denominations of Weights and Measures which are assizable

PART I

Weights

20	kilogram	500	grams
10	kilogram	200	grams
5	kilogram	100	grams
2	kilogram	500	milligram
1	kilogram	200	milligram
500	grams	100	milligram
200	grams	50	milligram
100	grams	20	milligram
50	grams	10	milligram
20	grams	5	milligram
10	grams	2	milligram
		1	milligram
500	metric carats	1.0	metric carats
200	metric carats	0.5	metric carats
100	metric carats	0.25	metric carats

50	metric carats	0.2	metric carats
20	metric carats	0.1	metric carats
10	metric carats	0.05	metric carats
5	metric carats	0.02	metric carats
2	metric carats	0.01	metric carats
		0.005	metric carats

PART II

Measures

1. Graduated glass measures

2	litres	25	millilitres
1	litre	20	millilitres
500	millilitres	10	millilitres
250	millilitres	5	millilitres
200	millilitres	2	millilitres
100	millilitres	1	millilitre
50	millilitres		

2. Measures of capacity other than graduated glass measures

100	litres or above	100	millilitres
50	litres	50	millilitres
20	litres	20	millilitres
10	litres	10	millilitres
5	litres	5	millilitres
2	litres	2	millilitres
1	litre	1	millilitre
500	millilitres		

200 millilitres

3. Dry capacity measures

50 litres or above

20 litres 1 litre

10 litres 500 millilitres

5 litres 200 millilitres

2 litres 100 millilitres

4. Measures of area

1 square metre or multiples of 1 square metre

1 square decimetre or multiples of 1 square decimetre

1 square centimetre or multiples of 1 square centimetre

5. Measures of length

100 metres 3 metres

50 metres 2 metres

30 metres 1 metre

20 metres 0.5 metre

10 metres 1 decimetre

5 metres 1 centimetre

6. Cubic measures

Measures of any multiple of 0.1 cubic metre.

WEIGHTS AND MEASURES (ASSIZE BOARD) REGULATIONS

under s. 28

G.N. 272/1962(F)

57/1969

1. Citation

These Regulations may be cited as the Weights and Measures (Assize Board) Regulations.

2. Interpretation

In these Regulations, unless inconsistent with the context —

“day” means any period of 24 hours during which a member is engaged on the business of the Board, including time spent travelling between his residence and the place at which the business of the Board is being conducted.

3. Appointment of Board members

The members of the Board shall be appointed by the Minister.

4. Period of office

The period of office of a member of the Board shall be two years.

5. Voting and absence of chairman

(1) At meetings of the Board each member present shall have one vote on any question before the Board and, in the event of an equality of votes, the chairman shall have, in addition to a deliberative vote, a casting vote.

(2) If the chairman of the Board is prevented by illness, absence from Malawi or other cause from attending a meeting of the Board the members present shall elect one of their number to preside at such meeting.

6. Quorum

The quorum of the Board shall consist of three members.

WEIGHTS AND MEASURES (ASSIZE FEES) REGULATIONS

under s. 28

G.N. 279/1966

5/1983

27/1983

19/1989

29/1990

44/1995

3/1997

61/1998

1. Citation

These Regulations may be cited as the Weights and Measures (Assize Fees) Regulations.

2. Interpretation

In these Regulations—

“applicant” means a person having an instrument, weight or measure referred to in section 16 (3) of the Act, who notifies, an assizer in writing of the particulars of such instrument, weight or measure and the place where it is ordinarily kept and requests that such instrument, weight or measures be assized at that place;

“assize station” means a place specified in a notice issued in accordance with section 16 (1) of the Act as a place where persons called upon must produce any instrument, weight or measure in use in trade for the purpose of its being assized;

“special applicant” means a person, other than an applicant, who notifies an assizer of the particulars of an instrument, weight or measure and the place where it is kept and requests that such instrument, weight or measure be assized at that place.

3. Fees for assizing

(1) Subject to subregulation (2) and to regulation 5, there shall be charged, in respect of the assizing or rejection of instruments, weights and measures, the fees prescribed in the First Schedule.

(2) The fees referred to in subregulation (1) shall not be charged in respect of an assized instrument, weight or measure which is produced or submitted for re-assizing at an assize station and is rejected.

4. Fees for various services

Subject to regulation 5, there shall be charged, in respect of—G.N. 3/1997

(a) the adjusting of weights and measures, the fees prescribed in Part II of the First and Second Schedules, respectively; and

(b) the services mentioned in Part III of the First and Second Schedules, the fees prescribed in Part III of the First and Second Schedules, respectively.

5. Special Fees

Where an instrument, weight or measure is assized, or rejected or any of the services referred to in regulation 4 are carried out at a place other than—G.N. 19/1989

(a) an assize office;

(b) an assize station; or

(c) the premises of a maker or repairer of, or dealer in, instruments, weights or measures, of that type,

the appropriate fee chargeable in accordance with regulation 3 or regulation 4 shall be increased by fifty per centum.

6. Testing on applicant's premises

Where an assizer tests an instrument, weight or measure on the premises of a special applicant there shall be charged, in respect of each journey necessarily made by the assizer to the premises—G.N. 5/1983, 3/1997

(a) if the journey is made by motor vehicle, a fee determined by the body responsible for weights and measures services in Malawi;

(b) if the journey is made by rail or air, a fee equal to the cost of a first class return rail fare or return air fare, as the case may be, from the assize office at which the assizer is stationed to the railway station or airport, as the case may be, nearest to the premises plus any costs incurred by the assizer in travelling from the railway station or airport, as the case may be, to the premises;

(c) if the journey necessitates the absence from the assize office at which he is stationed of the assizer for a period exceeding six hours, a fee of K50.00 for each day or part of a day that he is absent; and

(d) if the journey necessitates the assizer obtaining sleeping accommodation away from the place where the assize office at which he is stationed is established, a fee of K80.00 for each night such accommodation is obtained.

7. Testing of weighbridge on applicant's premises

Where an assizer tests a weighbridge on the premises of an applicant or special applicant, there shall be charged in addition to any other fee prescribed, a fee equal to the cost incurred in transporting the weights to the premises of the applicant or special applicant, as the case may be:

Provided that no such fee shall be charged or collected where transport is provided by the applicant or special applicant as the case may be.

G.N. 5/1983

27/1983

29/1990

44/1995

3/1997

61/1998

FIRST SCHEDULE reg. 3

PART I

FEES FOR TESTING MEASURING INSTRUMENTS USED IN TRADE BY THE INDUSTRY

1. Weighing Instrument—

K t

(a)	100,000 kg or over	1,500 00
(b)	50,000kg to under 100,000 kg	1,200 00
(c)	10,000 kg to under 50,000 kg	700 00
(d)	2,000 kg to under 10,000 kg	500 00
(e)	200 kg to under 2,000 kg	250 00
(f)	under 200 kg	80 00
2.	An automatic weighing machine where the capacity for each individual weigher is—	
(a)	100 kg or over	700 00
(b)	10 kg to under 100 kg	250 00
(c)	under 10 kg	80 00
3.	A continuous weigher coupled to a conveyor belt	150 00
4.	Weights—	
(a)	10 kg or over	150 00
(b)	under 10 kg	70 00
5.	Measures of capacity—	
(a)	Graduated glass	30 00
(b)	A measure of a capacity of—	250 00

00	(i)	1,000 litres or over	700
00	(ii)	100 litres to under 1,000 litres	500
00	(iii)	10 litres to under 100 litres	300
00	(iv)	under 10 litres	250
	(c)	A vehicle tank or a compartment of a capacity of—	
00	(i)	250 litres or under	300
00	(ii)	over 250 litres:	
		(A) for the first 250 litres	300
70		(B) for each additional 100 litres or part thereof	
00			
6.		Measures of length—	
		2 metres or over	250
00			
7.		Measuring instruments—	
	(a)	a bulk flow metre	700
00			
	(b)	a fabric measuring instrument of capacity of—	
	(i)	50 metres or over	250
00			
	(ii)	under 50 metres	150
00			

PART II

ADJUSTING FEES

1.	A weight of 5 kg or over	50
	00	
2.	A counterpoise weight	50
	00	
3.	A measure of a capacity of—	
	(a) 1,000 litres or over	130
	00	
	(b) 50 litres to under 1,000 litres	100
	00	
	(c) under 50 litres	70
	00	

PART III

MISCELLANEOUS FEES

K t

1.	Denominating a weight or measure	50
	00	
2.	Affixing a stud or inserting plug	50
	00	
3.	Balancing a counter scale	50
	00	

SECOND SCHEDULE

PART I

G.N. 44/1995

3/1997

61/1998

FEES FOR TESTING TRADE MEASURING INSTRUMENTS FOR USERS OTHER THAN THE INDUSTRY

K t

1.	Weighing Instruments—	
	(a) 200 kg to under 500 kg	150
	00	
	(b) 50 kg to under 200 kg	75
	00	
	(c) 20 kg to under 50 kg	50
	00	
	(d) under 20 kg	25
	00	
	(e) self or semi-self indicating weighing instrumentst	twice the fee in (a), (b), (c) or (d)
2.	Weights—	
	(a) 5 kg	20
	00	
	(b) under 5 kg	15
	00	
3.	Measures of length—	
	under 2 metres	10
	00	

PART II

ADJUSTING FEES

K t

1.	5 kg or under	10
	00	
2.	A counter poise weight	15
	00	

PART III

MISCELLANEOUS FEES

K t

1.	Denominating a weight or measure	15
	00	
2.	Affixing a stud or inserting a plug	15
	00	
3.	Balancing a counter scale	15
	00	

WEIGHTS AND MEASURES (ASSIZER'S CERTIFICATE) REGULATIONS

under s. 28

G.N. 61/1964(M)

1. Citation

These regulations may be cited as the Weights and Measures (Assizer's Certificate) Regulations.

2. Issue of assizer's certificate

The Minister may issue an assizer's certificate to a person who is the holder of—

- (a) a certificate of qualification as an inspector of weights and measures; issued by the Board of Trade of the United Kingdom; or
- (b) an assizer's certificate issued by the Department of Commerce and Industries of the Republic of South Africa.

WEIGHTS AND MEASURES (EXEMPTIONS) REGULATIONS

under s. 28

G.N. 272/1959(F)

225/1963

4/1983

57/1984

1. Citation

These Regulations may be cited as the Weights and Measures (Exemptions) Regulations.

2. Exempt articles

(1) Subject to regulation 3, the articles specified in the First Schedule, or any meal or flour obtained therefrom, shall, when sold by measure and in quantities of less than five litres, be exempt from section 18 and section 20 (2) of the Act. G.N. 4/1983

(2) Subject to regulation 3, the articles specified in the Second Schedule shall, when sold in quantities of less than 500 millilitres be exempt from section 18 and section 20 (2) of the Act.

3. No exemption if pre-packed

The exemptions contained in regulation 2 in respect of articles specified in the First or Second Schedule shall not apply to any such article which is pre-packed.

4. Quantities less than one litre

Any dry or liquid measures of capacity which is of a capacity of less than 500 millilitres shall be exempted from the provisions of— G.N. 4/1983

(a) sections 14, 16, 25 and 26 of the Act; and

(b) the Weights and Measures (Assize) Regulations made in terms of section 28 of the Act. Above p. 24

FIRST SCHEDULE regs. 2 (1) and 3

Beans Peas

CassavaRice

Castor Seed Sesame

Groundnuts Sorghum

Maize Sweet Potatoes

Milletts Wheat

Paddy

SECOND SCHEDULE reg. 2 (2) and 3, G.N. 57/1984

Cooking Oil Vinegar

WEIGHTS AND MEASURES (SALE OF ARTICLES) REGULATIONS

under s. 28

G.N. 273/1959(F)

242/1960(F)

268/1960(F)

122/1962(F)

248/1963(F)

225/1963(F)

19/1966

183/1970

233/1970

3/1971

120/1974

179/1974

66/1981

59/1984

17/1989

70/1995

1. Citation

These Regulations may be cited as the Weights and Measures (Sale of Articles) Regulations.

2. Application of Regulations

These Regulations shall not apply to the sale of—

(a) any articles of food, other than intoxicating liquor, for consumption on the premises of the seller;

(b) any assortment of foods packed for sale as a meal and ready for consumption without cooking, heating or other preparation;

(c) articles intended for export which are so packed and marked and are consigned to a point outside Malawi; and

(d) a single article, the retail price of which is not more than five tambala.

3. Interpretation of terms

In these Regulations, unless inconsistent with the context—G.N. 59/1984, 17/1989

“agricultural produce” means—

- (a) beans, dhal, gram, lentils, onions or peas, when not in a green state;
- (b) barley, buckwheat, cassava, kaffir corn, maize but not including green maize on the cob, millet, munga, oats, paddy, rupoko, rice, rye, sorghum, wheat, or any other cereal;
- (c) bean meal, bran, crushed maize, flour, hominy chop, kaffir corn meal, maize cones, maize grits, maize meal, maize, offals, maize seconds, mealie rice, munga meal, pollard, rupoko meal, rye meal, samp, or any other meal or milled product of grain;
- (d) chaff, fodder, forage, lucerne, or teff grass;
- (e) castor seed, groundnuts, linseed, potatoes, seed cotton, sesame, sweet potatoes, sunflower seed, or sunhemp seed;

“beer” and “cider” have the meanings ascribed to them in section 2 of the Liquor Act; Cap. 50:07

“coke” includes any solid fuel derived from coal or of which coal or coke is a constituent;

“dried fish” means fish which has been sun-dried or smoked;

“dried fruit” includes candied peel and crystallized or glacé fruits;

“fertilizer” means any substance which is intended or offered for improving or maintaining the growth of plants or the productivity of the soil but does not include—

- (a) farmyard, stable or kraal manure;
- (b) compost;
- (c) wood ash;
- (d) gypsum;
- (e) town refuse or night soil;

“intoxicating liquor” means spirits, beer, cider and wine;

“meat” means the carcass, part of a carcass or offal of any animal or poultry being a carcass, part of a carcass or offal suitable for human consumption and whether fresh, frozen, chilled, pickled, cured, salted, dried, minced, cooked, or manufactured into brawn, polony, or sausages;

“milk” means cow’s milk, whether pasteurized, separated, skimmed, or subjected to any other process, but does not include dried, evaporated, or condensed milk;

“soft drinks” includes ginger beer, mineral water, fruit concentrates and any non-alcoholic fruit-based drink;

“spirituous liquor” means brandy, gin, rum, cane, vodka or whisky;

“thread” means single, multiple or cabled yarn of any fibre, natural or synthetic, other than wool, which is suitable for sewing, embroidery, crocheting or similar purposes;

“wool” means yarns—

- (a) of natural wool or synthetic fibres; or
- (b) of mixtures containing natural wool and additionally or alternatively synthetic fibres,

packed and intended for hand-knitting.

4. Exemption from section 20 (1) of the Act

(1) Subject to subregulation (2), section 20 (1) of the Act shall not apply to chocolates. G.N. 59/1984

(2) When chocolates are sold by weight, the weight of only the immediate wrapping, if any, of each individual chocolate shall be included in the weight of the chocolates so sold.

5. Exemption from section 21 (1) of the Act

Subsection (1) of section 21 of the Act shall not apply to—G.N. 59/1984, 17/1989

(a) any pre-packed article specified in the First Schedule, if the wrapper or container of the article is marked in accordance with regulation 6 with the net weight, at the time that it is pre-packed, of the article and the statement of the weight is preceded or followed by the words “net weight when packed”;

(b) any groundnuts, kaffir corn, maize, munga or rupoko, sold in quantities of not less than 15 tonnes if the invoice or delivery note required in terms of section 20 (2) of the Act, contains a statement similar in all material particulars to the following—

“This sale of groundnuts/kaffir corn/maize/munga/rupoko, which is not less than 15 tonnes, is made by total net weight and the bags in which the articles are packed do not comply with section 21 of the Weights and Measures Act, Cap. 48:04 The purchaser of these articles who resells them by weight as pre-packed articles in quantities of less than 15 tonnes must comply with the said section”

6. Marking of Wrappers or Containers

(1) For the purposes of sections 19 and 21 of the Act, the wrapper or container of an article shall be marked with a statement of the weight or measure, as the case may be, of the article in a manner complying with this regulation and with regulations 6A, 6B and 6C. G.N 59/1984, 17/1989

(2) The marking of the net weight or the measure of the article shall be clearly and legibly stamped, printed or written—

(a) in a prominent position and so placed, whether upon an inner or outer wrapper or container or upon both, that it can easily be read without detaching or unwrapping any of the wrappers or containers;

(b) in letters, or figures and letters, of a size not less than half the average size of the letters used to describe the contents nor less than six millimetres in height:

Provided that—

(i) where the wrapper or container, or the label containing a printed description of the contents and affixed thereto, is so small as to preclude the marking in letters, or figures and letters, of the size prescribed, such marking may be in smaller letters, or figures and letters, if they are clear and legible;

(ii) where the average size of the letters used to describe the contents is greater than seventy-five millimetres, it shall not be necessary for the marking to be in letters, or figures and letters, more than thirty-five millimetres in height.

6A. Marking of metric units

(1) A marking indicating a length—

(a) of one metre or more shall be entirely in terms of metres and fractions of a metre; and

(b) of less than one metre shall be entirely in terms of centimetres and fractions of a centimetre, or entirely in terms of millimetres.

(2) A marking indicating a mass or weight—

(a) of one kilogram or more shall be entirely in terms of kilograms and fractions of a kilogram; and

(b) of less than one kilogram shall be entirely in terms of grams.

(3) A marking indicating a capacity or volume—

(a) of one litre or more shall be entirely in terms of litres and fractions of a litre; and

(b) of less than one litre shall be entirely in terms of centilitres and fractions of a centilitre, or entirely in terms of millilitres.

(4) A marking indicating a volume—

(a) of 0.01 cubic metre or more shall be entirely in terms of cubic metres and fractions of a cubic metre; and

(b) of less than 0.01 cubic metre shall be entirely in terms of cubic centimetres and fractions of a cubic centimetre.

6B. Marking of quantity by measurement

(1) In the case of a wrapper or container required by or under the Act to be marked with quantity of measurement, the marking shall comprise the numerical value of the relevant unit of

measurement expressed in words or figures and a reference to that unit in words or by means of the symbol used in relation to the unit as specified in the Second Schedule. Second Schedule

(2) An indication of quantity by gross weight shall include the words “gross” or the words “including container” or other words which indicate that the marked weight includes the weight of the wrapper or container.

(3) No abbreviation of the word “net” or “gross” shall be employed in the marking.

(4) Where the numerical value of the relevant unit of quantity is expressed in words, the unit of measurement shall be expressed in words and not by means of a symbol.

6C. Position of marking

For the purposes of regulations 6, 6A and 6B the wrapper or container of an article shall be deemed to be marked with a statement of weight or measure if the statement is marked on a label—

(a) securely attached to the wrapper or container; or

(b) inserted within the wrapper or container or, where more than one wrapper or container is used, within the outer wrapper or container, in such a manner that it cannot be removed without first breaking open the wrapper or container.

7. Standard weight per bag or pocket

(1) The standard weight for a bag of any article specified in the first column of Part I of the Third Schedule shall be the net weight specified opposite thereto in the second column of Part I of the Third Schedule.

(2) The standard weight for a pocket of any article specified in the first column of Part II of the Third Schedule shall be the net weight specified opposite thereto in the second column of Part II of the Third Schedule.

8. Pre-packed articles

(1) Subject to subregulation (2), no person shall sell any pre-packed article specified in the first column of the Fourth Schedule otherwise than by weight and in a quantity specified opposite thereto in the second column of that Schedule. G.N. 59/1984, Fourth Schedule

(2) Subregulation (1) shall not apply to any pre-packed article other than wool—

(a) the weight of which does not exceed 50 g, or

(b) packed in a tube,

if the wrapper or container of the article is marked in accordance with regulation 6, with the net weight of the article.

9. Cement

No person shall sell cement otherwise than by weight.

10. Coal and Coke

No person shall sell coal or coke otherwise than by weight.

11. Fertilizer

(1) Subject to subregulation (2), no person shall sell any fertilizer otherwise than by weight.

(2) Subregulation (1) shall not apply to a fertilizer sold in liquid form.

12. Firewood

(1) Subject to subregulation (2), no person shall sell firewood otherwise than— G.N. 59/1984

(a) by weight; or

(b) in quantities of one cubic metre or integral multiple of one cubic metre.

(2) Subregulation (1) shall not apply to firewood sold in quantities of less than 100 kg.

13. Meat

(1) Subject to subregulation (3), no person shall sell any meat otherwise than by weight.

(2) The invoice or delivery note required in terms of section 20 (2) of the Act shall, in respect of the sale of any meat sold by weight, specify—

(a) the name and address of the seller;

(b) the name and address of the purchaser;

(c) the weight, grade and designation of each cut of meat delivered; and

(d) the price per pound of, or the total price charged for, each cut of meat delivered.

(3) Subregulation (1) shall not apply to the sale of brains, head or feet.

14. Soap

(1) Subject to subregulation 2, no person shall sell—G.N. 59/1984

(a) soap in the form of cake, tablet or bar—

(i) which is pre-packed unless the container or wrapper is marked with an indication of quantity by net weight;

(ii) which is not pre-packed but contained in a case, unless the soap is of uniform weight and the case is marked with the number of cakes, tablets or bars contained therein;

(b) liquid soap which is pre-packed unless the container is marked with an indication of quantity by capacity measurement;

- (c) soap in any form other than in the form described in paragraph (a) or (b)—
 - (i) which is pre-packed unless the container is marked with an indication of quantity by net weight;
 - (ii) which is not pre-packed except by retail sale only and by net weight.

(2) Subregulation (1) shall not apply to—

- (a) soap manufactured in the specifications of a purchaser for his own use and not for re-sale;
- (b) medicated soap containing special antiseptic or similar ingredients;
- (c) liquid soap in a quantity of less than 50 ml;
- (d) soap in any other form in a quantity of less than 50 g.

15. Spirituous liquor

(1) For the purposes of this regulation, “sell from bulk” means to sell from a bottle or other container any quantity which is less than the original quantity contained in such bottle or other container. G.N. 59/1984

(2) Subject to subregulation (3), no person shall sell from bulk for consumption on his premises any spirituous liquor otherwise than—

- (a) by measure of capacity; and
- (b) in quantities of 35 ml, 70 ml or 140 ml.

(3) Subregulation (2) shall not apply to any spirituous liquor sold—

- (a) in the form of a cocktail; or
- (b) on the premises of a club which holds a club licence in terms of section 23 (7) of the Liquor Act. Cap. 50:07

16. Thread

(1) Subject to subregulation (2), no person shall sell thread otherwise than by length or by weight.

(2) No person shall sell thread which—

- (a) is suitable for sewing purposes; and
- (b) is not of linen, jute or ramie fibre, otherwise than by lengths:

Provided that if such thread is sold to a manufacturer for manufacturing purposes, it shall be sold by length or by weight.

17. Agricultural produce

(1) Subject to subregulation (2), no person shall sell any agricultural produce otherwise than by weight or by measure of capacity. G.N. 59/1984

(2) Subregulation (1) shall not apply to any agricultural produce which is—

(a) sold by auction and which is—

(i) not contained in a sack or container; and

(ii) sold in quantities not exceeding 15 kg in weight; or

(b) sold by measure of capacity in quantities of less than 5 litres.

18. Bread

(1) Subject to subregulation (2), no person shall sell bread otherwise than—G.N. 66/1981, 70/1995

(a) by weight; and

(b) in quantities of 300 grams and 600 grams:

Provided that these quantities may be exceeded by a weight not exceeding 20 grams for each 300 grams of bread.

(2) Subregulation (1) shall not apply to bread baked in rolls or other shapes and not exceeding 100 grams in weight.

19. Milk and cream

(1) Subject to subregulation (2), no person shall sell milk or cream otherwise than by measure of capacity and in quantities of 250 ml, 500 ml, 1 litre or an integral multiple of 1 litre, and unless the container is marked with an indication of quantity by capacity measurement. G.N. 59/1984

(2) Subregulation (1) shall not apply to—

(a) flavoured milk drinks in sealed containers;

(b) milk or cream sold to a creamery, dairy or factory for manufacturing purposes;

(c) tinned or bottled cream sold by weight;

(d) milk sold for consumption at a school.

20. Soft drinks

(1) Subject to subregulation (2), no person shall sell soft drinks which are pre-packed in a closed container unless the container is marked with an indication of quantity by capacity measurement. G.N. 59/1984

(2) Subregulation (1) shall not apply to any soft drink of a quantity of less than 50 ml.

21. Intoxicating liquor

(1) Subject to subregulation (2), no person shall sell intoxicating liquor which is pre-packed in a closed container unless the container is marked with an indication of quantity by capacity measurement.

(2) Subregulation (1) shall not apply to intoxicating liquor of a quantity of less than 50 ml.

22. Potato crisps, biscuits or sweets

(1) Subject to subregulation (2), no person shall sell potato crisps, biscuits or sweets which are pre-packed in, a closed container unless the container is marked with a declaration of mass.

(2) Subregulation (1) shall not apply to potato crisps, biscuits or sweets of a mass of less than 25 g.

23. Liquid fuel, oil, etc.

(1) Subject to subregulation (2), no person shall sell liquid fuel, lubricating oil or any mixture of such fuel and oil and lubricating grease—

(a) which is not pre-packed unless the sale is by net weight, by volume or by capacity measurement;

(b) which is pre-packed unless the container is marked with an indication of quantity by net weight, by volume or by capacity measurement.

(2) Subregulation (1) shall not apply where the liquid fuel, lubricating oil, mixture of fuel and oil or lubricating grease is sold in a quantity of less than 50 g or capacity of less than 50 ml.

24. Offences

Any person who contravenes any provision of these regulations is guilty of an offence and liable upon conviction to a fine of K250 and to imprisonment for three months.

FIRST SCHEDULE reg. 5

Pre-packed articles which may be marked "Net Weight when Packed"

1. Carbonate of soda, sulphate of soda or epsom salts.
2. Soap made in bar or tablet form and packed in cases.
3. Tobacco.
4. Dried fruit.
5. Cheese in its original wrappings.
6. Ham in its original wrappings or preserving materials.
7. Fertilizers.

8. Compound feeding stuffs for animals.

9. Seed potatoes.

10. Yeast.

11. Any grade of ferrous sulphate other than the exsiccated variety, zinc sulphate, copper sulphate, sodium sulphate, sodium thiosulphate or lead nitrate.

12. Wool.

13. Soap powder and detergent powder.

SECOND SCHEDULE reg. 6B

SYMBOLS OF DENOMINATIONS

Denomination	Symbol
Weights	
Kilogram	kg
Gram	g
Decigram	dg
Milligram	mg
Centigram	cg
Metric carat	C.M.
Measures	
Metre	m
Decimetre	dm
Centimetre	cm
Millimetre	mm
Cubic metre	Cu.m or m ³
Cubic centimetre	c.c. or cm ³
Litre	l
Decilitre	dl
Centilitre	cl

Millilitre ml

THIRD SCHEDULE reg. 7

PART I

STANDARD WEIGHT PER BAG

Article Net Weight

Barley 70 kg

Beans, all varieties 90 kg

Bran, Maize 45 kg

Bran, wheaten 20 kg

Buckwheat 70 kg

Bullrush millet 90 kg

Bullrush millet meal 90 kg

Coal 50 kg

Coke 25 kg

Cow peas 90 kg

Coffee beans 60 kg

Flour, wheaten 70 kg

Gram 90 kg

Groundnuts, shelled 70 kg

Groundnuts cake 70 kg

Groundnut meal 90 kg

Groundnuts, unshelled 30 kg

Hominy chop 70 kg

Kaffir corn 90 kg

Kaffir corn meal 90 kg

Maize, crushed seconds or grits 70 kg
Maize, dried and off the cob 90 kg
Maize flour 70 kg
Maize germ meal 70 kg
Maize meal 70 kg
Manna 90 kg
Mealie rice 90 kg
Munga 90 kg
Munga meal 90 kg
Oats, crushed 50 kg
Oats, uncrushed 70 kg
Onions 50 kg
Pollard 45 kg
Potatoes 70 kg
Rupoko (finger millet) 90 kg
Rupoko meal (finger millet meal) 90 kg
Rice paddy 80 kg
Rye 90 kg
Rye meal 90 kg
Samp 70 kg
Seed cotton 70 kg
Sorghum 90 kg
Sorghum meal 90 kg
Sunflower seed 70 kg
Sunhemp seed 90 kg
Sweet potatoes 50 kg
Wheat 90 kg

PART II

STANDARD WEIGHT PER POCKET

Article	Net Weight
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Coal	50 kg
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Coke	25 kg
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Groundnuts, shelled	50 kg
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Groundnuts meal	50 kg
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Maize, crushed or grits	45 kg
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Maize flour	45 kg
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Maize germ meal	45 kg
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Maize meal	45 kg
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Onions	12 kg
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Potatoes	15 kg
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Rice	50 kg
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Seed cotton	45 kg
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Wheat	45 kg
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FOURTH SCHEDULE reg. 8

Pre-packed Article	Quantity
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1. Butter, dripping, lard, margarine or any other animal or vegetable cooking fat not in liquid form, but excluding peanut butter	100 g, 125 g, 250 g, 1 kg, or an integral multiple of 1 kg.
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2. Tea, including bush tea, raw or roast coffee beans, ground coffee, cocoa and other beverages in flaked, granulated or powdered form but excluding—	
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(a)	dried or evaporated milk;
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(b)	soluble coffee extracts;
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- (c) soluble coffee and chicory extracts;
 - (d) soluble tea compound;
 - (e) fruit-flavoured drinks in dried form 75 g, 100 g, 125 g, 150 g, 200 g, 375 g, 500 g, 750 g, 1 kg, or an integral multiple of 250 g.
3. Soluble coffee extracts, soluble coffee and chicory extracts and soluble tea compounds 100 g, 125 g, 200 g, 250 g, 300 g, 500 g, 750 g, 1 kg and an integral multiple of 500 g.
 4. Honey, jam, jelly, marmalade syrup or treacle, but excluding jelly criystas 100 g, 125 g, 200 g, 225 g, 250 g, 300 g, 400 g, 450 g, 500 g, 1 kg and an integral multiple of 500 g.
 5. Breakfast foods manufactured from cereal 100 g, 125 g, 150 g, 200 g, 250 g, 300 g, 350 g, 400 g, 500 g, 1 kg and an integral multiple of 1 kg.
 6. Macaroni, spaghetti, vermicelli or any similar product or substitute therefor, whether flavoured or not, which is not tinned 100 g, 125 g, 200 g, 250 g, 500 g, 1 kg or an integral multiple of 500 g.
 7. Cornflour, self-raising flour rice, sago, semolina or tapioca 100 g, 125 g, 200 g, 500 g, 1 kg or an integral multiple of 500 g.
 8. Flour, but excluding flour of a type specified in paragraph 7 or 9 An integral multiple of 500 g, not exceeding 5 kg, 10 kg, 20 kg, 45 kg, 70 kg or 90 kg.
 9. Maize meal or maize flour 100 g, 200 g, 250 g, 500 g, 1 kg, or an integral multiple of 1 kg not exceeding 5 kg, 10 kg, 20 kg, or 90 kg.
 10. Maize germ meal An integral multiple of 500 g not exceeding 5 kg, 10 kg, 20 kg, 50 kg, 70 kg or 90 kg.
 11. Meal, but excluding meal of a type specified in paragraph 9 or 10 An integral multiple of 500 g not exceeding 5 kg, 10 kg, 20 kg, 50 kg or 90 kg.
 12. Salt, but excluding rock or flavoured salt 100 g, 125 g, 200 g, 250 g, 500 g, 750 g, 1 kg or an integral multiple of 500 g.
 13. Caster, cube, icing, loaf or table sugar 125 g, 200 g, 450 g, 500 g, 1 kg, or an integral multiple of 500 g.
 14. Sugar, but excluding sugar of a type specified in paragraph 13 125 g, 200 g, 250 g, 500 g, 1 kg or an integral multiple of 1 kg not exceeding 5 kg, 10 kg, 20 kg, 50 kg, or 90 kg.
 15. Dried fruit 100 g, 125 g, 200 g, 250 g, 500 g, 1 kg or an integral multiple of 1 kg.
 16. Wool 10 g, 20 g, 25 g, or an integral multiple of 20 g or 25 g.
 17. Peanut butter 100 g, 200 g, 400 g, 500 g, 1 kg or an integral multiple of 1 kg.

18. Nuts, including peanuts, dried fruit mixtures and puffs 75 g, 100 g, 125 g, 150 g, 200 g, 250 g, 300 g, 500 g, 1 kg or an integral multiple of 1 kg.

WEIGHTS AND MEASURES (STANDARDS) REGULATIONS

under s. 28

G.N. 274/1959(F)

225/1963

216/1966

6/1983

1. Citation

These Regulations may be cited as the Weights and Measures (Standards) Regulations.

2. Authentication of standards

(1) A standard shall be authenticated by a certificate issued by the National Physical Laboratory of the United Kingdom or by the Standard Weights and Measures Department of the Board of Trade of the United Kingdom which—

- (a) describes and identifies the standard;
- (b) states the actual error found on verification; and
- (c) specifies any special conditions applying during the verification.

(2) A local standard shall be authenticated by a certificate issued by an assizer under instructions issued by the Minister which—

- (a) describes and identifies the standard; and
- (b) states the actual error found on verification.

(3) A working standard shall be authenticated by a certificate issued by an assizer which—

- (a) describes and identifies the standard; and
- (b) states the actual error found on verification.

3. Verification of working standards

All working standards shall be verified in comparison with local standards at intervals not exceeding—G.N. 6/1983

- (a) in the case of weights, other than metric carat weights, one year;

- (b) in the case of metric carat weights, five years;
- (c) in the case of measures of length, five years;
- (d) in the case of measures of capacity, one year.

4. Error allowed

In local standards, the limit of error allowed—G.N. 6/1983

(a) on a weight of a denomination specified in the first column of Part I or II of the First Schedule, is that specified opposite thereto in the second column of Part I or II, as the case may be, of the First Schedule;

(b) on a measure of capacity of a capacity specified in the first column of Part I or II of the Second Schedule, is that specified in the second column of Part I or II, as the case may be, of the Second Schedule;

(c) on a measure of length of a capacity specified in the first column of the Third Schedule, is that specified opposite thereto in the second column of the Third Schedule.

5. Adjustment of a working standard

(1) Subject to subregulation (2), a working standard shall, when verified, be adjusted to agree with the local standard with which it is compared. G.N. 6/1983

(2) The limit of error allowed on an iron working standard weight of a denomination of 1 kg or over, which is used for the testing of any weighing instrument, is 100 mg per kilogram, in excess only.

(3) The limit of error allowed on a 500 kg roller weight is 100 grams in excess only.

6. Place where local standards are kept reg. 4 (a)

The local standards shall be kept at the assize offices established at Blantyre. G.N. 6/1983

FIRST SCHEDULE

Limits of error on local Standards

PART I

Weights

Denomination of Weight		Error allowed in excess or deficiency	
20	kilograms	150	milligrams
10	kilograms	100	milligrams
5	kilograms	50	milligrams

2	kilograms	30	milligrams
1	kilogram	20	milligrams
500	grams	10	milligrams
200	grams	10	milligrams
100	grams	4	milligrams
50	grams	3	milligrams
20	grams	2	milligrams
15	grams	1	milligram
10	grams	1	milligram
5	grams	1	milligram
4	grams	1	milligram
3	grams	1	milligram
2	grams	1	milligram
1	gram	0.4	milligram
500	milligrams	0.4	milligram
200	milligrams	0.4	milligram
100	milligrams	0.4	milligram
50	milligrams	0.4	milligram
20	milligrams	0.2	milligram
10	milligrams	0.1	milligram
5	milligrams or under	0.04	milligram

PART II

Metric Carat Weights

Denomination of Weight	Error allowed in excess or deficiency
200 metric carats or over	1 milligram

100	metric carats	0.4	milligram
50	metric carats	0.4	milligram
20	metric carats	0.2	milligram
10	metric carats	0.2	milligram
5	metric carats	0.2	milligram
2	metric carats	0.2	milligram
1	metric carat	0.2	milligram
0.5	metric carat	0.1	milligram
0.25	metric carat	0.1	milligram
0.2	metric carat	0.1	milligram
0.1	metric carat	0.04	milligram

SECOND SCHEDULE reg. 4(b)

Limits of error on local Standards

PART I

Measure of Capacity

Capacity of Measure	Error allowed in excess or deficiency
20 litres	10 millilitres
10 litres	5 millilitres
5 litres	2.5 millilitres
2 litres	1.25 millilitres
1 litre	0.5 millilitre
500 millilitres	0.4 millilitre
200 millilitres	0.3 millilitre
100 millilitres	0.2 millilitre
50 millilitres	0.15 millilitre

20	millilitres	0.1	millilitre
10	millilitres	0.08	millilitre
5	millilitres	0.06	millilitre
2	millilitres	0.04	millilitre
1	millilitre	0.04	millilitre

PART II

Graduated Glass Measures

Capacity of Measure	Error allowed in excess or deficiency
above 100 millilitres	0.5 millilitre
above 20 millilitres and not exceeding 100 millilitres	0.3 millilitre
above 5 millilitres and not exceeding 20 millilitres	0.2 millilitre
above 2 millilitres and not exceeding 5 millilitres	0.1 millilitre
not exceeding 2 millilitres	0.05 millilitre

THIRD SCHEDULE reg. 4 (c)

Limits of error on local standards—measures of length

Denomination	Error allowed in excess or deficiency
50 metres	4.0 millimetres
30 metres	4.0 millimetres
20 metres	2.5 millimetres
10 metres	2.5 millimetres
5 metres	2.5 millimetres
3 metres	2.5 millimetres
2 metres	0.5 millimetres

1	metre	0.25	millimetre
1	decimetre	0.1	millimetre
1	centimetre	0.05	millimetre

WEIGHTS AND MEASURES (LICENCE OF COMPETENCY) REGULATIONS

under s. 28

G.N. 48/1969

1. Citation

These Regulations may be cited as the Weights and Measures (Licence of Competency) Regulations.

2. Interpretation

In these Regulations unless the context otherwise requires—

“licence of competency” means a licence declaring that a person is competent in the repair of weighing instruments, measuring instruments, weights and measures.

3. Applications

Applications for a licence of competency shall be made in writing to an assizer.

4. Examination for licence

(1) The assizer shall cause an applicant for a licence of competency to be examined as to his ability to repair instruments, weights and measures and as to his knowledge of the law relating to weights and measures insofar as it relates to the particular classes of instruments, weights and measures for which the applicant wishes to hold a licence of competency.

(2) The examination referred to in subregulation (1) shall be conducted in such a manner as the assizer may determine.

5. Issue of licence

(1) Where the assizer is satisfied that an applicant for a licence of competency has sufficient knowledge of the law relating to weights and measures and is a person who can repair instruments, weights and measures to the standard prescribed by the Act he shall, upon receipt of the prescribed fee, issue the applicant with a licence of competency.

(2) A licence of competency may be issued for all or any particular class of weighing and measuring instruments.

6. Renewal of licence

A licence of competency shall expire on the 31st day of December each year, but may be renewed upon application to the assizer and on payment of the prescribed fee. The assizer shall renew the licence if he is satisfied that the work on the holder is satisfactory:

Provided that, where the assizer refuses to grant or renew a licence of competency he shall, in writing, advise the applicant of the reasons for such refusal.

7. Withdrawal of licence

The assizer may at any time withdraw a licence of competency if he is satisfied that the holder has failed to comply with any law relating to weights and measures:

Provided that where a certificate of competency is withdrawn, the assizer shall advise the holder, in writing, of the reasons for the withdrawal.

8. Appeal

Any person aggrieved by a decision of the assizer under these Regulations may appeal to the Minister whose decision shall be final.

9. Fees

The fees for the examination of an applicant for a licence of competency, the issue of a licence of competency and the renewal of a licence of competency, shall be those specified in the Schedule.

SCHEDULE

Fee

1. Examination for licence of competency	K4.20
2. Issue of licence of competency	K2.10
3. Renewal of licence of competency	K2.10

WEIGHTS AND MEASURES (CERTIFICATE OF APPROVAL) REGULATIONS

under s. 28

G.N. 90/1969

1. Citation

These Regulations may be cited as the Weights and Measures (Certificate of Approval) Regulations.

2. Application

These Regulations shall apply to the submission of weights, measures and weighing and measuring instruments in terms of section 13 of the Weights and Measures Act.

3. State of instruments

Any instrument submitted to an assizer for approval shall be completely erected and ready for use.

4. Liquid measuring instruments

In the case of an instrument intended to measure a liquid, the applicant shall provide the assizer with a sufficient quantity of that liquid to enable him to test the instrument adequately.

5. Fees

The fees listed in the Schedule hereto are hereby prescribed for the examination and testing of weights, measure, and weighing and measuring instruments whether or not they are subsequently approved.

6. Modified instruments

Where an instrument, weight or measure, after approval, is modified in minor detail only, the Assizer may if he thinks fit undertake the examination and testing of the modified pattern for one half of the normal fee.

7. Exemption from payment of fees

Where an applicant can prove that a Certificate of Approval has been issued in respect of an instrument, weight or measure by a testing authority in another country and accepted by the Ministry of Trade, Industry and Tourism as satisfying the requirements for approval under these Regulations no approval fee shall be charged in Malawi.

SCHEDULE

K

Measures of length	30
Measures of volume	30
Measures of capacity	50
Weights	30
Beam scales	50
Counter machines	100
Counter machines with charts or dials	140

Steelyards 50

Deadweight machines 100

Spring balances including hydrostatic weighing machines 100

Platform machines and weighbridges 160

Machines acting automatically to weigh or record a succession of loads or deliver a succession of loads from bulk 240

Length measuring instruments 100

Capacity or volume measuring instruments 200

[Chap4805]CHAPTER 48:05

HIRE-PURCHASE

ARRANGEMENT OF SECTIONS

SECTION

PRELIMINARY

1. Short title
2. Interpretation

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GENERAL PROVISIONS RELATING TO AGREEMENTS

3. Application of Part I
4. Provisions as to agreements
5. Supply of copies to purchaser
6. Provisions to be included in agreements
7. Invalidity of certain provisions
8. Purchaser entitled to certain information
9. Removal of goods
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11. Conditions and warranties implied in agreements
12. Appropriation of payments made in respect of agreements
13. Negotiable instruments
14. Right of purchaser to be reinstated after return of goods to seller
15. Right of purchaser to pay outstanding balance of purchase price
16. Passing of ownership
17. Right of purchaser to terminate hire-purchase agreement
18. Special provisions as to installation charges
19. Disposal of goods upon termination of agreement
20. Powers of the court
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22. Agreements binding on liquidator or trustee of seller
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PART II

FINANCIAL PROVISIONS RELATING TO AGREEMENTS

24. Initial payments and periods for repayment
25. Time limit for certain actions
26. Control of purchase price

PART III

MISCELLANEOUS

27. Exemption
28. [Replaced by 39 of 1981]

Schedule

34 of 1956(F)

14 of 1959(F)

39 of 1981

G.N. 309/1962(F)

92/1964(N)

16/1964(M)

43/1984

An Act to make provision for the regulation of Hire-Purchase Agreements and certain instalment sales, and for other purposes incidental thereto

PRELIMINARY

[Ch4805s1]1. Short title

(1) This Act may be cited as the Hire-Purchase Act.

(2) This Act shall not apply to any agreement under which the Government is the seller or, subject to section 28, to any agreement made before the 12th day of February, 1964.

[Ch4805s2]2. Interpretation

(1) In this Act, unless inconsistent with the context—

“agreement” means a hire-purchase agreement or an instalment sale agreement;

“cash price”, in relation to any goods, means the price at which the goods may be purchased outright for cash;

“goods” means any movable property which may lawfully form the subject-matter of a contract of hire or sale;

“hire-purchase agreement” means—

(a) any contract whereby goods are sold subject to the condition that notwithstanding delivery of the goods the ownership in such goods shall not pass except in terms of the contract and the purchase price is to be paid in two or more instalments;

(b) any contract which provides for the hiring of goods whereby the hirer has the right—

(i) to purchase such goods after two or more instalments have been paid in respect thereof; or

(ii) after two or more instalments have been paid in respect thereof, to continue or renew from time to time such hiring at a nominal rental, or to continue or renew from

time to time the right to be in possession of the goods, without any further payment or against payment of a nominal amount periodically or otherwise; whether or not the agreement may at any time be terminated by either party or one of the parties;

(c) any other contract which has, or contracts which together have, the same import as either or both the contracts defined in paragraph (a) or (b) of this definition, whatever form such contract or contracts may take;

“instalment” includes any cash amount payable in terms of section 24 (1) (a) and, where no cash amount is payable in terms of that paragraph, the amount of any deposit or initial payment payable under an agreement;

“instalment sale agreement” means any contract of sale under which—

(a) the ownership in the goods sold passes either before or upon delivery;

(b) the purchase price is to be paid in instalments, of which one or more are payable after delivery; and

(c) the seller is entitled to the return of the goods sold if the purchaser fails to comply with any provision thereof,

and includes any other contract which has, or contracts which together have, the same import, whatever form such contract or contracts may take;

“purchase price” means the total sum payable by the purchaser under an agreement, including any sum payable by him by way of a deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the seller or to any other person or is to be or has been discharged by a payment of money or by the transfer or delivery of goods or by any other means, but excluding any sum payable—

(a) as compensation or damages for breach of the agreement;

(b) for licence or registration fees;

(c) for any insurance premiums which have been paid to insure the goods sold under the agreement;

(d) by way of interest upon instalments which are in arrear; or

(e) in respect of any installation as defined in section 18 (2);

“purchaser” means the person who, in terms of any agreement, is the purchaser or hirer, as the case may be, and includes his successors in title;

“seller” means the person who, in terms of any agreement, is the seller or the lessor, as the case may be, and includes his successors in title.

“writing”—

(a) in relation to an agreement in a form the provisions of which the Act requires shall be set out in printed or typed letters, means printing or typewriting; and

(b) in relation to an agreement which is not in a form such as is referred to in paragraph (a), means writing as defined in section 2 of the General Interpretation Act. Cap. 1:01

(2) References in sections 4, 6 and 24 to “contain”, “set out” and “provide” shall, without derogation from section 4 (1) (a), be construed as references to “contain expressly in writing”, “set out expressly in writing” and “provide expressly in writing” respectively.

(3) Where a seller has agreed that any part of the purchase price may be discharged otherwise than by the payment of money, any such discharge shall, for the purposes of this Act, be deemed to be a cash payment of that part of the purchase price.

PART I

GENERAL PROVISIONS RELATING TO AGREEMENTS

[Ch4805s3]3. Application of Part I

Except for sections 4, 22 and 23, which shall apply to every agreement or, as the case may be, to the parties to every agreement, this Part shall not apply to an agreement under which the purchase price exceeds the sum of fifteen hundred pounds.

[Ch4805s4]4. Provisions as to agreements

(1) Every agreement shall—

(a) be reduced to writing and signed by or on behalf of all the parties to the agreement;

(b) contain a statement of the cash price.

(2) If an agreement does not comply with subsection (1)—

(a) the goods which are the subject of the agreement shall be deemed to have been sold to the purchaser—

(i) without any reservation as to the ownership of the goods or, as the case may be, without any stipulation as to the seller’s right to the return of the goods; and

(ii) on credit at a price, payable in the same manner as that stipulated in the agreement, which is twenty-five per centum less than the purchase price;

and

(b) the seller shall not be entitled to enforce any contract of suretyship, indemnity or guarantee relating to the agreement except, in the case of an agreement which has been the subject of a cession or assignment, against a surety or guarantor who was the original seller under the agreement:

Provided that if, in any action arising out of the agreement, the court is satisfied that the purchaser would not, but for this subsection, have been prejudiced by the fact that the agreement does not comply with subsection (1), the court may, subject to such conditions that it thinks just and equitable to impose, order the parties to carry out the terms of the agreement as if the agreement had complied with subsection (1).

[Ch4805s5]5. Supply of copies to purchaser

(1) It shall be the duty of the seller to hand or send by registered post to the purchaser a copy of any agreement entered into between them as soon as possible after it has been entered into. If a seller fails so to supply such a copy, the purchaser may hand or send to him by registered post a written request for the supply of such a copy, and any seller who, within fourteen days of the receipt of such a request, fails to hand such a copy to the purchaser, or send it to him by registered post, shall be guilty of an offence.

(2) Any person who is guilty of an offence under subsection (1) shall be liable to a fine of fifty pounds or, in default of payment, to imprisonment for thirty days.

[Ch4805s6]6. Provisions to be included in agreements

(1) Every agreement shall set out—

- (a) (i) the amount of the purchase price of the goods;
 - (ii) the amount paid or to be paid by the purchaser under section 26 (1) (a);
 - (iii) the amount of each of the instalments by which the purchase price is to be paid;
 - (iv) the mode of payment of such instalments;
 - (v) the date or mode of determining the date on which each instalment is payable; and
 - (vi) the rate of interest, which shall not exceed the maximum rate of interest referred to in section 7 (2), chargeable upon an instalment in arrear.
- (b) a description of the goods let, sold or delivered under the agreement and of any goods delivered to the seller under section 24 (1) (a) which is sufficient to identify them;
- (c) the terms as to the reservation and passing of ownership of the goods or as to the seller's right to the return of the goods, as the case may be.

(2) No seller shall use any form of agreement the provisions of which, whatever their nature, are not set out in clearly legible printed or typed letters of substantially the same size.

(3) If an agreement does not comply with subsection (1) or with subsection (2)—

- (a) the goods which are the subject of the agreement shall be deemed to have been sold to the purchaser—

(i) without any reservation as to the ownership of the goods or, as the case may be, without any stipulation as to the seller's right to the return of the goods; and

(ii) on credit at a price, payable in the same manner as that stipulated in the agreement, which is twenty-five per centum less than the purchase price;

and

(b) the seller shall not be entitled to enforce any contract of suretyship, indemnity or guarantee relating to the agreement except, in the case of an agreement which has been the subject of a cession or assignment, against a surety or guarantor who was the original seller under the agreement:

Provided that if, in any action arising out of the agreement, the court is satisfied that the purchaser would not, but for the provisions of this subsection, have been prejudiced by the fact that the agreement does not comply with subsection (1), the court may, subject to such conditions that it thinks just and equitable to impose, order the parties to carry out the terms of the agreement as if the agreement had complied with subsection (1).

[Ch4805s7]7. Invalidity of certain provisions

(1) A provision of an agreement shall not be of any force or effect if it provides whether expressly or impliedly that—

(a) the seller or any person acting on his behalf is authorized to enter upon any premises for the purpose of taking possession of goods which are the subject of any agreement, or is relieved from liability for any such entry;

(b) the right conferred on a purchaser by this Act to determine the agreement is excluded or restricted;

(c) any liability, in addition to the liability imposed by this Act, is imposed on a purchaser by reason of the termination of the agreement by him under this Act;

(d) a purchaser, after the termination of the agreement in any manner whatsoever, is subject to a liability which exceeds the liability to which he would have been subject if the agreement had been terminated by him under this Act;

(e) any person acting on behalf of a seller in connexion with the formation or conclusion of an agreement is to be treated as or deemed to be the agent of the purchaser;

(f) a seller is to be relieved from liability for the acts or defaults of any person acting on his behalf in connexion with the formation or conclusion of an agreement;

(g) the purchaser shall pay interest on an instalment in arrear at a rate which exceeds the maximum rate of interest referred to in subsection (2).

(2) The maximum rate of interest chargeable under an agreement on an instalment in arrear shall be the rate per centum per annum specified by the Minister in fixing, in terms of section 26, the

maximum amount by which the purchase price under agreements of the class in question may exceed the cash price, which was so specified at the date of the agreement.

[Ch4805s8]8. Purchaser entitled to certain information

(1) If a purchaser hands or sends by registered post a request therefor to the seller and tenders to the seller a sum of five shillings for expenses, the seller shall, within thirty days after the tender is received by him, hand or send by registered post to the purchaser all or any of the following particulars as the purchaser may specify—

(a) a statement signed by or on behalf of the seller, showing—

(i) the amount paid under the agreement by or on behalf of the purchaser and the date of each payment;

(ii) the amount due under the agreement and unpaid, the date upon which each unpaid instalment became due and the amount of each such instalment; and

(iii) the amount which is to become payable under the agreement, the date or mode of determining the date upon which each future instalment is to become payable and the amount of each such instalment;

(b) a copy of the agreement.

(2) In the event of a failure without reasonable cause to comply with subsection (1), then, while the default continues—

(a) no person shall be entitled to enforce the agreement against the purchaser or to enforce any contract of suretyship, indemnity or guarantee relating to the agreement, and the seller shall not be entitled to enforce any right to recover the goods from the purchaser; and

(b) no security given by the purchaser in respect of money payable under the agreement or given by a surety or guarantor in respect of money payable under such a contract of suretyship, indemnity or guarantee as aforesaid shall be enforceable by any holder thereof against the purchaser, surety or guarantor, as the case may be;

and, if the default continues for a period exceeding thirty days, the defaulter shall be liable to a fine of £50 or, in default of payment, to imprisonment for thirty days.

[Ch4805s9]9. Removal of goods

(1) It shall be lawful for the seller of goods under a hire-purchase agreement to stipulate—

(a) that the purchaser shall record his address in such agreement; and

(b) that if before the ownership of the goods has passed to the purchaser the purchaser changes such address or at any time removes or allows such goods or any part thereof to be removed from any premises for keeping at other premises, he shall, prior to such change of address or removal, notify the seller or his agent in writing of all or any of the following particulars—

- (i) his new address;
- (ii) the premises to which such goods have been removed;
- (iii) the name and address of the landlord, if any, of such new premises;

but no such stipulation shall require the purchaser to notify the seller more than 48 hours before such change or removal.

(2) If any purchaser fails to comply with any stipulation made in terms of subsection (1), he shall be liable to a fine of £50 or, in default of payment, to imprisonment for thirty days. In any prosecution for a contravention of this subsection it shall be a sufficient defence if the purchaser satisfies the court that his failure to comply with any such stipulation was due to circumstances over which he had no control.

(3) If the seller of goods under a hire-purchase agreement has given written notice of his ownership thereof to the landlord of the premises where such goods are kept, such landlord shall not have any right of distress over such goods for rental.

[Ch4805s10]10. Removal of goods from Malawi

(1) It shall be lawful for the seller of goods under a hire-purchase agreement to stipulate that the purchaser shall not remove or permit the removal of the goods from Malawi without the consent of the seller.

(2) If a purchaser, in breach of a stipulation made in terms of subsection (1) and with intent to deprive the seller of his ownership of the goods or to defeat the rights of the seller to obtain any payment due to him under the agreement, removes or permits the removal of the goods from Malawi, he shall be liable to a fine of £100 and to imprisonment for three months.

(3) If a hire-purchase agreement contains a stipulation such as is referred to in subsection (1) and the seller believes that the goods sold under the hire-purchase agreement have been removed or are being removed or are about to be removed from Malawi without his consent, he may bring an action for the return of the goods.

(4) A seller referred to in subsection (3) may, before bringing the action referred to in that subsection or while his action is pending, make an application, in which the purchaser or other person substantially interested in the goods shall be made respondent, to a court for an order for the attachment of the goods.

(5) An application for an order referred to in subsection (4) may be made, on summons or notice to the respondent or ex parte, to a court having jurisdiction in the area in which the respondent or the goods proposed to be attached may be or through which the goods are likely to be removed.

(6) The rules of court governing applications on summons or notice or, as the case may be, applications ex parte in interlocutory proceedings of a like nature to an application referred to in subsection (4) which are in force in the court to which such an application is made shall, subject to subsections (7) to (9) inclusive, mutatis mutandis, apply to that application.

(7) A court which makes an order ex parte for the attachment of goods in terms of this section may require the applicant to give such security for damages as may be caused by the order as the court may think fit.

(8) An order referred to in subsection (7)—

(a) may be discharged or varied by the court on cause shown by any person affected by the order and on such terms as to costs as the court may think fit; and

(b) shall ipso facto be discharged upon the giving of security by the respondent for the amount of the value of the goods to which the order relates, together with costs.

(9) If goods are attached by order of a court other than the court in which the action for the return of the goods is brought, the court which made the order of attachment shall cause copies of the application, order and proceedings, together with the goods attached or, as the case may be, the security given for their release, to be transmitted to the court in which the action is brought.

[Ch4805s11]11. Conditions and warranties implied in agreements

(1) In every agreement there shall be—

(a) an implied warranty that the purchaser shall have and enjoy quiet possession of the goods;

(b) an implied condition on the part of the seller that he is not and will not be precluded from passing the ownership of the goods to the purchaser at the time when the ownership is to pass;

(c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the ownership is to pass;

and such warranties and conditions shall be implied notwithstanding any agreement to the contrary.

(2) Every agreement shall be deemed to contain any warranties or conditions implied in a contract for the sale of goods under any enactment or under the common law applicable in Malawi.

(3) The seller shall not be entitled to rely on any provision in the agreement excluding or modifying any warranty or condition referred to in subsection (2) unless he proves that, before the agreement was made, the provision was brought to the notice of the purchaser and its effect made clear to him.

[Ch4805s12]12. Appropriation of payments made in respect of agreements

A purchaser who is liable to make payments to the same seller in respect of two or more agreements shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements, in such proportions as he thinks fit, and, if he fails to make any such appropriations, the payment shall by virtue of this section be appropriated towards the

satisfaction of the sums due under the respective agreements in the proportions which those sums bear to one another.

[Ch4805s13]13. Negotiable instruments

(1) If a seller takes from a purchaser any negotiable instrument (other than a dated cheque which is not a post-dated cheque) in respect of any instalment or part of an instalment payable under an agreement, the seller shall not have any right to recover any such instalment or part of an instalment in terms of the agreement, and any such seller shall be confined, in respect of the recovery of such instalment or part of an instalment, to his rights of action, if any, in relation to such negotiable instrument, so, however, that nothing in this subsection contained shall affect any other rights of such seller under the agreement or this Act.

(2) If any negotiable instrument (other than a dated cheque which is not a post-dated cheque) is given or drawn by a purchaser in respect of any liability under an agreement, the seller shall when he takes it from the purchaser—

(a) write clearly on the face of such negotiable instrument the words “Issued in connexion with a hire-purchase agreement” or “Issued in connexion with an instalment sale agreement”, as may be appropriate; and

(b) write clearly at the top of the first page of such agreement the words “A negotiable instrument has been issued in connexion with this agreement” or “Negotiable instruments have been issued in connexion with this agreement”, as may be appropriate.

(3) Nothing contained in subsection (2) shall prevent the seller from writing on either the negotiable instrument or the agreement in question such further words as may serve to identify with greater particularity the negotiable instrument or agreement to which he refers.

(4) Any seller who fails to comply with subsection (2) shall be liable to a fine of £50 or, in default of payment, to imprisonment for thirty days.

[Ch4805s14]14. Right of purchaser to be reinstated after return of goods to seller

(1) If the seller has, as a result of the failure of the purchaser to pay any instalment of the purchase price due under any agreement, recovered possession, otherwise than by an order of a court, of any goods to which the agreement relates, the purchaser shall, unless he himself has terminated the agreement, be entitled, if he pays all arrear instalments of the purchase price due under the agreement within a period of twenty-one days after the seller recovered possession of the goods, to the return of the goods at the seller’s place of business or, if he has no place of business or if the purchaser so requests, at the premises in which the goods are kept, and to be reinstated in his rights under the agreement.

(2) The seller shall, after the return of the goods under subsection (1), be entitled to recover the reasonable expenses incurred by him in the taking and storing of such goods.

[Ch4805s15]15. Right of purchaser to pay outstanding balance of purchase price

A purchaser shall at all times be entitled to pay any instalment of the purchase price before it is due and shall, if he pays the whole of the purchase price remaining unpaid in one amount, be entitled to the reduction of each instalment not due at the said date of payment by an amount calculated at the rate of five per centum per annum on such instalment in respect of the period by which the payment of such instalment is accelerated.

[Ch4805s16]16. Passing of ownership

The ownership in any goods which are the subject of a hire-purchase agreement shall pass to the purchaser upon payment of all sums payable by him in terms of the agreement.

[Ch4805s17]17. Right of purchaser to terminate hire-purchase agreement

(1) A purchaser shall, at any time before the final payment under a hire-purchase agreement falls due, be entitled, upon the return to the seller of any goods which are the subject of the agreement, to terminate the agreement by giving notice of termination in writing to any person entitled or authorized to receive the sums payable under the agreement.

(2) On the termination of a hire-purchase agreement by the purchaser in terms of subsection (1), the purchaser shall be liable, without prejudice to any liability which has accrued before the termination—

(a) to pay to the seller—

(i) the amount, if any, by which one half of the purchase price exceeds the sum of—

(A) all instalments in respect of the purchase price paid by the purchaser before the date of the termination; and

(B) all instalments in respect of the purchase price in arrear at the date of the termination;

or

(ii) if an amount less than the sum referred to in subparagraph (i) is payable under the agreement on its termination by the purchaser in terms of subsection (1), the amount payable under the agreement; and

(b) if the purchaser has failed to take reasonable care of the goods, to pay to the seller damages in respect of his failure.

(3) Nothing in this section shall prejudice any right of a purchaser to terminate a hire-purchase agreement otherwise than by virtue of this section.

[Ch4805s18]18. Special provisions as to installation charges

(1) Where under any hire-purchase agreement the seller is required to carry out any installation and the agreement specifies the amount to be paid in respect of the installation, the

reference in section 17 (1) to one-half of the purchase price shall be construed as a reference to the aggregate of the said amount and one-half of the purchase price.

(2) For the purposes of this section, the expression "installation" means—

(a) the installing of any gas or water pipe, or the installing of any line or other means of conveying, transmitting, distributing or supplying electricity;

(b) the fixing of goods to which the agreement relates to the premises where they are to be used, and the alteration of premises to enable any such goods to be used thereon; and

(c) where it is reasonably necessary that any such goods should be constructed or erected on the premises where they are to be used, any work carried out for the purpose of such construction or erection.

[Ch4805s19]19. Disposal of goods upon termination of agreement

(1) If any agreement is lawfully terminated or rescinded at the instance of the seller after he has been paid fifty per centum of the purchase price, the seller shall not, save with the written consent of the purchaser, be entitled to recover possession of the goods which are the subject-matter of such agreement, but the goods shall be sold by a person appointed on the application of the seller by a magistrate, who, in making the appointment, shall have regard to the information available to him as to the whereabouts of the goods and may give directions as to the advertisement and place, date and method of sale. Before making any appointment in terms of this subsection, the magistrate shall ascertain whether or not any negotiable instrument has been given or drawn by the purchaser in respect of any instalment or part of an instalment payable under the provisions of the agreement in question and, if any such instrument has been so given or drawn, the magistrate shall not appoint a person to sell the goods unless he is satisfied that—

(a) every such negotiable instrument has been cancelled or returned to the purchaser;
or

(b) the seller has made arrangements to indemnify the purchaser against any liability on the part of the purchaser in respect of such instrument which may be in excess of the amount outstanding under the agreement after the disposal of the proceeds of the sale of the goods in terms of this section.

(2) The seller shall give notice of such appointment to the purchaser by handing it to him or sending it to him by registered post at his last known address.

(3) If the purchaser fails within fourteen days of such notice to deliver the goods to the person so appointed, the seller shall be entitled to recover possession of the goods, and this section shall not apply in relation to such goods.

(4) After the sale, the person selling the goods shall, after deducting his reasonable costs, pay to the seller the purchase price and all other moneys payable in terms of the agreement, less the total amount of any payments actually made thereunder, and shall pay over the balance of the proceeds of the sale to the purchaser.

(5) In the event of the net proceeds of the sale being insufficient to discharge the amount outstanding under the agreement, the seller may recover such amount from the purchaser.

(6) If any dispute arises as to the amount payable to the purchaser or the seller, the person selling such goods shall deposit the amount in dispute with a magistrate, who shall retain such amount pending action brought by either party to the agreement against the other, and the person who sold the goods shall be discharged from any further liability in the matter.

(7) Where a hire-purchase agreement has been terminated under this section, the purchaser shall, if he has failed to take reasonable care of the goods, be liable to pay damages for the failure.

[Ch4805s20]20. Powers of the court

(1) In any action by the seller for the return of any goods to which any agreement relates, the court may, without prejudice to any other power and subject to sections 17 and 19—

(a) make an order for the return of the goods to the seller, subject to repayment by the seller of so much of the purchase price received by him as the court may deem just;

(b) make an order for the return of a part of the goods to the seller and—

(i) in the case of an instalment sale agreement, for the retention by the purchaser of the remainder of the goods; or

(ii) in the case of a hire-purchase agreement, for the transfer to the purchaser of the seller's title to the remainder of the goods;

(c) make an order—

(i) in the case of an instalment sale agreement, for the retention by the purchaser of part of the goods; or

(ii) in the case of a hire-purchase agreement, for the transfer to the purchaser of the seller's title to part of the goods, and an order referred to in paragraph (e) in respect of the remainder of the goods;

(d) make an order referred to in paragraph (b), subject to—

(i) repayment by the seller of so much of the purchase price received by him;
or

(ii) payment by the purchaser of so much of the unpaid balance of the purchase price,

as the court may deem just; or

(e) make an order requiring the goods to be sold by public auction by a person appointed by the court, within a period stated in the order, or, if the parties so agree, by private treaty.

(2) No order shall be made in terms of subsection (1) (d) (ii) unless the purchaser satisfies the court that the order will be carried out forthwith.

(3) In making any order in terms of this section, the court may, if any negotiable instrument has been given or drawn by the purchaser in respect of any instalment or part of an instalment payable under the agreement in question, order that the seller shall—

(a) cancel such negotiable instrument or return it to the purchaser; or

(b) indemnify the purchaser against any liability on the part of the purchaser in respect of such negotiable instrument.

(4) Any order referred to in subsection (1) (e) shall state—

(a) the total amount found by the court to be payable under the agreement;

(b) the amount fixed by the court as damages for any failure by the purchaser to take reasonable care of the goods;

(c) the total amount of payments so found to have been made thereunder;

(d) the party by whom the costs incidental to the sale shall be borne; and

(e) any directions given by the court as to advertisement and the place, date and method of the sale of the goods;

and the court may, when making any such order, at the same time order the purchaser to pay to the seller the deficiency referred to in subsection (6), if any.

(5) If any goods are sold in pursuance of an order referred to in subsection (1) (e), the person appointed by the court or, in the case of a sale by private treaty, the seller shall, after deducting—

(a) any costs incidental to the sale awarded by the court against the purchaser;

(b) any other costs so awarded; and

(c) the total amount stated in the order to be payable under the agreement, less the total amount of payments so stated to have been made thereunder,

pay over the balance of the proceeds of the sale to the purchaser. Any costs incidental to the sale which have been so awarded shall be a first charge upon the proceeds of the sale.

(6) If the net proceeds of the sale are insufficient to discharge the purchaser's liability in respect of any costs referred to in subsection (5) and his liability under the agreement, the seller may recover the deficiency from the purchaser.

(7) If damages have been awarded against the seller in the proceedings, the amount thereof or so much of such amount as the court may determine shall be deemed to have been paid by the purchaser in respect of the purchase price of the goods, and thereupon the damages shall be remitted either in whole or in part.

(8) On the institution of an action referred to in subsection (1) and pending the conclusion of the proceedings, the court shall, in addition to any other powers, have power, upon the application of the seller, to make such orders as the court may deem just for the purpose of protecting the goods from damage or depreciation, including orders restricting or prohibiting the use of the goods or giving directions as to their custody.

[Ch4805s21]21. Waiver of rights by purchaser

No waiver by any purchaser of any right under this Act shall be of any force or effect.

[Ch4805s22]22. Agreements binding on liquidator or trustee of seller

If a company is being wound up under any enactment in force in Malawi relating to companies or a person is adjudged or otherwise declared bankrupt under any enactment in force in Malawi relating to bankruptcy, any agreement entered into by such company or person as seller shall remain of full force and effect and shall be binding on the liquidator of such company or the trustee concerned, as the case may be:

Provided that nothing in this section shall affect the powers of the court to set aside any disposition of property made by way of undue preference.

[Ch4805s23]23. Bankruptcy of purchaser

(1) In this section “trustee’s expenses”, in relation to goods which are the subject of an agreement entered into by a purchaser referred to in subsection (2) (a) means—

- (a) the trustee’s remuneration in respect of the goods; and
- (b) the costs incurred by the trustee in conserving the goods; and
- (c) all other expenses of liquidation or administration incurred by the trustee in connexion with the goods.

(2)(a) If, in terms of an enactment in force in Malawi relating to bankruptcy, a purchaser is adjudged or otherwise declared bankrupt, the goods which are the subject of the agreement entered into by the purchaser shall, notwithstanding the terms of the agreement, vest in his trustee:

Provided that if the goods are used by the trustee on behalf of the purchaser’s estate, the trustee shall pay to the seller, as a cost in the administration of the estate, each instalment in respect of the purchase price which becomes due under the agreement during the period the goods are so used.

(b) The trustee of a purchaser referred to in paragraph (a) shall pay to the seller out of the proceeds of the sale of the goods referred to in that paragraph, reduced by the amount of the trustee’s expenses and the cost of realizing the goods, so far as there are proceeds available, an amount equal to the balance of the unpaid purchase price together with all other sums due to the seller under the agreement.

(c) If the full amount due to the seller in terms of paragraph (b) is unpaid by reason of the insufficiency of the proceeds of the sale of the goods, the seller shall, unless he relies for the

satisfaction of the payment due to him solely on the proceeds of the sale of the goods, have a claim in the bankruptcy in respect of the balance.

(3)(a) The trustee of a purchaser referred to in subsection (2) (a) shall give not less than twenty-eight days notice in writing to the seller of the date on which he proposes to sell the goods which are the subject of the agreement.

(b) The trustee shall, if required in writing by the seller not less than seven days before the date referred to in paragraph (a), deliver the goods to the seller on the pre-payment by the seller of the cost of delivery and the trustee's expenses.

(c) On the delivery of the goods to the seller, the seller shall thereupon have, in respect of the goods, a lien or right of retention with all the rights of a creditor holding a security under any law in force in Malawi.

(d) In proving a claim in bankruptcy a seller referred to in this subsection shall state in his affidavit or other document of claim the nature, particulars and value of his security.

(4) If the purchaser is a company which is in course of being wound up under an enactment in force in Malawi providing for the winding up of companies, subsections (2) and (3) shall apply as if the company were an individual adjudged or otherwise declared bankrupt and the liquidator of the company were the trustee of the purchaser.

(5) This section shall, notwithstanding section 1 (2), apply in relation to an agreement under which the Government is the seller.

PART II

FINANCIAL PROVISIONS RELATING TO AGREEMENTS

[Ch4805s24]24. Initial payments and periods for repayment

39 of 1981(1) Every agreement under which the purchase price exceeds ten pounds shall provide—

(a) that payment shall be made in money (which for this purpose shall include a cheque) or in goods before any of the goods which are the subject of the agreement are delivered to the purchaser of a sum equal at least to that percentage of the cash price which is specified in the second column of the Schedule for the particular class of goods sold under the agreement; and

(b) that the period within which the full purchase price is payable shall not exceed the period specified in the third column of the Schedule for the particular class of goods sold under the agreement.

(2) The period referred to in subsection (1) (b) shall be reckoned from the date of the payment made in terms of paragraph (a) of that subsection:

Provided that if the agreement provides for the delivery of the goods which are the subject of the agreement from a place outside Malawi to a purchaser who at the time of delivery is outside

Malawi the period shall, at the election of the seller, be reckoned from the date on which the goods are first imported into Malawi.

(3) If an agreement does not comply with subsection (1) or payment has not been made in terms of paragraph (a) of that subsection—

(a) the goods which are the subject of the agreement shall be deemed to have been sold to the purchaser—

(i) without any reservation as to the ownership of the goods or, as the case may be, without any stipulation as to the seller's right to the return of the goods; and

(ii) on credit at a price, payable in the same manner as that stipulated in the agreement, which is twenty-five per centum less than the purchase price; and

(b) the seller shall not be entitled to enforce any contract of suretyship, indemnity or guarantee relating to the agreement except, in the case of an agreement which has been the subject of a cession or assignment, against a surety or guarantor who was the original seller under the agreement.

(4) No payment in cash shall, to the extent to which it is made out of moneys borrowed directly or indirectly from or through the seller or any person whose business or part of whose business it is by arrangement with the seller to advance money for payments under agreements with the seller, and no payment in goods shall, to the extent to which the amount thereof exceeds the normal market price for the goods, be deemed to be a payment for the purposes of subsection (1) (a).

39 of 1981(5) The Schedule may be varied by the Minister after consultation with the Minister for the time being responsible for matters relating to trade by notice published in the Gazette so, however, that no such variation shall affect the operation of any agreement entered into prior to the date of publication of such notice.

[Ch4805s25]25. Time limit for certain actions

(1) A seller shall have no right to institute a suit or action for—

(a) the return of goods to which an agreement relates; or

(b) the recovery of a portion of the purchase price due under an agreement,

after the lapse of the period prescribed by subsection (2).

(2) The period after the lapse of which no suit or action referred to in subsection (1) may be brought shall be the period, fixed by or under subsection (3), which was so fixed at the time the right to institute the suit or action first accrued.

(3) The period to which subsection (2) relates shall be—

(a) such number of days, not less than one hundred and fifty, as the Minister may by notice published in the Gazette fix; or

(b) if no period is fixed in terms of paragraph (a), three hundred and sixty-five days.

commencing on the day following the last day of the appropriate period within which this Act requires the full purchase price to be paid.

(4) In determining for the purposes of paragraph (a) or, as the case may be, subsection (3) (b) the number of days which have elapsed there shall not be taken into account any period during which—

(a) the purchaser was absent from Malawi; or

(b) service of summons issued by the seller for the return of any goods or the recovery of any portion of the purchase price could not be effected owing to the whereabouts of the purchaser being unknown or owing to the purchaser wilfully evading service or owing to his absence from Malawi; or

(c) the seller was a minor or was of unsound mind; or

(d) the obligation of the purchaser to pay instalments was suspended pursuant to this Act or any other relevant written law.

(5) This section shall not apply if at any time before the end of the period of limitation prescribed by subsection (2) the seller or purchaser—

(a) is adjudged or otherwise declared bankrupt; or

(b) makes an assignment to or composition with his creditors; or

(c) being a company, is wound up or placed under judicial management; or

(d) dies.

[Ch4805s26]26. Control of purchase price

(1) The Minister shall, for all classes of agreement and goods, by notice published in the Gazette, fix the maximum amount, to be determined by reference to the rate per centum per annum referred to in subsection (2), by which the purchase price under an agreement may exceed the cash price.

(2) The rate per centum per annum to which subsection (1) relates shall be a rate per centum per annum, specified by the Minister in the notice referred to in that subsection, of the balance of the cash price remaining unpaid before the due date of each instalment.

(3) The Minister may, in fixing the maximum amount referred to in subsection (1), make different provision in respect of different classes of agreements and different classes of goods.

(4) A provision in an agreement shall be of no effect in so far as it provides for the payment of a purchase price exceeding the cash price by more than the appropriate amount fixed in terms of subsection (1) at the date of the agreement and the amount of each instalment payable under an agreement containing such a provision shall be decreased accordingly.

PART III

MISCELLANEOUS

[Ch4805s27]27. Exemptions

39 of 1984The Minister may, by notice published in the Gazette, order that any agreement or class of agreements entered into by any body corporate established directly by any law shall be exempted from any of the provisions of this Act. s. 24

[Ch4805s28]28.

[Repealed by 39 of 1981.]

SCHEDULE s. 24, G.N. 43/1984

INITIAL PAYMENTS AND PERIODS FOR PAYMENT

Class of goods	Description of goods	Percentage of cash to be paid before goods are delivered	Period within which full purchase price is payable (months)
A.	Agricultural, irrigation machinery and any other goods mainly used for agricultural purposes where an agricultural officer has certified the intended use of such goods	10%	48
B.	Motor assisted cycles, motor cars (including estate cars and station wagons), motor cycles, motor cycle combinations, motor scooters	25%	24
C.	Ambulances, hearses, lorries, road passenger vehicles designed to seat more than eight persons, vans designed for commercial purposes, vanettes	20%	48
D.	Motor vehicles other than those referred to in Class B and Class C	20%	48
E.	Commercial, industrial and mining plant and machinery, earth moving equipment	20%	48
F.	Accounting, adding calculating and cash register machines, aircraft, airconditioning units, bicycles, boats, cameras, caravans (non-motorized), duplicating machines, floor polishers, furniture, geysers, invalid tricycles, lawn mowers, marine engines (including outboard motors), pianos, radios, radiograms, refrigerators, sewing machines, stoves, taperecorders, vacuum-cleaners, washing machines	30%	24
G.	Any other goods	30%	24

SUBSIDIARY LEGISLATION

HIRE-PURCHASE (FINANCE CHARGES) NOTICE

under s. 26

G.N. 437/1961(F)

92/1964(N)

1. Citation

This notice may be cited as the Hire-Purchase (Finance Charges) Notice.

2. Maximum excess of purchase price over cash price

For all classes of agreement the purchase price shall not exceed the cash price by more than an amount which together with the accountancy costs, credit control and collection expenses and all other administrative costs connected with the agreement, other than the sums excluded from the purchase price in terms of section 2 (1) of the Act—

(a) in respect of new goods, is an amount calculated at the rate of 15.69 per centum per annum of the balance of the cash price remaining unpaid before the due date of each instalment; and

(b) in respect of used goods, is an amount calculated at the rate of 17.54 per centum per annum of the balance of the cash price remaining unpaid before the due date of each instalment.

EXPLANATORY NOTE

(This note is not part of the notice, but is intended to indicate its general purport.)

The effect of the variation set out in the notice is to increase the maximum amount by which the purchase price of second-hand goods, purchased under a hire-purchase agreement, may exceed the cash price, to an amount calculated at the rate of 17.54 per centum per annum of the balance outstanding before the date of payment of each instalment.

Where payment, after the first instalment, is to be made in equal instalments the finance charge per £100 may be calculated by applying the following formula:—

(a) in the case of new goods—

$$F = 15.69 \times (n+p)$$

.....

24

(b) in the case of second-hand goods—

$$F = 17.54 \times (n+p)$$

.....

24

where

F = finance charge

n = number of months in which the full purchase price is payable

p = period, in months, between each instalment.

[Chap4806]CHAPTER 48:06

COMMERCIAL CREDITS

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Commercial charges on trading assets
4. Effect of fixed charge
5. Effect of floating charge
6. Supplemental provisions as to commercial charges
7. Registration of commercial charges
8. Frauds by business proprietors
9. Regulations

45 of 1970

24 of 1972

An Act to facilitate the borrowing of money by the proprietors of certain businesses on the security of trading assets and for purposes connected therewith and incidental thereto

[10TH DECEMBER 1970]

[Ch4806s1]1. Short title

This Act may be cited as the Commercial Credits Act.

[Ch4806s2]2. Interpretation

In this Act, unless the context otherwise requires—

24 of 1972 “business proprietor” means any person (not being an incorporated company or society) who, as the owner or occupier of any premises, carries on trade or business therein as a retailer or wholesaler;

“commercial charge” means a charge under this Act;

“designated institution” means a bank, company, statutory body or society designated by the Minister, by notice published in the Gazette, to be a designated institution for purposes of this Act;

“register” means the register provided for in section 7 and “registered” bears a corresponding meaning;

“trading assets” includes shop goods, stock in trade, plant and utensils used in any trade or business and any money or things in action employed or received in the course of any trade or business but does not include any real property or landlord’s fixtures.

[Ch4806s3]3. Commercial charges on trading assets

(1) It shall be lawful for a business proprietor by instrument in writing to create in favour of a designated institution a commercial charge on all or any of the trading assets belonging to him as security for sums due, or to become due, by him to such institution or advanced or to be advanced to him or paid or to be paid on his behalf by such institution and as security for interest, commission and charges on such sums.

(2) A Commercial charge may be either a fixed charge or a floating charge or both.

(3) The property affected by a fixed charge shall be such property forming part of the trading assets belonging to the business proprietor at the date of the charge as may be specified in the charge but may include, in the case of trading plant, any plant which may whilst the charge is in force be substituted for the plant specified in the charge.

(4) The property affected by a floating charge shall be the trading assets from time to time belonging to the business proprietor or such part thereof as is mentioned in the charge.

(5) The principal sum secured by a commercial charge may be either a specified amount, or a fluctuating amount advanced on current account to, or due and owing for goods and services supplied by, the designated institution not exceeding at any one time such amount, if any, as may be specified in the charge and a charge shall not be deemed to be redeemed by reason only of the current account having ceased to be in debit or by reason only of there being no amount due or owing, as the case may be.

(6) A commercial charge may be in such form and made upon such conditions as the parties thereto may agree and sureties may be made parties thereto.

[Ch4806s4]4. Effect of fixed charge

(1) A fixed charge shall, so long as the charge continues in force, confer on the designated institution the following rights and impose on the institution the following obligations, that is to say—

(a) a right, upon the happening of any event specified in the charge as being an event authorizing the seizure of the property subject to the charge, to take possession of any property so subject;

(b) where possession of any property has been so taken, a right, after an interval of five clear days or such less time as may be allowed by the charge, to sell the property either by public auction, or, if the charge so provides, by private treaty, and either for a lump sum payment or payment by instalments;

(c) an obligation, in the event of such power of sale being exercised, to apply the proceeds of sale in or towards the discharge of the moneys and liabilities secured by the charge, and the cost of seizure and sale, and to pay the surplus (if any) of the proceeds to the business proprietor.

(2) A fixed charge shall, so long as the charge continues in force, impose on the business proprietor the following obligations—

(a) an obligation whenever he sells any of the property, or receives any money in respect of trading assets comprised in the charge, forthwith to pay to the designated institution the amount of the proceeds of the sale or of the money so received, except to such extent as the charge otherwise provides or the designated institution allows; the sums so paid to be applied, except so far as otherwise agreed, by the designated institution in or towards the discharge of moneys and liabilities secured by the charge;

(b) in the event of the business proprietor receiving any money under any policy of insurance on any of the property comprised in the charge, forthwith to pay the amount of the sums so received to the designated institution, except to such extent as the charge otherwise provides or the designated institution allows; the sums so paid to be applied, except so far as otherwise agreed by the designated institution, in or towards the discharge of the moneys and liabilities secured by the charge.

(3) Subject to compliance with the obligations so imposed, a fixed charge shall not prevent the business proprietor from selling any of the property subject to the charge, and neither the purchaser, nor, in the case of a sale by auction, the auctioneer, shall be concerned to see that such obligations are complied with notwithstanding that he may be aware of the existence of the charge.

(4) Where any proceeds of sale which in pursuance of such obligation as aforesaid ought to be paid to the designated institution are paid to some other person nothing in this Act shall confer on the designated institution a right to recover such proceeds from that other person unless the

designated institution proves that such other person knew that the proceeds were paid to him in breach of such obligation as aforesaid, but such other person shall not be deemed to have such knowledge by reason only that he has notice of the charge.

[Ch4806s5]5. Effect of floating charge

A commercial charge creating a floating charge shall have the like effect as if the charge had been created by a duly registered debenture issued by a company:

Provided that—

(a) the charge shall become a fixed charge upon the property comprised in the charge as existing at the date of its becoming a fixed charge—

(i) upon a receiving order in bankruptcy being made against the business proprietor;

(ii) upon the death of the business proprietor;

(iii) upon the dissolution of partnership in the case where the property charged is partnership property;

(iv) upon notice in writing to that effect being given by the designated institution on the happening of any event which by virtue of the charge confers on the designated institution the right to give such notice;

(b) the business proprietor, whilst the charge remains a floating charge, shall be subject to the like obligation as in the case of a fixed charge to pay over to the designated institution the amount received by him by way of proceeds of sale or in respect of trading assets, under policies of insurance and section 4 shall apply accordingly except that it shall not be necessary for a business proprietor to comply with such obligations if and so far as the amount so received is expended by him in the purchase of trading assets which on purchase become subject to the charge.

[Ch4806s6]6. Supplemental provisions as to commercial charges

(1) A commercial charge shall have effect notwithstanding anything in the Bills of Sale Act and shall not be deemed to be a bill of sale within the meaning of that Act.

(2) Commercial charges shall in relation to one another have priority in accordance with the times at which they are respectively registered under this Act. Cap. 48:03

(3) Where a commercial charge creating a floating charge has been made, a commercial charge purporting to create a fixed charge or a bill of sale comprising any of the property comprised in the floating charge shall, as respects the property subject to the floating charge, be void so long as the floating charge remains in force.

(4) Trading assets subject to a commercial charge shall not, for the purposes of section 40 of the Bankruptcy Act be deemed to be goods in the possession, order or disposition of the business proprietor in his trade or business by the consent of the true owner thereof under such circumstances that he is the reputed owner thereof. Cap. 11:01

(5) Where a business proprietor who is adjudged bankrupt has created in favour of a designated institution a commercial charge on any of the trading assets belonging to him and the charge was created within three months of the date of the presentation of the bankruptcy petition the amount which but for this provision would have been secured by the charge shall be reduced—

(a) firstly, by the amount of any debt payable in priority to other debts by virtue of section 35 (1) of the Bankruptcy Act; and

(b) secondly, where such charge operated to secure any sum owing to the designated institution immediately prior to the giving of the charge, unless it is proved that the business proprietor immediately after the execution of the charge was solvent, by the amount so owing to the designated institution immediately prior to the giving of the charge:

Provided that nothing in this section shall prejudice the right of the designated institution to enforce any other security for the amount of any reduction made under this section or to claim payment of such amount as an unsecured debt.

(6) A commercial charge shall be no protection in respect of property included in the charge which but for the charge would have been liable to distress for rent, taxes or rates.

(7) An instrument creating a commercial charge shall be exempt from stamp duty.

[Ch4806s7]7. Registration of commercial charges

(1) Every commercial charge shall be registered under this Act within seven clear days after the execution thereof, and, if not so registered, shall be void as against any person other than the business proprietor:

Provided that the High Court on proof that omission to register within such time aforesaid was accidental or due to inadvertence may extend the time for registration on such terms as the court thinks fit.

(2) The Registrar General shall maintain a register of commercial charges in such form and in such manner as may be prescribed.

(3) Registration of a commercial charge shall be effected by sending by post to the Registrar General at his principal office a memorandum of the instrument creating the charge and such particulars of the charge as may be prescribed, together with the prescribed fee; and the Registrar General shall enter the particulars in the register and file the memorandum.

(4) The register kept and the memoranda filed under this section shall at all reasonable times be open to inspection by any person on payment (except where the inspection is made by or on behalf of a designated institution) of the prescribed fee, and any person inspecting the register or any such filed memorandum on payment (except as aforesaid) of the prescribed fee may make copies or extracts therefrom.

(5) Any person may on payment of the prescribed fee require to be furnished with a copy of any entry in the register or of any filed memorandum or of any part thereof certified to be a true copy by the Registrar General.

(6) Registration of a commercial charge may be proved by the production of a certified copy of the entry in the register relating to the charge and a copy of any entry purporting to be certified as a true copy by the Registrar General shall in all legal proceedings be evidence of the matters stated therein without proof of the signature or authority of the person signing it.

(7) Registration of a commercial charge under this section shall be deemed to constitute actual notice of the charge and of the fact of such registration to all persons and for all purposes connected with the property comprised in the charge as from the date of registration or other prescribed date and so long as the registration continues in force:

Provided that where a commercial charge created in favour of a designated institution is expressly made for securing a current account or other further advances, the institution, in relation to the making of further advances under the charge, shall not be deemed to have notice of another commercial charge by reason only that it is so registered if it was not so registered at the time when the first-mentioned charge was created or when the last search (if any) by or on behalf of the institution was made, whichever last happened.

[Ch4806s8]8. Frauds by business proprietors

If, with intent to defraud, a business proprietor who has created a commercial charge—

(a) fails to comply with the obligations imposed by this Act as to the payment over to the designated institution of any sums received by him by way of proceeds of sale or in respect of other trading assets or under a policy of insurance; or

(b) removes or suffers to be removed from his holding any property subject to the charge,

he shall be liable to a fine of five hundred pounds and to imprisonment for three years.

[Ch4806s9]9. Regulations

The Minister may make Regulations for the better carrying out of the purposes and provisions of this Act and without prejudice to the generality of the foregoing such regulations may provide for—

(a) the form of the register;

(b) the form and content of any memorandum or other document used for the purposes of this Act;

(c) inspections and searches under this Act, including the times when they may be made;

(d) the provision of any copies of any documents under this Act and the certification of such copies;

(e) the payment of fees for anything done or supplied under this Act;

(f) anything which in accordance with this Act is to be prescribed.

SUBSIDIARY LEGISLATION

COMMERCIAL CREDITS REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Memoranda of instruments creating commercial charges
3. Registration of memoranda
4. Entry of memoranda
5. Index of grantors
6. Arrangement of index
7. Copy instruments and original instruments, when furnished, to be endorsed
8. Inspection and searches
9. Official search and certificate of search
10. Correction of error in register
11. Index of designated institutions
12. Refusal to register
13. Satisfaction or cancellation of charge
14. Fees

First Schedule

Second Schedule

G.N. 35/1971

31A/2005

COMMERCIAL CREDITS REGULATIONS

under s. 9

1. Citation

These Regulations may be cited as the Commercial Credits Regulations.

2. Memoranda of instruments creating commercial charges

A memorandum under section 7 (3) shall be in Form A in the First Schedule and shall be furnished in duplicate.

3. Registration of memoranda

Upon receipt by him of a memorandum under section 7 (3), duly completed, the Registrar General shall, subject to the other provisions of this Act, register the same by entering the particulars given in the memorandum in the register maintained by him for the purpose. Before making such entry, the Registrar General shall satisfy himself as to the completeness of the particulars set out in the memorandum and shall ensure that the required copy of the relevant instrument creating the charge in question is annexed to the memorandum. Where the original of such instrument is furnished with the memorandum and annexed copy instrument, the Registrar General may satisfy himself of the accuracy of the copy by comparing it with the original. In all other cases he shall require the copy of the instrument to be verified by a statutory declaration.

4. Entry of memoranda

The Registrar General shall enter the particulars given in memoranda in the register in the order in which the memoranda are accepted for registration and shall number those registered in each year consecutively according to the time and date of their registration. Upon registration of the particulars given in a memorandum the Registrar General shall file it among his records.

5. Index of grantors

The Registrar General shall keep an index of all the names of the grantors of all commercial charges referred to in the register with reference to the relevant entry.

6. Arrangement of index

The index referred to in regulation 5 shall be arranged in divisions corresponding with the letters of the alphabet so that all grantors whose surnames begin with the same letter, and no others, shall be comprised in one division, save that the arrangement within each subdivision need not be alphabetical:

Provided that where persons in partnership grant a charge each partner will have his name entered in the index in its appropriate alphabetical division with a cross-reference to the other persons with whom he is in partnership.

7. Copy instruments and original instruments, when furnished, to be endorsed

When the original instrument creating a charge has been furnished with a memorandum the Registrar General shall mark both copies of the instrument with a registered number and with particulars of the amount of the fee paid and the date and number of the receipt issued therefor. The Registrar General shall file the copy of the instrument among his records and return the original

to the applicant. When the original instrument is not furnished, the Registrar General shall mark the copy instrument with a registered number, endorse it with the particulars referred to in this regulation and file it among his records.

8. Inspection and searches

At any time after 21 days from the commencement of the Act, any person desiring to inspect the register or to make search of any document filed with the Registrar General under these Regulations may apply either in person during normal office hours, or by registered post, to the Registrar General in Form B in the First Schedule. Such person shall, on payment of the prescribed fee, be permitted to inspect the entry or entries in the register to which his application relates and any copy documents relating thereto filed in the office of the Registrar General and to make such copies of, or extracts from, the entry, entries or copy documents as he wishes:

Provided that no fee shall be payable by a designated institution for any inspection or search under this regulation.

9. Official search and certificate of search

At any time after 21 days from the commencement of the Act, a person desiring to obtain a certificate of official search containing the prescribed particulars of all entries relating to unsatisfied commercial charges given by any business proprietor may apply either in person during normal office hours, or by registered post, to the Registrar General in Form C in the First Schedule. The Registrar General shall, on payment of the prescribed fee, search the register and any other relevant document and issue a certificate of official search in Form D in the First Schedule. If the person applying for such search so requests, the Registrar General may also, on payment of the prescribed fee, supply a certified copy of any entry in the register or of all, or any part of, any document relating thereto filed in his office under these Regulations.

10. Correction of error in register

Upon any reasonable belief or information at any time that an entry in the register is incorrect, the Registrar General may consider such evidence as he shall think fit relating to the correctness or otherwise of the entry and, if satisfied that such entry is incorrect, he shall correct the same and, if necessary, amend any endorsement made by him on any instrument.

11. Index of designated institutions

The Registrar General shall maintain an index in such form as he deems fit of all designated institutions so designated by the Minister by notice published in the Gazette.

12. Refusal to register

The Registrar General may, in his discretion, refuse to register any memorandum under these Regulations if it appears to him that—

- (i) all fees for the registration thereof have not been paid;

- (ii) the instrument creating the charge in question has been fraudulently obtained or given or does not have the effect in law which it purports to have;
- (iii) the instrument creating the charge contains any blank space, erasure, alteration or interlineation which is not verified by the signature or initials of the person given the charge;
- (iv) that the charge in question is not given in favour of a designated institution;
- (v) that the memorandum has been presented out of time; and
- (vi) that the grantor of the instrument creating the charge to the best of the knowledge, information or belief of the Registrar General—
 - (a) is an undischarged bankrupt;
 - (b) has had a receiving order in bankruptcy made against him or her; or
 - (c) is proscribed by law from carrying on the trade or business of a retailer in Malawi.

13. Satisfaction or cancellation of charge

On the satisfaction or cancellation of any commercial charge in respect whereof an entry has been made in the register, the grantor thereof shall give notice to the Registrar General on Form E in the First Schedule within 30 days from the date of such satisfaction or cancellation. The notification shall be transmitted to the Registrar General either in person or by registered post and upon receiving it he shall endorse the relevant entry accordingly.

14. Fees

The fees specified in the second column of the Second Schedule shall be payable for the things and matters referred to in the first column thereof.

FIRST SCHEDULE

Form A

COMMERCIAL CREDITS ACT, 1970

COMMERCIAL CREDITS REGULATIONS, 1971

(REGULATION 2)

MEMORANDUM OF COMMERCIAL CHARGE

Pursuant to section 7 (3) of the Commercial Credits Act, 1970, I/we supply particulars to the Registrar General of a charge created by me/us, the business proprietor(s) of the business known as

.....

my/our address(es) is/are in favour of (name and address of designated institution) designated by the Minister as a designated institution.

The charge is made for the purpose of securing*

- (a) Sums due by me/us to the said institution
- (b) Sums to become due by me/us to the said institution
- (c) Money advanced to me/us by the said institution
- (d) Money to be advanced to me/us by the said institution
- (e) Money paid on my/our behalf by the said institution
- (f) Money to be paid on my/our behalf by the said institution
- (g) Interest
- (h) Commission; and
- (i) Charges on such sums.

The charge is*

- (a) Fixed charge;
- (b) Floating charge; or
- (c) Both fixed and floating charges.

PARTICULARS

- (1) Date of creation of charge
- (2) Amount secured
- (3) Nature of charge (fixed or floating).....
- (4) Property secured in short.....
- (5) Name of Business Proprietor(s) whether sole trader or in partnership.....
- (6) Place of business
- (7) Name of Designated Institution (state: banker, company, statutory body or society).....
- (8) Gazette Reference to designated institution
.....

(9) Whether first or subsequent charge by same person to same institution

.....

(10) A copy of the instrument creating the charge is annexed hereto and *verified by statutory declaration/accompanied by the original thereof.

Presented for filing by

Signed.....

For Official Use

Registration No Fee paid

Date registered Cross-reference to other charges

.....

Signed

Registrar General

Date satisfaction entered Signed

Registrar General

Form B

COMMERCIAL CREDITS ACT

COMMERCIAL CREDITS REGULATIONS

(REGULATION 8)

APPLICATION FOR INSPECTION/SEARCH

To: The Registrar General,

P.O. Box 100,

Blantyre.

I, the undersigned, hereby apply under regulation 8 of the Commercial Credits Regulations, 1971, to be permitted to inspect the entry or entries in the register maintained by you under the Commercial Credits Act, 1970, relating to the undermentioned person and any documents relating thereto filed in your office.

Name of Person(s) Registered Number of Entry or Entries
.....
.....
.....

Herewith please find search fee of

Dated this day of, 19.....

Signed

Full Name

(in block letters)

Address.....

.....

Application granted

Fee

Paid

Official Receipt No.....

for Registrar General

Form C

COMMERCIAL CREDITS ACT

COMMERCIAL CREDITS REGULATIONS

(REGULATION 9)

APPLICATION FOR OFFICIAL SEARCH AND CERTIFICATE

To: The Registrar General,

P.O. Box 100,

Blantyre.

You are hereby requested under regulation 9 to search in the name of the following person(s) to ascertain whether any commercial charge or charges which are still unsatisfied are the subject of any entry or entries on the register maintained by you under the Commercial Credits Act, 1970 and to supply the prescribed information relating to such entry or entries, if any.

Name of Person(s)

.....
.....
.....
.....
.....

Herewith please find search fee of

Dated this day of, 19.....

Signed

Full Name

(in block letters)

Address.....

Fee

Paid

Official Receipt No.

Certificate issued

for Registrar General

Form D

COMMERCIAL CREDITS ACT

COMMERCIAL CREDITS REGULATIONS

(REGULATION 9)

CERTIFICATE OF OFFICIAL SEARCH

Fee paid.....

Official Receipt No.

Name and Address of Business Proprietor(s)	Place of business	Date charge created
Regd. No.	Date Regd.	Amount secured
Nature of security	Property	
securedIn favour of (Designated Institution)	Date due for satisfaction	Remarks

Certified true particulars of all entries in the Register of Commercial Charges relating to unsatisfied charges executed by of

Signed

Registrar General

Date

Form E

COMMERCIAL CREDITS ACT

COMMERCIAL CREDITS REGULATIONS reg. 13

NOTICE OF SATISFACTION OR CANCELLATION

I, the undersigned, hereby give notice to the Registrar General that a Commercial Charge registered number created by me, was on the day of....., 20.....

*satisfied/cancelled.

Signature:

Full Name:

(in block letters)

Address:.....

.....

Dated this day of, 20.....

To: The Registrar General

P.O. Box 100

Blantyre.

SECOND SCHEDULE reg. 14, G.N. 31A/2005

FEES PAYABLE

K t

1. For registration of a commercial charge 1,000 00
2. For searching any one entry in the register and any document or documents relating to such entry filed in the office of the Registrar General under these Regulations 1,000 00
3. For Certificate of Official Search under regulation 9 500 00
4. For typewritten copy of any document referred to in paragraph 2 hereof for every 100 words 1,000 00
5. For photographic copy of any one sheet of any document referred to in paragraph 2 hereof 500 00
6. On certification of any copy under paragraphs 4 and 5 hereof 100 00

[Chap4807]CHAPTER 48:07

COMMERCIAL ADVERTISING (TRADITIONAL MUSIC)CONTROL

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Recording of traditional music or dancing
4. Use of recordings of traditional music or dancing for advertising
5. Regulations

An Act to provide for the control of the recording and reproduction for commercial advertising purposes of Malawi traditional music and dancing performed as an integral part of any official or public celebrations and for matters incidental thereto or connected therewith

[31ST MARCH 1978]

[Ch4807s1]1. Short title

This Act may be cited as the Commercial Advertising (Traditional Music) Control Act.

[Ch4807s2]2. Interpretation

In this Act unless the context otherwise requires—

“Malawi traditional music or dancing” means any music, dancing, singing or drumming performed in the Malawi customary manner by ceremonial performers or by members of the public as an integral part of, or in connexion with, any official or public celebration or act of public acclaim of the President or of any other notable person or visitor to Malawi.

[Ch4807s3]3. Recording of traditional music or dancing

Any person who, for purposes of use in commercial advertising, records or causes to be recorded, by any method of sound, cinematographic or photographic recording capable of reproduction, any Malawi traditional music or dancing shall be guilty of an offence and liable to a fine of two thousand Kwacha or to imprisonment for a term of one year.

[Ch4807s4]4. Use of recordings of traditional music or dancing for advertising

Any person who publishes or causes to be published any sound, cinematographic or photographic record of any Malawi traditional music or dancing for the purpose of or in connexion with or as background to any advertising of any commercial enterprise or business or of any offer to the public of any sale, letting or hiring of any lands, goods or services shall be guilty of an offence and liable to a fine of two thousand Kwacha or to imprisonment for a term of one year.

[Ch4807s5]5. Regulations

The Minister may, by notice published in the Gazette, make regulations for the better carrying out of the provisions of this Act.

[Chap4808]CHAPTER 48:08

METRICATION

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title

PART II

INTRODUCTION OF THE METRIC SYSTEM

2. Metric units
3. Power of Minister to adapt, alter, convert and modify
4. Conversion of Imperial standard units to metric units
5. Power of Minister to add to, vary or amend Schedules
6. Saving

PART III

WEIGHTS, MEASURES AND INSTRUMENTS USED IN TRADE

7. Interpretation of Part
8. Power of Minister to prohibit non-metric systems
9. Seizure and destruction of prohibited weights and measures
10. Surrender of instruments, seizure, etc.
11. Power of Minister to exempt
12. Conversion of instruments
13. Power of Minister to prohibit importation, sale or manufacture of non-metric instruments
14. Offences and penalties

First Schedule

Second Schedule

9 of 1981

G.N. 48/1981

An Act to introduce the units of the metric system in Malawi, to enable necessary modification of legislation to be effected, to provide that the metric system of weights and measures shall be the only permitted system in trade transactions and for matters incidental thereto

[26TH JUNE 1981]

PART I

PRELIMINARY

[Ch4808s1]1. Short title

(1) This Act may be cited as the Metrication Act.

(2) This Act shall be construed as one with the Weights and Measures Act (hereinafter called the principal Act) so however that, in the case of any conflict between the provisions of this Act and the principal Act, the provisions of this Act shall prevail. Cap. 48:04

PART II

INTRODUCTION OF THE METRIC SYSTEM

[Ch4808s2]2. Metric units

On and after the commencement of this Act the units of the metric system shall have legal force and validity in Malawi and the units of the metric system shall consist of—

- (a) the base units set out in Part I of First Schedule (including their multiples and sub-multiples);
- (b) the supplementary and derived units set out in Part II of the First Schedule; and
- (c) the additional units set out in Part III of the First Schedule.

[Ch4808s3]3. Power of Minister to adapt, alter, convert and modify

The Minister responsible for the administration, of an Act may, in respect of that Act, by Order provide for the adaptation, alteration, conversion or modification of any of the provisions of that Act for the purpose of replacing references to units other than metric units which are either equivalent to such provisions or such approximations thereto as appear to the Minister to be desirable to ensure that, as so adapted, altered, converted or modified, they are expressed in convenient terms.

[Ch4808s4]4. Conversion of Imperial standard units to metric units

The values expressed in terms of any units of the Imperial standard relating to measures of extension whether lineal, superficial or solid, or weight or capacity, may be converted into values expressed in terms of the units of the metric system in accordance with the Second Schedule.

[Ch4808s5]5. Power of Minister to add to, vary or amend Schedules

The Minister may from time to time, by Order, add to, vary or amend the Schedules to this Act as he may think fit.

[Ch4808s6]6. Saving

(1) No Act or thing done prior to the making of any Order pursuant to section 3 shall be challenged only on the ground that such act or thing done was in a unit other than a unit of the metric system.

(2) Nothing in this Part shall affect the legal force and validity of any other system of units lawfully used in Malawi.

PART III

WEIGHTS, MEASURES AND INSTRUMENTS USED IN TRADE

[Ch4808s7]7. Interpretation of Part

In this Part—

“instrument” means a weighing or measuring instrument;

“licensed repairer” means a person licensed pursuant to the principal Act to repair or overhaul instruments;

“measure” means any device for the measurement of length area, capacity or volume;

“weight” means a mass piece, of a kind ordinarily used in association with a weighing instrument, for the determination of quantity according to weight.

[Ch4808s8]8. Power of Minister to prohibit non-metric systems

(1) The Minister may, by Order, specify any area, industry, trade or transaction to be an area, industry, trade or transaction in which—

(a) all weights and measures possessed or used in trade and denominated in units other than metric units shall be surrendered to an assizer on such date and in such circumstances as may be specified in the Order;

(b) all instruments possessed or used in trade and indicating in units other than metric units shall be converted to indicate in metric units within such period and in such circumstances as may be specified in the Order.

(2) When an Order is made under subsection (1) the Minister may, by the same or a subsequent Order, specify a date after which the possession or use in trade in the area, industry, trade or transaction concerned of any weights, measures or instruments which indicate in units other than metric units shall be prohibited.

[Ch4808s9]9. Seizure and destruction of prohibited weights and measures

(1) After the date specified in an Order made under section 8 (2) an assizer or inspector may seize and detain any weight or measure which he has reason to believe is prohibited by the Order.

(2) Unless, within 90 days after the date of seizure, the owner or other person found in possession of such weight or measure institutes proceedings for the recovery thereof on the ground that the same was not prohibited by the Order, giving notice in writing to the Minister of the institution of such proceedings, the weight or measure shall be destroyed.

(3) Proceedings under subsection (2) shall be heard and determined before a court of a Resident Magistrate.

[Ch4808s10]10. Surrender of instruments, seizure, etc.

(1) After the commencement of any period specified in an Order made under section 8 (1) (b), the Government Assizer may, by General Notice published in the Gazette and in such other manner, if any, as he may consider expedient, require any person in the area, industry or trade, or engaged in the transaction, to which the Order relates, who has in his possession for use in trade any instrument to which the Order applies, to surrender such instrument to an assizer on such date and at such place as is specified in the Notice being a date within the period specified in the Order.

(2) After the date specified in an Order made under section 8 (2) an assizer or inspector may seize and detain any instrument which he has reason to believe is prohibited by the Order.

(3) This section does not apply with respect to any instrument which is—

(a) in the possession of a licensed repairer for the purpose of conversion to indicate in metric units;

(b) bona fide possessed or being used for the purposes of any person, industry, trade or transaction for the time being exempted by an Order made under section 11.

[Ch4808s11]11. Power of Minister to exempt

Where the Minister is satisfied that suitable arrangements exist for ultimate compliance with this Part he may, by Order, exempt any person, industry, trade or transaction from the provisions of any Order made under section 8 for such period and subject to such conditions as may be specified in the Order made under this section.

[Ch4808s12]12. Conversion of instruments

(1) Any instrument which is to be converted to indicate in metric units in pursuance of this Part shall be so converted by a licensed repairer.

(2) After completing such conversion, the licensed repairer concerned shall submit the instrument for assize before the same is returned to the possession of any person.

(3) Notwithstanding subsection (2), where an instrument is so fixed, or by reason of its heavy weight or delicate construction, it cannot conveniently be moved, the requirement of that subsection shall be deemed to have been complied with if—

(a) the licensed repairer concerned, in writing, has notified the fact of such conversion and the location of the instrument to an assizer and certified that to the best of his ability and belief such instrument has been rendered by him correct and assizable; and

(b) an assizer, having received a fee of K2, has issued a written authority stating that the instrument, as so converted, may be used in trade.

[Ch4808s13]13. Power of Minister to prohibit importation, sale or manufacture of non-metric instruments

The Minister may, by Order, prohibit the importation, sale or manufacture of instruments intended for use in trade which do not indicate in metric units, and an assizer shall not accept for assize any such instrument so prohibited.

[Ch4808s14]14. Offences and Penalties

(1) Any person who—

(a) after the date specified in an Order made under section 8, has in his possession for use, or uses, in trade any weight, measure or instrument, prohibited by that Order;

(b) not being an assizer or a licensed repairer, converts or purports to convert any instrument for the purposes of this Part;

(c) being a licensed repairer, fails to comply with the requirement of section 12 (2);

(d) imports, sells or manufactures any instrument in contravention of an Order made under section 13; or

(e) fails to comply with a requirement made under section 10 (1),

shall be guilty of an offence and liable to a fine of K500 and every instrument in respect of which an offence under paragraph (a), (d) or (e) was committed shall be forfeited unless the owner or some person acting on his behalf or having a right in such instrument shows cause to the contrary to the satisfaction of the court in accordance with subsection (3).

(2) Paragraphs (a), (d) and (e) of subsection (1) do not apply with respect to any instrument which is—

(a) in the possession of a licensed repairer for the purpose of conversion to indicate in metric units; or

(b) bona fide possessed or being used for the purposes of any person, industry, trade or transaction for the time being exempted by an Order made under section 11.

(3) Where a person is convicted of an offence under paragraph (a), (d) or (e) of subsection (1) the court, unless it considers, for reasons to be recorded by the court, that suitable arrangements can be made for the conversion of the instrument concerned to indicate in metric units, shall order that the instrument be forfeited.

(4) Where an instrument has been seized under section 10 (2) and a person charged with an offence in relation thereto under paragraph (a), (d) or (e) of subsection (1) has not within six months of the date thereof appeared to answer such charge, the Government Assizer may apply to a court of a Resident Magistrate for an order that such instrument shall be forfeited, and the court may make such order in relation to such application as it thinks just.

(5) Where a court other than the High Court fails or refuses to make an order for forfeiture under this section the Government Assizer may appeal against such failure or refusal to the High Court which may make such order, or may dismiss the appeal, and the decision of the High Court shall be final.

(6) Every instrument forfeited under this section shall be destroyed.

FIRST SCHEDULE

(section 2)

PART I

BASIC UNITS

Quantity	Name	Symbol
length	metre	m
mass	kilogram	kg
time	second	s
intensity of electric current	ampere	A
thermodynamic temperature	kelvin	K
luminous intensity	candela	cd
amount of substance	mole	mol

PART II

SUPPLEMENTARY UNITS

Quantity	Name	Symbol
plane angle	radian	rad
solid angle	steradian	sr

DERIVED UNITS

Quantity	Name	Symbol	
area	square metre	m ²	
volume	cubic metre	m ³	
frequency	hertz	Hz	
density (mass density)	kilogram per cubic metre	kg/m ³	
velocity	metre per second	m/s	
angular velocity	radian per second	rad/s	
acceleration	metre per second squared	m/s ²	
angular acceleration	radian per second squared	rad/s ²	
force	newton	N	
pressure (stress)	pascal	Pa	
dynamic viscosity	pascal second	Pa.s	
kinematic viscosity	square metre per second	m ² /s	
work, energy, quantity of heat	joule	J	
power	watt	W	
quantity of electricity	coulomb	C	
electric potential	volt	v	
potential difference	electromotive force		
electric field strength	volt per metre	V/m	
electric resistance	ohm	Ω	
electric capacitance	farad	F	
conductance	siemens	S	
magnetic flux	weber	Wb	
inductance	henry	H	

magnetic flux density	tesla	T
magnetic field strength	ampere per metre	A/m
luminous flux	lumen	lm
luminance	candela per square metre	cd/m ²
illuminance	lux	lx
wave number	1 per metre	m ⁻¹
heat capacity, entropy	joule per kelvin	J/K
specific heat capacity	joule per kilograms kelvin	J/kgK
thermal conductivity	watt per metre kelvin	W/mK
radiant intensity	watt per steradian	W/sr
activity (of a radio-active source)	1 per second	s ⁻¹
torque, moment of force	newton metre	Nm
surface tension	newton per metre	N/m
specific energy	joule per kilogram	J/kg
energy density	joule per cubic metre	J/m ³
current density	ampere per square metre	A/m ²
molar energy	joule per mole	J/mol
moment of inertia	kilogram square metre	kgm ²
momentum	kilogram metre per second	kgm/s

PART III

ADDITIONAL UNITS

Quantity	Name	Symbol
time	minute	min = 60s
hour	h = 60 min	
day	d = 24 h	

angle	degree	$^{\circ} = \pi/180 \text{ rad}$
minute	'	$= 1^{\circ}/60$
second	"	$= 1'/60$
volume	litre	$1 = \text{dm}^3$
mass	tonne	$t = 1,000 \text{ kg}$
temperature interval	degree Celsius	$^{\circ}\text{C} (0^{\circ}\text{C} = 273.15\text{K})$
distance	nautical mile	$n \text{ mile} = 1.852\text{m}$
speed	knot	$kn = 1 \text{ nautical mile per hour}$
area	are	$a = 100\text{m}^2$
	hectare	$ha = 10\,000\text{m}^2$
pressure	bar	$b = 10^5 \text{ Pa}$
	standard atmosphere	$\text{atm} = 101.325 \text{ kPa}$

SECOND SCHEDULE

(section 4)

Conversion of Imperial Standard Units to Equivalent Metric Units

Imperial Standard Units Metric Units

1 yards = 0.9144 metre exactly

1 pound = 0.453 592 37 kilogram exactly

1 gallon = 4.546 09 cubic decimetres approximately

SUBSIDIARY LEGISLATION

(CONVERSION OF INSTRUMENTS) AND (SURRENDER OF WEIGHTS AND MEASURES) ORDERS

under s. 8

(Not reproduced in the Laws of Malawi)

G.N. 52–55/1981

67–80/1981

91–92/1981

95–102/1981

116– 119/1981

7–10/1982

45–50/1982

69–72/1983.

(EXEMPTION) ORDERS

under s.11

(Not reproduced in the Laws of Malawi)

G.N. 28/1983

80/1985

[Chap4809]CHAPTER 48:09

COMPETITION AND FAIR TRADING

ARRANGEMENT OF SECTIONS

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43 of 1998

G.N. 9/2000

An Act to encourage competition in the economy by prohibiting anti-competitive trade practices; to establish the Competition and Fair Trading Commission; to regulate and monitor monopolies and concentrations of economic power; to protect consumer welfare; to strengthen the efficiency of production and distribution of goods and services; to secure the best possible conditions for the freedom of trade; to facilitate the expansion of the base of entrepreneurship and to provide for matters incidental thereto or connected therewith

[1ST APRIL 2000]

PART I

PRELIMINARY

[Ch4809s1]1. Short title

This Act may be cited as the Competition and Fair Trading Act.

[Ch4809s2]2. Interpretation

(1) In this Act, unless the context otherwise requires—

“advertisement” means any form of communication made to the public or a section of the public for the purpose of promoting the supply of goods or services;

“affiliated” means associated with each other, formally or informally, by shareholding or otherwise;

“anti-competitive trade practices” means the trade practices enumerated in sections 32, 33 and 34;

“Chairman” means the Chairman of the Commission appointed under section 5;

“Committee” means a committee of the Commission established under section 14;

“Consumer” includes any person—

(a) who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production and manufacture of any other foods or articles for sale;

(b) to whom a service is rendered;

“controlling interest”, in relation to—

(a) any undertaking means any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the undertaking;

(b) any asset, means any interest which enables the holder thereof to exercise, directly or indirectly, any control whatsoever over the asset;

“customer” means a person who purchases goods or services;

“distribution” includes any act which goods are sold or services are supplied for consideration;

“distributor” means a person who engages in distribution;

“Executive Director” means the Executive Director of the Commission appointment under section 20;

“immediate family member”, in relation to any person, means that person’s spouse, child, parent, brother or sister;

“manufacturing” means transforming, on a commercial scale, raw materials into finished or semi-finished products, and includes the assembling of inputs into finished or semi-finished products but does not include mining;

“member” means a member of the Commission;

“merger” means—

(a) the acquisition of a controlling interest in—

(i) any trade involved in the production or distribution of any goods or services;

(ii) an asset which is or may be utilized for or in connexion with the production or distribution of any commodity, where the person who acquires the controlling interest already has a controlling interest in any undertaking involved in the production or distribution of the same goods or services; or

(b) the acquisition of a controlling interest in any trade whose business consists wholly or substantially in—

(i) supplying goods or services to the person who acquires the controlling interest;

(ii) distributing goods or services produced by the person who acquires the controlling interest;

“monopoly” means a situation in which a single person exercises, or two or more persons with a substantial economic connexion exercise, substantial control of a market for any goods or services;

“person” includes an individual, a company, a partnership, an association and any group of persons acting in concert, whether incorporated or not;

“sale” includes an agreement to sell or offer for sale and includes the exposing of goods for sale, the furnishing of a quotation, whether verbally or in writing, and any other act or notification by which willingness to enter into any transaction for sale is expressed;

“service” includes the sale of goods where the goods are sold in conjunction with the rendering of a service;

(a) in relation to goods, includes supply or re-supply by way of gift, sale, exchange, lease, hire or hire purchase;

(b) in relation to services, does not include the rendering of any services under a contract or employment but includes—

(i) the performance of engagements, for gain or reward (including professional engagements) for any matter; and

(ii) the rendering of services to order, and the provision of services by making them available to potential users, and

“supplier” shall be construed accordingly;

“trade” means any trade, business, industry, profession or occupation, relating to the supply or acquisition of goods or services;

“trade association” means a body of persons, whether incorporated or not, which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members and, for the avoidance of doubt, does not include a trade union as defined in the Labour Relations Act; and Cap. 54:01

“trade practice means” any practice related to the carrying on of any trade and includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trade or class of traders or the production, supply or price in the course of trade of any goods whether real or personal, or of any service.

(2) For the purpose of this Act—

(a) any two companies are to be treated as affiliated enterprises if one of them is a company of which the other is a subsidiary or if both of them are subsidiaries of the same company; and

(b) a group of affiliated enterprises shall be treated as a single enterprise.

(3) Every reference in this Act to the term “market” is a reference to a market in Malawi for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.

(4) References in this Act to the lessening of competition shall, unless the context otherwise requires, include references to hindering or preventing competition.

(5) For the purposes of this Act, the effect on competition in a market shall be determined by reference to all factors that affect competition in that market, including competition from goods or services supplied or likely to be supplied by persons not resident or carrying on business in Malawi.

[Ch4809s3]3. Non-application of the Act

Nothing in this Act shall apply to—

(a) activities of employees for their own reasonable protection as employees;

(b) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;

(c) activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members;

(d) those elements of any agreement which relate exclusively to the use, licence or assignment of rights under, or existing by virtue of, any copyright, patent or trademark;

(e) any act done to give effect to a provision of an agreement referred to in paragraph (d);

(f) activities expressly approved or required under a treaty or agreement to which Malawi is a party;

(g) those activities of professional associations which relate exclusively to the development and enforcement of professional standards of competence reasonably necessary for the protection of the public; and

(h) such business or activity as the Minister may, by notice published in the Gazette, specify.

PART II

THE COMPETITION AND FAIR TRADING COMMISSION

[Ch4809s4]4. Establishment of the Commission

There is hereby established a body to be known as Competition and Fair Trading Commission (in this Act otherwise referred to as the "Commission") which shall be a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name, and with power, subject to this Act, to do or perform all such acts and things as a body corporate may by law do or perform.

[Ch4809s5]5. Composition of the Commission

(1) The Commission shall consist of—

- (a) the following members nominated by the Minister and appointed by the President—
 - (i) two persons representing business interests;
 - (ii) a lawyer;
 - (iii) an economist;
 - (iv) an accountant; and
 - (v) two persons representing consumer interests.
- (b) the following members ex officio—
 - (i) the Secretary to the Treasury or his representative;
 - (ii) the Secretary for Commerce and Industry or his representative; and
 - (iii) the General Manager of the Malawi Bureau of Standards or his representative.

(2) A representative of a member ex officio referred to in subsection (1) shall be designated by, or on behalf of, the member ex officio by a notice in writing to the Commission to attend the meetings of the Commission, and upon such designation such representative shall not attend to the business of the Commission by representation.

(3) The Chairman shall be elected by the Commission from among its members:

Provided that no member appointed under paragraph (b) of subsection (1) shall be elected as Chairman.

(4) The names of all members as first constituted and every change of membership shall be published in the Gazette.

(5) The persons to be appointed under subsection (1) shall be chosen for their ability and experience in industry, commerce or administration or their professional qualifications or their suitability otherwise for appointment.

(6) A member shall not be in the employ of the Commission nor serve on a full time basis.

[Ch4809s6]6. Tenure of office and vacancies

(1) A member, other than a member ex officio, shall hold office for a period of three years and shall be eligible for re-appointment for another three-year term but the office of that member shall become vacant—

- (a) if he resigns by giving one month notice in writing to the Minister;
- (b) upon his death;
- (c) if he is absent without valid excuse from three consecutive meetings of the Commission of which he has had notice;
- (d) if he becomes an undischarged bankrupt;
- (e) if he becomes of unsound mind; and
- (f) if he participates, directly or indirectly, in an activity which is in contravention of this Act.

(2) On vacation of office by a member, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of section 5 (1) (a) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

[Ch4809s7]7. Allowances of members

Members of the Commission shall be paid such an allowance as the Minister shall determine.

[Ch4809s8]8. Functions of the Commission

(1) It shall be the function of the Commission to regulate, monitor, control and prevent acts or behaviour which are likely to adversely affect competition and fair trading in Malawi.

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

- (a) to carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of business so as to determine whether any enterprise is carrying on anti-competitive trade practices or unfair trading and the extent of such practices, if any;
- (b) to carry out investigations on its own initiative or at the request of any person who may be adversely affected by a proposed merger;
- (c) to take such action as it considers necessary or expedient to prevent or redress the creation of a merger or the abuse of a dominant position by an enterprise;
- (d) to provide persons engaged in business with information regarding their rights and duties under this Act;

(e) to provide information for the guidance of consumers regarding their rights under this Act;

(f) to undertake studies and make available public reports regarding the operation of this Act;

(g) to cooperate with and assist any association or body of persons to develop and promote the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act;

(h) to advise the Minister on such matters relating to the operation of this Act as it thinks fit or as may be requested by the Minister; and

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

[Ch4809s9]9. Commission shall seek information

The Commission shall obtain such information as it considers necessary to assist it in its investigation and, where it considers appropriate, shall examine and obtain verification of documents submitted to it.

[Ch4809s10]10. Powers of the Commission

(1) For the purposes of carrying out its functions under this Act, the Commission is hereby empowered to—

(a) summon and examine witnesses;

(b) call for and examine documents;

(c) administer oaths;

(d) require that any document submitted to the Commission be verified by affidavit;
and

(e) adjourn any investigation from time to time.

(2) The Commission may hear orally any person who, in its opinion, will be affected by an investigation under this Act, and shall so hear the person if the person has made a written request for a hearing, showing that his is an interested party likely to be affected by the result of the investigation or that there are particular reasons why he should be heard orally.

(3) The Commission may require a person engaged in business or a trade or such other person as the Commission considers appropriate, to state such facts concerning goods manufactured, produced or supplied by him as the Commission may think necessary to determine whether the conduct of the business in relation to the goods or services constitutes an anti-competitive practice.

(4) If the information specified in subsection (3) is not furnished to the satisfaction of the Commission, it may make a finding on the basis of the information available before it.

[Ch4809s11]11. Hearings to be held in public

Hearings of the Commission shall take place in public but the Commission may, whenever the circumstances so warrant, conduct a hearing in private.

[Ch4809s12]12. Policy directions

(1) The Commission may, where necessary, seek the general direction of the Minister as to the manner in which it is to carry out its duties under this part of the Act.

(2) Any direction given by the Minister under subsection (1) shall be in writing and published by the Commission in the Gazette.

[Ch4809s13]13. Proceedings of the Commission

(1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

(2) The Commission shall meet for the transaction of business at least once every three months at such places and at such times as the Chairman may determine.

(3) A special meeting of the Commission may be called by the Chairman upon written notice of not less than seven days received from any member of the Commission and shall be called if at least four members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) Half of the members shall form the quorum of any meeting of the Commission.

(5) There shall preside at any meeting of the Commission—

(a) the Chairman; and

(b) in the absence of the Chairman such member as the Chairman may designate or such member as the members present and forming a quorum may elect from among their number for the purpose of that meeting.

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

(7) No member appointed under section 5 (1) (a) shall attend to the business of his office by representation.

[Ch4809s14]14. Committees of the Commission

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

(2) The Commission may appoint as members of a committee established under subsection (1) persons who are or are not members of the Commission and such persons shall hold office for such period as the Commission may determine.

(3) Subject to any specific or general direction of the Commission, a committee established under subsection (1) may regulate its own procedure.

[Ch4809s15]15. Minutes of meetings

The Commission shall cause minutes to be kept of the proceedings of every meeting of the Commission and of every meeting of a committee of the Commission.

[Ch4809s16]16. Disclosure of interest

(1) If any member is present at a meeting of the Commission or of any committee of the Commission at which any matter which is the subject of consideration is a matter in which that person or his immediate family member or his professional or business partner is directly or indirectly interested in a private or professional capacity, he shall, as soon as is practicable after the commencement of the meeting, disclose such interest and, unless the Commission or the committee otherwise directs, that person shall not take part in any consideration or discussion of, or vote on, any question touching on such matter.

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

[Ch4809s17]17. Protection of members

No action, suit or other proceedings shall be brought or instituted personally against any member in respect of any act done in good faith in the course of carrying out the provisions of this Act.

[Ch4809s18]18. Invited persons

(1) The Commission may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate an officer in the public service, to attend any meeting of the Commission or of any of its committees and take part in the deliberations of the meeting, but such person or officer shall not be entitled to vote at the meeting.

(2) Section 16 shall apply, mutatis mutandis, to a person or an officer attending a meeting of the Commission pursuant to subsection (1).

PART III

SECRETARIAT

[Ch4809s19]19. Secretariat of the Commission

The Secretariat of the Commission shall consist of the Executive Director and other employees of the Commission appointed under this Act.

[Ch4809s20]20. Executive Director of the Commission

(1) The Commission shall appoint, on such terms and conditions as it may determine, an Executive Director of the Commission who shall be the chief executive officer of the Commission and shall in addition perform such duties as the Commission shall assign to his office and ensure the effective administration and implementation of this Act.

(2) Without derogation from the generality of the responsibilities and duties of the Executive Director conferred under subsection (1), the Executive Director shall be responsible for the day to day administration of the Commission.

(3) The Executive Director or such other officer of the Commission as the Executive Director may designate, shall attend meetings of the Commission and of any committee of the Commission and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Executive Director or such other officer to withdraw from such meeting.

(4) Section 16 shall apply, mutatis mutandis, to the Executive Director and of such other officer referred to in this section.

[Ch4809s21]21. Other employees

(1) The Commission may appoint, on such terms and conditions as it may determine, such other employees, subordinate to the Executive Director, as it considers necessary for the performance of its functions and to assist the Executive Director in discharging his duties and responsibilities.

(2) The Commission may delegate to the Executive Director the appointment of employees of such junior ranks as the commission shall specify.

[Ch4809s22]22. Disclosure of interest by employees, etc.

(1) An employee of the Commission or a consultant to the Commission who, or whose immediate family member is directly or indirectly interested in a private or professional or official capacity in any matter being considered by the Commission, shall disclose such interest.

(2) A disclosure of interest made under this section shall be made to the Executive Director who shall take such decision as he considers appropriate in each case and submit a report thereon to the Commission.

[Ch4809s23]23. Oath of secrecy

Every—

- (a) member of the Commission;

- (b) member of a committee of the Commission;
- (c) employee of the Commission; and
- (d) consultant in the service of the Commission,

shall, upon assumption of his office, take such oath of secrecy as may be approved by the commission or as may otherwise be prescribed under this Act.

[Ch4809s24]24. Prohibition of publication or disclosure of information by unauthorized persons

(1) No person shall, without the consent in writing given by or on behalf of the Commission, publish or disclose to any person, otherwise than in the course of his duties, contents of any document communication of information which relates to, and which has come to his knowledge in the course of his duties under this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and, upon conviction, liable to a fine of K50,000 and to imprisonment for three years.

[Ch4809s25]25. Protection of employees

No action, suit or other proceedings shall be brought or instituted personally against any employee in respect of any act done in good faith in the course of carrying out the provisions of this Act.

PART IV

FINANCIAL PROVISIONS

[Ch4809s26]26. Funds of the Commission

- (1) The funds of the Commission shall consist of such monies as may—
 - (a) be appropriated by Parliament for the purposes of the Commission;
 - (b) be obtained as a result of the levy imposed under section 27;
 - (c) be paid to the Commission by way of grants or donations;
 - (d) be received by the Commission under subsection (2);
 - (e) constitute proceeds of sales of the annual reports and progress reports of the Commission: and
 - (f) otherwise vest or accrue to the Commission.
- (2) The Commission may—
 - (a) accept money by way of grants or donations from any source in or outside Malawi;

(b) subject to the approval of the Minister and the Minister responsible for Finance, raise, by way of loans from any source in or outside Malawi, such money as it may require for the discharge of its functions; and

(c) Charge and collect fees in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Commission.

(3) The Commission may invest in such manner as it thinks fit such funds as it does not immediately require for the performance of its functions.

[Ch4809s27]27. Levy

The Commission may, from time to time, by order published in the Gazette, impose a levy and such levy shall be appropriated for the general operations of the Commission.

[Ch4809s28]28. Financial year

The financial year of the Commission shall be the period of twelve months ending on 30th June in each year or on such other date as the Minister may specify by Order published in the Gazette:

Provided that the first financial year of the Commission may be such shorter or longer period than twelve months as the Minister shall determine but being not less than six months or more than eighteen months.

[Ch4809s29]29. Accounts

(1) The Commission shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Commission shall be audited annually by independent auditors appointed by the Commission.

[Ch4809s30]30. Annual reports

(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Commission shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Commission, and there shall be appended to the report—

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Commission may consider appropriate or as the Minister may direct.

(3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly and subsequently the report shall be published.

[Ch4809s31]31. Progress reports

The Commission shall, at the end of every financial year, produce a progress report on its activities during that period and shall publish the Report.

PART V

ANTI-COMPETITIVE TRADE PRACTICES, ETC.

[Ch4809s32]32. Enumeration of anti-competitive trade practices

(1) Any category of agreements, decisions and concerted practices which are likely to result in the prevention, restriction or distortion of competition to an appreciable extent in Malawi or in any substantial part of it are declared anti-competitive trade practices and are hereby prohibited.

(2) Subject to the provisions of subsection (1), enterprises shall refrain from the following acts or behaviour if they limit access to markets or otherwise unduly restrain competition, or have or are likely to have adverse effect on trade or the economy in general—

(a) predatory behaviour towards competitors including the use of cost pricing to damage, hinder or eliminate competition;

(b) discriminatory pricing and discrimination, in terms and conditions, in the supply or purchase of goods or services, including by means of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;

(c) Making the supply of goods or services dependant upon the acceptance of restrictions on the distribution or manufacture of competing or other goods or the provision of competing or other services;

(d) making the supply of particular goods or services dependant upon the purchase of other goods or services from the supplier to the consignee;

(e) imposing restrictions where or to whom or in what form or quantities goods supplied or other goods may be sold or exported;

(f) resale price maintenance; or

(g) trade agreements fixing prices between persons engaged in the business of selling goods or services, which agreements hinder or prevent the sale or supply or purchase of goods or services between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services.

[Ch4809s33]33. Trade agreements

(1) It shall be an offence for enterprises engaged on the market in rival or potentially rival activities to engage in the practices appearing in subsection (3):

Provided that this subsection shall not apply where enterprises are dealing with each other in the context of a common entity wherein they are under common control or where they are otherwise not able to act independently of each other.

(2) The section applies to formal, informal, written and unwritten agreements and arrangements.

(3) For the purposes of subsection (1), the following are prohibited—

(a) colluding in the case of monopolies of two or more manufacturers, wholesalers, retailers, contractors or suppliers of services, in settling uniform price in order to eliminate competition;

(b) collusive tendering and bid-rigging;

(c) market or customer allocation agreements;

(d) allocation by quota as to sales and production;

(e) collective action to enforce arrangements;

(f) concerted refusals to supply goods or services to potential purchasers; or

(g) collective denials of access to an arrangement or association which is crucial to competition.

[Ch4809s34]34. Anti-competitive trade practices by associations

(1) The following practices conducted by or on behalf of a trade association are declared to be anti-competitive trade practices and are prohibited—

(a) unjustifiable exclusion from a trade association of any person carrying on or intending to carry on in good faith the trade in relation to which the association is formed; or

(b) making of recommendations, directly or indirectly, by a trade association, to its members or to any class of its members which relate to—

(i) the prices charged or to be charged by such members or any such class of members or to the margins included or to be included in the prices or to the pricing formula used or to be used in the calculation of those prices; or

(ii) the terms of sale (including discount, credit, delivery, and product and service guarantee terms) of such members or any class of members and which directly affects prices or profit margins included in the pricing formula.

(2) Any trade association which contravenes the provisions of subsection (1) commits an offence.

[Ch4809s35]35. Control of mergers and takeovers

(1) Any person who, in the absence of authority from the Commission, whether as a principal or agent and whether by himself, or his agent, participates in effecting—

(a) a merger between two or more independent enterprises;

(b) a takeover of one or more such enterprises by another enterprise, or by a person who control another such enterprise,

where such a merger or takeover is likely to result in substantial lessening of competition in any market shall be guilty of an offence.

(2) No merger or takeover made in contravention to subsection (1) shall have any legal effect and no rights or obligations imposed on the participating parties by any agreement in respect of the merger or takeover shall be legally enforceable.

[Ch4809s36]36. Application to the Commission for authorization

Any person may apply to the Commission for an order authorizing that person to effect a merger or takeover.

[Ch4809s37]37. Investigation by the Commission

(1) The Commission shall investigate any application made under section 36 and for that purpose the Commission shall be entitled to require any participant in the market within which a merger or takeover is proposed to take place to grant to the Commission access to records relating to patterns of ownership and percentages of sales accounted for by participants in the proposed merger or takeover or by other leading enterprises in the relevant sector.

(2) The Commission may require any person possessing such records to give to the Commission copies of those records or alternatively to submit such records to the Commission for copying by the Commission.

[Ch4809s38]38. Criteria for evaluating application for authorization

(1) In evaluating an application under section 36, the Commission shall have due regard to the following criteria—

(a) a merger or takeover shall be regarded as disadvantageous to the extent that it is likely to reduce competition in the domestic market and increases the ability of producers of the goods or services in question to manipulate domestic prices, output and sales;

(b) a merger or takeover shall be regarded as advantageous to Malawi to the extent that it is likely to result in—

(i) a substantially more efficient unit with lower production or distribution costs;

(ii) an increase in net exports;

- (iii) an increase in employment;
- (iv) lower prices to consumers;
- (v) an acceleration in the rate of economic development;
- (vi) a more rapid rate of technological advancement by enterprises in Malawi.

(2) The Commission shall not authorize a merger or takeover unless on balance the advantages to Malawi outweigh the disadvantages.

[Ch4809s39]39. Order of the Commission on mergers or takeovers

(1) The Commission shall, within forty-five days of receipt of an application or the date on which the applicants provide the information sought by the Commission if that date is later, make an order concerning and an application for authorization of a merger or takeover.

(2) An order made under subsection (1) may approve or reject the application, or it may approve the application on condition that certain steps be taken to reduce negative effects of the merger or takeover on competition.

(3) The Commission shall cause an order made under subsection (1) to be published in the Gazette not later than fourteen days after it is made.

[Ch4809s40]40. Enforcement of orders

(1) The Commission or any person in whose favour or for whose benefit an order has been made may lodge a copy of the order, certified by the Commission or a person authorized by the Commission, with the Registrar of the High Court and the Registrar shall forthwith record the order as a judgment of the High Court.

(2) An order that has been recorded under subsection (1) shall, for the purposes of enforcement, have the effect of a civil judgment of the High Court.

[Ch4809s41]41. Misuse of market power

(1) Any person that has a dominant position of market power shall not use that power for the purpose of—

- (a) eliminating or damaging a competitor in that or any other market;
- (b) preventing the entry of a person into that or any other market; or
- (c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

(2) Any person who contravenes the provisions of subsection (1) commits an offence.

[Ch4809s42]42. Monitoring concentration of economic power, etc.

The Commission shall keep the structure of production of goods and services in Malawi under review to determine where concentrations of economic power or anti-competitive trade

practices exist whose detrimental impact on competition and the economy outweigh the efficiency advantages, if any.

[Ch4809s43]43. Unfair trading

(1) A person shall not, in relation to a consumer—

(a) withhold or destroy producer or consumer goods, or render unserviceable or destroy the means of production and distribution of such goods, whether directly or indirectly, with the aim of bringing about a price increase;

(b) exclude liability for defective goods;

(c) in connexion with the supply of goods or services, make any warranty—

(i) limited to a particular geographic area or sales point;

(ii) falsely representing that products are of a particular style, model or origin;

(iii) falsely representing that the goods are new or of specified age; or

(iv) representing that products or services have any sponsorship, approval, performance and quality characteristics, components, materials, accessories, uses or benefits which they do not have;

(d) engage in conduct that is likely to mislead the public as to the nature, price, availability, characteristics, suitability for a given purpose, quantity or quality of any products or services;

(e) supply any product which is likely to cause injury to health or physical harm to consumers, when properly used, or which does not comply with a consumer safety standard which has been prescribed under any written law;

(f) claim payment for unsolicited goods or services;

(g) engage in unconscionable conduct in carrying out trade in goods or services;

(h) engage in pyramid selling of goods and services;

(i) engage in bait selling;

(j) offer gifts or prizes with no intention of supplying them; and

(k) put out an advertisement which is misleading or deceptive.

(2) Any person who contravenes the provisions of subsection (1) commits an offence.

[Ch4809s44]44. Authorization of allowable acts

(1) The Commission may authorize any act, agreement or understanding which is not prohibited outright by this Act, that is, one which is not necessarily illegal unless abused if that act,

agreement or understanding is consistent with the objectives of this Act and the Commission considers that, on balance, the advantage to Malawi outweigh the disadvantages.

(2) The Commission shall not authorize acts, agreements or understandings of a kind described in sections 33 (3), 41 (1) and 43 (1).

PART VI

MISCELLANEOUS PROVISIONS

[Ch4809s45]45. Investigating officers

(1) The Commission may designate any of its employees to be investigating officers for the purposes of this Act.

(2) Investigating officers shall carry out their functions under this Act subject to such directions as the Commission may give them.

(3) The Commission shall cause every investigating officer to be furnished with a certificate of appointment, which the investigating officer shall exhibit on demand by any interested person before carrying out any function under this Act.

[Ch4809s46]46. Powers of entry and inspection

(1) An investigating officer may at all reasonable times and on the production of a search warrant obtained from a court of law—

(a) enter any premises in or on which there is reasonable suspected to be any book, record or document relating to any anti-competitive trade practice or unfair trade practice or any actual or potential merger, takeover or monopoly situation; and

(b) require any person upon the premises—

(i) to disclose all information at his disposal; and

(ii) to produce any book, record or document or copy thereof or extract therefrom,

that may relate in any way to any anti-competitive trade practice, unfair trade practice, merger, takeover or monopoly situation referred to in paragraph (a); and

(c) make copies of or take extracts from any book; record or document referred to in paragraph (b).

(2) Any person who, without lawful excuse—

(a) hinders or prevents an investigating officer from exercising any power under subsection (1); or

(b) fails or refuses to comply with any requirement of an investigating officer under subsection (1); or

(c) upon being required under subsection (1) or disclose any information, fails or refuses to do so or provides information that is false or which he does not believe on reasonable grounds to be true,

shall be guilty of an offence and, upon conviction, be liable to a fine of K10,000 or to imprisonment for two years.

[Ch4809s47]47. Secrecy to be observed

(1) A member of the Commission or of a committee thereof, and every investigating officer and other person appointed or employed under this Act shall not disclose to any person, except in the performance of his functions under this Act or when required to do so by any written law, any information which he may have acquired in the course of his duties in relation to the financial or business affairs of any person, undertaking or business.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and, upon conviction, be liable to a fine of K1,000 or to imprisonment for two years.

[Ch4809s48]48. Appeal against finding of the Commission

(1) Any person who is aggrieved by a finding of the Commission may, within fifteen days after the date of that finding, appeal to a Judge in Chambers.

(2) The Judge in Chambers may—

- (a) confirm, modify or reverse the findings of the Commission or any part thereof; or
- (b) direct the Commission to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

(3) In giving any direction under this section, the Judge shall—

- (a) advise the Commission of his reasons for doing so; and
- (b) give to the Commission such directions as he thinks fit concerning the reconsideration of the matter by the Commission.

(4) In reconsideration of the matter, the Commission shall have regard to the Judge's reasons for giving a direction.

[Ch4809s49]49. Operation of order pending determination of appeal

Where an appeal is brought against any finding of the Commission any directions or order of the Commission based on such findings shall remain in force pending the determination of the appeal, unless the Judge otherwise orders.

[Ch4809s50]50. Offences

Any person who—

(a) contravenes or fails to comply with provision of this Act or any regulations made hereunder, or any directive or order lawfully given, or any requirement lawfully imposed under this Act or any regulations made hereunder;

(b) omits or refuses—

(i) to furnish any information when required by the Commission to do so; or

(ii) to produce any document when required to do so by a notice sent by the Commission; or

(c) knowingly furnishes any false information to the Commission,

shall be guilty of an offence.

[Ch4809s51]51. Penalty for offences

A person guilty of an offence under this Act for which no specific penalty is provided shall be liable to a fine of K500,000 or of an amount equivalent to the financial gain generated by the offence, if such amount be greater, and to imprisonment for five years

[Ch4809s52]52. Civil liability

Any person who suffers injury, loss or harm as a result of any agreement, arrangement, undertaking, act or omission which is prohibited under this Act may recover damages by way of civil proceedings in the High Court from the person responsible for any such agreement, arrangement, undertaking, act or omission.

[Ch4809s53]53. Regulations

The Minister may, on the advice of the Commission, make regulations for carrying into effect the provisions of this Act, and, in particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) anything required to be prescribed under, or for the purposes of, this Act;

(b) any forms required for the purposes of this Act; and

(c) fees payable in respect of any service provided by the Commission.

[Ch4809s54]54. Government to be bound

This Act shall apply to and bind the Government.

SUBSIDIARY LEGISLATION

COMPETITION AND FAIR TRADING REGULATIONS

under s. 53

G.N. 20/2006

1. Citation

These Regulations may be cited as the Competition and Fair Trading Regulations.

2. Oath of secrecy

(1) Every member of the Commission or a committee of the Commission upon the assumption of his office in terms of section 23, shall take the oath of secrecy in the prescribed form contained in the First Schedule hereto.

(2) Every employee of the Commission or consultant in the service of the Commission upon the assumption of his office or duties, as the case may be, in terms of section 23, shall take the oath of secrecy in the prescribed form contained in the First Schedule hereto.

3. Application for authorization for relocation of core-company assets

(1) An enterprise may apply to the Commission for authorization for relocation of core-company assets in terms of section 8 (1) of the Act.

(2) The application referred to in subregulation (1) shall be made in the prescribed form contained in the Second Schedule hereto.

4. Application for authorization of exclusive dealing arrangement

(1) An enterprise may apply to the Commission for authorization to enter into an exclusive dealing arrangement, in terms of section 32 (2) (c) of the Act, where the enterprise is of the view that such agreement would not—

- (a) limit access to market;
- (b) unduly restrain competition; or
- (c) have or likely to have adverse effect on trade or the economy in general.

(2) The application referred to in subregulation (1) shall be made in the prescribed form contained in the Second Schedule hereto.

5. Application for authorization for full-line forcing, bundling or tying arrangements

(1) An enterprise may apply to the Commission for authorization to engage in full-line forcing, bundling or tying arrangements, in terms of section 32 (2) (d) of the Act, where the enterprise is of the view that such acts would not—

- (a) limit access to markets;
- (b) unduly restrain competition; or
- (c) have or likely to have adverse effect to trade or the economy in general.

(2) The application referred to in subregulation (1) shall be made in the prescribed form contained in the Second Schedule hereto.

6. Application for authorization for resale price maintenance

(1) An enterprise may apply to the Commission for authorization to engage in resale price maintenance in terms of section 32 (2) (f) of the Act, where the enterprise is of the view that such act would not—

- (a) limit access to markets;
- (b) unduly restrain competition; or
- (c) have or likely to have adverse effect on trade or the economy in general.

(2) The application referred to in subregulation (1) shall be made in the prescribed form contained in the Second Schedule hereto.

7. Application for authorization to enter into trade agreement

(1) An enterprise may apply to the Commission for authorization to enter into trade agreement where the enterprise is of the view that such agreement would not—

- (a) hinder or prevent the sale or supply or purchase of goods or services between persons;
- (b) limit or restrict the terms and conditions of sale or purchase between persons engaged in the sale of purchased goods or services in terms of section 32 (2) (g) of the Act.

(2) The application referred to in subregulation (1) shall be made in the prescribed form contained in the Second Schedule hereto.

8. Application for authorization for negative clearance

(1) An enterprise may apply to the Commission for authorization for negative clearance in terms of section 32 (2) of the Act, where the enterprise is of the view that such act would not—

- (a) limit access to markets;
- (b) unduly restrain competition; or
- (c) have or likely to have adverse effect to trade or the economy in general.

(2) The application referred to in subregulation (1) shall be made in the prescribed form contained in the Second Schedule hereto.

9. Application for authorization of a merger, takeover or acquisition

Any person who wishes to effect a merger, takeover or acquisition between two or more enterprises in terms of section 35 of the Act, shall apply to the Commission for authorization in the prescribed form contained in the Second Schedule hereto.

10. Unfair trading practices

(1) Any person may lodge a complaint with the Commission in the prescribed form contained in the Third Schedule hereto, regarding unfair trading practice in terms of section 43 of the Act.

11. Fees

(1) Any person who applies for authorization to the Commission under regulations 3 to 9 shall pay such fees as set out in the Fourth Schedule hereto.

(2) The Commission may from time to time revise the fees referred to in subregulation (1).

12. Consideration of the applications by the Commission

(1) The Commission shall consider an application made by an enterprise taking into consideration the objectives of the Act and in order to give effect to the same.

(2) The Commission may, where necessary—

(a) investigate any application made under the regulations above and for that purpose may—

(i) require from the enterprise making the application to furnish the Commission with any necessary documents; or

(ii) access the records of the enterprise;

(b) require any person possessing the records of an enterprise to give to the Commission copies of those records;

(c) require the personal attendance of the persons making the application before the Commission to explain or clarify matters; or

(d) seek the views of other enterprises who are carrying on similar business as the applicant or the views of the persons who may be affected if such request was granted by the Commission.

(3) The Commission shall make its determination whether or not to grant the authorization within forty-five (45) days of receipt of the application:

Provided that where the Commission requests additional information the forty-five (45) days shall start running from the date the Commission acquires the requested information.

(4) The Commission shall inform an applicant of its decision in writing and, where the Commission has rejected the application, it shall furnish the applicant with the reasons for rejecting the application.

13. Offence and penalty

(1) Any person who contravenes or fails to comply with the provisions of these Regulations commits an offence.

(2) Any person guilty of an offence under subregulation (1) shall, upon conviction, be liable to a fine of K1,000 and to three (3) months imprisonment.

FIRST SCHEDULE

OATH OF SECRECY FORMS s. 23; reg. 2

FORM I OATH OF SECRECY FOR A MEMBER OF THE COMMISSION

FORM II OATH OF SECRECY FOR A MEMBER OF A COMMITTEE OF THE COMMISSION

FORM III OATH OF SECRECY FOR AN EMPLOYEE OF THE COMMISSION

FORM IV OATH OF SECRECY FOR A CONSULTANT IN THE SERVICE OF THE COMMISSION

FORM I

THE COMPETITION AND FAIR TRADING ACT

(CAP 48:09)

CONFIDENTIAL

SOLEMN AFFIRMATION

OATH OF SECRECY FOR A MEMBER OF THE COMPETITION AND FAIR TRADING COMMISSION s. 23; reg. 2 (1)

I, being called upon to exercise the duties and functions of a member of the Competition and Fair Trading Commission, in pursuance of section 23 of the Act, do swear that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of the exercise of my duties or functions as such.

SO HELP ME GOD

Signed:

Sworn before me this day of, 20

.....

Commissioner for Oaths

FORM II

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

CONFIDENTIAL

SOLEMN AFFIRMATION

OATH OF SECRECY FOR A MEMBER OF A COMMITTEE OF THE COMPETITION AND FAIR TRADING COMMISSION s. 23; reg. 2 (1)

I, being called upon to exercise the duties and functions of a member of a committee of the Competition and Fair Trading Commission, in pursuance of section 23 of the Act, do swear that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of the exercise of my duties or functions as such.

SO HELP ME GOD

Signed:

Sworn before me this day of, 20

.....

Commissioner for Oaths

FORM III

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

CONFIDENTIAL

SOLEMN AFFIRMATION

OATH OF SECRECY FOR AN EMPLOYEE OF THE COMPETITION AND FAIR TRADING COMMISSION s. 23; reg. 2 (2)

I, being called upon to exercise the duties and functions as an employee of the Competition and Fair Trading Commission, in pursuance of section 23 of the Act, do swear that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of the exercise of my duties or functions as such.

SO HELP ME GOD

Signed:

Sworn before me this day of, 20

.....

Commissioner for Oaths

FORM IV

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

CONFIDENTIAL

SOLEMN AFFIRMATION

OATH OF SECRECY FOR A CONSULTANT IN THE SERVICE OF THE COMPETITION AND FAIR TRADING COMMISSION s. 23; reg. 2 (2)

I, being in the service of the Competition and Fair Trading Commission as a consultant, in pursuance of section 23 of the Act, do swear that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of the exercise of my duties or functions as such.

SO HELP ME GOD

Signed:

Sworn before me this day of, 20

.....

Commissioner for Oaths

SECOND SCHEDULE

FORMS

FORM NO. CFTC/I APPLICATION FOR AUTHORIZATION FOR A PROPOSED RELOCATION OF CORE COMPANY ASSETS

FORM NO. CFTC/II APPLICATION FOR AUTHORIZATION FOR EXCLUSIVE DEALING
ARRANGEMENT

FORM NO. CFTC/III APPLICATION FOR AUTHORIZATION FOR A FULL-LINE FORCING BUNDLING
OR TYING ARRANGEMENTS

FORM NO. CFTC/IV APPLICATION FOR AUTHORIZATION FOR RESALE PRICE MAINTENANCE

FORM NO. CFTC/V APPLICATION FOR AUTHORIZATION FOR A TRADE AGREEMENT

FORM NO. CFTC/VI APPLICATION FOR AUTHORIZATION OF A PROPOSED
MERGER/TAKEOVER/ACQUISITION

FORM NO. CFTC/VII APPLICATION FOR AUTHORIZATION FOR NEGATIVE CLEARANCE

FORM NO. CFTC/I

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

APPLICATION FOR AUTHORIZATION OF A PROPOSED RELOCATION OF CORE COMPANY ASSETS s. 8
(1), reg. 3

To: The Executive Director

The Competition and Fair Trading Commission

P.O. Box 30366

Lilongwe 3

PART I

BACKGROUND INFORMATION

1. Information from the Applicant(s):

Give details of—

(a) name and address of undertaking:

.....
.....

(b) nature of the undertaking's business:

.....
.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

.....
.....
.....

2. Information of the other parties to the arrangement:

For each party to the arrangement (except the applicant) give details of:

(a) name and address of undertaking:

.....
.....
.....

(b) nature of the undertaking's business:

.....
.....
.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

.....
.....
.....

3. Address of service:

Give an address to which all communications may be made and documents delivered):

.....
.....

4. Appointment of Representatives:

Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

5.1 If yes, please give details requested below:

- (a) name of representative:
- (b) address of representative:
.....
- (c) name of person to be contacted (if different from (b) above):
.....
- (d) telephone number and fax number:

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent—

- (a) name of representative:
.....
.....
- (b) address of representative:
.....
.....
- (c) name of person to be contacted (and address, if different from (b) above):
.....
.....
.....
- (d) telephone number and fax number:

PART II

DETAILS OF THE CONDUCT, RELOCATION OF COMPANY ASSETS

7. Give a full listing and description of the plant and machinery to be relocated out of Malawi and subject of this notification. Include the plant rated capacity, current utilization rate, dates of manufacture and purchase, and country of origin.

.....

7.1 Give a full description of the production process and an identification of where the plant and machinery to be relocated is used.

.....

.....

7.2 Indicate whether or not the plant and machinery has alternative usage in Malawi and the current product or service supply situation in the country.

7.3 Give details of firms and their locations that are using similar plant and machinery in Malawi.

7.4 Give the market value of the plant and machinery to be relocated.

PART III

MARKET STRUCTURE

Structure of Supply in affected Markets

8. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate—

8.1 Distribution systems prevailing on the affected markets and their importance, i.e. who are the suppliers and the service providers to your company?

.....
.....

8.2 Indicate the anticipated effects of the relocation on the company's product lines, customers and consumers, resellers and other service providers, etc. (indicate whether the effects are positive or negative) Explain.

8.3 What are relative market shares of other suppliers/manufacturers using similar plant and machinery?

.....
.....

8.4 Is your company and industry affected by imported products in markets?

.....
.....

Structure of Demand in affected Markets

9. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer.

Customer 1	%
Customer 2	%

Customer 3	%
Customer 4	%
Customer 5	%
Others	%

9.1 State the name, address, fax, and telephone numbers of the contact person for each customer mentioned in 9 above:

.....

.....

.....

.....

.....

9.2 Explain the structure of demand in terms of—

(a) what has been the trend in the demand for the products from the plant and machinery to be relocated (i.e. downward, stable, upward, etc.). Please itemize trend for each product?

.....

.....

.....

.....

(b) what would you consider as the strong factors to your products doing well on the market, why do customers prefer your products?

.....

.....

(c) what is the degree of concentration or dispersion of customers on the Malawian market?

.....

(d) the basis of segmentation of customers into different groups and describe the “typical customer” of each group:

.....

(e) the importance of exclusive distribution contracts and other types of long-term contracts:

(f) the extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:

.....
.....

PART IV

MARKET ENTRY

10. State whether there has been significant entry into any of the affected markets over the past five years:

.....
.....

11. If there has been significant entry into the market provide names, address, telephone number and contact person of market entrants:

.....
.....

12. In the opinion of parties making this notification, are there any undertakings likely to enter the market?

.....
.....

13. If there is likely to be new entrants in the market, give names, addresses and contact telephone numbers of such entrants:

.....
.....

14. Give an estimate of the period within which such entry is likely to occur, if possible:

.....
.....

15. Describe the various factors influencing entry into affected markets that exist in the present case, examining entry from both a geographical and product view point. In so doing, take account of the following where appropriate—

(a) the total costs of entry (R & D. establishing distribution systems, promotion, advertising, servicing, etc.) on a scale equivalent to a significant viable competitor, indicating the market share of such a competitor:

.....
.....

(b) any legal or regulatory barriers to entry, such as government authorization or standard setting in any form:

.....
.....

(c) any restrictions created by existence of patents, know-how and other intellectual property rights in these markets and any restrictions created by licensing such rights:

.....
.....

(d) the extent to which each of the parties to the concentration are licensees or licensors of patents, know-how and other rights in the relevant markets:

.....
.....

(e) the importance of economies of scale for the production of products in the fledged markets:

.....
.....

(f) access to sources of supply, such as availability of raw materials:

.....
.....
.....

PART V

CONSIDERATION OF PUBLIC INTEREST ISSUES

15. Depending on your particular situation, the transaction may warrant justification on public interest grounds which may include such factors as the ones listed below herewith on which you may want to make detailed comments—

15.1 A particular (industrial) sector or region.

15.2 Employment.

15.3 The ability of small businesses or the informal sector or the socially disadvantaged and persons with disabilities to become competitive i.e. impact in expanding the base of entrepreneurship and human development.

15.4 The ability of national industries to compete in international markets.

PART VI

GROUPS FOR GRANTING THE AUTHORIZATION

16. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have an adverse effect on trade or the economy in general:

.....
.....
.....

16.1 Facts and contentions relied upon to substantiate this claim:

.....

NOTE: The Commission will need to be satisfied that the conduct is consistent with the objectives of the Act.

PART VII

DECLARATION

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required under this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at this day of year

Name(s):

.....

Signature(s):

.....

I/We attach the following relevant documents:

- Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);
- Copy of Agreement or other documents relating to the transaction;

☐ Press Release or other Shareholder, Board or management official statement on the transaction;

☐ Other market or industry study reports that support the transaction.

NOTES:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.

2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.

3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.

4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 50 (c) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.

5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.

6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the latter case the notifying party shall confirm that they are true and complete.

7. **CONFIDENTIALITY:** If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.

8. The notification should be delivered during normal Commission working hours at the following address—

The Competition and Fair Trading Commission

P. O. Box 30366

Lilongwe 3

Tel: 01 774 940/01 770 244 Fax: 01 770 680

E-mail: malawicftc@gmail.com website:

FORM NO. CFTC/II

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

APPLICATION FOR AUTHORIZATION OF EXCLUSIVE DEALING ARRANGEMENT s. 32 (2) (d); reg. 4

To: The Executive Director

The Competition and Fair Trading Commission

P.O. Box 30366

Lilongwe 3

PART I

BACKGROUND INFORMATION

1. Information from the Applicant(s): Give details of—

(a) name and address of undertaking:

.....
.....

(b) nature of the undertaking's business:

.....
.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

.....
.....

.....

2. Information on the other parties to the arrangement:

For each party to the arrangement (except the applicant) give details of—

(a) name and address of undertaking:

.....
.....
.....

(b) nature of undertaking's business:

.....
.....
.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

.....
.....
.....

3. Address of service (give an address to which all communications may be made and documents delivered):

.....
.....
.....

4. Appointment of Representatives:

Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

5.1 If yes, please give details requested below—

(a) name of representative:

(b) address of representative:

.....

(c) name of person to be contacted (if different from (b) above):

.....

(d) telephone number and fax number:

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent—

(a) name of representative:

.....

.....

(b) address of representative:

.....

.....

.....

(c) name of person to be contacted (and address, if different from (b) above):

.....

.....

.....

(d) telephone number and fax number:

.....

PART II

DETAILS OF THE ARRANGEMENT

7. Describe goods and services in relation to the supply or acquisition of which this application relates:

7.1 Describe competing goods and services of which the distributors are not allowed to engage in:

.....

8. Identity the possible area(s) or market which will be affected by the Agreement in Malawi:

.....

9. Give a list of all other undertakings which are engaged in the production of competing goods and services forbidden by the said Agreement:

.....
.....

10. Does the agreement grant the distributor also an exclusive territory? (if so, give details):

.....
.....

11. What are the normal conditions you require to grant a distributorship?

.....
.....
.....

12. Describe what either party brings in the arrangement i.e. consideration:

.....
.....
.....

13. What is your current market share in the relevant market?

.....

14. Please summarize any provisions contained in the agreements which may restrict the parties in their freedom to take independent commercial decisions, for example regarding—

(a) buying or selling prices, discounts or other trading conditions:

.....
.....

(b) the quantities of goods to be manufactured or distributed or services to be offered:

.....
.....

(c) technical development or investment:

.....

(d) the choice of markets or services of supply:

.....

.....
(e) purchases from or sales to third parties

.....
(f) whether to apply similar terms for the supply of equivalent goods and services:
.....
.....

(g) whether to offer different services separately:
.....
.....

PART III

MARKET STRUCTURE

Structure of Supply in affected Markets

15. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate—

15.1 Distribution systems prevailing on the affected markets and their importance:

.....
.....

15.2 The service networks performed by third parties prevailing and their importance:

.....
.....

15.3 What are relative market shares of other suppliers, manufacturers?

.....
.....

15.4 What is the importance of import competition?

.....
.....

Structure of Demand in affected Markets

16. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer:

.....

.....
.....
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.....

16.1 State the name, address, fax, telephone numbers of the contact person for each customer mentioned in 16, above:.....

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.....
.....
.....

16.2 Explain the structure of demand in terms of—

(a) take off/expansion/maturity and decline or forecast of the growth rate of demand:

.....
.....
.....
.....

(b) the importance of customer preference in terms of brand loyalty/ product differentiation or provision of full range of products:

.....
.....

(c) the degree of concentration or dispersion of customers:

.....

(d) segmentation of customers into different groups and describe the “typical customer” of each group:

.....

(e) the importance of exclusive distribution contracts and other types of long-term contracts:

(f) the extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:

.....

.....

PART IV

BUSINESS JUSTIFICATION OF THE AGREEMENT

17. What is the duration of the Agreement:

18. What are the special features of the goods or services of the contract, such as, do they require any special handling, storage or distribution, etc.

.....

.....

.....

19. Is there any unwillingness of dealers to handle the product without exclusive dealership or territory restrictions:

.....

20. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have an adverse effect on trade or the economy in general:

.....

.....

The Commission will need to be satisfied that the conduct is consistent with the objectives of the Act.

PART V

DECLARATION

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at this day of year

Names(s):

.....

Signature(s):

.....

I/We attach the following relevant documents:

Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);

Copy of Agreement or other documents relating to the transaction;

Press Release or other Shareholders, Board or management official statement on the transaction;

Other market or industry study reports that support the transaction.

NOTES:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.

2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.

3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.

4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 50 (c) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.

5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.

6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the latter case the notifying party shall confirm that they are true and complete.

7. CONFIDENTIALITY: If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.

8. The notification should be delivered during normal Commission working hours at the following address—

The Competition and Fair Trading Commission

P.O. Box 30366

Lilongwe 3

Tel: 01 774 940/ 01 770 244 Fax: 01 770 680

E-mail: malawicftc@gmail.com Website:

FORM NO. CFTC/III

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

APPLICATION FOR THE AUTHORIZATION FOR FULL-LINE FORCING BUNDLING OR TYING ARRANGEMENTS s. 32 (2) (d); reg. 5

To: The Executive Director

The Competition and Fair Trading Commission

P.O. Box 30366

Lilongwe 3

PART I

BACKGROUND INFORMATION

1. Information from the Applicant(s):

Give details of—

(a) name and address of undertaking:

.....
.....

(b) nature of the undertaking's business:

.....
.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

.....
.....
.....

2. Information on the other parties to the arrangement:

For each party to the arrangement (except the applicant) give details of—

(a) name and address of undertaking:

.....
.....
.....

(b) nature of undertaking's business:

.....
.....
.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

.....
.....
.....

3. Address of Service

Give an address to which all communications may be made and documents delivered:

.....
.....

4. Appointment of Representatives:

Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

5.1 If yes, please give details requested below—

(a) name of representative:

(b) address of representative:

.....

(c) name of person to be contacted (if different from (b) above):

.....

(d) telephone number and fax number:

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent.

(a) name of representative:

.....

.....

(b) address of representative:

.....

.....

.....

(c) name of person to be contacted (and address, if different from (b) above):

.....

.....

.....

(d) telephone number and fax number:

.....

PART II

PRODUCT MARKET

7. Description of goods and services in relation to the supply or acquisition of which this application relates:

.....
8. Description of the conduct of a kind referred to in s. 32 (2) (d):

.....
9. Grounds for the granting of the authorization:

.....
10. Describe the relevant geographic market:
.....
.....
.....

NOTE: The Commission will need to be satisfied that the conduct is consistent with the objectives of the Act.

PART III

MARKET STRUCTURE

Structure of Supply in affected Markets

11. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate—

11.1 Distribution systems prevailing on the affected markets and their importance:

.....
.....

11.2 The service networks performed by third parties prevailing and their importance:

.....
.....

11.3 What are relative market shares of other suppliers/manufacturers?

.....
.....

11.4 What is the importance of import competition?

.....
.....

Structure of Demand in affected Markets

12. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer:

.....
.....
.....
.....
.....
.....

12.1 State the name, address, fax, telephone numbers of the contact person for each customer mentioned in 12 above:

.....
.....
.....
.....
.....

12.2 Explain the structure of demand in terms of—

(a) take off/expansion/maturity and decline or forecast of the growth rate of demand:

.....
.....
.....
.....

(b) the importance of customer preference in terms of brand loyalty/product differentiation or provision of full range of products:

.....
.....

(c) the degree of concentration or dispersion of customers:

.....

(d) segmentation of customers into different groups and describe the “typical customer” of each group:

.....

(e) the importance of exclusive distribution contracts and other types of long-term contracts:

(f) the extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:

.....

.....

PART IV

GROUNDS FOR GRANTING THE AUTHORIZATION

13. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have an adverse effect on trade or the economy in general:

.....

.....

.....

14. Facts and contentions relied upon to substantiate this claim:

.....

.....

.....

NOTES: The Commission will need to be satisfied that the conduct is consistent with the objectives of the Act.

PART V

DECLARATION

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at this day of year.....

Name(s):

Signature(s):.....

.....
I/We attach the following relevant documents:

Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);

Copy of Agreement or other documents relating to the transaction;

Press Release or other Shareholders, Board or management official statement on the transaction;

Other market or industry study reports that support the transaction.

NOTES:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.

2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.

3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.

4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 50 (c) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.

5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.

6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the latter case the notifying party shall confirm that they are true and complete.

7. CONFIDENTIALITY: If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.

8. The notification should be delivered during normal Commission working hours at the following address—

The Competition Fair Trading Commission
P. O. Box 30366
Lilongwe 3
Tel: 01 774 940/ 01 770 244 Fax: 01 770 680
E-mail: malawicftc@gmail.com Website:

FORM NO. CFTC/IV

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

APPLICATION FOR AUTHORIZATION FOR RESALE PRICE MAINTENANCE s. 32 (2) (f); reg. 6

To: The Executive Director
The Competition and Fair Trading Commission
P.O. Box 30366
Lilongwe 3

PART I

BACKGROUND INFORMATION

1. Information from the Applicant(s):

Give details of—

(a) name and address of undertaking:

.....
.....

(b) nature of the undertaking's business:

.....
.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

.....
.....
.....

2. Information on the other parties to the arrangement:

For each party to the arrangement (except the applicant) give details of—

(a) name and address of undertaking:

.....
.....

(b) nature of undertaking's business:

.....
.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

.....
.....
.....

3. Address of Service

Give an address to which all communications may be made and documents delivered:

.....
.....

4. Appointment of Representatives:

Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

5.1 If yes, please give details requested below—

(a) name of representative:

(b) address of representative:.....

.....

(c) name of person to be contacted (if different from (b) above):

.....

(d) telephone number and fax number:

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent.

(a) name of representative:

.....

.....

.....

.....

(b) telephone number and fax number:

.....

PART II

PRODUCT MARKET

7. Description of goods and services in relation to the supply or acquisition of which this application relates:

.....

.....

7.1 Description of the conduct that may constitute resale price maintenance:

.....

.....

7.2 Describe the relevant geographic market:

.....

.....

.....

PART III

MARKET STRUCTURE

Structure of Supply in affected Markets

8. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate—

8.1 Distribution systems prevailing on the affected markets and their importance:

.....
.....

8.2 The service networks performed by third parties prevailing and their importance:

.....
.....

8.3 What are relative market shares of other suppliers/manufacturers?

.....
.....

8.4 What is the importance of import competition?

.....
.....

Structure of Demand in affected Markets

9. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer:

.....
.....
.....
.....
.....

9.1 State the name, address, fax, telephone numbers of the contact person for each customer mentioned in 9 above:.....

.....
.....
.....

.....
.....

9.2 Explain the structure of demand in terms of—

(a) take off/expansion/maturity and decline or forecast of the growth rate of demand:

.....
.....

(b) the importance of customer preference in terms of brand loyalty/product differentiation or provision of full range of products:

.....
.....

(c) the degree of concentration or dispersion of customers:

.....

(d) segmentation of customers into different groups and describe the “typical customer” of each group:

.....

(e) the importance of exclusive distribution contracts and other types of long-term contracts:

(f) The extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:

.....
.....

PART IV

GROUNDS FOR GRANTING THE AUTHORIZATION

10. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have an adverse effect on trade or the economy in general:

.....
.....
.....

NOTES: The Commission will need to be satisfied that the conduct is consistent with the objectives of the Act.

PART V

DECLARATION

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at this day of year.....

Name(s):

Signature(s):.....

.....

I/We attach the following relevant documents:

Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);

Copy of Agreement or other documents relating to the transaction;

Press Release or other Shareholders, Board or management official statement on the transaction;

Other market or industry study reports that support the transaction.

NOTES:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.

2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.

3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.

4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 50 (c) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.
5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.
6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the latter case the notifying party shall confirm that they are true and complete.
7. **CONFIDENTIALITY:** If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.
8. The notification should be delivered during normal Commission working hours at the following address—

The Competition Fair Trading Commission

P. O. Box 30366

Lilongwe 3

Tel: 01 774 940/ 01 770 244 Fax: 01 770 680

E-mail: malawicftc@gmail.com Website:

FORM NO. CFTC/V

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

APPLICATION FOR AUTHORIZATION FOR A TRADE AGREEMENT s. 32 (2) (g); reg. 7

To: The Executive Director

The Competition and Fair Commission

P.O. Box 30366

Lilongwe 3

PART I

BACKGROUND INFORMATION

1. Information from the Applicant(s):

Give details of—

(a) name and address of undertaking:

.....
.....

(b) nature of the undertaking's business:

.....
.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

.....
.....

2. Information on the other parties to the arrangement:

For each party to the arrangement (except the applicant) give details of—

(a) name and address of undertaking:

.....
.....

(b) nature of undertaking's business:

.....
.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

.....
.....

3. Address of Service

Give an address to which all communications may be made and documents delivered:

.....

.....

4. Appointment of Representatives:

Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

5.1 If yes, please give details requested below—

(a) name of representative:

(b) address of representative:.....

.....

(c) name of person to be contacted (if different from (b) above):

.....

(d) telephone number and fax number:

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent.

(a) name of representative:

.....

.....

.....

(b) address of representative:

.....

.....

.....

(c) Name of person to be contacted (if different from (b) above):

.....

.....

.....

(d) Telephone number and fax number:

.....

PART II

AGREEMENTS BY ASSOCIATIONS

7. The agreement by which the association is formed:

.....
.....

7.1 Description of any recommendations issued to members (with copy of relevant extracts from the minutes, if any, authorizing those recommendations):

.....
.....
.....

(see Declaration below)

PART III

FULL DETAILS OF THE ARRANGEMENT

8. Please summarize any provisions contained in the agreements which may restrict the parties in their freedom to take independent commercial decisions, for example regarding—

(a) buying or selling prices, discounts or other trading conditions:

.....

(b) the quantities of goods to be manufactured or distributed or services to be offered:

.....

(c) technical development or investment:

.....

(d) the choice of markets or services of supply:

.....

(e) purchases from or sales to third parties:

.....

(f) whether to apply similar terms for the supply of equivalent, goods and services:

.....

(g) whether to offer different services separately:

.....
(h) list of all the parties (e.g. agents or distributors) to the agreement:
.....

PART IV

MARKET STRUCTURE

Structure of Supply in affected Markets

9. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate—

9.1 Distribution systems prevailing on the affected markets and their importance:

.....
.....

9.2 The service networks performed by third parties prevailing and their importance:

.....
.....

9.3 What are relative market shares of other suppliers/manufacturers?

.....
.....

9.4 What is the importance of Import Competition?

.....
.....

Structure of Demand in affected Markets

10. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer:

.....
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.....

10.1 State the name, address, fax, telephone numbers of the contact person for each customer mentioned in 10, above:

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.....

10.2 Explain the structure of demand in terms of—

(a) take off/expansion/maturity and decline or forecast of the growth rate of demand:

.....
.....
.....
.....

(b) the importance of customer preference in terms of brand loyalty/product differentiation or provision of full range of products:

.....
.....

(c) the degree of concentration or dispersion of customers:

.....

(d) segmentation of customers into different groups and describe the “typical customer” of each group:

.....

(e) the importance of exclusive distribution contracts and other types of long-term contracts:

(f) the extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:

.....

PART V

GROUNDS FOR GRANTING THE AUTHORIZATION

11. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have any adverse effect on trade or the economy in general:

.....
.....
.....

NOTE: The Commission will need to be satisfied that the agreement is consistent with the objectives of the Act.

PART VI

DECLARATION

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at this day of year.....

Name(s):

Signature(s):.....

.....

I/We attach the following relevant documents:

Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);

Copy of Agreement or other documents relating to the transaction;

Press Release or other Shareholders, Board or management official statement on the transaction;

Other market or industry study reports that support the transaction.

NOTES:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.

2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the

estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.

3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.

4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 50 (c) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.

5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.

6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the latter case the notifying party shall confirm that they are true and complete.

7. If an agreement is made by a trade or a service association. The parties include all the association's members but, if there are more than 50, there is no need to give names and addresses, an approximation of the total membership is sufficient.

8. Where an agreement made among the members of a trade or services supply association is contained in its constitution, the rules, regulations, by-laws or resolutions of the association must be provided to the Commission.

9. **CONFIDENTIALITY:** If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.

10. The notification should be delivered during normal Commission working hours at the following address—

The Competition Fair Trading Commission

P. O. Box 30366

Lilongwe 3

Tel: 01 774 940/ 01 770 244 Fax: 01 770 680

E-mail: malawicftc@gmail.com Website:

FORM NO. CFTC VI

THE COMPETITION AND FAIR TRADING ACT

(CAP. 8:09)

APPLICATION FOR AUTHORIZATION OF A PROPOSED MERGER/TAKEOVER/ACQUISITION s. 35; reg. 8

To: The Executive Director
The Malawi Competition and Fair Trading Commission
P.O. Box 30366
Lilongwe 3

PART I

BACKGROUND INFORMATION

1. Information from the Applicant(s):

Give details of—

(a) name and address of undertaking:

.....
.....

(b) nature of the undertaking's business:

.....
.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

.....
.....
.....

2. Information on the other parties to the arrangement:

For each party to the arrangement (except the applicant) give details of—

(a) name and address of undertaking:

.....

.....
.....

(b) nature of undertaking's business:

.....
.....
.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

.....
.....
.....

3. Address of Service

Give an address to which all communications may be made and documents delivered:

.....
.....

4. Appointment of Representatives:

Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

5.1 If yes, please give details requested below—

(a) name of representative:

(b) address of representative:

.....

(c) name of person to be contacted (if different from (b) above):

.....

(d) telephone number and fax number:

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent.

(a) name of representative:

-
- (b) address of representative:
.....
.....
.....
- (c) name of person to be contacted (and address, if different from (b) above):
.....
.....
.....
- (d) telephone number and fax number:
.....

PART II

OWNERSHIP AND CONTROL

7. For each of the parties to the concentration provide a list of all undertakings belonging to the same group. The list must include—

7.1 Names and addresses of the current and past (two years) Directors of each of the undertaking to the concentration:

.....
.....
.....
.....

7.2 Names and addresses of the current and past (two years) shareholders of each of the undertaking to the concentration:

.....
.....
.....
.....

7.3 All undertakings or persons controlling these parties, directly or indirectly:

.....

.....
7.4 All undertakings active on any affected market that are controlled, directly or indirectly—

(a) by these parties:

.....

(b) by any other undertaking identified in 7.3 above:

.....

.....

For each entry listed above, the nature and means of control shall be specified.

PART III

DETAILS OF THE CONCENTRATION

8. Briefly describe the nature of the concentration being notified. In doing so state—

(a) whether the proposed concentration is a full legal merger, an acquisition of sole or joint control, a concentrative joint merger or other means of conferring direct or indirect control:

.....

.....

(b) whether the whole or parts of parties are subject to the concentration:

.....

.....

(c) a brief explanation of the economic and financial structure of the concentration:

.....

.....

(d) the proposed or expected date of any major events designed to bring about the completion of the concentration:

.....

.....

(e) the proposed structure of ownership and control after the completion of the concentration:

.....

.....

PART IV

MARKET STRUCTURE

Structure of Supply in affected Markets

9. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate—

9.1 Distribution systems prevailing on the affected markets and their importance:

.....

9.2 The service networks performed by third parties prevailing and their importance:

.....

.....

9.3 What are relative market shares of other suppliers, manufacturers?

.....

.....

9.4 What is the importance of import competition?

.....

.....

Structure of Demand in affected Markets

10. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer:

.....

.....

.....

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.....

.....

10.1 State the name, address, fax, telephone numbers of the contact person for each customer mentioned in 16 above:

.....

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.....
.....
.....

10.2 Explain the structure of demand in terms of—

(a) take off/expansion/maturity and decline or forecast of the growth rate of demand:

.....
.....
.....
.....

(b) the importance of customer preference in terms of brand loyalty/ product differentiation or provision of full range of products:

.....
.....

(c) the degree of concentration or dispersion of customers:

.....

(d) segmentation of customers into different groups and describe the “typical customer” of each group:

.....

(e) the importance of exclusive distribution contracts and other types of long-term contracts:

(f) the extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:

.....
.....

PART V

MARKET ENTRY

11. State whether there has been significant entry into any of the affected markets over the past five years:

.....
.....

12. If there has been significant entry into the market provide names, address, telephone numbers and contact person of market

entrants:.....

.....
.....

13. In the opinion of parties making this notification, are there any undertakings likely to enter the market?

.....
.....

14. If there is likely to be new entrants in the market, give names, addresses and contact telephone numbers of such entrants:

.....

15. Give an estimate of the period within which such entry is likely to occur, if possible:

.....

.....

16. Describe the various factors influencing entry into affected markets that exist in the present case, examining entry from both a geographical and product view point. In so doing, take account of the following where appropriate—

(a) the total costs of entry (R & D, establishing distribution systems, promotion, advertising, servicing, etc.) on a scale equivalent to a significant viable competitor, indicating the market share of such a competitor:

.....
.....

(b) any legal or regulatory barriers to entry, such as government authorization or standard setting in any form:

.....

(c) any restrictions created by existence of patents, know-how and other intellectual property rights in these markets and any restrictions created by licensing such rights:

.....
.....

(d) the extent to which each of the parties to the concentration are licensees or licensors of patents, know-how and other rights in the relevant markets:

.....

(e) the importance of economies of scale for the production of products in the affected markets:

.....

.....

(f) access to sources of supply, such as availability of raw materials:

.....

.....

PART VI

FULL DETAILS OF THE ARRANGEMENT

17. Please summarize any provisions contained in the agreements which may restrict the parties in their freedom to take independent commercial decisions, for example regarding—

(a) buying or selling prices, discounts or other trading conditions:

.....

(b) the quantities of goods to be manufactured or distributed or services to be offered:

.....

(c) technical development or investment:

.....

(d) the choice of markets or services of supply:

.....

(e) purchases from or sales to third parties:

.....

(f) whether to apply similar terms for the supply of equivalent goods and services:

.....

(g) whether to offer different services separately:

.....

18. What is the corresponding share of each market currently held by the acquiring enterprise (the other enterprise involved in the proposed merger) in the relevant market?

.....
.....
.....

19. If the proposed merger or acquisition is authorized, what is the estimated market share of the combined enterprise following the merger or acquisition in the relevant market?

.....
.....
.....

PART VII

GROUNDS FOR GRANTING THE AUTHORIZATION

20. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have any adverse effect on trade or the economy in general:

.....
.....
.....

20.1 Facts and contentions relied upon to substantiate this claim (this may include competitive effects, efficiencies, failing firms, public interest issues e.g. employment, export development, increased tax, consumer welfare, technological transfer, MNC presence, market development, etc.):

.....
.....
.....
.....

NOTE: The Commission will need to be satisfied that the agreement is consistent with the objectives of the Act.

PART VIII

DECLARATION

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required

by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at this day of year.....

Name(s):

Signature(s):.....

I/We attach the following relevant documents:

Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);

Copy of Agreement or other documents relating to the transaction;

Press Release or other Shareholders, Board or management official statement on the transaction;

Other market or industry study reports that support the transaction.

NOTES:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.

2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.

3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.

4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 50 (c) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.

5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is

responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.

6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the later case the notifying party shall confirm that they are true and complete.

7. CONFIDENTIALLY: If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.

8. The notification should be delivered during normal Commission working hours at the following address—

The Executive Director

The Malawi Competition and Fair Trading Commission

P.O. Box 30366

Lilongwe 3

Tel: 01 774 940 01 770 244 Fax: 01 770 680

E-mail: malawicftc@gmail.com Website:

FORM NO. CFTC/VII

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

APPLICATION FOR NEGATIVE CLEARANCE s. 32 (2); reg. 8

To: The Executive Director

The Competition and Fair Trading Commission

P.O. Box 30366

Lilongwe 3

PART I

BACKGROUND INFORMATION

1. Information from the Applicant(s):

Give details of—

(a) name and address of undertaking:

.....
.....

(b) nature of the undertaking's business:

.....
.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

.....
.....
.....

2. Information on the other parties to the arrangement:

For each party to the arrangement (except the applicant) give details of—

(a) name and address of undertaking:

.....
.....
.....

(b) nature of undertaking's business:

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.....

(c) name, address, telephone number, fax number and position held by the appropriate contact person:

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.....
.....

3. Address of Service

Give an address to which all communications may be made and documents delivered:

.....

.....

4. Appointment of Representatives:

Where applications are signed by representatives of undertakings, such representatives shall produce written proof that they are authorized to act.

5. If a joint notification is being submitted, has a joint representative been appointed?

5.1 If yes, please give details requested below—

(a) name of representative:

(b) address of representative:

.....

(c) name of person to be contacted (if different from (b) above):

.....

(d) telephone number and fax number:

6. If no, please give details below of information of any representatives who have been authorized to act for each of the parties to the application, indicating whom they represent.

(a) name of representative:

.....

.....

(b) address of representative: .

.....

.....

.....

(c) name of person to be contacted (and address, if different from (b) above):

.....

.....

.....

(d) telephone number and fax number:

.....

DETAILS OF THE CONDUCT

7. Description of the conduct, arrangement, undertaking or practice which is being notified:

.....

7.1 Describe in detail the nature of the restriction(s) contained in the arrangement:

.....

.....

PART III

OWNERSHIP AND CONTROL

8. For each of the parties to the concentration provide a list of all undertakings belonging to the same group. The list must include—

8.1 Names and addresses of the current and past (two years) Directors of each of the undertaking to the concentration:

.....

.....

.....

.....

8.2 Names and addresses of the current and past (two years) shareholders of each of the undertaking to the concentration:

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.....

8.3 All undertakings or persons controlling these parties, directly or indirectly:

.....

.....

8.4 All undertakings active on any affected market that are controlled directly or indirectly—

(a) by these parties:

.....

(b) by any other undertaking identified in 7.3 above:

.....
.....

PART IV

MARKET STRUCTURE

Structure of Supply in affected Markets

9. Explain the distribution channels and service networks, if any, that exist in affected markets taking into account the following where appropriate—

9.1 Distribution systems prevailing on the affected markets and their importance:

.....
.....

9.2 The service networks performed by third parties prevailing and their importance:

.....
.....

9.3 What are relative market shares of other suppliers/manufacturers?

.....
.....

9.4 What is the importance of import competition?

.....
.....

Structure of Demand in affected Markets

10. Identify five largest customers of the notifying parties in each affected market stating their individual share of the total sales of the goods and services attributed to each customer:

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10.1 State the name, address, fax, telephone numbers of the contact person for each customer mentioned in 16. above:

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10.2 Explain the structure of demand in terms of—

(a) take off/expansion/maturity and decline or forecast of the growth rate of demand:

.....
.....

(b) the importance of customer preference in terms of brand loyalty/ product differentiation or provision of full range of products:

.....
.....

(c) the degree of concentration or dispersion of customers:

.....

(d) segmentation of customers into different groups and describe the “typical customer” of each group:

.....

(e) the importance of exclusive distribution contracts and other types of long-term contracts:

(f) the extent to which public authorities like government agencies, state enterprises or similar bodies are important participants as a source of demand:

.....
.....

PART V

GROUNDS FOR GRANTING THE AUTHORIZATION

11. The grounds for claiming that the notified conduct does not and will not unduly restrain competition nor have any adverse effect on trade or the economy in general:

.....
.....
.....

11.1 Facts and contentions relied upon to substantiate this claim:

.....
.....
.....

NOTE: The Commission will need to be satisfied that the agreement is consistent with the objectives of the Act.

PART VI

DECLARATION

The undersigned declare that, to the best of their knowledge and belief, the information given in this notification is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Dated at this day of year.....

Name(s):

Signature(s):.....
.....

I/We attach the following relevant documents:

Two copies of latest Annual Report and Audited Accounts (including Balance Sheet);

Copy of Agreement or other documents relating to the transaction;

Press Release or other Shareholders, Board or management official statement on the transaction;

Other market or industry study reports that support the transaction.

NOTES:

1. Experience has shown that pre-notification meetings are extremely valuable to both the notifying party(ies) and the Commission in determining the precise amount of information required in a notification and, in the large majority of cases, will result in a significant reduction of the information required. Accordingly, notifying parties are encouraged to consult the Commission regarding the possibility of dispensing with the obligation to provide certain information.

2. If the information required in this Form is not reasonably available to you in part or whole, the Commission will accept that the notification is complete and thus valid notwithstanding the failure to provide such information, provided that you give reasons for the unavailability of the said information, and provide your best estimates for the missing data together with the sources for the estimate. Where possible, indications as to where any of the requested information that is available to you could be provided.
3. The Commission only requests the submission of information relevant and necessary to its inquiry into the notified operation. If you consider that any particular information requested in this form may not be necessary for the Commission's examination of the case, you may explain this in your notification and ask the Commission to dispense with the obligation to provide that information.
4. Incorrect or misleading information in the notification will be considered to be incomplete information. The notification will only become effective on the date on which the complete and accurate information is received by the Commission. Section 50 (c) of the Act provides that misleading or incorrect information where supplied intentionally or negligently can make the notifying party or parties liable to a fine or imprisonment or to both.
5. The Commission can revoke its decision on the compatibility of a notified concentration or business practice where it is based on incorrect information for which one of the undertakings is responsible. Each party completing the notification is responsible for the accuracy of the information which it provides.
6. The notification must be completed in English and type-written or printed. The information requested in this Form is to be set out using the sections and paragraph numbers of the Form. The supporting or requested documents may be originals or certified copies of the originals. In the later case the notifying party shall confirm that they are true and complete.
7. **CONFIDENTIALLY:** If you believe that your interests would be harmed if any of the information you are asked to supply were to be published or otherwise divulged to other parties, submit this information separately with each page clearly marked "Business Secrets". You should also give reasons why this information should not be divulged or published.
8. The notification should be delivered during normal Commission working hours at the following address—

The Competition and Fair Trading Commission

P. O. Box 30366

Lilongwe 3

Tel: 01 774 940/01 770 244 Fax: 01 770 680

E-mail: malawicftc@gmail.com website:

THIRD SCHEDULE

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

COMPLAINT AUTHORIZATION FORM s. 43; reg. 10

PART A

Name of Commission Officer: Date:

.....

.....

Name of Complainant(s):

.....

.....

Address(es):

.....

.....

.....

Identification Document:

.....

.....

.....

Tel.: Mobile: Fax No.:

Occupation: Nationality:

.....

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Method of lodging a complaint:

.....

.....

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Details of Trader:

.....

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Address:

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.....

.....

Tel.: Mobile: Fax No.:

Economic Sector:

.....

.....

The alleged contravened section of the Act:

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SUMMARY OF COMPLAINT

NB. If space is not adequate use additional paper.

List of Documents attached, if any:

.....

Signature of Officer

Signature of Certifying Officer

.....

.....

Designation of Officer

Designation of certifying Officer

PART B

DECISION OF THE EXECUTIVE DIRECTOR

In terms of section 8 (2) (a) of the Act, I hereby authorize/do not authorize officers of the Competition and Fair Trading Commission to investigate the complaint whose details are contained in Part A of this document.

Therefore the following action should be taken:

..... Date:

Executive Director

FOURTH SCHEDULE

THE COMPETITION AND FAIR TRADING ACT

(CAP. 48:09)

FEES reg. 11

Type of fees Amount

 K t

(1)	Application fees for authorization for—	70,000	00
	(a) relocation of core-company assets	700,000	00
	(b) exclusive dealing arrangement	700,000	00
	(c) full-line forcing, bundling or tying arrangements	700,000	00
	(d) re-sale price maintenance	700,000	00
	(e) trade agreement	700,000	00
	(f) negative clearance	700,000	00
(2)	Notification for a merger, takeover or acquisition—	700,000	00

0.05% of combined turnover or total assets, whichever is the higher, of the enterprises proposing to effect the merger or takeover.

CONSUMER PROTECTION

ARRANGEMENT OF SECTIONS

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14 of 2003

G.N. 27/2004

An Act to protect the rights of consumers, address the interests and needs of consumers, establish a Consumer Protection Council, provide an effective redress mechanisms for consumer claims and provide for other matters incidental thereto or connected therewith

[21ST OCTOBER 2004]

PART I

PRELIMINARY

[Ch4810s1]1. Short title

This Act may be cited as the Consumer Protection Act.

[Ch4810s2]2. Interpretation

In this Act, unless the context otherwise requires—

“abusive clause” means a clause which is or appears to be imposed on a consumer by a supplier or trader who has economic power over the consumer and which gives the supplier or trader an unfair, unconscionable or excessive advantage over the consumer;

“abusive advertising” refers to abusive, unfair or discriminatory advertising which incites or is likely to incite violence, evokes fear or exploits profits from children, infringes environmental values or is capable of leading consumers to behave in a manner detrimental or hazardous to their health or safety;

“advertiser” includes a supplier or trader of technology, goods or services who has commissioned the publication of an advertising message;

“appropriate laboratory” means a laboratory or organization recognized by Government and includes any such laboratory or organization established by or under any law for the time being in force for carrying out analysis or test of any goods with a view to determining whether such goods have any defect;

“business records” include—

(a) accounts, balance sheets, vouchers, records, minutes of meetings, contracts, files, instructions to employees, invoices, import documents and other instruments; and

(b) any information recorded or stored by means of a pen, typewriter, computer or other device whatsoever and any material subsequently derived from information so recorded;

“Chairman” means the Chairman of the Council appointed under section 14;

“competent authority” means a body that has power or jurisdiction, derived from any written law, over a particular issue or entity;

“complainant” means a consumer or any consumer association who or which, as the case may be, makes a complaint;

“complaint” means any allegation in writing or orally made by a complainant that—

(a) as a result of any unfair trade practice adopted by a supplier or trader, the complainant has suffered loss or damage;

(b) the goods or technology mentioned in the complaint had one or more defects; and

(c) the services mentioned in the complaint suffer from deficiency in any respect;

“consumer” means a person who—

(a) purchases or offers to purchase technology, goods or services otherwise than for resale; but does not include a person who purchases any technology, goods or services for the purpose of using them in the production or manufacture of any other technology, goods or services for sale;

(b) receives or uses any technology, goods or services for which consideration has been paid or promised or partly paid or partly promised, or under any system of deferred payment and such person includes any user of such technology, goods or services other than the person who buys or pays for the same when such is made with the approval or acquiescence of the purchaser;

(c) hires or avails himself of any technology, goods or services for a consideration which has been paid or promised or partly paid or partly promised, or under any system of deferred payment and includes any beneficiary of technology, goods or services other than the person who hires or avails himself of the same when the technology, goods or services are availed with the approval or acquiescence of the hirer;

“consumer contract” means a contract for the sale or supply of technology, goods or services, in which the supplier or trader is dealing in the course of business and the purchaser or user is not; but does not include a contract for the sale, letting or hire of immoveable property or a contract of employment;

“consumer dispute” means a dispute where the person or business against whom or which a complaint has been made denies or disputes the allegations contained in the complaint or having accepted the allegations, refuses, declines or fails to compensate any loss or injury suffered by the complainant to the satisfaction of the complainant;

“Council” means the Consumer Protection Council established under section 10 of this Act;

“defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under this Act or any other written law in relation to any goods;

“deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by this Act or under any written law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

“distribution” includes any act by which technology, goods or services are sold or supplied by one person to another person;

“distributor” means any person in the supply chain whose activity does not affect properties of a product;

“downstream processor” means a manufacturer who adds value to goods supplied or manufactured by another person;

“false or misleading advertising” includes any type of business information or communication which uses text, dialogue, sound, image or description which can directly or indirectly, expressly or implied or by omission, leads a consumer to make a mistake, misunderstand or to be confused about any technology, goods or services on the market;

“goods” include all tangible items or articles acquired or used by a consumer;

“guarantee” means an undertaking applicable for a specified time made by a supplier or trader to pay for the cost of repairs or to replace a good that does not work due to a defect or deficiency arising from mechanical failure or faulty workmanship;

“interest” means the prevailing interest rates charged by commercial banks at that particular time;

“intermediate goods” means goods used as inputs in manufacturing or downstream processing;

“Local Authority” bears the same meaning as defined in the Local Government Act; Cap. 22:01

“manufacture” includes any process which transforms goods in order to add value to them for the purpose of resale; and includes any operation of packing or repackaging not linked to another form of transformation within a single enterprise;

“manufacturer” means a person who—

- (a) manufactures the product or a component part;
- (b) assembles or fabricates parts made or manufactured by any other manufacturer;

(c) presents himself as the manufacturer by affixing to the product his name, trade mark or other distinctive mark; or

(d) reconditions the product;

“offer for sale” includes the exposing of goods for sale, the furnishing of a quotation, whether verbally or in writing and any other act or notification whatsoever by which willingness to enter into any transaction for sale is expressed;

“price” in relation to the transfer, supply, provision or sale of technology, goods or services, includes every valuable consideration whether direct or indirect, and includes any consideration which in effect relates to the transfer, supply, provision or sale of the technology, goods or services, although ostensibly relating to any other matter or things;

“pyramid selling” means—

(a) a scheme for the sale or lease of a product whereby one person (the ‘first person’) pays a fee to participate in the scheme and receives the right to receive a fee, commission or other benefit—

(i) in respect of the recruitment into the scheme of other persons either by the first person or any other person;

(ii) in respect of sales or leases made, other than by the first person, to other persons recruited into the scheme by the first person or any other person; and

(b) a scheme for the sale or lease of a product whereby one person sells or leases a product to another person (the “second person”) who receives the right to receive a rebate, commission or other benefit in respect of sales or leases of the same or another product that are not—

(i) sales or leases made to the second person;

(ii) sales or leases made by the second person; or

(iii) sales or leases, made to ultimate consumers or users of the same or other product, to which no right of further participation in the scheme, immediate or contingent, is attached;

“retail trade” means a form of distribution by which goods are customarily sold to consumers rather than for the purpose of resale or manufacturing; and includes any act or set of acts or sale to consumers which is the subject of a consumer dispute or an action under this Act;

“safe product” means a product or service which does not present any risk to health, environment and safety of persons or property when used for the assumed purpose or in a way in which it is expected to be used:

Provided that a product shall not be considered dangerous only because it is possible to obtain higher levels of safety or because another safer product is available;

“sale” includes an agreement to sell or offer for sale;

“seller” means a person regularly engaged in retail trade or who participates in some act or set of acts of retail trade which is the subject of a consumer dispute or action under this Act;

“service” means service of any description, which is made available to potential users and includes the provision of facilities in connexion with health, insurance, banking, including the rendering of a service free of charge or under a contract or personal service;

“supplier” in relation to a service or technology, includes a person who performs a service or transfers technology and a person who arranges the performance of a service or the transfer of technology, goods or services to another person;

“subordinate court” bears the same meaning as defined in the Courts Act; Cap. 3:02

“technology”, “technology transaction” or “technology transfer” includes, mutatis mutandis, systematic knowledge or a transaction involving the transfer of systematic knowledge for the manufacture of a product, for the application of a process or for the rendering of a service and does not extend to the transactions involving the mere sale or mere lease of goods;

“trader” in relation to any technology, goods or services means any person who sells or distributes, supplies or provides any technology, goods or services and includes the manufacturer thereof, and where goods are sold or distributed in package form includes the packer of the goods;

“trade practice” means any practice related to the carrying on of any trade; includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trader or class of traders, or the production, supply or price in the course of trade of any goods whether real or personal, or of any technology or service as defined in the Competition and Fair Trading Act; Cap. 48:09

“unfair trade practice” means a trade or business practice including the practice which, for the purpose of promoting the sale, use, supply or provision of any technology, goods or services adopts any unfair method or unfair or deceptive practice including the practice of making any statement whether orally or in writing or by conduct which—

(a) falsely represents that the technology or goods are of a particular standard, quality, grade, durability, composition, style or model;

(b) falsely represents that the services are of a particular standard, quality or grade;

(c) falsely represents that any re-built, second hand, renovated, reconditioned or old goods are new or unused goods;

(d) represents that any technology, goods or services has sponsorship, approval, performance characteristics, accessories, peripherals, uses or benefits which such technology, goods or services do not have;

(e) represents that the supplier or trader has a sponsorship or approval, affiliation, intellectual property, licence or franchise which such supplier or trader does not have;

(f) makes a false or misleading representation concerning the need for or the usefulness or utility of any technology, goods or services;

(g) gives to the public any assurance, warranty or guarantee of the performance, efficiency, efficacy or length of life of a product or any technology, goods or services that is not based on an adequate or proper test thereof; and

(h) takes advantage of a consumer by exerting undue pressure or undue influence on the consumer to enter into a transaction involving any technology, goods or services;

“warranty” means an agreement with reference to goods which are the subject of a contract, but collateral to the main purpose of such contract of sale, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat contract as repudiated as defined in the Sale of Goods Act; Cap. 48:01

“wholesale” means a form of distribution by which goods are customarily sold for the purpose of resale or as inputs in manufacturing and includes any act or set of acts of sale for either of those purposes which is the subject of a consumer dispute or an action under this Act or any other written law;

“wholesaler” means a person regularly engaged in wholesale trade, or who participates in some act or set of acts of wholesale trade, which is the subject of a consumer dispute or an action under this Act or any other written law.

PART II

GENERAL PRINCIPLES OF CONSUMER PROTECTION

[Ch4810s3]3. Consumer rights

Consumers shall be entitled to the following rights—

(a) the protection of their economic interest, health and safety in the consumption of technology, goods and services;

(b) true, sufficient, clear and timely consumer education including information on technology, goods and services offered, as well as on prices, characteristics, quality and risks that may be encountered in the consumption of the technology, goods and services;

(c) fair and non-discriminatory treatment by a supplier or trader of technology, goods and services;

(d) full, timely, adequate and prompt compensation for damages suffered by a consumer which, pursuant to the provisions of this Act or any other written law or other special or general contractual obligations, are attributed to a supplier or trader;

(e) the freedom and right to associate and join or form consumer unions or associations;

(f) access to the appropriate or competent authorities for the protection of their legitimate rights; and

(g) any other rights, freedoms, entitlements and interests incidental to or which would facilitate the enjoyment of the foregoing rights.

[Ch4810s4]4. Undertaking of the Government

(1) The Government shall in its policies, laws and administrative measures ensure that consumers draw maximum benefit from national, economic, environmental, cultural, social and other resources.

(2) The Government shall endeavour to establish or adopt, maintain and enforce standards for technology, goods and services according to Malawi Standards in order to prevent technology, goods and services from causing harm to life and property of a consumer as well as to the environment.

(3) The Government shall endeavour to establish a system for indicating the quality and other elements of the substance of goods and services and regulate against false advertising and exaggerated indications so that a consumer may not make a mistake in the selection of technology, goods and services, in purchasing or utilizing them.

(4) The Government shall endeavour to regulate activities that reasonably restrict fair and free competition concerning the prices and supply of technology, goods and services that are particularly important to consumers.

(5) The Government shall endeavour to promote the circulation of information on technology, goods and services in order to assist the consumer make a sound and informed choice on the technology, goods and services.

(6) The Government shall endeavour to ensure access to basic or essential needs and where appropriate prescribe minimum standards.

[Ch4810s5]5. Responsibilities of the Local Authorities

(1) Local Authorities shall have the responsibility to plan measures paralleling those of the Government as well as plan and execute measures concerning consumer protection according to the social and economic condition of the area under their jurisdiction.

(2) Local Authorities shall, in collaboration with the Council, have the responsibility of implementing the provisions of this Act and any other written laws on matters of consumer protection.

[Ch4810s6]6. Obligations of a supplier or a trader

(1) A supplier or trader of technology, goods or services shall—

(a) take necessary and appropriate measures concerning technology, goods or services he provides for the prevention of danger;

- (b) ensure correct ingredients, measures or weights and give proper indications of technology, goods or services, as the case may be;
- (c) ensure that imported technology, goods meet the Malawi Standards;
- (d) cooperate with the Government or Local Authorities in the execution of policies relating to consumer protection;
- (e) not supply technology, goods or services which can cause injury or harm to a consumer or the environment and which do not comply with the Malawi Safety Standards;
- (f) not engage in any unfair trade practices;
- (g) produce and show a business record, when requested to do so, to a member of the Council or a person duly authorized by the Council:

Provided that a member of the Council or a person duly authorized by the Council shall on demand produce to the trader or supplier a valid identification; and

- (h) provide consumers with true, sufficient, clear and timely information on technology, goods or services that they offer.

(2) Any supplier or trader who contravenes subsection (1) shall be guilty of an offence and upon conviction, liable to a fine of K500,000 and to imprisonment for five (5) years.

[Ch4810s7]7. Responsibility of the consumer

The consumer shall take the initiative to acquire the necessary knowledge of consumer life and endeavour to behave self-reliantly and rationally.

[Ch4810s8]8. Beneficial interpretation

(1) Any competent authority shall construe consumer contracts or agreements in favour of and for the benefit of a consumer where the contract is unfair or ambiguous.

(2) The Council or any other competent authority shall closely regulate and control abusive, unfair, dumping, restrictive, harmful or anti-competitive trade or business practices or contract terms or clauses.

(3) Contractual clauses or stipulations shall have no effect where they purport to or in fact—

- (a) exempt, exclude, reduce or limit the responsibility or liability of a supplier or trader for a defect, deficiency, inadequacy or efficacy of any nature of the technology or goods supplied or the services rendered;
- (b) imply a waiver of the rights, freedoms or liabilities vested in the consumer pursuant to this Act or any other written law and limit the exercise of the rights, freedoms and liberties of the consumer;
- (c) place, shift or reverse the burden of proof against the consumer for a defect, deficiency, inadequacy or efficacy which is not immediately apparent to the consumer;

(d) authorize the supplier or trader to unilaterally cancel, repudiate or rescind the contract except where this power is vested in the trader or supplier in the case of postal or sample sales; or

(e) create contractual terms and conditions, which are unfair, unconscionable, inequitable, oppressive or unreasonable to consumers or are actuated by bad faith.

[Ch4810s9]9. Pyramid selling or betting prohibited

A person who engages, causes or coerces another person to be engaged in pyramid selling or betting commits an offence.

PART III

ADMINISTRATION

[Ch4810s0]10. Establishment of the Consumer Protection Council

(1) There is hereby established a body to be known as the Consumer Protection Council which shall—

- (a) be a body corporate with perpetual succession and a common seal;
- (b) in its corporate name, be capable of suing and being sued;
- (c) be capable of holding, purchasing or otherwise acquiring, charging and disposing of any property, moveable or immovable, for the purpose, or in the course of carrying out its functions;
- (d) have the powers of borrowing and lending money; and
- (e) be capable of doing or performing all such acts and activities bodies corporate may by law do and perform.

(2) The Council shall consist of—

- (a) the following members appointed by the Minister—
 - (i) a representative from a consumer body in Malawi;
 - (ii) a representative from an economic body in Malawi;
 - (iii) a representative from Malawi Confederation of Chambers of Commerce and Industry;
 - (iv) a representative from the Law Society of Malawi;
 - (v) a representative of a trade union in Malawi;
 - (vi) a representative from a women's organizations;
- (b) the following ex officio members—

- (i) the Secretary for Commerce and Industry or his designated representative;
- (ii) the Director General of Malawi Bureau of Standards or his designated representative; and
- (iii) the Chief Executive of the Pharmacy, Medicines and Poisons Board or his designated representative;
- (iv) Secretary for Justice or his designated representative; and
- (v) Secretary for Local Government or his designated representative.

(3) A member of the Council, other than an ex officio member, shall hold office for a period of three (3) years unless his appointment is terminated sooner than the expiry of that period and shall be eligible for re-appointment for one more term.

(4) The names of all members of the Council as first constituted and every change in the membership of Council shall be published in the Gazette.

(5) There shall be a Secretary to the Council who shall be an officer in the public service.

(6) The Secretary shall be the chief executive officer of the Council and as such shall be responsible to the Council for the administration and management of its affairs, and shall be in charge of all administrative, executive and other staff of the Council, and, in all such matters, shall, at all times, be subject to the direction and control of the Council.

(7) The Secretary shall exercise such powers and perform such duties as the Council may delegate to him in writing from time to time, and in any such delegation the Council may impose such conditions as to the exercise of such powers or the performance of such duties as the Council deems fit.

(8) In addition to the Secretary, there shall be appointed in the public service such other officers subordinate to the Secretary as may be required for the proper functions of the Council.

[Ch4810s11]11. Vacation of office of members

The office of a member, other than an ex officio member shall become vacant—

- (a) upon his death;
- (b) if he has been absent from three consecutive meetings of the Council, of which he has had notice, without valid explanation;
- (c) if he has been convicted of an offence and sentenced to imprisonment for a period exceeding six (6) months without an option of a fine;
- (d) if he becomes mentally or physically incapable of efficiently performing his duties as a member of the Council;
- (e) if he becomes an undischarged bankrupt; or

- (f) if he resigns by giving one month notice in writing to the Minister.

[Ch4810s12]12. Filling of vacancies

(1) On vacation of office by a member of the Council, the vacancy shall be filled by a person appointed in accordance with section 10 (2) (a) under which the former member was appointed:

Provided that if the remaining period is less than six (6) months the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Council is granted leave of absence by the Council, the Council may, if it deems fit, co-opt a person who belongs to the same organization as the member who has been granted leave to fill the vacancy during the absence of that member.

[Ch4810s13]13. Invited persons

The Council may, in its discretion at any time and for any period, invite any person to attend any meeting of the Council and take part in the deliberations of the Council, but such person shall not be entitled to vote at that meeting.

[Ch4810s14]14. Chairman and Vice-Chairman

(1) The Minister shall appoint a Chairman from the elected members of the Council.

(2) The Vice-Chairman of the Council shall be elected by the members of the Council from amongst its members.

(3) No member appointed under paragraph (b) of subsection (2) of section 10 shall be appointed or, elected as Chairman or Vice-Chairman, respectively.

(4) Subject to subsection (3), the Chairman and the Vice-Chairman shall hold office for the duration of their membership of the Council.

(5) The office of the Chairman or the Vice-Chairman shall become vacant—

- (a) if the holder resigns his office by notice to the Minister; or
(b) if the holder of the office ceases to be a member of the Council.

(6) Whenever the Chairman is absent or is for any cause unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

[Ch4810s15]15. Remuneration of members of the Council or committees

A member of the Council or a committee shall be paid out of the funds of the Council, such remuneration and allowances, if any, as the Minister may determine.

[Ch4810s16]16. Meetings of the Council

(1) Subject to subsection (2), the Council shall hold ordinary meetings for the dispatch of business at least four times a year.

(2) An extraordinary meeting of the Council—

(a) may be convened by the Chairman at any time;

(b) shall be convened by the Chairman within twenty-one (21) days of receipt by him of a request in writing signed by not less than five (5) members of the Council and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Council—

(a) the Chairman or, in his absence, the Vice-Chairman, shall preside;

(b) in absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of their number to preside; and

(c) the quorum shall be formed by seven (7) members.

(4) An ex officio member of the Council shall attend any meeting of the Council in person.

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

(6) The Council shall regulate its own procedure.

(7) The Council shall cause minutes of every meeting of the Council or committee of the Council to be kept.

[Ch4810s17]17. Non-liability of members of the Council or committees

No member of the Council or of any committee of the Council shall be liable for any act or default of his or of the Council, done in good faith in the exercise of the functions or powers of the Council.

PART IV

FUNCTIONS AND POWERS OF THE COUNCIL

[Ch4810s18]18. Functions of the Council

(1) The functions of the Council shall be—

(a) to identify price mechanisms in Malawi to determine whether the prices are justifiable;

(b) to monitor the frequency and the magnitude of price increases;

(c) to liaise and consult with relevant stakeholders in order to understand what is happening in the economy;

(d) to coordinate and network consumer activities and liaise with consumer associations or organizations, any competent authority and agencies within and outside Malawi to protect consumer interests;

(e) to carry out, promote or participate in consumer education programmes and activities;

(f) disseminate consumer information to the public;

(g) to provide advice to consumers on their rights and responsibilities under this Act and any other written law and make available to consumers general information affecting their interests;

(h) to monitor the operations of consumer organizations so that they operate in a transparent manner and effectively throughout the country;

(i) to create or facilitate the establishment of conflict resolution mechanisms on consumer issues;

(j) to investigate any complaint received regarding consumer protection, and where appropriate, refer the complaint to a competent authority and ensure that action is taken by the competent authority to whom the complaint has been referred;

(k) to advocate for the effective implementation of this Act and any other written law affecting consumers;

(l) to maintain a complaints register;

(m) to formulate and submit to the Minister, policy and legislative proposals in the interest of consumers, consider and examine, and where necessary, advise the Minister on the modification, consolidation or updating of legislation providing protection to consumers in the areas covered under, or related to this Act or any other written law;

(n) to collaborate with other institutions to ensure that the quality of technology, goods or services imported into the country comply with the Malawi Standards;

(o) to recommend to Government, where appropriate, minimum standards for basic or essential needs;

(p) to carry out investigations or inspections on its own initiative or at the request of any person regarding matters relating to consumer issues;

(q) to undertake such activities as are necessary, to expedite or convenient for or in connexion with the performance of its functions under this Act.

[Ch4810s19]19. Powers of the Council

For the better performance of its functions, the Council shall, subject to the provisions of this Act, have power—

- (a) to request an advertiser to withdraw an advertisement which contravenes the provisions of this Act;
- (b) to publish reports of the complaints the Council has dealt with;
- (c) to caution suppliers or traders who contravene the provisions of this Act;
- (d) to employ professional, technical and administrative personnel as it may deem appropriate and lay down conditions of service for such employees;
- (e) to pay any person in its employ such salary, wages or other remuneration as it may deem fit, and to grant him such leave as it may deem fit;
- (f) to enter into any contract or agreement;
- (g) to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property, which it considers necessary in the furtherance of its functions;
- (h) subject to the Public Finance Management Act, to raise money by way of loans or overdrafts; Cap. 37:01
- (i) to invest or deal with any moneys not immediately required in such securities and in such manner as it may deem fit and to vary or realize such investments;
- (j) to manage, insure, let, sell, alienate, mortgage or otherwise deal with any property of the Council as it may deem necessary or expedient;
- (k) to receive donations of money or other property from any person or body of persons, other than from a supplier or trader, for the furtherance of its functions;
- (l) to receive such donations beneficially or as trustee of any trust established for the furtherance of such functions;
- (m) to publish, from time to time, such professional or other information as it deems necessary or expedient for the promotion of the functions of the Council; and
- (n) to do all such acts, matters and things as it deems necessary for fulfilling the functions of the Council.

[Ch4810s20]20. Committees of the Council

(1) The Council may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such functions of the Council as the Council may consider expedient.

(2) The Chairman of each committee shall be appointed by the Council from amongst the members of the Council.

(3) Each committee may in its discretion invite any person, not being a member of the Council, to attend a meeting of the committee and take part in the deliberations of the meeting but such person shall not be entitled to vote.

(4) The Chairman of a committee may convene a meeting of the committee of which he is Chairman.

(5) The Chairman may direct the Chairman of any committee to convene a meeting of such committee and such Chairman shall, as soon as is practicable, comply with such direction.

(6) At all meetings of a committee the quorum shall be formed by a majority of members.

(7) At all meetings of a committee each member present shall have one vote on a question before the committee and, in the event of an equality of votes, the Chairman shall have, in addition to a deliberative vote, a casting vote.

(8) Every committee shall have the power to regulate its own procedure.

(9) Every committee shall keep minutes of its meetings and shall inform the Council of its activities and shall conduct its proceedings in such manner as the Council may direct.

(10) A member of a committee shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council such allowances as the Council may, determine.

[Ch4810s21]21. Disclosure of interest

If a member of the Council has an interest, direct or indirect, in any matter before the Council and is present at a meeting of the Council at which the matter is under consideration, he shall as soon as practicable, disclose that fact and shall not take part in the consideration or discussion of or vote on any question with respect to the determination of the matter.

PART V

FINANCIAL PROVISIONS

[Ch4810s22]22. Funds, accounts and audit

(1) The funds of the Council shall consist of—

- (a) such sums as may be appropriated by Parliament for the purposes of the Council;
- (b) any fees payable under this Act;
- (c) a portion of the fines paid to the subordinate courts in matters of consumer protection;
- (d) such other moneys and assets as may vest in or accrue to the Council in the course of its functions; and
- (e) such moneys or other assets as may accrue to or vest in, the Council by way of grants, subsidies, bequests, donations, subscriptions, rents, interests or royalties from any other person.

(2) The Council shall keep proper accounts and other records relating thereto in respect of its funds and shall in every aspect comply with the provisions of the Public Finance Management Act. Cap. 37:01

(3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council.

[Ch4810s23]23. Reimbursement of expenses of members of the Council, etc.

The Council may make provision for the reimbursement of any reasonable expenses incurred by a member of the Council or of a committee in connexion with the business of the Council or the committee.

[Ch4810s24]24. Annual reports

(1) As soon as practicable, but not later than six (6) months after the expiry of each financial year, the Council shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Council, and shall be appended to the report—

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Council may consider appropriate or as the Minister may direct.

(3) The Minister shall, after he receives the report referred to in subsection (1), lay the report before the National Assembly and subsequently the report shall be published.

[Ch4810s25]25. Progress reports

The Council shall, at the end of every financial year, produce a progress report on its activities during that period and shall publish the report.

PART VI

CONTRACTUAL PROTECTION

[Ch4810s26]26. Standard form contracts

(1) Standard form contracts or agreements shall—

- (a) be drafted in terms which are clear and understandable to a consumer and shall not contain references to contracts, rules, practices, texts or documents which, not being within public or common knowledge, are not made available to a consumer prior to the execution of the agreement or contract;

(b) be drafted in the official language and in characters readable at single sight by any normal sighted person; and

(c) where the contract is entered into locally, have a written translation into the national local language and shall be read and explained to an illiterate, blind, mute and similarly disabled consumer in a language he understands.

(2) The Council shall control and regulate the standard form agreements to ensure adequate consumer protection.

[Ch4810s27]27. Relief against unfair consumer contracts

(1) A consumer who contracts for sale or supply of technology, goods or services where the contract is unfair or contains unfair provisions or where the trader or supplier has taken or is likely to take unfair advantage of his rights under the contract shall be given relief by a competent authority.

(2) Where a consumer has entered into an unfair consumer contract, the competent authority may make any one or more of the following orders—

(a) cancelling the whole or any part of the contract;

(b) varying part only of the consumer contract;

(c) enforcing part only of the consumer contract;

(d) reducing any amount payable by the consumer under the contract;

(e) annulling the exercise of any power, right or discretion under the consumer contract or directing that any such power, right or discretion should be exercised in a particular way.

(3) For the purposes of this section, an unfair consumer contract means a contract which—

(a) results in an unreasonable or unequal exchange of value or benefits;

(b) is oppressive;

(c) imposes obligations or liabilities on a party, which obligations are not reasonably necessary to protect the interests of the other party;

(d) excludes or limits the obligations of a party to an extent that it is not reasonably necessary to protect his interests;

(e) is contrary to commonly acceptable standards of fair dealings; or

(f) in case of a written consumer contract, if the contract is expressed in a language not ordinarily understood by the consumer.

[Ch4810s28]28. Financial transactions

(1) A consumer shall have access to banking and financial services including but not limited to opening and operating accounts, securing loans, mortgages, charges, insurance, health insurance cover, pension and other services at affordable or lowest possible rates.

(2) Contracts governing financial transactions such as general insurance, health insurance, hire purchase, mortgage shall be interpreted, implemented and enforced—

- (a) in good faith;
- (b) consistent with the instrument embodying the contract between the parties; and
- (c) in a manner consistent with the laws governing or regulating financial transactions.

[Ch4810s29]29. Consumer credit contracts

The supplier or trader of technology, goods or services shall, in a case involving the supply or sale of technology, goods or services that include the grant of consumer credits, inform the consumer and advise him in writing about the following matters in advance—

- (a) the cash price of the technology, goods or services involved;
- (b) the amount of interest, the annual or periodic rate at which the same is computed as well as the interest rate in arrears;
- (c) the number of instalments payable as well as the frequency or periodicity thereof; and
- (d) the total amount payable for such technology, goods or services except that the said total amount shall not be higher than the sum of the cash price and the interest.

[Ch4810s30]30. Right of retraction

(1) A consumer shall have the right of retraction within a reasonable period but not less than seven (7) days from the signature or execution of a contract or receipt of the technology, goods or services where the contract has been entered into at a place other than the ordinary business premises of the supplier or trader.

(2) In computing the grace period within which the consumer should exercise the right of retraction from the day on which the agreement was entered into, weekends and public holidays shall be excluded.

(3) Where the consumer exercises the right of retraction within reasonable time he shall be entitled to have the consideration he paid returned to him subject to corresponding reasonable adjustments which shall be agreed upon by the parties.

(4) A supplier or trader shall indemnify a consumer for injury or loss suffered where a good or item under service for fitness, repair, cleaning or otherwise suffers such detriment so as to diminish its value or render it wholly or partly unfit for the ordinary or normal use it is intended for.

[Ch4810s31]31. Implied contract terms

(1) In the service of technology transfer contract, the purpose of which is the repair of any type of goods, there shall be an implied obligation on the part of the service or technology supplier

to use at his expense new spare parts, accessories, paraphernalia or peripherals fit for the goods involved without prejudice to the freedom of the parties to expressly agree otherwise.

(2) Where the supplier of service or technology does not comply with subsection (1), a consumer shall be entitled to indemnity and such other redress including the supplier of services or technology substituting, without extra charge, the components, spare parts, paraphernalia, accessories or peripherals involved therein.

[Ch4810s32]32. Cancellation and variation of contracts

(1) A consumer may request cancellation of an agreement or a reduction of the price, without prejudice to being indemnified for injury or loss, where a technology, good or service which is the subject of the contract has concealed faults, defects or deficiencies that make it unfit or diminish its quality and usefulness below the standards normally expected from it to such an extent that, if previously known to the consumer he would not have purchased the same or would have paid a lower price for it.

(2)—(a) A consumer shall be entitled, in addition to indemnity for consequential injury or loss, to—

- (i) free replacement of the technology;
- (ii) repair of the goods;
- (iii) adjustment of the technology, or
- (iv) free rendering of the service for a reasonable term; and

(b) where (ii), (iii) or (iv) is not possible, to its replacement or to the return of the amount paid.

(3) Subsection (2) shall apply where—

(a) the technology, goods or services which are subject to compulsory standards regarding its quality or efficiency do not comply with the standards;

(b) the materials, elements, substances or ingredients forming or constituting the technology, goods or services do not correspond with the alleged specifications;

(c) a legal standard of fineness of jewellery or gold is lower than that allegedly present;

(d) a technology, good or service has been purchased under a given warranty and within the warranty period a deficiency, poor quality or defect covered by the warranty becomes evident; or

(e) a supplier or trader and the consumer have agreed that the technology, goods or services subject to the agreement should meet certain specifications but which the technology, good or service supplied or rendered does not meet the specification.

(4) A supplier or trader shall replace goods or return the excess money paid, as the case may be, where—

(a) after consideration of the permitted tolerance ranges, the net contents of goods are lower than expected or the amount is lower than what is indicated on the package or container; or

(b) the instrument used to measure the contents, quantity, volume or any other standard has been used to the detriment of the consumer or beyond the tolerance ranges permitted in the type of measurement.

[Ch4810s33]33. Supplier's or trader's liability

(1) The actions referred to in section 32 above may be brought against any constituent of the distribution chain which sold such technology, goods or services including manufacturer, wholesaler, retailer or trader, all of whom may be severally or jointly liable.

(2) A consumer may cancel a contract, without prejudice to the indemnities he is entitled to, where a supplier or trader of technology, goods or services delays in complying with his obligations under a contract.

(3)(a) Where goods repaired show defects related to the service rendered and attributable to the supplier of the service, a consumer shall be entitled, within sixty (60) days from receipt of the goods or discovery of the defect, whichever is latter, to have it repaired without additional cost within the shortest possible time and in any event within fourteen (14) days; and

(b) this subsection shall not prejudice the consumer's right to proper indemnity for damages.

(4) A supplier shall indemnify a consumer for injury or loss suffered where goods or items under service for fitness, repair, cleaning or otherwise suffers such detriment so as to diminish its value or render it wholly or partly unfit for the ordinary or normal use it is intended for.

[Ch4810s34]34. Standards and support service

(1) The supplier or trader of technology, goods or services shall supply or deliver technology, goods or services which shall offer the services or satisfaction legitimately expected by the consumer.

(2) The technology, goods or services shall meet the minimum requirements and relevant standards such as durability, usefulness, safety and viability.

(3) The supplier or trader shall also give the consumer a manual in a language understood by the consumer, receipt or any other document showing the technical characteristics, application of the product or technology, safety precautions relating to the operation or use thereof, the price, and the guarantee period which shall be sufficiently long but not less than six (6) months.

(4) The supplier or trader shall, in transactions concerning products for long use, provide maintenance, after sale services and guarantee or warranty to the consumer.

[Ch4810s35]35. Consumer information on standards

(1) A supplier or trader of a technology, goods or services shall provide consumers with true, sufficient, clear and timely information on—

- (a) goods including whether they are genetically modified or not; and
- (b) services offered, to enable consumers to make proper, informed and reasonable choices.

(2) A manufacturer or producer shall—

- (a) label all products in a manner that is legible, indelible and where applicable in bold letters and in ordinarily understandable language or dialect of a consumer; and
- (b) label every genetically modified product.

(3) A manufacturer, producer, assembler or packer shall clearly indicate his name, postal and physical address, the contents, ingredients and the expiry date of the products in legible, distinct characters and in a contrasting colour to the background colour.

(4) The supplier or trader of technology, goods or services shall provide technology, goods or services that meet Malawi Standards.

[Ch4810s36]36. Supplier or trader to provide the consumer with receipt, invoice, etc.

(1) A supplier or trader of technology, goods or services shall provide a consumer with a contract, receipt, ticket, invoice, business record or any other document that embodies or evidences the transaction unless this requirement is expressly excluded by this Act or any other written law.

(2) In the event that the technology, goods or services are not delivered, supplied or performed upon the execution of the transaction or upon the sale, the contract, receipt, ticket, invoice, business record or document shall indicate the date and place where delivery, supply or performance is to take place and the consequences of any failure or delay.

(3) In the supply of technology, goods or services the contract, receipt, ticket or invoice shall indicate the material components, spare parts, accessories, paraphernalia or peripherals to be used, price thereof, the cost of manpower or labour as well as the terms under which the supplier undertakes to provide such technology or service.

[Ch4810s37]37. Price to be displayed on goods, etc.

(1) The supplier or trader of technology, goods or services shall indicate clearly in local currency and exhibit to the public the price of any technology, goods and services, unless an express exemption applies under any written law.

(2) The price of any technology, goods or services shall include the actual price as well as any duty, tax, charge, fees or levy the consumer is liable to pay.

[Ch4810s38]38. Particulars or labels on goods to be in official language, etc.

A supplier or trader of technology, goods or services shall ensure that the particulars shown on the goods or their labels, packages or in advertisements and any information or announcements relating to the supply of a technology, goods or services is expressed in recognized official language, legal tender, and in generally accepted international, national or local measuring units.

[Ch4810s39]39. Certain words to be used to indicate warranty

A person shall only use the terms “guarantee” or “warranty” or any other equivalent term, to indicate clearly and accurately the extent of the warranty, as well as the conditions, manner, duration and place in which they can be enforced by a consumer.

[Ch4810s40]40. Warning about harmful technology and goods

(1) A supplier or trader of consumer technology or goods which are harmful or hazardous to human health or the environment shall put easily noticeable instructions and warning on the technology or goods so that the consumer may use them under highest possible safety conditions.

(2)(a) The supplier or trader of dangerous technology, goods or services shall provide instructions and put a clearly visible and prominent warning on the technology, goods or services;

(b) paragraph (a) above shall not prejudice the supplier’s obligation to take corresponding safety measures or to conduct his activities with due diligence and care as may be required under this Act or any other written law.

(3) A supplier or trader who, after the introduction of technology, goods or services into the market becomes aware of the existence of unforeseen health hazards or risks, shall communicate as soon as possible to the relevant authority and inform consumers of the existence of such hazards or risks.

(4) The supplier or trader of technology, goods or services concerned shall bear the costs of giving notice to consumers and the notice shall be given through the most effective and appropriate means to ensure full and timely dissemination of the information about the risks that such technology, goods or services might cause to the consumers.

(5) Subsection (4) shall not exempt the supplier or trader from his liability for the damage actually caused by the technology, goods or services.

[Ch4810s41]41. Remedies for harmful technologies and goods

(1) The Council shall take all necessary steps for the full, timely and faithful compliance with the obligations set forth in section 40.

(2) Where it is verified in an appropriate laboratory that technology or goods have a material defect or deficiency or constitutes a material hazard or risk, even under proper use, the supplier or trader thereof shall, without prejudice to the liabilities that may have arisen, withdraw the same from the market and substitute or replace the same at his own expense.

(3) Where a supplier or trader fails to proceed according to subsection (2) he shall, within a reasonable period, return to a consumer the consideration paid for the technology, goods or services.

(4) A consumer shall show the supplier or trader the technology, goods or services as well as its package or other means of proving that the consumer purchased or lawfully availed himself of the same,

(5) The Council shall cause the immediate withdrawal of a technology, goods or services from the market and ban the circulation thereof where the hazard or toxicity of the technology, goods or services is proven to reach levels considered harmful or dangerous to public or where it is reasonably foreseeable that the technology, goods or services are health capable of causing harm or danger to the public.

(6) The trader or supplier of the technology, goods or services which cause harm or danger shall be liable for the damage caused and bear the expenses of withdrawing the technology, goods or services from the market.

[Ch4810s42]42. Offence and penalty

Any supplier or trader who contravenes any provision under this Part shall be guilty of an offence and upon conviction, liable to a fine of K500,000 and to imprisonment for five (5) years.

PART VII

ADVERTISING

[Ch4810s43]43. Supplier or trader to provide true information

Every supplier or trader of technology, goods services shall provide a consumer with true, adequate, clear and prompt information on the technology, goods and services offered, so that the consumer can make a proper and informed choice.

[Ch4810s44]44. Advertisement to be truthful

(1) An advertiser shall ensure that an advertisement—

- (a) conforms to rules of decency, sincerity and truth;
- (b) does not exploit superstition, ignorance or fear; and
- (c) is distinct in whatever form it takes.

(2) Any advertiser who puts an advertisement that constitutes a false or misleading offer or promotion of technology, goods, activities or services shall be guilty of fraud,

(3) For the purposes of this section, false or misleading advertising includes any type of business information or communication using text, dialogue, sounds, images or descriptions which can directly or indirectly, expressly or by omission, lead a consumer to mistake, misunderstand or confuse—

- (a) the geographic, business or other origin of the offered goods or the place for the rendering of services agreed upon or the technology used;
- (b) the components or ingredients of goods offered, or the percentages of the same used therein;
- (c) the benefits or repercussions of the uses or hiring such technology, goods or services;
- (d) the basic characteristics of the goods to be sold or the technology to be supplied or the services to be rendered, such as size, quality, usefulness, durability or any other standard deemed reasonable and indispensable or a normal dealing relating to such technology, goods or services;
- (e) the date of manufacture or useful life of the technology or goods,
- (f) the terms of the warranties and guarantee as offered;
- (g) the official or private, domestic or foreign recognition, approvals or distinctions or licences, such as patents, trademarks, medals, awards, prizes or diplomas;
- (h) the price of the offered technology, goods or services, the terms of payment and the cost of the credit; or
- (i) any other particular material to the transaction involving the technology, goods or services.

[Ch4810s45]45. Abusive advertising prohibited

An advertiser shall not use abusive advertising.

[Ch4810s46]46. Duration of advertisement necessary in promotional sales, etc.

(1) An advertiser shall, in the case of promotional services, sales or special offers, indicate in the respective advertisement the duration thereof or, as the case may be, the nature or volume of the technology, goods or services offered, as well as the general conditions, warranties, guarantee and terms of the proposed business.

(2) Where no duration is fixed, nor the nature or volume of the technology, goods or services determined, the sale, promotion or offer shall be understood to extend for a maximum duration of thirty (30) days from time of the last announcement.

(3) Where the advertiser of technology, goods or services in promotion, sale or special offer fails to comply with the advertisement, a consumer may—

- (a) take necessary steps to compel the supplier or trader to comply with the obligation according to the general law of contract;
- (b) accept another technology or goods or the rendering of an equivalent service; or
- (c) cancel the contract if there has been an advance payment by the consumer.

[Ch4810s47]47. Consumer to be compensated

(1) Where abusive advertising results in loss to a consumer, the consumer shall be entitled to claim compensation from the offeror, or advertiser and the compensation shall in no event be less than the balance between the price of the technology, goods or services under promotion or sale and its regular or ordinary price or cost of replacement or repair.

(2) Where the statements made in the advertisement are considered false or misleading to consumers, the Council shall order an amendment of the content and such amendment shall be announced at the expense of the advertiser through the same media used to disseminate the false or misleading message.

(3) The advertiser shall bear the burden of proving the truth of the statements contained in the advertising material.

[Ch4810s48]48. Offence and penalty

Any person who contravenes any provision under this Part shall be guilty of an offence and upon conviction, liable to a fine of K500,000 and to imprisonment for five (5) years.

PART VIII

MEASURES FOR CONSUMER REDRESS AND MECHANISMS

[Ch4810s49]49. Representative consumer or class actions

(1) The defence, promotion or enforcement of rights under this Act or any other written law shall be exercised or conducted through individual or collective mediation, negotiation, arbitration or litigation.

(2) Collective mediation, negotiation, arbitration or litigation may be conducted where collective or diffuse interests or rights are involved.

(3) Under “collective or diffuse interest” means supra-individual rights or interests having an indivisible nature to which undetermined individuals are entitled.

(4) Registered consumer associations shall be lawfully entitled to act in judicial or administrative tribunals in the collective enforcement or defence of the rights that this Act or any other written law vest in a consumer; and they may represent consumers in such tribunals.

(5) The decisions rendered in collective procedures shall have general effect and accrue to all consumers except where any such decision is dismissed for want of proof in which event any other consumer having an interest in the matter may bring a new action on the basis of facts and claims arising from the same transaction.

[Ch4810s50]50. Subordinate courts to have jurisdiction over consumer claims

The subordinate courts shall—

- (a) have jurisdiction over consumer protection claims;

(b) be available and accessible to all consumers in order to provide simple, speedy, inexpensive and understandable justice; and

(c) have the power to order alteration, modification, reform, rescission or reformulation of consumer contracts and transactions.

[Ch4810s51]51. Funding for the subordinate Courts

Local Authorities shall allocate funds to the subordinate courts for the disposition of the consumer protection claims.

[Ch4810s52]52. Remedies and sanctions

(1) The subordinate courts shall have and exercise penal and remedial powers provided under this Act or any other written law.

(2) The subordinate court may under this Act or any other written law give the following remedies to a consumer—

(a) cancellation, rescission or revision of a contract or its clauses;

(b) damages and interests; or

(c) fine the guilty party.

(3) A subordinate court may—

(a) order the destruction of offensive technology or goods;

(b) decide upon the prohibition of the sale or supply of technology, goods or services; or

(c) order the withdrawal of the same from the market, within a specified period.

[Ch4810s53]53. Jurisdiction in respect of persons and causes of action

(1) Subject to this Act, a subordinate court shall have jurisdiction in respect of—

(a) any person who resides or carries on business or is employed within its area;

(b) any person in respect of any cause of action that arose wholly within its area;

(c) any person, whether or not he resides, carries on business or is employed within its area, if he appears before the court and does not object to its jurisdiction; and

(d) any person in respect of any proceedings incidental to any action instituted in the court by that person.

[Ch4810s54]54. Relationship between this Act and other laws

For the avoidance of doubt, this Act shall be regarded as complementary to the process of ensuring and enhancing laws regulating or touching on consumer protection.

PART IX

MISCELLANEOUS PROVISIONS

[Ch4810s55]55. Offence and penalty

(1) Any person who contravenes or fails to comply with any provision of this Act or any regulations made hereunder shall be guilty of an offence.

(2) A person guilty of an offence under this Act or regulations made hereunder for which no specific penalty is provided shall be liable to a fine of K500,000 or where applicable to an amount equivalent to the financial gain generated by the offence, if such amount be greater, and to imprisonment for five (5) years.

[Ch4810s56]56. Regulations

(1) The Minister may, in consultation with the Council, make regulations generally for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing, the Minister may make regulations to fees to be paid by the complainants.

(3) The Chief Justice may in consultation with the Minister make regulations to—

- (a) prescribe the manner in which complaints to the subordinate courts may be made;
- (b) prescribe the monetary jurisdiction and ceilings for matters which may be tried in subordinate courts;
- (c) prescribe the procedure of subordinate courts in matters of consumer protection;
- (d) prescribe forms for pleadings at subordinate courts in matters of consumer protection; and
- (e) prescribe the sessions of the subordinate courts to facilitate access as well as to ensure expeditious determination of matters.

[Chap4901]CHAPTER 49:01

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14 of 1957(F)

37 of 1960(F)

2 of 1962(F)

G.N. 5/1964(M)

166/1967

An Act to make Provision Relating to the Registration of Trade Marks and for other purposes
Incidental thereto

[1ST APRIL 1958]

PRELIMINARY

[Ch4901s1]1. Short title

This Act may be cited as the Trade Marks Act.

[Ch4901s2]2. Interpretation

(1) In this Act, unless inconsistent with the context—

“assignment” means assignment by act of the parties concerned;

“Convention” means the Union Convention of Paris, dated the 20th March, 1883, for the Protection of Industrial Property, revised at Brussels on the 14th December, 1900, at Washington on the 2nd June, 1911, at The Hague on the 6th November, 1925, and at London on the 2nd June, 1934, and any revision thereof to which Malawi may accede in terms of section 7 of the Patents Act; Cap. 49:02

“convention country”, in relation to any provision of this Act, means a country (including any colony, protectorate or territory subject to the authority or under the suzerainty of that country, or any territory over which a mandate or trusteeship is exercised) which has been declared to be a convention country in terms of section 7 of the Patents Act;

“examiner” means an examiner appointed under section 5;

“former trade marks legislation” means this Act as in force from time to time prior to the 1st January, 1964;

“limitations” means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods to be sold or otherwise traded in in any place within Malawi or as to use in relation to goods to be exported to any market outside Malawi;

“mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination thereof;

“patent agent” means a person who is registered as such under section 68 (1) of the Patents Act and is by virtue of that Act entitled to practise as a patent agent; Cap. 49:02

“permitted use” has the meaning assigned to it by section 33 (1)

“register” means the register of trade marks kept under this Act;

“register of trade mark agents” means the register of trade mark agents kept under section 83 (1)

“registered trade mark” means a trade mark that is actually on the register;

“registered user” means a person who is for the time being registered as such under section 33;

“Registrar” means the Registrar of Trade Marks appointed under section 5;

“regulations” means regulations made under section 81;

“trade mark” means, except in relation to a certification trade mark, a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connexion in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person, and means, in relation to a certification trade mark, a mark registered or deemed to have been registered under section 42;

“trade mark agent” means a person who is—

- (a) registered as a trade mark agent in terms of section 83 (2); or
- (b) a legal practitioner or patent agent entitled to practise as a trade mark agent in terms of section 85;

“Trade Marks Office” means the Trade Marks Office established under section 3;

“transmission” means transmission by operation of law, devolution on the legal representative of a deceased person and any other mode of transfer not being assignment;

“Tribunal” means the Patents Tribunal established under the Patents Act. Cap. 49:02

(2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references therein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in physical or other relation to, goods.

PART I

ADMINISTRATION

[Ch4901s3]3. Establishment of Trade Marks Office

There shall be established under the direction of the Minister an office to be called the Trade Marks Office.

[Ch4901s4]4. Seal

The seal of the Patent Office kept in terms of the Patents Act shall also be the seal of the Trade Marks Office, and impressions thereof made for the purposes of this Act shall be judicially noticed. Cap. 49:02

[Ch4901s5]5. Appointment of officers

There shall be appointed—

- (a) a Registrar of Trade Marks who shall exercise the powers and perform the duties assigned to the Registrar by this Act and shall be responsible for its administration;
- (b) one or more Deputy Registrars of Trade Marks who shall, subject to the control of the Registrar, have all the powers conferred by this Act on the Registrar,
- (c) such examiners and other officers as the Minister may consider necessary for carrying out this Act.

[Ch4901s6]6. Register of trade marks

(1) There shall be kept at the Trade Marks Office for the purposes of this Act the record called the register of trade marks wherein shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of all registered users, disclaimers, conditions, limitations and such other matters relating to registered trade marks as may be prescribed.

(2) The register shall be divided into four parts which shall be known as Part A, Part B, Part C and Part D respectively.

(3) Any trade mark which was registered under the former trade marks legislation shall continue in force in Malawi for the remainder of the unexpired portion of the period for which it was of force and effect when registered under the said legislation.

(4) Subject to this Act, the register of trade marks shall, at all convenient times, be open to inspection by the public, and certified copies, sealed with the seal of the Patent Office, of any entry in the register shall be given to any person requiring them on payment of the prescribed fee.

(6) No notice of any trust, whether expressed, implied or constructive, shall be entered in the register, and the Registrar shall not be affected by any such notice.

PART II

EFFECT OF REGISTRATION AND THE ACTION FOR INFRINGEMENT

[Ch4901s7]7. No action for infringement of unregistered trade mark

No person shall be entitled to institute any proceedings to prevent or to recover damages for the infringement of an unregistered trade mark, but nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

[Ch4901s8]8. Registration to be in respect of particular goods

A trade mark must be registered in respect of particular goods or classes of goods, and any question arising as to the class within which any goods fall shall be determined by the Registrar whose decision shall be final.

[Ch4901s9]9. Right given by registration in Part A and infringement thereof

(1) Subject to this section and sections 12 and 13, the registration of a person in Part A of the register as proprietor of a trade mark in respect of any goods shall, if valid, give or be deemed to have given to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion in the course of trade in relation to any goods in respect of which it is registered and in such manner as to render the use of the mark likely to be taken either—

(a) as being used as a trade mark; or

(b) in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as referring—

(i) to some person having the right either as proprietor or as registered user to use the trade mark; or

(ii) to goods with which such a person as aforesaid is connected in the course of trade.

(2) The right to the use of a trade mark given by registration as aforesaid shall be subject to any conditions or limitations entered on the register and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market or in any other circumstances to which, having regard to any such limitations, the registration does not extend.

(3) The right to the use of a trade mark given by registration as aforesaid shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form a part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it or has at any time expressly or impliedly consented to the use of the trade mark; or

(b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact a connexion in the course of trade between any person and the goods.

(4) The use of a registered trade mark, being one of two or more registered trade marks that are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

[Ch4901s10]10. Right given by registration in Part B and infringement thereof

(1) Except as provided by subsection (2), the registration of a person in Part B of the register as proprietor of a trade mark in respect of any goods shall, if valid, give or be deemed to have given to that person the like right in relation to those goods as if the registration had been in Part A of the register, and section 9 shall have effect in like manner in relation to a trade mark registered in Part B of the register as they have effect in relation to a trade mark registered in Part A of the register.

(2) In any action for infringement of the right to the use of a trade mark given by registration as aforesaid in Part B of the register, otherwise than by an act that is deemed to be an infringement by virtue of section 11 no injunction or other relief shall be granted to the plaintiff if the defendant establishes to the satisfaction of the High Court that the use of which the plaintiff complains is not likely to deceive or cause confusion or to be taken as indicating a connexion in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the trade mark.

[Ch4901s11]11. Infringement by breach of certain restrictions

(1) Where, by a contract in writing made with the proprietor or a registered user of a registered trade mark, a purchaser or owner of goods enters into an obligation to the effect that he will not do, in relation to the goods, an act to which this section applies, any person who, being the owner for the time being of the goods and having notice of the obligation, does that act or authorizes it to be done, in relation to the goods, in the course of trade or with a view to any dealing therewith in the course of trade shall be deemed thereby to infringe the right to the use of the trade mark given by the registration thereof, unless that person became the owner of the goods by purchase for money or money's worth in good faith before receiving notice of the obligation or by virtue of a title derived through another who so became the owner thereof.

(2) The acts to which this section applies are—

(a) the application of the trade mark upon the goods after they have suffered alteration in any manner specified in the contract as respects their state or condition, get-up or packing;

(b) in a case in which the trade mark is upon the goods, the alteration, part removal or part obliteration thereof;

(c) in a case in which the trade mark is upon the goods and there is also thereon other matter, being matter indicating a connexion in the course of trade between the proprietor or registered user and the goods, the removal or obliteration, whether wholly or partly, of the trade mark unless that other matter is wholly removed or obliterated;

(d) in a case in which the trade mark is upon the goods, the application of any other trade mark to the goods;

(e) in a case in which the trade mark is upon the goods, the addition to the goods of any other matter in writing that is likely to injure the reputation of the trade mark.

(3) In this section, references, in relation to any goods, to the proprietor, to a registered user and to the registration of a trade mark shall be construed, respectively, as references to the proprietor in whose name the trade mark is registered, to a registered user who is registered and to the registration of the trade mark, in respect of those goods, and the expression “upon” includes, in relation to any goods, a reference to physical relation thereto.

[Ch4901s12]12. Saving for vested rights

Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it, in relation to goods, in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date anterior—

(a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his; or

(b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his,

whichever is the earlier, or to object (on such use being proved) to that person being put on the register for that identical or nearly resembling trade mark in respect of those goods under section 17 (2).

[Ch4901s13]13. Saving for use of name, address or description of goods

No registration of a trade mark shall interfere with—

(a) any bona fide use by a person of his own name or of the name of his place of business, or of the name or of the name of the place of business of any of his predecessors in business; or

(b) the use by any person of any bona fide description of the character or quality of his goods, not being a description that would be likely to be taken as importing any such reference as is mentioned in section 9 (1) (b) or in section 42 (3) (b).

PART III

REGISTRABILITY AND VALIDITY OF REGISTRATION

[Ch4901s14]14. Distinctiveness requisite for registration in Part A

(1) In order for a trade mark (other than a certification trade mark) to be registrable in Part A of the register, it must contain or consist of at least one of the following essential particulars—

(a) the name of a company, individual or firm, represented in a special or particular manner;

- (b) the signature of the applicant for registration or some predecessor in his business;
- (c) an invented word or invented words;
- (d) a word or words having no direct reference to the character or quality of the goods and not being, according to its ordinary signification, a geographical name or a surname;
- (e) any other distinctive mark, but a name, signature or word or words, other than such as fall within the descriptions in the foregoing paragraphs (a), (b), (c) and (d), shall not be registrable under this paragraph except upon evidence of its distinctiveness.

(2) For the purposes of this section, “distinctive” means adapted, in relation to the goods in respect of which a trade mark is registered or proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the; course of trade from goods in the case of which no such connexion subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) The Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, in determining whether a trade mark is adapted to distinguish as aforesaid may have regard to the extent to which—

- (a) the trade mark is inherently adapted to distinguish as aforesaid; and
- (b) by reason of the use of the trade mark or of any other circumstances the trade mark is, in fact, adapted to distinguish as aforesaid.

(4) An appeal shall lie from any decision of the Registrar under this section.

[Ch4901s15]15. Capability of distinguishing requisite for registration in Part B

(1) In order for a trade mark to be registrable in Part B of the register, it must be capable, in relation to the goods in respect of which it is registered or proposed to be registered, of distinguishing goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connexion subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(2) In determining whether a trade mark is capable of distinguishing as aforesaid, the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, may have regard to the extent to which—

- (a) the trade mark is inherently capable of distinguishing as aforesaid; and
- (b) by reason of the use of the trade mark or of any other circumstances the trade mark is, in fact, capable of distinguishing as aforesaid.

(3) A trade mark may be registered in Part B notwithstanding any registration in Part A in the name of the same proprietor of the same trade mark or any part or parts thereof.

(4) An appeal shall lie from any decision of the Registrar under this section.

[Ch4901s16]16. Prohibition of registration of deceptive, etc., matter

It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice or would be contrary to law or morality, or any scandalous design.

[Ch4901s17]17. Prohibition of registration of identical and resembling trade marks

(1) Subject to subsection (2), no trade mark shall be registered in respect of any goods or description of goods that is identical with a trade mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods or that so nearly resembles such a trade mark as to be likely to deceive or cause confusion.

(2) In the case of honest current use or other special circumstances which, in the opinion of the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, make it proper so to do, the Registrar or the Tribunal, as the case may be, may permit the registration of trade marks that are identical or nearly resemble each other in respect of the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as the Registrar or the Tribunal may think it right to impose.

(3) Where separate applications are made by different persons to be registered as proprietors respectively of trade marks that are identical or nearly resemble each other in respect of the same goods or description of goods, the Registrar may refuse to register any of them until their rights have been determined by the Tribunal or have been settled by agreement in a manner approved by him or on an appeal by the Tribunal.

[Ch4901s18]18. Registration in Part A to be conclusive as to validity after seven years

(1) In all legal proceedings relating to a trade mark registered in Part A of the register (including applications under section 37) the original registration in Part A of the register of the trade mark shall, after the expiration of seven years from the date of that registration, be taken to be valid in all respects, unless—

- (a) that registration was obtained by fraud; or
- (b) the trade mark offends against section 16.

(2) Nothing in section 10 (1) shall be construed as making applicable to a trade mark, as being a trade mark registered in Part B of the register, the foregoing provisions of this section relating to a trade mark registered in Part A of the register.

[Ch4901s19]19. Registration subject to disclaimer

If a trade mark—

- (a) contains any part not separately registered by the proprietor as a trade mark; or
- (b) contains matter common to the trade or otherwise of a non-distinctive character,

the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, in deciding whether the trade mark shall be entered or shall remain on the register, may require as a condition of its being on the register—

(i) that the proprietor shall disclaim any right to the exclusive use of any part of the trade mark or to the exclusive use of all or any portion of such trade mark as aforesaid, to the exclusive use of which the Registrar or the Tribunal holds him not to be entitled; or

(ii) that the proprietor shall make such other disclaimer as the Registrar or the Tribunal may consider necessary for the purposes of defining his rights under the registrations:

Provided that no disclaimer on the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

[Ch4901s20]20. Words used as name or description of an article or substance

(1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use, after the date of the registration, of a word or words which the trade mark contains, or of which it consists, as the name or description of an article or substance:

Provided that, if it is proved either—

(a) that there is a well-known and established use of the word or words as the name or description of the article or substance by a person or persons carrying on a trade therein, not being use in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark on (in the case of a certification trade mark) goods certified by the proprietor; or

(b) that the article or substance was formerly manufactured under a patent, that a period of two years or more after the cesser of the patent has elapsed, and that the word or words is or are the only practicable name or description of the article or substance,

subsection (2) shall have effect.

(2) Where the facts mentioned in proviso (a) or (b) to subsection (1) are proved with respect to any word or words, then—

(a) if the trade mark consists solely of that word or those words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed, for the purposes of section 37, to be an entry wrongly remaining on the register;

(b) if the trade mark contains that word or those words and other matter, the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may in case of a decision in favour of its remaining on the register require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance and any goods of the same description of that word or those words, so, however, that no disclaimer on the register shall affect

any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made; and

(c) for the purposes of any other legal proceedings relating to the trade mark—

(i) if the trade mark consists solely of that word or those words, all rights of the proprietor, whether under the common law or by registration, to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description; or

(ii) if the trade mark contains that word or those words and other matter, all such rights of the proprietor to the exclusive use of that word or those words in such relation as aforesaid,

shall be deemed to have ceased on the date at which the use mentioned in proviso (a) to subsection (1) first became well known and established or at the expiration of the period of two years mentioned in proviso (b).

(3) No word which is the commonly used and accepted name of any single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark in respect of a chemical substance or preparation, and any such registration in force at the commencement of this Act or thereafter shall, notwithstanding anything in section 18, be deemed, for the purposes of section 37, to be an entry made in the register without sufficient cause, or an entry wrongly remaining on the register, as the circumstances may require:

Provided that the foregoing provisions of this subsection shall not have effect in relation to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to public use.

[Ch4901s21]21. Effect of limitation as to colour and of absence thereof

A trade mark may be limited in whole or in part to one or more specified colours, and in any such case the fact that it is so limited shall be taken into consideration by the Registrar, or by the Tribunal in the event of an appeal from a decision of the Registrar, in deciding on the distinctive character of the trade mark.

If and so far as a trade mark is registered without limitation of colour, it shall be deemed to be registered for all colours.

PART IV

PROCEDURE FOR, AND DURATION OF, REGISTRATION

[Ch4901s22]22. Application for registration

(1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it must apply in writing to the Registrar in the prescribed manner for registration either in Part A or in Part B of the register.

(2) Subject to this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think right.

(3) In the case of an application for registration of a trade mark (other than a certification trade mark) in Part A of the register, the Registrar may, if the applicant is willing, instead of refusing the application, treat it as an application for registration in Part B and deal with the application accordingly.

(4) In the case of a refusal or conditional acceptance, the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat, and the decision of the Registrar shall be subject to appeal.

(5) An appeal under this section shall be made in the prescribed manner, and on the appeal the Tribunal shall, if required, hear the applicant and the Registrar, and shall otherwise deal with such appeal in accordance with Part X.

(6) Appeals under this section shall be heard on the materials stated as aforesaid by the Registrar, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those so stated as aforesaid by him, except by leave of the Tribunal. Where any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(7) The Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, may at any time, whether before or after acceptance, correct any error in or in connexion with the application or may permit the applicant to amend his application upon such terms as the Registrar or the Tribunal may think right.

[Ch4901s23]23. Opposition to registration and appeals

(1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the applicant shall, as soon as may be after acceptance, advertise the application as accepted in the prescribed manner, and the advertisement shall set forth all conditions and limitations subject to which the application has been accepted:

Provided that the Registrar may direct that an application shall be advertised before acceptance if it is made under section 14 (1) (e), or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do, and where an application has been so advertised, the Registrar may, if he thinks fit, direct that it shall be advertised again when it has been accepted, but shall not be bound so to do.

(2) Any person may, within the prescribed time from the date of the advertisement of an application, give notice to the Registrar of opposition to the registration.

(3) The notice shall be given in writing in the prescribed manner and shall include a statement of the grounds of opposition.

(4) The Registrar shall send a copy of the notice to the applicant and, within the prescribed time after receipt thereof, the applicant shall send to the Registrar, in the prescribed manner a

counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(5) If the applicant sends such a counter-statement as aforesaid, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(6) An appeal shall lie from any decision of the Registrar under this section.

(7) An appeal under this section shall be made in the prescribed form and manner, and on the appeal the Tribunal shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(8) On the hearing of an appeal under this section, any party may, either in the manner prescribed or by special leave of the Tribunal, bring forward further material for the consideration of the Tribunal.

(9) On an appeal under this section, no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar, other than those so stated as aforesaid by the opponent, except by leave of the Tribunal. Where any further grounds of objection are taken; the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(10) On an appeal under this section, the Tribunal may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity thereof, but in any such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

[Ch4901s24]24. Registration

(1) When an application for registration of a trade mark has been accepted, and either—

(a) the application has not been opposed and the time for notice of opposition has expired; or

(b) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall, unless the application has been accepted in error or unless the Tribunal otherwise directs, register the trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and that date shall be deemed, for the purposes of this Act, to be the date of registration:

Provided that the foregoing provisions of this subsection, relating to the date as of which a trade mark shall be registered and to the date to be deemed to be the date of registration, shall, as respects a trade mark registered under this Act with the benefit of any enactment relating to international arrangements, have effect subject to that enactment.

(2) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Patent Office.

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned, unless it is completed within the time specified in that behalf in the notice.

[Ch4901s25]25. Duration and renewal of registration

(1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with this section.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fourteen years from the date of expiration of the original registration or of the last renewal of registration, which date is in this section referred to as “the expiration of the last registration”.

(3) At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained and, if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the trade mark from the register, subject to such conditions, if any, as to its restoration to the register as may be prescribed.

(5) Where a trade mark has been removed from the register for non-payment of the fee for renewal, it shall, nevertheless, for the purpose of any application for the registration of a trade mark during one year next after the date of the removal, be deemed to be a trade mark that is already on the register:

Provided that the foregoing provisions of this subsection shall not have effect where the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, is satisfied either—

(a) that there has been no bona fide trade use of the trade mark that has been removed during the three years immediately preceding its removal; or

(b) that no deception or confusion would be likely to arise from the use of the trade mark that is the subject of the application for registration by reason of any previous use of the trade mark that has been removed.

[Ch4901s26]26. Registration of parts of trade marks and of trade marks as a series

(1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and any such part as separate trade marks.

Each separate trade mark must satisfy all the conditions of an independent trade mark and shall, subject to section 28 (3) and section 35 (2), have all the incidents of an independent trade mark.

(2) Where a person claiming to be the proprietor of several trade marks, in respect of the same goods or description of goods, which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) statements of the goods in relation to which they are respectively used or proposed to be used; or

(b) statements of number, price, quality or names of places; or

(c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(d) colour,

seeks to register those trade marks, they may be registered as a series in one registration.

PART V

ASSIGNMENT AND TRANSMISSION

[Ch4901s27]27. Powers of and restrictions on, assignment and transmission

(1) Notwithstanding any rule or law to the contrary, a registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible either in connexion with the goodwill of a business or not.

(2) A registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible in respect either of all the goods in respect of which it is registered, or was registered, as the case may be, or of some (but not all) of those goods.

(3) Subsections (1) and (2) shall have effect in the case of an unregistered trade mark used in relation to any goods as they have effect in the case of a registered trade mark registered in respect of any goods, if at the time of the assignment or transmission of the unregistered trade mark it is or was used in the same business as a registered trade mark and if it is or was assigned or transmitted at the same time and to the same person as that registered trade mark and in respect of goods all of which are goods in relation to which the unregistered trade mark is or was used in that business and in respect of which that registered trade mark is or was assigned or transmitted.

(4) Notwithstanding anything in subsections (1) to (3) inclusive, a trade mark shall not be, or be deemed to have been, assignable or transmissible in a case in which as a result of an assignment or transmission there would in the circumstances subsist or have subsisted, whether under the common law or by registration, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade

marks, the use of the trade marks in exercise of those rights would be, or have been, likely to deceive or cause confusion:

Provided that, where a trade mark is, or has been, assigned or transmitted in such a case as aforesaid, the assignment or transmission shall not be deemed to be, or to have been, invalid under this subsection if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, or were, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold or otherwise traded in within Malawi (otherwise than for export therefrom) or in relation to goods to be exported to the same market outside Malawi.

(5) The proprietor of a registered trade mark who proposes to assign it in respect of any goods in respect of which it is registered may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances, and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment of the first-mentioned trade mark would or would not be invalid under subsection (4), and a certificate so issued shall, subject to the provisions of this section as to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation, be conclusive as to the validity or invalidity under subsection (4) of the assignment in so far as such validity or invalidity depends upon the facts set out in the case, but, as regards a certificate in favour of validity, only if application for the registration under section 30 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

(6) Notwithstanding anything in subsections (1) to (3) inclusive, a trade mark shall not, on or after the commencement of this Act, be assignable or transmissible in a case in which as a result of an assignment or transmission thereof there would in the circumstances subsist, whether under the common law or by registration, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold or otherwise traded in in a place or places in Malawi and an exclusive right in another of those persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold or otherwise traded in in another place or other places in Malawi :

Provided that on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or of a person who claims that a trade mark has been transmitted to him or to a predecessor in title of his on or after the commencement of this Act, in any such case, the Registrar, if he is satisfied that in all the circumstances the use of the trade marks in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not be deemed to be, or to have been, invalid under this subsection or under subsection (4), so, however, that in the case of a registered trade mark this provision shall not have effect unless application for the registration under section 30 of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

(7) Where an assignment in respect of any goods of a trade mark that is at the time of the assignment used in a business in those goods is made, on or after the commencement of this Act, otherwise than in connexion with the goodwill of that business, the assignment shall not take effect

until the following requirements have been satisfied, that is to say, the assignee must, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, apply to him for directions with respect to the advertisement of the assignment and must advertise it in such form and manner and within such period as the Registrar may direct.

(8) An appeal shall lie from any decision of the Registrar under this section.

[Ch4901s28]28. Certain trade marks to be associated so as to be assignable and transmissible as a whole only

(1) Trade marks that are registered as, or that are deemed by virtue of this Act to be, associated trade marks shall be assignable and transmissible only as a whole and not separately, but they shall for all other purposes, be deemed to have been registered as separate trade marks.

(2) Where a trade mark that is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark that is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar, may at any time require that the trade marks shall be entered on the register as associated trade marks.

(3) Where a trade mark and any part or parts thereof are, by virtue of section 26 (1), registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

(4) All trade marks that are, by virtue of section 26 (2), registered as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.

(5) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by another person in relation to any of the goods in respect of which it is registered and may amend the register accordingly.

(6) An appeal shall lie from any decision of the Registrar under this section.

[Ch4901s29]29. Power of registered proprietor to assign and give receipts

Subject to this Act, the person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from the register to be vested in any other person, have power to assign the trade mark and to give effectual receipts for any consideration for an assignment thereof.

[Ch4901s30]30. Registration of assignments and transmissions

(1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall make application to the Registrar to register his title, and the Registrar shall, on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of

the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

(2) An appeal shall lie from any decision of the Registrar under this section.

(3) Except for the purposes of an appeal under this section or of an application under section 37, a document or instrument in respect of which no entry has been made in the register in accordance with subsection (1) shall not be admitted in evidence in any court in proof of the title to a trade mark unless the court otherwise directs.

PART VI

USE AND NON-USE

[Ch4901s31]31. Removal from register and imposition of limitation

(1) Subject to section 32, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application by any person aggrieved to the Tribunal or, at the option of the applicant and subject to section 64, to the Registrar, on the ground either—

(a) that the trade mark was registered without any bona fide intention on the part of the applicant for registration that it should be used in relation to those goods by him and that there has in fact been no bona fide use of the trade mark in relation to those goods by any proprietor thereof for the time being up to the date one month before the date of the application; or

(b) that up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no bona fide use thereof in relation to those goods by any proprietor thereof for the time being:

Provided that (except where the applicant has been permitted under section 17 (2) to register an identical or nearly resembling trade mark in respect of the goods in question or where the Tribunal or the Registrar, as the case may be, is of opinion that he might properly be permitted so to register such a trade mark) the Tribunal or the Registrar may refuse an application made under paragraph (a) or (b) in relation to any goods, if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, bona fide use of the trade mark by any proprietor for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where, in relation to any goods in respect of which a trade mark is registered—

(a) the matters referred to in subsection (1) (b) are shown so far as regards non-use of the trade mark in relation to goods to be sold or otherwise traded in in a particular place in Malawi (otherwise than for export from Malawi) or in relation to goods to be exported to a particular market outside Malawi; and

(b) a person has been permitted under section 17 (2) to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to

goods to be sold or otherwise traded in in that place (otherwise than for export from Malawi) or in relation to goods to be exported to that market or the Tribunal or the Registrar is of opinion that he might properly be permitted so to register such a trade mark;

on application by that person to the Tribunal or, at the option of the applicant and subject to section 64, to the Registrar, the Tribunal or the Registrar may impose on the registration of the first mentioned trade mark such limitations as the Tribunal or the Registrar thinks proper for securing that that registration shall cease to extend to such use as last aforesaid.

(3) An applicant shall not be entitled to rely for the purposes of subsection (1) (b), or for the purposes of subsection (2), on any non-use of a trade mark that is shown to have been due to special circumstances in the trade and not to any intention not to use or to abandon the trade mark in relation to the goods to which the application relates.

[Ch4901s32]32. Defensive registration of wellknown trade marks

(1) Where a trade mark registered in Part A of the register has become so well known as respect any goods in respect of which it has been used that the use thereof in relation to other goods would be likely to be taken as indicating a connexion in the course of trade between those goods and a person entitled to use the trade mark in relation to the first-mentioned goods, then, notwithstanding that the proprietor registered in respect of the first-mentioned goods does not use or propose to use that trade mark in relation to those other goods and notwithstanding anything in section 31, the trade mark may, on the application in writing in the prescribed manner of the proprietor registered in respect of the first-mentioned goods be registered in Part D of the register in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under section 31.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark, notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark, notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.

(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application by any person aggrieved to the Tribunal or at the option of the applicant and subject to section 64, to the Registrar, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of subsection (1) are no longer satisfied in respect of any goods in respect of which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark or may be cancelled as respects any goods in respect of which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in subsection (1).

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases and the provisions of section 9 relating to the infringement of a trade mark registered in Part A of the register shall apply to the infringement of any defensive trade mark registered in terms of this section if that registration is valid.

[Ch4901s33]33. Registered users

(1) Subject to this section, a person other than the proprietor of a trade mark registered in either Part A or Part B of the register may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a certification or defensive trade mark) and either with or without conditions or restrictions.

The use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject, is in this Act referred to as the “permitted use” thereof.

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof and shall be deemed not to be use by a person other than the proprietor for the purposes of section 31 and for any other purpose for which such use is material under this Act or under any other law.

(3) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof and, if the proprietor refuses or neglects to do so within two months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

A proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(4) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user must apply in writing to the Registrar in the prescribed manner and must furnish him with an affidavit or a solemn declaration made by the proprietor or by some person authorized to act on his behalf and approved by the Registrar—

(a) giving particulars of the relationship existing or proposed between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;

- (b) stating the goods in respect of which registration is proposed;
- (c) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use or to any other matter; and
- (d) stating whether the permitted use is to be for a period or without limit of period and, if for a period, the duration thereof,

and with such further documents, information or evidence as may be required under the regulations or by the Registrar.

(5) When the requirements of subsection (4) have been complied with, if the Registrar, after considering the information furnished to him under that subsection, is satisfied that in all the circumstances the use of the trade mark in relation to the proposed goods or any of them by the proposed registered user, subject to any conditions or restrictions which the Registrar thinks proper, would not be contrary to the public interest, the Registrar may register the proposed registered user as a registered user in respect of the goods as to which he is so satisfied subject as aforesaid.

(6) The Registrar shall refuse an application under the foregoing provisions of this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(7) The Registrar shall, if so required by an applicant, take steps for securing that information given for the purposes of an application under the foregoing provisions of this section (other than matter entered in the register) is not disclosed to rivals in trade.

(8) Without prejudice to section 37, the registration of a person as a registered user—

- (a) may be varied by the Registrar as regards the goods in respect of which or any conditions or restrictions subject to which it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark to which the registration relates;

- (b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark; or

- (c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, that is to say—

- (i) that the registered user has used the trade mark otherwise than by way of the permitted use or in such a way as to cause or to be likely to cause deception or confusion;

- (ii) that the proprietor or the registered user misrepresented or failed to disclose some fact material to the application for the registration or that the circumstances have materially changed since the date of the registration;

- (iii) that the registration ought not to have been effected, having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.

(9) Provision shall be made by regulations for the notification of the registration of a person as a registered user to any other registered user of the trade mark, and for the notification of an

application under subsection (8) to the registered proprietor and each registered user (not being the applicant) of the trade mark, and for giving to the applicant on such an application, and to all persons to whom such an application is notified and who intervene in the proceedings in accordance with the regulations an opportunity of being heard.

(10) The Registrar may at any time cancel the registration of a person as a registered user of a trade mark in respect of any goods in respect of which the trade mark is no longer registered.

(11) An appeal shall lie from any decision of the Registrar under this section.

(12) Nothing in this section shall confer on a registered user of a trade mark any assignable or transmissible rights to the use thereof.

[Ch4901s34]34. Proposed use of trade mark by corporation to be constituted, etc

(1) No application for the registration of a trade mark in respect of any goods shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark—

(a) if the Registrar is satisfied that a body corporate is about to be constituted and that the applicant intends to assign the trade mark to the corporation with a view to the use thereof in relation to those goods by the corporation; or

(b) if the application is accompanied by an application for the registration of a person as a registered user of the trade mark and the Registrar is satisfied that the proprietor intends it to be used by that person in relation to those goods and the Registrar is also satisfied that that person will be registered as a registered user thereof immediately after the registration of the trade mark.

(2) Section 31 shall have effect, in relation to a trade mark registered under the power conferred by subsection (1) as if for the reference, in section 31 (1) (a) to intention on the part of an applicant for registration that a trade mark should be used by him there were substituted a reference to intention on his part that it should be used by the corporation or registered user concerned.

(3) Where a trade mark is registered in respect of any goods under the power conferred by subsection (1) in the name of an applicant who relies on intention to assign to a corporation as aforesaid, then, unless within such period as may be prescribed or within such further period not exceeding six months as the Registrar may on application being made to him in the prescribed manner allow, the corporation has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

(4) An appeal shall lie from any decision of the Registrar under this section.

[Ch4901s35]35. Use of one of associated or substantially identical trade marks equivalent to use of another

(1) Where under this Act use of a registered trade mark is required to be proved for any purpose, the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, may, if and so far as the Registrar or the Tribunal thinks right, accept use of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

(2) The use of the whole of a registered trade mark shall for the purposes of this Act, be deemed to be also a use of any registered trade mark, being a part thereof, registered in the name of the same proprietor by virtue of section 26 (1).

[Ch4901s36]36. Use of trade mark for export trade

The application in Malawi of a trade mark to goods to be exported from Malawi and any other act done in Malawi in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in in Malawi, would constitute use of a trade mark therein shall be deemed to constitute use of the trade mark in relation to those goods for any purpose for which such use is material under this Act or under any other law.

PART VII

RECTIFICATION AND CORRECTION OF THE REGISTER

[Ch4901s37]37. General power to rectify entries in register

(1) Any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Tribunal or, at the option of the applicant and subject to section 64, to the Registrar, and the Tribunal or the Registrar may make such order for making, expunging or varying the entry as the Tribunal or the Registrar may think fit.

(2) The Tribunal or the Registrar may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connexion with the rectification of the register.

(3) In case of fraud in the registration, assignment or transmission of a registered trade mark, the Registrar may himself apply to the Tribunal under this section.

(4) Any order of the Tribunal rectifying the register shall direct that notice of the rectification shall be served in the prescribed manner on the Registrar, and the Registrar shall on receipt of the notice rectify the register accordingly.

(5) The power to rectify the register conferred by this section shall include power to remove a registration in Part A of the register to Part B.

[Ch4901s38]38. Power to expunge or vary registration for breach of condition

On application by any person aggrieved to the Tribunal or, at the option of the applicant and subject to section 64, to the Registrar or on application by the Registrar to the Tribunal, the Tribunal

or the Registrar may make such order as the Tribunal or the Registrar may think fit for expunging or varying the registration of a trade mark on the ground of any contravention of or failure to observe a condition entered on the register in relation thereto.

[Ch4901s39]39. Correction of register

(1) The Registrar may, in request made in the prescribed manner by the registered proprietor—

(a) correct any error in the name, address or description of the registered proprietor of a trade mark;

(b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark;

(c) cancel the entry of a trade mark on the register;

(d) strike out any goods or classes of goods from those in respect of which a trade mark is registered; or

(e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on request made in the prescribed manner by a registered user of a trade mark, correct any error or enter any change in the name, address or description of the registered user.

(3) An appeal shall lie from any decision of the Registrar under this section.

[Ch4901s40]40. Alteration of registered trade mark

(1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may direct that an application under this section shall be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) An appeal shall lie from any decision of the Registrar under this section.

(4) Where leave as aforesaid is granted, the trade mark as altered shall be advertised by the proprietor in the prescribed manner, unless it has already been advertised, in the form to which it has been altered, in an advertisement under subsection (2).

[Ch4901s41]41. Adaptation of entries in register to amended or substituted classification of goods

(1) The Minister may from time to time make such regulations, prescribe such forms and generally do such things as may be expedient, for empowering the Registrar to amend the register, whether by making or expunging or vary in entries therein, so far as may be requisite for the purpose of adapting the designation therein of the goods or classes of goods in respect of which trade marks are registered to any amended or substituted classification that may be prescribed.

(2) The Registrar shall not, in exercise of any power conferred on him for the purpose aforesaid, make any amendment of the register that would have the effect of adding any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made or of ante-dating the registration of a trade mark in respect of any goods:

Provided that this subsection shall not have effect in relation to goods as to which the Registrar is satisfied that compliance with this subsection in relation thereto would involve undue complexity and that the addition or ante-dating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(3) A proposal for the amendment of the register for the purpose aforesaid shall be notified to the registered proprietor of that trade mark affected, shall be subject to appeal by the registered proprietor to the Tribunal, shall be advertised by the proprietor with any modifications, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes subsection (2), and an appeal shall lie from any decision of the Registrar on any such opposition.

PART VIII

CERTIFICATION TRADE MARKS

[Ch4901s42]42. Certification trade marks

(1) A mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic from goods not so certified shall be registrable as a certification trade mark in Part C of the register in respect of those goods in the name, as proprietor thereof, of that person:

Provided that a mark shall not be so registrable in the name of a person who carries on a trade in goods of the kind certified.

(2) In determining whether a mark is adapted to distinguish as aforesaid, the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, may have regard to the extent to which—

(a) the mark is inherently adapted to distinguish as aforesaid in relation to the goods in question; and

(b) by reason of the use of the mark or of any other circumstances, the mark is in fact adapted to distinguish as aforesaid in relation to the goods in question.

(3) Subject to subsections (4) to (6) inclusive and sections 12 and 13, the registration of a person as proprietor of a certification trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods, and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a person authorized by him under the regulations in that behalf using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion in the course of trade in relation to any goods in respect of which it is registered and in such manner as to render the use of the mark likely to be taken either—

(a) as being use as a trade mark; or

(b) in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or by his authorization under the relevant regulations to use the trade mark or to goods certified by the proprietor.

(4) The right to the use of a certification trade mark given by registration as aforesaid shall be subject to any conditions or limitations entered on the register and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market or in any other circumstances to which, having regard to any such limitations, the registration does not extend.

(5) The right to the use of a certification trade mark given by registration as aforesaid shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods certified by the proprietor of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorization under the relevant regulations has applied the trade mark and has not subsequently removed or obliterated it or the proprietor has at any time expressly or impliedly consented to the use of the trade mark; or

(b) in relation to goods adapted to form part of or to be accessory to other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor:

Provided that paragraph (a) shall not have effect in the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that paragraph, if such application is contrary to the relevant regulations.

(6) Where a certification trade mark is one of two or more registered trade marks that are identical or nearly resemble each other, the use of any of those trade marks in exercise of the right to the use of that trade mark given by registration shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

(7) There shall be deposited at the Trade Marks Office in respect of every trade mark registered under this section regulations approved by the Registrar for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorize the use of the trade mark and may contain any other provisions that the Registrar may require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorize the use of the trade mark in accordance with the regulations). Regulations so deposited shall be open to inspection in like manner as the register.

(8) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Registrar.

(9) The First Schedule shall have effect with respect to the registration of a mark under this section and to marks so registered.

(10) In this section, "person" includes the Minister responsible for the administration of any Ministry or Government department which has been authorized or established to certify goods in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic.

(11) Marks which, immediately before the 1st January, 1964, were registered under the former trade marks legislation as certification trade marks shall be deemed to be registered as certification trade marks in Part C of the register.

PART IX

FUNCTIONS OF REGISTRAR IN RELATION TO CERTAIN EVIDENCE, DOCUMENTS AND POWERS

[Ch4901s43]43. Preliminary advice by Registrar as to distinctiveness

(1) The power to give to a person who proposes to apply for the registration of a trade mark in Part A or Part B of the register advice as to whether the trade mark appears to the Registrar prima facie to be inherently adapted to distinguish or capable of distinguishing, as the case may be, shall be a function of the Registrar under this Act.

(2) Any such person who is desirous of obtaining such advice must make application to the Registrar therefor in the prescribed manner.

(3) If on application for the registration of a trade mark as to which the Registrar has given advice as aforesaid in the affirmative, made within three months after the advice is given, the Registrar, after further investigation or consideration, gives notice to the applicant of objection on the ground that the trade mark is not adapted to distinguish or capable of distinguishing, as the case may be, the applicant shall be entitled, on giving notice of withdrawal of the application within the prescribed period, to have repaid to him any fee paid on the lodging of the application.

[Ch4901s44]44. Hearing before exercise of Registrar's discretion

Where any discretionary or other power is given to the Registrar by this Act or the regulations, he shall not exercise that power adversely to the applicant for registration or the

registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving to the applicant or registered proprietor an opportunity of being heard.

[Ch4901s45]45. Evidence of certain entries and documents

(1) A certificate purporting to be signed by the Registrar and certifying that any entry which he is authorized by or under this Act to make has or has not been made, or that any other thing which he is so authorized to do has or has not been done, shall be prima facie evidence of the matters so certified.

(2) A copy of any entry in any register or of any document kept in the Trade Marks Office or of any trade mark or an extract from any such register or document, certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence without further proof and without production of the original.

[Ch4901s46]46. Requests for information as to trade mark

The Registrar shall, on the request of any person and on payment of the prescribed fee, furnish copies of any documents which are open to public inspection and which are lodged at the Trade Marks Office or particulars from the register or furnish a certificate in respect thereof.

[Ch4901s47]47. Power of Registrar to award costs

In all proceedings before the Registrar under this Act, the Registrar shall have power to award to any party such costs as he may consider reasonable and to direct how and by what parties they are to be paid. Any costs awarded by the Registrar shall be taxed by a taxing officer of the Tribunal and payment thereof may be enforced in the same manner as if they were costs allowed by the Tribunal.

[Ch4901s48]48. Proceedings before Registrar

(1) Subject to section 79, evidence in any proceedings before the Registrar under this Act shall be given by affidavit, so, however, that the Registrar may, if he thinks fit in any particular case, take oral evidence on oath in lieu of or in addition to such evidence as aforesaid and may allow any witness to be cross-examined on his affidavit, or oral evidence.

(2) The powers, rights and privileges of the Registrar in proceedings before him under this Act shall be the same as those conferred upon commissioners by the Commissions of Inquiry Act and sections 9, 10 and 12 of that Act and so much of the regulations made under it as are applicable shall, mutatis mutandis, apply in relation to the hearing and determination of any matter before the Registrar under this Act and to any person summoned to give evidence or giving evidence before him. Cap. 18:01

[Ch4901s49]49. Power of Registrar to fix time and place of sitting, etc

The Registrar may in any proceeding held before him decide the hours, times and places at which he will sit and he may adjourn any proceedings for such time and to such place as he may think fit.

[Ch4901s50]50. Advertisements to be approved by Registrar

No advertisement or notice, other than a notice issued under the authority of the Minister, shall be published by any person under this Act unless it is in the prescribed form and the Registrar has approved the contents of such advertisement or notice, and no advertisement or notice which has not been so approved shall have any force or effect for the purposes of this Act.

PART X

APPEALS AND LEGAL PROCEEDINGS

[Ch4901s51]51. Patents Tribunal to hear appeals

(1) Where this Act provides for an appeal from a decision of the Registrar, such appeal shall be made to the Tribunal.

(2) For the purposes of this Act, the Minister shall appoint a registrar of the Tribunal and such other officers thereof as he may deem necessary.

(3) The Tribunal shall in connexion with any proceedings before it under this Act have all the powers of the High Court and without prejudice to the foregoing and to the other powers conferred upon it by this Act, the Tribunal shall have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of court which the High Court as aforesaid has power to make.

(4) The procedure and practice of the Tribunal shall, save as otherwise provided for by rules made under this Part, be those prevailing in the High Court, in so far as the same are applicable, and if any matter should arise which is not contemplated by either such procedure, practice or rules, the Tribunal may give instructions regarding the course to be pursued which instructions shall be binding on all parties.

(5) Upon appeal to the Tribunal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Registrar in proceedings in connexion with which the appeal is brought;
- (c) make such order as to costs as it may think fit.

(6) For the purpose of this Act, the Tribunal shall sit at such times and places as it may appoint.

(7) In any proceedings before it, the Tribunal may, subject to section 79, accept evidence by affidavit or take oral evidence on oath and allow any witness to be cross-examined on his affidavit or oral evidence.

[Ch4901s52]52. Right of audience

In any proceedings before the Tribunal under this Act, the parties to such proceedings may appear in person or be represented and appear by a legal practitioner, and in any case where the Tribunal deems fit, it may grant to the Registrar leave to intervene, and he may thereafter appear or be so represented.

[Ch4901s53]53. Rules

The Minister may make rules for regulating generally the practice and procedure of the Tribunal and with respect to appeals or references to such Tribunal as to the time within which any requirement of the rules is to be complied with, as to the costs and expenses of and incidental to any proceedings in such Tribunal, as to the fees to be charged in respect of proceedings therein, as to the fees to be paid to assessors, and in particular may make rules providing for the summary determination of any appeal which appears to the Tribunal to be frivolous or vexatious or to be brought for the purpose of delay.

[Ch4901s54]54. Assessors

The Tribunal may appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to such Tribunal that such knowledge is required for the proper determination of the case.

[Ch4901s55]55. Time for appeals

Appeals under this Part, whether from decisions of the Registrar, or orders or decisions of the Tribunal, shall be brought within three months after the date of the decision or order in question or within such further time as the Tribunal or High Court may allow upon application by the appellant concerned.

[Ch4901s56]56. References to Tribunal by Registrar

When any matter to be decided by the Registrar under this Act appears to him to involve a point of law or to be of unusual importance or complexity, he may, after giving notice to the parties, refer such matter to the Tribunal for a decision and shall thereafter, in relation to such matter act in accordance with the decision of that Tribunal or any decision substituted therefor on appeal to the High Court.

[Ch4901s57]57. Registration to be prime facie evidence of validity

In all legal proceedings relating to a registered trade mark (including applications under section 37) the fact that a person is registered as proprietor of the trade mark shall be prima facie evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

[Ch4901s58]58. Certification of validity

In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of the trade mark, the High Court or Tribunal may certify to that effect, and if it so certifies, then, in any subsequent legal proceeding in which the validity of the registration comes into question, the proprietor of the trade mark, on

obtaining a final order or judgment in his favour, shall have his full costs, charges and expenses as between solicitor and client or attorney and client, unless in the subsequent proceeding the High Court or Tribunal certifies that he ought not to have them.

[Ch4901s59]59. Infringement or passing off action to be heard in High Court

Any action or legal proceeding relating to the infringement or passing off of a trade mark shall be brought in the High Court.

[Ch4901s60]60. Trade usage, etc., to be considered

In any action or proceeding relating to a trade mark or trade name, the Tribunal or the Registrar, as the case may be, shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get-up legitimately used by other persons.

[Ch4901s61]61. Registrar's appearance in proceedings involving rectification

(1) In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Tribunal.

(2) Unless otherwise directed by the Tribunal, the Registrar, in lieu of appearing and being heard, may submit to the Tribunal a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting it or of the practice of the Trade Marks Office in like cases or of such other matters relevant to the issues, and within his knowledge as Registrar, as he thinks fit, and the statement shall be deemed to form part of the evidence in the proceeding.

[Ch4901s62]62. Tribunal's power to review Registrar's decision

The Tribunal, in dealing with any question of the rectification of the register (including all applications under section 37) shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

[Ch4901s63]63. Discretion of Tribunal in appeals

In any appeal from a decision of the Registrar to the Tribunal, the Tribunal shall have and exercise the same discretionary powers as under this Act are conferred upon the Registrar.

[Ch4901s64]64. Procedure in cases of option to apply to Tribunal or Registrar

Where under any of the foregoing provisions of this Act an applicant has an option to make an application either to the Tribunal or to the Registrar and such application is made to the Registrar, the Registrar may, at any stage of the proceedings, refer the application to the Tribunal or may, after hearing the parties, determine the question between them, subject to appeal to the Tribunal.

[Ch4901s65]65. Security for costs and taxation of costs

(1) When a party to proceedings before the Registrar or the Tribunal or an appellant is resident outside Malawi, the Registrar or the Tribunal may order such party or appellant to give security, within such time as may be directed, for the costs of the proceedings or appeal.

(2) If the party or appellant ordered to give security for costs fails to do so within the time directed, the Registrar or the Tribunal may treat the proceedings or appeal as abandoned.

(3) Where a bond is to be given as security for costs, it shall, unless the Registrar or the Tribunal otherwise directs, be given to the party requiring the security.

(4) Unless otherwise agreed between the parties, any costs awarded in terms of section 51 (5) shall be taxed by the registrar of the Tribunal in accordance with rules made under this Part which taxation shall be subject to appeal to the Tribunal, and any such costs may be recovered by action in a court of competent jurisdiction.

[Ch4901s66]66. Costs of Registrar

In all proceedings before the Tribunal under this Act, the costs of the Registrar shall be in the discretion of the Tribunal, but the Registrar shall not be ordered to pay the costs of any other of the parties.

[Ch4901s67]67. Appeals to High Court

(1) Any party to any proceedings before the Tribunal may appeal in accordance with rules made under this Part from any order or decision of such Tribunal to the High Court.

(2) Upon the hearing of an appeal under the provisions of this section, the High Court may, without prejudice to its other powers—

(a) confirm, set aside or vary the order or decision in question;

(b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the High Court may think fit to give;

(c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connexion with which the appeal is brought;

(d) make such order it may think just as to the costs of the appeal or of earlier proceedings in the matter before the Tribunal.

PART XI

OFFENCES AND PENALTIES

[Ch4901s68]68. Falsification of entries in register

Any person who makes or causes to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or who produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, shall be guilty of an offence.

[Ch4901s69]69. Penalty for falsely representing a trade mark as registered

(1) Any person who makes a representation—

(a) with respect to a mark not being a registered trade mark to the effect that it is a registered trade mark; or

(b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark to the effect that it is so registered; or

(c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not registered; or

(d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the register, the registration does not give that right,

shall be liable to a fine of £50 and to imprisonment for six months.

(2) For the purposes of this section, the use in Malawi in relation to a trade mark of the word “registered” or of any other word referring, whether expressly or impliedly, to registration shall be deemed to import a reference to registration in the register, except—

(a) where that word is used in physical association with other words delineated in characters at least as large as those in which that word is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside Malawi, being a country under the law of which the registration referred to is in fact in force;

(b) where that word (being a word other than the word “registered”) is of itself such as to indicate that the reference is to such registration as last aforesaid; or

(c) where that word is used in relation to a mark registered as a trade mark under the law of another country and in relation to goods to be exported to that country.

[Ch4901s70]70. Deceiving or influencing the Registrar or an officer

(1) Any person who—

(a) for the purpose of deceiving the Registrar or any other officer of the Trade Marks Office in the execution of this Act; or

(b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder,

makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, shall be guilty of an offence.

(2) Any person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relating to this Act or any matter thereunder and who on becoming aware that such statement or

representation was false, fails to advise the Registrar forthwith of such falsity shall be guilty of an offence.

[Ch4901s71]71. Witness giving false evidence

Any person who, after having been sworn, wilfully gives false evidence before the Registrar or the Tribunal concerning the subject-matter of the proceeding in question, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence.

[Ch4901s72]72. Penalties

Save where otherwise provided in this Act, any person who is guilty of an offence under this Act shall be liable to a fine of £500 and to imprisonment for three years.

PART XII

MISCELLANEOUS

[Ch4901s73]73. Convention arrangements

(1) Any person who qualifies under Article 2 or 3 of the Convention and who has applied for protection for any trade mark in a convention country or his legal representative or assignee (if such assignee is also so qualified) shall be entitled to registration of his trade mark in priority to other applicants; and the registration shall have the same date as the date of the application in the convention country:

Provided that—

(a) the application for registration is made within six months from the date of the application for protection in the convention country;

(b) nothing in this section shall entitle the proprietor of a trade mark to recover damages for infringements happening prior to the actual date on which his trade mark is registered in Malawi.

(2) Where applications have been made for the registration of a trade mark in two or more convention countries, the period of six months referred to in subsection (1) shall be reckoned from the date on which the earlier or earliest of those applications was made.

(3) The application for the registration of a trade mark under this section must be made in the same manner as is required in the case of any ordinary application under this Act.

[Ch4901s74]74. Change of form of trade connexion not to be deemed to cause deception

The use of a registered trade mark in relation to goods between which and the person using it any form of connexion in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the trade mark has been or is used in relation to goods between which and that person or a predecessor in title of his a different form of connexion in the course of trade subsisted or subsists.

[Ch4901s75]75. Jointly owned trade marks

Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

- (a) on behalf of both or all of them; or
- (b) in relation to an article with which both or all of them are connected in the course of trade;

those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

Subject as aforesaid, nothing in this Act shall authorize the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

[Ch4901s76]76. Lodging and authentication of documents

(1) Any application, notice or document authorized or required under this Act to be lodged, made or given at the Trade Marks Office or to the Registrar or to any other person may be delivered by hand or sent by registered post.

(2) No authentication shall be required in respect of any document lodged in the Trade Marks Office under this Act or used in proceedings before the Tribunal.

[Ch4901s77]77. Expenses of administration

All moneys necessary for the purpose of this Act shall be paid out of moneys provided for the purpose by Parliament.

[Ch4901s78]78. Provisions as to fees

(1) Where under this Act—

- (a) a fee is payable in respect of the performance of any act by the Registrar, the Registrar shall not perform that act until the fee has been paid;
- (b) a fee is payable in respect of the doing of any act by any person other than the Registrar, the act shall be deemed not to have been done until the fee has been paid; or
- (c) a fee is payable in respect of the lodging of a document, the document shall be deemed not to have been lodged until the fee has been paid.

(2) All fees shall be paid at the Trade Marks Office in such manner as the Registrar, with the approval of the Minister, may accept.

[Ch4901s79]79. Oaths and affirmations

Any person who is required under this Act to take any oath or swear to the truth of any affidavit may, in lieu thereof, make an affirmation or declaration in accordance with the law relating to affirmations or declarations.

[Ch4901s80]80. Trade Marks Journal

(1) The Minister may, when he deems fit, direct the publication by the Registrar of a journal, to be referred to as the Trade Marks Journal, containing particulars of applications for the registration of trade marks and other proceedings or matters arising under this Act, together with such reports of cases and other relevant matters as the Minister may deem fit.

(2) The Registrar shall make provision for selling copies of the Trade Marks Journal at such price and in such manner as the Minister may direct.

[Ch4901s81]81. Power to make regulations

(1) The Minister may make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

(2) Without derogation from the generality of subsection (1), regulations made by the Minister may provide—

- (a) for regulating the practice under this Act, including the service of documents;
- (b) for classifying goods for the purposes of registration of trade marks;
- (c) for prohibiting the registration of any mark on the grounds of morality, public policy or other good and sufficient reason;
- (d) for making or requiring duplicate representations of trade marks and other documents;
- (e) for securing and regulating the publishing and selling or distributing, in such manner as he thinks fit, of copies of trade marks and other documents;
- (f) for the fees which may be charged in relation to the conduct of trade mark business by trade mark agents;
- (g) for the professional conduct of trade mark agents;
- (h) generally for regulating the business of the Trade Marks Office in relation to trade marks and all things by this Act placed under the direction or control of the Registrar.

(3) The Minister may also prescribe a tariff, not inconsistent with this Act, of the fees which shall be payable in respect of any application, registration and other matters under this Act and the fees shall be payable as so prescribed.

PART XIII

APPLICATION

[Ch4901s82]82. Application of Act

Save as otherwise provided in this Part, this Act shall apply in respect of all trade marks, including trade marks registered before the date of commencement of this Act, and in respect of all applications for the registration of trade marks, including applications made before that date:

Provided that—

(a) a trade mark registered before that date shall not be liable to be taken off the register except upon some ground upon which it would have been so liable in terms of the relevant repealed legislation under which it was registered and shall, unless it is so removed in terms of this Act, lapse on the date of the expiration of the last registration thereof in terms of that legislation unless renewed in terms of section 25;

(b) fees for the renewal of any trade mark registered before the date of commencement of this Act shall be paid in accordance with the scale of fees prescribed for the renewal of trade marks registered under this Act.

PART XIV

TRADE MARK AGENTS

[Ch4901s83]83. Registration of trade mark agents

(1) Subject to section 85, the Registrar shall keep a register of trade mark agents in which he shall—

(a) register the name of every person who is accepted for registration in terms of subsection (2);

(b) show against the name of every person registered under paragraph (a) such particulars as he may from time to time deem necessary; and

(c) enter all changes relating to registrations.

(2) Any person who, within six months after the date* of commencement of the Trade Marks Amendment Act, 1962, satisfies the Registrar that for a continuous period of two years immediately before such date he was ordinarily resident in the Federation of Rhodesia and Nyasaland and was performing the functions mentioned in section 87 (1) may make application to the Registrar in the prescribed manner to be registered as a trade mark agent, and the Registrar shall arrange such registration if he is satisfied that there is no good reason why it should not be arranged and that the applicant is not a person whose name could be removed from the register of trade mark agents under section 84 (1) (b), (c) or (f).

[Ch4901s84]84. Removal of names from register of trade mark agents

(1) The Registrar may remove from the register of trade mark agents the name of any trade mark agent upon proof to his satisfaction that such trade mark agent—

(a) has died;

- (b) has become of unsound mind;
- (c) has been adjudged or otherwise declared bankrupt or insolvent under any law, or has made an assignment to or composition with his creditors;
- (d) has ceased to reside in Malawi, or has ceased to maintain a place of business therein;
- (e) has applied for his name to be so removed;
- (f) has, after being convicted, in Malawi or elsewhere, of the crime of theft, fraud, forgery or uttering a forged document or perjury, been sentenced to to serve a term of imprisonment without the option of a fine, whether such sentence is suspended or not, and has not received a free pardon;
- (g) having been entitled to practise as a trade mark agent has ceased to be so entitled, or has ceased to practise as such.

An appeal shall lie from any decision of the Registrar made under this subsection.

(2) Subject to this section and such procedure as may be prescribed, the Tribunal may order the Registrar to remove the name of any trade mark agent from the register of trade mark agents or may suspend any trade mark agent from practising as such for such time as it thinks fit if it is satisfied, after due inquiry, that such person has been guilty of conduct discreditable to a trade mark agent or has been guilty of a breach of any regulations prescribed for the conduct of trade mark agents.

(3) No order shall be made by the Tribunal in terms of subsection (2) unless the trade mark agent concerned has been given notice of any allegation made against him and has had an opportunity to adduce evidence and to be heard.

(4) Where the name of any trade mark agent has been removed from the register of trade mark agents under subsection (1) or (2), his name shall not be restored to that register except by direction of the Tribunal, which may further direct that such restoration shall be made either without fee or on payment of such fee as it may fix, and the Registrar shall restore the name accordingly.

[Ch4901s85]85. Privileges of legal practitioners and patent agents

Any person entitled to practise as a legal practitioner and any patent agent may practise and describe himself as a trade mark agent and perform the functions set out in section 87 without being registered as a trade mark agent.

[Ch4901s86]86. Entitlement to practise as a trade mark agent

- (1) No person who is not—
 - (a) ordinarily resident in Malawi and registered as a trade mark agent; or
 - (b) such a person as is described in section 85,

shall practise as a trade mark agent.

(2) A person shall be deemed to practise as a trade mark agent if he performs any of the functions of a trade mark agent set out in section 87 or if he carries on within Malawi the business of applying for or obtaining for others trade marks in Malawi or elsewhere.

(3) No person who is not a trade mark agent shall describe himself as, or hold himself out to be, a trade mark agent, trade mark attorney or attorney for trade marks, nor shall he permit himself to be so described or held out.

(4) Any person who contravenes this section shall be guilty of an offence.

[Ch4901s87]87. Trade mark agents and their functions

(1) Subject to this Act, a trade mark agent may act as agent on behalf of any person in connexion with any matter or proceeding before the Registrar under this Act and may draw and sign all documents and make all communications between an applicant and the Trade Marks Office and may represent an applicant at all attendances before the Registrar.

(2) A trade mark agent shall not be guilty of an offence under any law prohibiting the preparation for reward of certain documents by persons not legally qualified, by reason only of the preparation by him of any document relating to trade marks for use in the Trade Marks Office or required in any proceedings under this Act before the Registrar or the Tribunal.

[Ch4901s88]88. Prohibition of certain acts by trade mark agents

(1) No trade mark agent shall have an interest either as a partner or manager or otherwise in more than one firm of trade mark agents in Malawi.

(2) No trade mark agent shall practise under a name or title which includes the name of any person who is not or was not—

- (a) in his lifetime ordinarily resident in Malawi; or
- (b) registered or entitled to practise as a trade mark agent under this Act.

(3) No person shall practise as a trade mark agent if he is a party to—

- (a) a contract of partnership; or
- (b) an arrangement providing for the sharing or paying over of any professional fees,

relating to the business of a trade mark agent with any person who is prohibited from practising as a trade mark agent.

(4) Any person who contravenes this section shall be guilty of an offence.

SCHEDULE s. 42

CERTIFICATION TRADE MARKS

1. (1) An application for the registration of a mark under section 42 must be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof.

(2) An applicant for the registration of a mark under the said section 42 shall transmit to the Registrar draft regulations for governing the use thereof at such time before the decision of the Registrar on the application as he may require in order to enable him to consider the draft.

(3) Subject to this Act, the Registrar may refuse the application or may accept it and approve the regulations either without modification and unconditionally or subject to any conditions or limitations or to any amendments or modifications of the application or of the regulations, which he thinks requisite.

(4) Section 22 (5) to (8) inclusive shall have effect in relation to an application under section 42 as they have effect in relation to an application under section 22 (1).

(5) In dealing with an application under section 42, the Registrar, or the Tribunal in the event of an appeal from a decision of the Registrar, shall have regard to the like considerations, so far as relevant, as if the application were an application under section 22 and to any other considerations relevant to applications under section 42, including the desirability of securing that a certification trade mark shall comprise some indication that it is such a trade mark, and including also the following matters, that is to say—

(a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered;

(b) whether the draft regulations are satisfactory; and

(c) whether in all the circumstances the registration applied for would be to the public advantage.

2. When an application has been accepted, the applicant shall, as soon as may be after such acceptance, advertise the application as accepted in the prescribed manner, and section 23 (2) to (10) inclusive shall have effect in relation to the registration of the mark as if the application had been an application under section 22.

3. (1) The regulations deposited in respect of a certification trade mark may, on the application of the registered proprietor, be altered by the Registrar.

(2) The Registrar may direct that an application for an alteration under this paragraph shall be advertised in any case where it appears to him that it is expedient so to do, and where an application has been so advertised, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar of opposition to the application, the Registrar shall not decide the matter without giving the parties an opportunity of being heard.

4.—(1) On the application in the prescribed manner of any person aggrieved or of his own motion, the Registrar (subject to section 44) may make such order as he thinks fit for expunging or varying any entry in the register relating to a certification trade mark or for varying the deposited regulations on the ground—

(a) that the proprietor is no longer competent, in the case of any of the goods in respect of which the trade mark is registered, to certify those goods;

(b) that the proprietor has failed to observe a provision of the deposited regulations to be observed on his part;

(c) that it is no longer to the public advantage that the trade mark should be registered;
or

(d) that it is requisite for the public advantage that, if the trade mark remains registered, the regulations should be varied.

(2) An appeal shall lie from any decision of the Registrar under this paragraph.

5. Notwithstanding anything in section 47 the Registrar shall not have any jurisdiction to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or to authorize the use of the trade mark.

6. The following provisions of this Act shall not have effect in relation to a certification trade mark, that is to say, sections 9, 11, 14, 22 and 23 (except as expressly applied by this Schedule), section 27 (4) to (8) inclusive, sections 31 to 34 inclusive, section 74 and any provisions the operation of which is limited by the terms thereof to registration in Part B of the register.

SUBSIDIARY LEGISLATION

APPOINTMENT NOTICE

under s. 5

G.N. 237/1965

The Minister has appointed—

- (i) The Registrar-General to be Registrar of Trade Marks;
- (ii) The Assistant Registrar-General to be Deputy Registrar of Trade Marks.

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TRADE MARKS REGULATIONS

under ss. 41 and 81

1. Citation

These Regulations may be cited as the Trade Marks Regulations.

2. Interpretation

In these Regulations, unless inconsistent with the context—

“agent” means an agent duly authorized to the satisfaction of the Registrar;

“Office” means the Trade Marks Office;

“specification” means the designation of goods in respect of which a trade mark, or a registered user of a trade mark, is registered or proposed to be registered.

3. Fees

The fees which shall be payable in respect of any application, registration and other matters under the Act and these Regulations shall be the fees prescribed in the First Schedule.

4. Forms

The forms herein referred to are those contained in the Second Schedule and such forms shall be used in all cases to which they are applicable, and may be modified as directed by the Registrar to meet other cases.

5. Classification of goods

(1) For the purpose of—

(a) trade marks registrations dated in—

- (i) Zimbabwe (then Southern Rhodesia) before 1st January, 1951;
- (ii) Zambia (then Northern Rhodesia) before the 27th July, 1938;
- (iii) Malawi (then Nyasaland) before the 1st June, 1952;

and

(b) registrations of registered users in respect of any of the trade marks mentioned in paragraph (a),

goods are classified in the manner appearing in the Third Schedule unless any specification has been converted to the Fourth Schedule.

(2) For the purposes of—

(a) trade marks registrations dated in—

- (i) Southern Rhodesia on or after the 1st January, 1951;
- (ii) Zambia (then Northern Rhodesia) or or after the 27th July, 1938;
- (iii) Malawi (then Nyasaland) on or after the 1st June, 1952;

(b) registrations of registered users in respect of any of the trade marks mentioned in paragraph (a);

(c) any trade marks registrations dated before the date of commencement of the Act whereof the specifications have been converted to the Fourth Schedule; and

(d) trade marks registered on or after the date of commencement of the Act or registrations of registered users thereunder,

goods are classified in the manner appearing in the Fourth Schedule.

6. Application by registered proprietors for conversion of specification

Where the specification of a registered trade mark is founded on the Third Schedule the registered proprietor may apply to the Registrar on form T.M. No. 45 for the conversion of that specification so that it may be founded on the Fourth Schedule, whether with or without the striking-out of goods therefrom, but so that the registration retains its original date, and shall include in the application a request for the like conversion of the specification of the goods of any

registered users under that registration. Thereupon the Registrar in accordance with section 41 (3) shall notify in writing to the registered proprietor a proposal showing the form which, in the Registrar's view, the amendment of the register should take. Two or more registrations of a trade mark in respect of goods falling within the same class of the Fourth Schedule, having the same date of registration, may be amalgamated upon conversion in accordance with this regulation.

7. Advertisement of proposal. Opposition

The advertisement of a proposal for amendment under section 41 (3) of the Act shall be made in the Gazette and a notice of any opposition shall be given on form T.M. No. 46 within two months from the date of the advertisement, and shall be accompanied by a duplicate of the notice and by a statement in duplicate showing how the proposed conversion would be contrary to section 41 (2) of the Act. The Registrar shall forthwith send the duplicate copies to the registered proprietor who may, within two months from the receipt of such duplicates, send to the Registrar a counter-statement on form T.M. No. 7 setting out fully the grounds on which the opposition is contested and if he does so he shall deliver to the opponent a copy thereof. The Registrar may thereupon require or admit evidence directed to the questions in issue and, if so desired by either party he shall, before deciding the matter, give the parties an opportunity of being heard thereon.

8. Conversion of specifications; resulting registrations

When a proposal for the conversion of a specification in accordance with regulation 6 has been advertised and has not been opposed and the time for notice of opposition has expired, or having been opposed the opposition has been determined and a conversion allowed, the Registrar shall make all the entries in the register necessary to give effect to the conversion in accordance with the proposal as advertised, or the proposal as amended after opposition or appeal thereon and published subsequently in the Gazette, and shall enter in the register the date when such entries were made. The expression "the expiration of the last registration" shall have regard to the same date in the case of all the resulting entries for the purpose of determining the next renewal thereof in accordance with section 25 of the Act as it had with regard to the registration before conversion.

9. Size etc., of documents

Subject to any other directions that may be given by the Registrar, all applications, notices, statements, papers having representations affixed, or other documents authorized or required by the Act or these Regulations to be made, left or sent, at or to the Office, shall, unless the Registrar otherwise directs, be written, typewritten, lithographed or printed in the English language upon strong paper, in dark, indelible ink, on one side only, of a size approximately 13 inches by 8 inches, and shall have on the left-hand part thereof a margin of not less than 1 1/2 inches.

10. Signature of documents by partnerships, companies and associations

A document purporting to be signed for or on behalf of a partnership shall contain the names of all the partners in full and shall be signed by all the partners or by any qualified partner stating that he signs on behalf of the partnership, or by any other person who satisfies the Registrar that he is authorized to sign the document. A document purporting to be signed for or on behalf of a body corporate shall be signed by a director or by the secretary or other principal officer of the body corporate, or by any other person who satisfies the Registrar that he is authorized to sign the

document. A document purporting to be signed for or on behalf of an association of persons may be signed by any person who appears to the Registrar to be duly qualified.

11. Service of documents

All applications, notices, statements, papers having representations affixed, or other documents authorized or required by the Act or these Regulations to be made, left or sent, at or to the Office or with or to any other person may be sent through the post by a prepaid letter; any application or any document so sent shall be deemed to have been made, left or sent at the time when the letter containing the same would be delivered in the ordinary course of post. In proving such sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

12. Address

(1) Where any person is by the Act or these Regulations bound to furnish the Registrar with an address, the address given shall in all cases be as full as possible for the purpose of enabling any person easily to find the place of trade or business of the person whose address is given.

(2) The Registrar may require the address to include the name of the street and the number of the street or name of the premises, if any.

13. Address for service

(1) The Registrar may require an applicant, opponent or agent, or a registered proprietor or registered user of a trade mark, who does not reside or carry on business within Malawi, to give an address for service within Malawi and such address may be treated as the actual address of that person for all purposes connected with the matter in question.

(2) Any registered proprietor or registered user of a trade mark, or any person about to be registered as such, may, if he so desires, give an address for service for entry in the register, and such address may be entered by the Registrar.

(3) In any case in which no address for service is entered in the register, the Registrar may treat the trade or business address of the registered proprietor or registered user as therein entered as his address for service for all purposes connected with the registration.

(4) Any written communication addressed to a party or person as aforesaid at an address given by him, or treated by the Registrar, as his address for service shall be deemed to be properly addressed.

(5) The Registrar, at any time that a doubt arises as to the continued availability of an address for service entered in the register, may request the person for whom it is entered, by letter addressed to his trade or business address in the register, to confirm the address for service, and if within three months of making such request the Registrar receives no confirmation of that address, he may strike it off the register.

14. Agency

(1) Except as otherwise required by these Regulations, any application, request or notice which is required or permitted by the Act or these Regulations to be made or given to the Registrar, and all other communications between an applicant or a person making such a request or giving such a notice and the Registrar, and between the registered proprietor or a registered user of a trade mark and the Registrar or any other person, may be signed, made or given by or through an agent.

(2) Any such applicant, person making request or giving notice, proprietor or registered user may appoint an agent to act for him in any proceeding or matter before or affecting the Registrar under the Act and these Regulations by signing and sending to the Registrar an authority to that effect in the form T.M. No. 1, or in such other written form as the Registrar may deem sufficient. In case of such appointment, service upon the agent of any document relating to the proceeding or matter shall be deemed to be service upon the person so appointing him, all communications directed to be made to such person in respect of the proceeding or matter may be addressed to such agent, and all attendances upon the Registrar relating thereto may be made by or through such agent. In any particular case the Registrar may require the personal signature or presence of an applicant, opponent, proprietor, registered user or other person.

(3) The Registrar shall not be bound to recognize as such agent any person—

(a) who has been proved to him to have been guilty of conduct discreditable to a trade mark agent; or

(b) who has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine; or

(c) who has been suspended from practice as a legal practitioner or whose name has been struck off the roll of legal practitioners whether in Malawi or elsewhere;

(d) who has been adjudged guilty of conduct discreditable to a patent agent; or

(e) who has been suspended from practice as a patent agent, or whose name has been erased from the register of patent agents kept under the Patents Act and not subsequently restored.

15. Registrable trade marks

(1) The Registrar may refuse to accept any application for the registration of a mark upon which any of the following appear—

(a) the words “Patent”, “Patented”, “Registered”, “Registered Design”, “Copyright”, “Entered at Stationers’ Hall”, “To counterfeit this is a forgery”, or words to like effect;

(b) representations of the President or any colourable imitations thereof;

(c) The words “Red Cross” or “Geneva Cross”, and representations of the Geneva and other crosses in red, or of the Swiss Federal cross in white or a red ground or silver on a red ground, or such representations in a similar colour or colours.

(2) Where there appears in a trade mark the registration of which is applied for a representation of a cross in any colour, not being one of those mentioned in subregulation (1) (c) the Registrar may require the applicant as a condition of acceptance to undertake not to use the cross device in red, or in white on a red ground or silver on a red ground, or in any similar colour or colours.

16. Prohibited word in marks

The word "Anzac" may not appear on trade mark for whose registration an application is made.

17. Arms of city, etc.

Where a representation of the armorial bearings, insignia, orders of chivalry, decorations or flags of any state, city, borough, town, place, society, body corporate, institution or person appears on a mark, the Registrar, before proceeding to register the mark, shall, if he so requires, be furnished with a consent to the registration and use of such emblems from such official or other person as appears to the Registrar to be entitled to give consent, and in default of such consent he may refuse to register the mark.

18. Consent of person to use of name or representation

Where the name or representation of any person appears on a trade mark, the Registrar shall, if he so requires, before proceeding to register the mark be furnished with consent from him or, in the case of a person recently dead, from his legal representative, and in default of such consent he may refuse to register the mark.

19. Name or description of goods on a trade mark

(1) Where the name or description of any goods appears on a trade mark the Registrar may refuse to register such mark in respect of any n the goods so named or described.

(2) Where the name or description of any goods appears on a trade mark, which name or description in use varies, the Registrar may permit the registration of the mark for those and other goods, and in that case the applicant shall state in his application that the name or description will be varied when the mark is used upon goods covered by the specification other than the named or described goods.

20. Preliminary advice by Registrar as to distinctiveness

(1) Any person who proposes to apply for the registration of a trade mark in Part A or Part B of the register in respect of any goods may apply to the Registrar on form T.M. No. 30, or on form T.M. No. 29 in a case where he is also making an application under regulation 113, for advice as to whether the trade mark, of which duplicate representations shall accompany the form, appears to the Registrar prima facie to be inherently adapted to distinguish within the meaning of section 14 or 15 of the Act, as the case may be, in relation to those goods, and shall apply separately in relation to goods comprised within different classes of goods in the Fourth Schedule.

(2) A notice of withdrawal of an application for the registration of a trade mark given under section 43 (3) of the Act for the purpose of obtaining repayment of any fee paid on the filing of the application shall be given in writing within two months from the date of the notice of the Registrar's objection.

21. Form of application. Specification

(1) An application to the Registrar for the registration of a trade mark shall be signed by the applicant or his agent. For a trade mark other than a certification or defensive trade mark the application shall be made on form T.M. No. 2. For a certification or a defensive trade mark the application shall be made on form T.M. No. 5 or form T.M. No. 33 respectively. Each application shall be for registration in respect of goods in one class of the Fourth Schedule only.

(2) Every application claiming priority under section 73 of the Act by reason of an application to register the trade mark made or deemed to have been made in a convention country, which shall be named in the application, shall state the date of that application, and the applicant shall furnish a certificate by the registrar or other registering authority of that country, or shall otherwise verify the application made or deemed to have been made therein to the satisfaction of the Registrar.

(3) In the case of an application for registration in respect of all the goods included in a class, or of a large variety of goods, the Registrar may refuse to accept the application unless he is satisfied that the specification is justified by the use of the mark which the applicant has made, or intends to make if and when it is registered.

(4) For the purposes of section 22 (2) of the Act an application shall be made on form T.M. No. 2 subject to such modifications as the Registrar may approve.

22. Address for application

An application for the registration of a trade mark shall be addressed and sent to the Registrar at the Office.

23. Representation of mark

(1) Every application for the registration of a trade mark shall contain a representation of the mark in the space provided on the application form for that purpose.

(2) Where the representation exceeds such space in size the representation shall be mounted upon linen, tracing cloth or such other material as the Registrar may consider suitable. Part of the mounting shall be affixed in the space aforesaid and the rest may be folded.

(3) In the case of word marks represented in plain letters, the word shall be printed or stencilled in letters of not less than 3/8 inch in size.

24. Additional forms and representations

There shall be sent with every application for registration of a trade mark (other than a certification trade mark) six additional representations of the mark on form T.M. No. 3. The representation of the mark on the application and its duplicate (if any) and the additional

representations shall correspond exactly. The additional representations shall in all cases be noted with all such particulars as may from time to time be required by the Registrar. Such particulars shall, if required, be signed by the applicant or his agent.

25. Representations to be durable

All representations of marks must be of a durable nature, but the applicant may in case of need supply, in place of representations on form T.M. No. 3, such representations on sheets of strong paper as may be approved by the Registrar.

26. Separate applications

Applications for the registration of the same mark in different classes shall be treated as separate and distinct applications, and in all cases where a trade mark is registered under the same official number for goods in more than one class, whether on conversion of the specification under regulation 6 or otherwise, the registration in respect of the goods included in each separate class shall be deemed to be a separate registration for all the purposes of the Act.

27. Representations to be satisfactory

The Registrar, if dissatisfied with any representation of a mark, may at any time require another representation satisfactory to him to be substituted before proceeding with the application.

28. Specimens of trade marks in exceptional cases

(1) Where a drawing or other representation or specimen cannot be given in the manner aforesaid, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale and in such form as the Registrar may think most convenient.

(2) The Registrar may also, in exceptional cases, deposit in the Office a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he may think fit.

29. Series of trade marks

Where application is made for the registration of a series of trade marks under section 26 (2) of the Act, a representation of each trade mark of the series shall be included, all as aforesaid, in the application form, in the duplicate thereof (if any), and six representations of each trade mark of the series shall be pinned on the accompanying form T.M. No. 3.

30. Transliteration and translation

(1) Where a trade mark contains a word or words in characters other than Roman, there shall, unless the Registrar otherwise directs, be endorsed on the application form, and on the accompanying form T.M. No. 3, a sufficient transliteration and translation to the satisfaction of the Registrar of each of such words, and every such endorsement shall state the language to which the word belongs and shall be signed by the applicant or his agent.

(2) Where a trade mark contains a word or words in a language other than English, the Registrar may ask for an exact translation thereof together with the name of the language, and such translation and name, if he so requires, shall be endorsed and signed as aforesaid.

31. Search

Upon receipt of an application for the registration of a trade mark in respect of any goods the Registrar shall cause a search to be made amongst the registered marks and pending applications, for the purpose of ascertaining whether there are on record in respect of the same goods or description of goods any marks identical with the mark applied for, or so nearly resembling it as to render the mark applied for likely to deceive or cause confusion, and the Registrar may cause the search to be renewed at any time before the acceptance of the application, but shall not be bound to do so.

32. Acceptance absolute or conditional; objection

After such search, and consideration of the application, and of any evidence of use or of distinctiveness or of any other matter which the applicant may furnish or may be required to furnish, the Registrar may accept the application absolutely, or he may object to it, or he may express his willingness to accept it subject to such conditions, amendments, disclaimer, modifications or limitations as he may think right to impose.

33. Registrar's objections Hearing

If the Registrar object to the application, he shall inform the applicant of his objections in writing, and unless within two months the applicant applies for a hearing or makes a considered reply in writing to those objections he shall be deemed to have withdrawn his application.

34. Registrar's conditions, etc. Hearing

If the Registrar is willing to accept the application subject to any conditions, amendments, disclaimer, modifications or limitations, he shall communicate such willingness to the applicant in writing, and, if the applicant objects to such conditions, amendments, disclaimer, modifications or limitations, he shall within two months from the date of the communication apply for a hearing or communicate his considered objections in writing, and if he does not do so he shall be deemed to have withdrawn his application. If the applicant does not object to such conditions, amendments, disclaimer, modifications or limitations, he shall forthwith notify the Registrar in writing and alter his application accordingly.

35. Decision of Registrar

(1) The decision of the Registrar, at a hearing in accordance with regulation 33 or 34, or without a hearing if the applicant has duly communicated his considered objections or considered reply, in writing, and has stated that he does not desire to be heard, shall be communicated to the applicant in writing, and if the applicant objects to such decision he may within two months by applying upon form T.M. No. 4 require the Registrar to state in writing the grounds of, and the materials used by him in arriving at, his decision.

(2) In a case where the Registrar makes any requirements to which the applicant does not object, the applicant shall comply therewith before the Registrar issues such statement in writing. The date when such statement is sent to the applicant shall be deemed to be the date of the Registrar's decision for the purpose of appeal.

36. Disclaimer

The Registrar may call on an applicant to insert in his application such disclaimer as the Registrar may think fit, in order that the public generally may understand what the applicant's rights, if his mark is registered, will be.

37. Application under section 32

An application for the registration of a defensive trade mark under section 32 of the Act shall be made, addressed and sent to the Registrar on form T.M. No. 33, and shall be accompanied by a statement of case setting forth the full particulars of the facts on which the applicant relies in support of his application, verified by an affidavit or solemn declaration made by the applicant or some other person approved for the purpose by the Registrar. The applicant may send with this declaration, or subsequently, such other evidence as he may desire to furnish, whether after request made by the Registrar or otherwise, and the Registrar shall consider the whole of the evidence before deciding on the application. In all other respects and where they are appropriate and it is not otherwise stated, these Regulations shall apply to such applications as they apply to applications for the registration of ordinary trade marks.

38. Application under section 42

An application for the registration of a certification trade mark under section 42 of the Act shall be made to the Registrar on form T.M. No. 5 and shall be accompanied by six additional representations of the trade mark on form T.M. No. 3.

39. Authorization to proceed

(1) These Regulations shall apply to such applications as they apply to applications for the registration of ordinary trade marks, except that for references therein to acceptance of an application there shall be substituted references to authorization to proceed with the application, and that the applicant shall not be deemed to have abandoned his application if in the circumstances of regulation 33 or 34 he does not apply for a hearing or reply in writing.

(2) The address of an applicant to register a certification trade mark shall be deemed to be a trade or business address for all the purposes for which such an address is required by these regulations.

40. Case; draft regulations

The applicant shall send to the Registrar with his application or when required by the Registrar a case setting out the grounds on which he relies in support of his application together with draft regulations for governing the use of the mark and form T.M. No. 34, all being in duplicate. The Registrar may communicate to the applicant any observations he may have to make on the

sufficiency of the case or the suitability of the draft regulations and the applicant may modify either of those documents.

41. Directions by the Registrar

If the Registrar decides to authorize the application to proceed he may at any time call for such evidence, if any, as he thinks fit, and shall if required hear the applicant before giving directions as provided in paragraph 1 (5) of the First Schedule to the Act. When such directions have been given and the application has been accepted, the regulations for governing the use of the mark approved by the Registrar, as well as the form of application, shall be open to public inspection.

42. Advertisement of application

(1) An application for the registration of a trade mark required or permitted to be advertised by section 23 (1) of the Act or paragraph 2 of the First Schedule to the Act, shall be advertised in form T.M. No. 44 in the Gazette. In the case of an application with which the Registrar proceeds only after the applicant has lodged the written consent to the proposed registration of the registered proprietor of another trade mark or another applicant, the words "By Consent" shall appear in the advertisement.

(2) If no representation of the trade mark be included in the advertisement of the application, the applicant shall refer in such advertisement to the place or places where a specimen or representation of the trade mark is deposited for exhibition.

43. Wood block or electro-type printing

For the purposes of such advertisement the applicant may, at the appropriate time, supply or be required to supply a printing block (or more than one, if necessary) of the trade mark satisfactory to the Registrar, of such dimensions as may from time to time be approved or directed by the Registrar, or shall supply such information or other means of advertising the trade mark as may be required by the Registrar; and the Registrar, if dissatisfied with the printing block supplied by the applicant or his agent, may require a fresh block before approving of the advertisement.

44. Advertisement of series

When an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in section 26 (2) of the Act, the applicant may be required to supply a printing block (or more than one, if necessary) satisfactory to the Registrar of any or of each of the trade marks constituting the series; or the Registrar may, if he thinks fit, direct that there shall be inserted with the advertisement of the application a statement of the manner in which the several trade marks differ from one another.

45. Advertisement under sections 23 and 40

Advertisements under section 23 (10) and section 40 (2) and (4) of the Act shall mutatis mutandis be made in the same manner as advertisements relating to an application for registration.

46. Opposition

Any person may within two months from the date of any advertisement in the Gazette of an application for registration of a trade mark give notice on form T.M. No. 6 to the Registrar of opposition to the registration.

47. Notice of opposition

The notice shall include a statement of the grounds upon which the opponent objects to the registration. If registration is opposed on the ground that the mark resembles marks already on the register, the numbers of such trade marks and the dates of the Gazettes in which they have been advertised shall be set out. The notice shall be accompanied by a duplicate which the Registrar will forthwith send to the applicant.

48. Counterstatement

Within two months from the receipt of such duplicate the applicant shall send to the Registrar a counter-statement on form T.M. No. 7 setting out the grounds on which he relies as supporting his application. The applicant shall also set out what facts, if any, alleged in the notice of opposition he admits. The counter-statement shall be in duplicate.

49. Evidence in support of opposition

Upon receipt of the counter-statement and duplicate the Registrar shall forthwith send the duplicate to the opponent and within two months from the receipt of the duplicate the opponent shall leave with the Registrar such evidence by way of affidavit or solemn declaration as he may desire to adduce in support of his opposition and shall deliver to the applicant a copy of such evidence.

50. Evidence in support of application

(1) If an opponent leaves no evidence he shall, unless the Registrar otherwise directs, be deemed to have abandoned his opposition but, if he does leave evidence, then, within two months from the receipt of the copies of such evidence, the applicant shall leave with the Registrar such evidence by way of affidavit or solemn declaration as he desires to adduce in support of his application and shall deliver to the opponent a copy thereof.

(2) An applicant shall, unless the Registrar otherwise directs, be deemed to have withdrawn his application if, within the period of two months referred to in subregulation (1), he—

(a) fails to leave with the Registrar such evidence as he desires to adduce in support of his application; or

(b) fails to notify the Registrar in the event of his not desiring to adduce evidence in support of his application.

51. Evidence in reply by opponent

Within two months from the receipt by the opponent of the copy of the applicant's affidavit or solemn declaration the opponent may leave with the Registrar evidence by affidavit or solemn

declaration in reply, and shall deliver to the applicant a copy of such evidence. This evidence shall be confined to matters strictly in reply.

52. Further evidence

No further evidence shall be left on either side but, in any proceedings before the Registrar, he may at any time if he thinks fit give leave to either the applicant or the opponent to leave any evidence upon such terms as to costs or otherwise as he may think fit.

53. Exhibits

Where there are exhibits to affidavits or solemn declarations filed in an opposition, a copy or impression of each exhibit shall be sent to the other party on his request and at his expense, or, if such copies or impressions cannot conveniently be furnished, the originals shall be left with the Registrar in order that they may be open to inspection. The original exhibits shall be produced at the hearing unless the Registrar otherwise directs.

54. Hearing

Upon completion of the evidence the Registrar shall give notice to the parties of a date when he will hear the arguments in the case. Such appointment shall be for a date at least fourteen days after the date of the notice, unless the parties consent to a shorter notice. Within seven days from the receipt of the notice any party who intends to appear shall so notify the Registrar on form T.M. No. 8. A party who receives notice as aforesaid and who does not, within seven days from the receipt thereof, so notify the Registrar on form T.M. No. 8 may be treated as not desiring to be heard and the Registrar may act accordingly.

55. Extension of time

Where in opposition proceedings any extension of time is granted to any party, the Registrar may thereafter, if he thinks fit, without giving the said party a hearing, grant any reasonable extension of time to any other party in which to take any subsequent step.

56. Security for costs

Where a party giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such a notice neither resides nor carries on business in Malawi, the Registrar may require him to give security, in such form as the Registrar may deem sufficient, for the costs of the proceedings before the Registrar, for such amount as to the Registrar may seem fit, and at any stage in the opposition proceedings may require further security to be given at any time before giving his decision in the case.

57. Costs in uncontested case

In the event of an opposition being uncontested by the applicant, the Registrar in deciding whether costs should be awarded to the opponent shall consider whether proceedings might have been avoided if reasonable notice had been given by the opponent to the applicant before the notice of opposition was lodged.

58. Opposition to application

Within two months from the date of any advertisement in the Gazette of an application for the registration of a certification trade mark, any person may give notice to the Registrar on form T.M. No. 37 of opposition under paragraph 2 of the First Schedule to the Act, and regulations 47 to 57 inclusive shall apply mutatis mutandis to the proceedings thereon, with substitution of form T.M. No. 38 for form T.M. No. 7, and of form T.M. No. 39 for form T.M. No. 8. In any case of doubt any party may apply to the Registrar for directions.

59. Non-completion within twelve months

Where registration of a trade mark is not completed within twelve months from the date of application by reason of default on the part of the applicant, the Registrar shall on form T.M. No. 9 give notice in writing to the applicant at his trade or business address of the non-completion, but if the applicant has authorized an agent for the purpose of the application he shall instead send the notice to the agent and shall send a duplicate thereof to the applicant. If after fourteen days from the date when the notice was sent, or such further time as the Registrar may allow, the registration is not completed, the application shall be deemed to be abandoned.

60. Entry in register

(1) As soon as may be after the expiration of two months from the date of the advertisement in the Gazette of any application for the registration of a trade mark, the Registrar shall, subject to any opposition and the determination thereof, and subject to section 24 (1) of the Act, and upon payment of the prescribed fee on form T.M. No. 10, enter the trade mark in the register. In those cases where the applicant has supplied a printing block in accordance with regulation 43, he shall send with his fee a representation of the trade mark agreeing in all respects with the representation then appearing on the form of application, to be affixed by the Registrar to the certificate of registration as required by regulation 63. The entry of a trade mark in the register shall give the date of the registration, the goods in respect of which it is registered, and all particulars named in section 6 (1) of the Act, including both the trade or business address and the address for service (if any), particulars of the trade, business, profession, occupation or other description of the proprietor, particulars of any undertakings by the proprietor entered on the form of application, particulars affecting the scope of the registration or the rights conferred by the registration and such other particulars as are prescribed.

(2) In the case of an application as aforesaid which the Registrar accepts only after the applicant has lodged the written consent to the proposed registration of the registered proprietor of another trade mark or another applicant for registration, the aforesaid entry in the register shall state that it is "By Consent" and shall give the number of the previous registration or the application for registration.

61. Associated marks

(1) Where a mark is registered as associated with any other mark or marks the Registrar shall note in the register in connexion with the first-mentioned mark the numbers of the marks with which it is associated and shall also note in the register in connexion with each of the associated marks the number of the first-mentioned mark as being a mark associated therewith.

(2) An application by a registered proprietor under section 28 (5) of the Act to the Registrar to dissolve the association between two or more associated trade marks shall be made on form T.M. No. 20, and shall include a statement of the grounds of the application.

62. Death of applicant before registration

In case of the death of any applicant for the registration of a trade mark after the date of his application, and before the trade mark applied for has been entered in the register, the Registrar, after the expiration of the prescribed period of advertisement and the determination of any opposition to the application, may, on being satisfied of the applicant's death, enter in the register in place of the name of such deceased applicant, the name, address and description of the person owning the trade mark, on such ownership being proved to the satisfaction of the Registrar.

63. Certificate of registration

Upon the registration of a trade mark the Registrar shall issue to the applicant a certificate in form T.M. No. 11, and shall affix thereto a copy of the mark, which may be a representation thereof supplied by the applicant under regulation 60.

64. Renewal of registration

At any time not more than six months before the expiration of the last registration of a trade mark any person may leave at the Office a fee for the renewal of the registration of the mark with form T.M. No. 12, and, if he is not the registered proprietor, shall sign a statement on the form that he is directed by the registered proprietor to pay the fee (if such be the case) and shall give his address. Before taking any further step the Registrar may either—

(a) require the person leaving the fee to furnish within fourteen days an authority to pay the fee signed by the registered proprietor, and if he does not furnish such authority may return the fee and treat it as not received; or

(b) communicate with the registered proprietor stating that the fee has been received and that the registration will in due course be renewed.

65. Notice before removal of trade mark from register

At a date not less than three months and not more than six months before the expiration of the last registration of a mark, if no fee with form T.M. No. 12 has been received, the Registrar shall notify the registered proprietor in writing of the approaching expiration.

66. Second notice

At a time not less than fourteen days and not more than one month before the expiration of the last registration of a mark the Registrar may, if no fee as aforesaid has been received, send a notice in writing to the registered proprietor at his trade or business address as well as at his address for service, if any.

67. Advertisement of non-payment

If at the date of the expiration of the last registration of a mark the renewal fee has not been paid, the Registrar shall advertise the fact forthwith in the Gazette. If the Registrar receives the renewal fee with form T.M. No. 12, together with an additional fee accompanying form T.M. No. 13, at any time during the period between such date of expiration and one month after such advertisement, he may renew the registration without removing the mark from the register.

68. Removal of trade mark from register

Where, at the expiration of one month from the advertisement mentioned in regulation 67, the fees therein mentioned have not been paid, the Registrar may remove the mark from the register as of the date of the expiration of the last registration, but may, upon payment of the renewal fee with form T.M. No. 12 together with a restoration fee accompanying form T.M. No. 14, restore the mark to the register if satisfied that it is just so to do and upon such conditions as he may think fit to impose.

69. Record of removal of mark

Where a trade mark has been removed from the register, the Registrar shall cause to be entered in the register a record of the removal and of the cause thereof.

70. Notice and advertisement of renewal and restoration

Upon the renewal or restoration and renewal of a registration a notice to that effect shall be sent to the registered proprietor and the renewal or restoration and renewal shall be advertised in the Gazette.

71. Joint application for entry of assignment or transmission

Where a person becomes entitled by assignment or transmission to a registered trade mark he may, conjointly with the registered proprietor, make application to the Registrar on form T.M. No. 16 to register his title.

72. Application for entry of assignment or transmission by subsequent proprietor

Where a person becomes entitled to a registered trade mark in the manner referred to in regulation 71, and no conjoint application as therein mentioned is made, he shall make application to the Registrar on form T.M. No. 17 to register his title.

73. Particulars to be stated in application

An application under regulation 71 or 72 shall contain the name, trade or business address and description of the person claiming to be entitled, together with full particulars of the instrument, if any, under which he claims, and such instrument shall be produced for inspection by the Registrar, preferably at the time of application. The full names of all the partners in a partnership shall be given in the body of the application. The Registrar may in any case require and retain an attested copy of any instrument produced for inspection in proof of title, but such copy shall not be open to public inspection.

74. Case accompanying application

Where in the case of an application on form T.M. No. 16 or No. 17 the person applying for registration of his title does not claim under any document or instrument which is capable in itself of furnishing proof of his title, he shall, unless the Registrar otherwise directs, either upon or with the application, state a case setting forth the full particulars of the facts upon which his claim to be proprietor of the trade mark is based, and showing that the trade mark has been assigned or transmitted to him. If the Registrar so requires, the case shall be verified by affidavit or solemn declaration on form T.M. No. 18.

75. Proof of title

The Registrar may call on any person who applies to be registered as proprietor of a registered trade mark for such proof or additional proof of title as he may require for his satisfaction.

76. Application for entry of assignment without goodwill

(1) An application under regulation 71 or 72 relating to an assignment on or after the commencement of the Act of a trade mark in respect of any goods shall state—

(a) whether the trade mark was, at the time of the assignment used in a business in any of those goods; and

(b) whether the assignment was made otherwise than in connexion with the goodwill of that business;

and, if both those circumstances subsisted, then the applicant shall leave with the Registrar a copy of the Registrar's directions to advertise the assignment, obtained upon application under section 27 (7) of the Act and regulation 80, and such proof, including copies of advertisements or otherwise, as the Registrar may require that his directions have been fulfilled; and if the Registrar is not satisfied that the directions have been fulfilled he shall not proceed with the application.

(2) For the purposes of section 34 (3) of the Act, the period within which a corporation may be registered as the subsequent proprietor of a registered trade mark, upon application made under regulation 71 or 72, shall be six months from the date of advertisement in the Gazette of the registration of the trade mark or such further period not exceeding six months as the Registrar may allow, on application being made to him on form T.M. No. 15 by the applicant for registration of title or the registered proprietor, as the case may be, at any time before or during the period for which the extension can be allowed.

77. Entry in register

When the Registrar is satisfied as to the title of the person claiming to be registered he shall cause him to be registered as proprietor of the trade mark in respect of the relevant goods, and shall enter in the register his name, trade or business address and description and particulars of the assignment or transmission.

78. Separate registrations

Where pursuant to an application under regulation 71 or 72, and as the result of a division and separation of the goods of a registration or a division and separation of places or markets,

different persons become registered separately under the same official number as subsequent proprietors of a trade mark, each of the resulting separate registrations in the names of those different persons shall be deemed to be a separate registration for all the purposes of the Act.

79. Registrar's certificate or approval as to certain assignments and transmissions

Any person who desires to obtain the Registrar's certificate under section 27 (5) of the Act, or his notification of approval under section 27 (6) of the Act, shall send to the Registrar, with his application on form T.M. No. 40 or No. 41, as the case may be, a statement of case in duplicate setting out the circumstances, and a copy of any instrument or proposed instrument effecting the assignment or transmission. The Registrar may call for any evidence or further information that he may consider necessary, and the statement of case shall be amended if required to include all the relevant circumstances and shall if required be verified by affidavit or solemn declaration. The Registrar, after hearing if so required the applicant and any other person whom the Registrar may consider to be interested in the transfer, shall consider the matter and issue a certificate thereon or a notification in writing of approval or disapproval thereof, as the case may be. Where a statement of case is amended, two fair copies thereof in its final form shall be left with the Registrar. The Registrar shall seal a copy of the statement of case in its final form to the certificate or notification.

80. Registrar's directions for advertisement of assignment without goodwill of trade mark in use

(1) An application to the Registrar under section 27 (7) of the Act shall be made by the assignee on form T.M. No. 42 and shall state the date on which the assignment was made. The application shall give particulars of the registration in the case of a registered trade mark, and, in the case of an unregistered trade mark, shall show the mark and give particulars of the registered trade mark that has been assigned therewith in accordance with section 27 (3) of the Act. The Registrar may call for any evidence or further information, and if he is satisfied with regard to the various matters he shall issue directions in writing with respect to the advertisement of the assignment.

(2) The Registrar may refuse to consider such an application in a case to which section 27 (6) of the Act applies unless his approval has been obtained under the said subsection and a reference identifying the Registrar's notification of approval is included in the application.

(3) A request to the Registrar for an extension of the period within which the application may be made, which shall be on form T.M. No. 43, may be made at any time before or during the period for which extension can be allowed. The extension of the period which the Registrar may allow shall not exceed three months.

81. Alteration of address in register

(1) A registered proprietor or registered user of a trade mark whose trade or business address or address for service is changed so that the entry in the register is rendered incorrect shall forthwith request the Registrar on form T.M. No. 19 to make the appropriate alteration of the address in the register, and the Registrar shall alter the register accordingly if he is satisfied in the matter.

(2) A registered proprietor or registered user of a trade mark whose registered trade or business address or address for service is altered by a public authority, so that the changed address

designates the same premises as before, may make the aforesaid request to the Registrar on form T.M. No. 19, and if he does so he shall leave therewith a certificate of the alteration given by the said authority. If the Registrar is satisfied as to the facts of the case, he shall alter the register accordingly, but shall not require the payment of the prescribed fee.

(3) In case of the alteration of the address of a person entered in the register as the address for service of more than one registered proprietor or registered user of trade marks, the Registrar may, on proof that the said address is the address of the applicant and if satisfied that it is just so to do, accept an application from that person on form T.M. No. 19 amended so as to suit the case for the appropriate alteration of the entries of his address as the address for service in the several registrations, particulars of which shall be given in the form, and may alter the entries accordingly.

(4) All applications under this regulation on form T.M. No. 19 shall be signed by the registered proprietor or the registered user, as the case may be, or by an agent expressly authorized by him for the purpose of such an application, unless in exceptional circumstances the Registrar otherwise allows.

82. Application to rectify, or remove a trade mark from, the register

An application to the Registrar under any of the sections 31, 32, 37 or 38 of the Act for the making, expunging or varying of any entry in the register shall be made on form T.M. No. 27, and shall be accompanied by a statement setting out fully the nature of the applicant's interest, the facts upon which he bases his case and the relief which he seeks. Where the application is made by a person who is not the registered proprietor of the trade mark in question it shall be accompanied by a copy of the application and a copy of the statement, and these copies shall be transmitted forthwith by the Registrar to the registered proprietor.

83. Further procedure

Upon such application being made, and copy thereof transmitted to the registered proprietor, if necessary, regulations 48 to 57 inclusive shall apply mutatis mutandis to the further proceedings thereon; but the Registrar shall not rectify the register or remove the mark from the register merely because the registered proprietor has not filed a counter statement. In any case of doubt any party may apply to the Registrar for directions.

84. Intervention by third parties

Any person other than the registered proprietor alleging interest in a registered trade mark in respect of which an application is made on form T.M. No. 27 may apply to the Registrar on form T.M. No. 28 for leave to intervene, stating thereon the nature of his interest, and the Registrar may refuse or grant such leave, after hearing (if so required) the parties concerned, upon such conditions and terms as he may deem fit. Before dealing in any way with the application for leave to intervene the Registrar may require the applicant to give an undertaking to pay such costs as in the circumstances he may award to any party.

85. Application under section 39 (1)

An application to the Registrar under section 39 (1) of the Act for the alteration of the register by correction, change, cancellation or striking out goods, or for the entry of a disclaimer or memorandum, may be made by the registered proprietor of the trade mark or by such person as may satisfy the Registrar that he is entitled to act in the name of the registered proprietor. Such applications shall be made on form T.M. No. 19, No. 21, No. 22, No. 23, No. 24 or No. 25, as may be appropriate.

86. Evidence

In the case of an application as in regulation 85, the Registrar may require such evidence by affidavit, solemn declaration or otherwise as he may think fit as to the circumstances in which the application is made.

87. Advertisement of certain applications

Where application is made on form T.M. No. 25 to enter a disclaimer or memorandum relating to a trade mark, the Registrar, before deciding upon such application, shall direct the applicant to advertise the application in the Gazette in order to enable any person desiring so to do to state, within two months of the advertisement, any reasons in writing against the making of the entry of the disclaimer or memorandum.

88. Certificates of validity to be noted

Where the High Court or the Tribunal has certified as provided in section 58 of the Act with regard to the validity of a registered trade mark, the registered proprietor thereof may request the Registrar on form T.M. No. 49 to add to the entry in the register a note that the certificate of validity has been granted in the course of the proceedings, which shall be named in the form. A certified copy of the certificate shall be sent with the request, and the Registrar shall so note the register and direct the proprietor to publish the note in the Gazette.

89. Alteration of registered mark

Where a person desires to apply under section 40 of the Act that his registered trade mark may be added to or altered, he shall make his application on form T.M. No. 26 and shall furnish the Registrar with six copies of the mark as it will appear when so added to or altered.

90. Advertisement before decision

The Registrar shall consider the application and shall, if it appears to him expedient, direct the registered proprietor to advertise the application in the Gazette before deciding it. Within two months from the date of such advertisement any person may give notice of opposition to the application on form T.M. No. 47 accompanied by a duplicate of the notice, and may also send therewith a further statement of his objections in duplicate. The Registrar shall send the duplicate notice, and the duplicate of any further statement of objections to the applicant and regulations 48 to 57 inclusive shall apply mutatis mutandis to the further proceedings thereon. In any case of doubt any party may apply to the Registrar for directions.

91. Advertisement after decision

If the Registrar decides to allow the application he shall add to or alter the mark in the register and, if the mark so added to or altered has not been advertised under regulation 90, he shall direct the registered proprietor to advertise it in the Gazette.

92. Supply of printing block

In connexion with an application to alter a registered trade mark the Registrar may at any time call on the applicant to supply a printing block satisfactory to the Registrar and suitable for advertising the mark with the addition or alteration as aforesaid, if in the opinion of the Registrar an advertisement describing the addition or alteration in words would not be likely to be understood by persons interested in the matter.

93. Orders for rectification of certification trade mark entries and regulations

An application on any of the grounds mentioned in paragraph 4 of the First Schedule to the Act, made by an aggrieved person to the Registrar for an order expunging or varying an entry in the register of or relating to a certification trade mark, or varying the relevant deposited regulations, shall be made on form T.M. No. 36 and shall include full particulars of the grounds on which the application is made.

94. Alteration of certification trade mark regulations

An application by the registered proprietor of a certification trade mark for an alteration of the deposited regulations and the consent of the Registrar thereto shall be made on form T.M. No. 35. Where the Registrar causes such an application to be advertised the time within which any person may give notice to the Registrar of opposition to the application shall be two months from the date of the advertisement.

95. Service of documents

Where any document is by these Regulations directed to be served upon the Registrar it shall be served in duplicate.

96. Application for entry of registered user

An application to the Registrar for the registration under section 33 of the Act of a person as a registered user of a registered trade mark shall be made by that person and the registered proprietor on form T.M. No. 50.

97. Entry and notification

The date of an entry of a registered user in the register shall be the date upon which the application for registration as a registered user was made. In addition to the trade or business address of the registered user it may include an address for service, if such has been approved. A notification in writing of the registration of a registered user shall be sent to the registered proprietor of the trade mark, to the registered user and to every other registered user whose name is entered in relation to the same registration of a trade mark, and shall be inserted by the registered proprietor in the Gazette.

98. Registered proprietor's application to vary entry

An application by the registered proprietor of a trade mark for the variation of the registration of a registered user of that trade mark under section 33 (8) (a) of the Act shall be made on form T.M. No. 51, and shall be accompanied by a statement of the grounds on which it is made, where the registered user in question consents, by the written consent of that registered user.

99. Application by registered proprietor or user to cancel entry

An application by the registered proprietor or any registered user of a trade mark for the cancellation of the registration of a registered user of that trade mark under section 33 (8) (b) of the Act shall be made on form T.M. No. 52, and shall be accompanied by a statement of the grounds on which it is made.

100. Application under section 33 (8) (c) to cancel entry

An application by any person for the cancellation of the registration of a registered user under section 33 (8) (c) of the Act shall be made on form T.M. No. 53, and shall be accompanied by a statement of the grounds on which it is made.

101. Notification of hearing

The Registrar shall notify in writing applications under regulations 98, 99 and 100 to the registered proprietor and each registered user (not being the applicant) under the registration of the trade mark. Any person so notified who intends to intervene in the proceedings shall within two months of the receipt of such notification give notice to the Registrar on form T.M. No. 54 to that effect and shall send therewith a statement of the grounds of his intervention. The Registrar shall thereupon send copies of such notice and statement to the other parties, so that the intervention may be known to the applicant, the registered proprietor, the registered user whose registration is in suit, and any other registered user who intervenes. Any such party may, within such time or times as the Registrar may appoint, leave evidence in support of his case, and the Registrar after giving the parties an opportunity of being heard may accept or refuse the application or accept it subject to such conditions, amendments, modifications of limitations as he may think right to impose.

102. Registered user's application under section 39 (2)

(1) Applications under section 39 (2) of the Act shall be made on form T.M. No. 19 or No. 21 or No. 22, as may be appropriate, by a registered user of a trade mark, or by such person as may satisfy the Registrar that he is entitled to act in the name of a registered user, and the Registrar may require such evidence by affidavit or solemn declaration or otherwise as he may think fit as to the circumstances in which the application is made.

(2) In case of the registration of a registered user of a period, in accordance with section 33 (4) (d) of the Act the Registrar shall cancel the entry of the registered user at the end of the period. Where some or all of the goods are struck out from those in respect of which a trade mark is registered, the Registrar shall at the same time strike them out from those specifications of registered users of the trade mark in which they are comprised. The Registrar shall notify every

cancellation or striking out under this subregulation to the registered users whose permitted use is affected thereby and the registered proprietor of the trade mark.

103. Extension of time

If in any particular case the Registrar is satisfied that the circumstances are such as to justify an extension of the time for doing any act or taking any proceedings under these regulations, not being a time expressly provided in the Act or prescribed by regulation 76 or 80, he may extend the time upon such notice to other parties, and proceedings thereon, and upon such terms as he may direct, and the extension may be granted though the time has expired for doing the act or taking the proceeding.

104. Excluded days

Whenever the last day fixed by these Regulations for doing any act or thing at the Office shall fall on a day when the Office is not open which day shall be an excluded day for the purpose of these Regulations, it shall be lawful to do the act or thing on the first day following such excluded day which is not an excluded day.

105. Hearing

Before exercising adversely to any person any discretionary power given to the Registrar by the Act, or by these Regulations, the Registrar shall, if so required, hear such person thereon.

106. Application for hearing

An application for a hearing shall be made within one month from the date of notification by the Registrar of any objection to an application or the date of any other indication that he proposes to exercise a discretionary power.

107. Notice of hearing

(1) Upon receiving such application the Registrar shall give the person applying fourteen days' notice of a time when he may be heard.

(2) Within seven days from the date when such notice would be delivered in the ordinary course of post the person applying shall notify the Registrar whether or not he intends to be heard on the matter.

108. Notification of decision

The decision of the Registrar in the exercise of any such discretionary power as aforesaid shall be notified to the person affected.

109. Dispensing with evidence

Where under these Regulations any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Registrar, or at the Office, and it is shown to the satisfaction of the Registrar that from any reasonable cause such person is unable to

do such act or thing, or to sign such document, or to make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Registrar, upon the production of such other evidence, and subject to such terms as he may think fit, to dispense with any such act or thing, signature, declaration, document or evidence.

110. Amendment of documents

Any document or drawing or other representation of a trade mark may be amended, and any irregularity in procedure which in the opinion of the Registrar may be excused without detriment to the interests of any person may be corrected, if the Registrar thinks fit, and on such terms as he may direct.

111. Certificates by Registrar

The Registrar may give a certificate, other than a certificate under section 24 (2) of the Act, as to any entry, matter or thing which he is authorized or required by Act or these Regulations to make or do, upon receipt of a request therefor on form T.M. No. 32 from any person who, if the Registrar thinks fit so to require, can show an interest in the entry, matter or thing to his satisfaction. The Registrar shall not be obliged to include in the certificate a copy of any mark, unless he is furnished by the applicant with a copy thereof suitable for the purpose.

112. Manner in which and person before whom affidavit or solemn declaration is to be taken

The affidavits and solemn declarations required by the Act and regulations, or used in any proceedings thereunder, shall be accepted if made and subscribed before any judge, magistrate, notary public under his signature and seal of office, or by the Registrar of a Court of Justice or by a commissioner of oaths.

113. Searches

Any person may request the Registrar on form T.M. No. 29 to cause a search to be made in respect of specified goods classified in any one class of the Third Schedule or the Fourth Schedule to ascertain whether any mark is on record at the date of the search which resembles a trade mark of which duplicate representations accompany the form. The Registrar shall cause such search to be made and the person making the request to be informed of the result thereof.

114. Days and hours of business

The office shall be open to the public and the register shall be open to inspection on payment of the fee specified in the First Schedule every weekday, except Saturday, between the hours of nine and twelve, and half-past one and half-past three, and on Saturdays between the hours of nine and twelve; except on public holidays.

115. Procedure on appeal from decision of Registrar

(1) Any person who wishes to appeal against a decision of the Registrar shall—

(a) submit his case in writing to the Registrar who shall furnish that person with his written decision and his grounds therefor;

(b) within three months from the date of the decision of the Registrar—

(i) leave at the Office a notice in form T.M. No. 31;

(ii) file with the Registrar of the Tribunal a notice of appeal in accordance with the Trade Marks (Tribunal) Rules.

(2) Subregulation (1) shall not apply in the case of an application within regulations 31 to 35 inclusive.

116. Copy of application to Tribunal to be served on Registrar

A copy of every application made to the Tribunal under the Act shall be served on the Registrar.

117. Order of High Court or Tribunal

Where an order has been made by the High Court or the Tribunal in any case under the Act, the person in whose favour such order has been made, or such one of them, if more than one, as the Registrar may direct, shall forthwith leave at the Office a certified copy of such order, together with form T.M. No. 48 if required. The register may, if necessary, thereupon be rectified or altered by the Registrar.

118. Publication of order of High Court or Tribunal

Whenever an order is made by the High Court or the Tribunal under the Act the Registrar may, if he thinks fit that the order should be made public, require the applicant or the appellant, as the case may be, to publish it in the Gazette.

FIRST SCHEDULE reg. 3, GN. 76/1980, 37/2000, 4/2006

TARIFF OF FEES

Matter or Proceeding	Amount	Corresponding Form No
	K t	
1. (a) On application not otherwise charged to register a trade mark for a specification of goods included in one class	1,000 00	T.M. No. 2
(b) On application to register a series of trade marks under section 26 (2) of the Act for a specification of goods included in one class	1,000 00	T.M. No 2
(c) On application to register a defensive trade mark for a specification of goods included in one class	1,000 00	T.M. No. 33
(d) On application under section 42 of the Act to register a certification trade mark for a specification of goods included in one class	1,000 00	T.M. No. 5

(e) On application made at the same time under section 42 of the Act to register one certification trade mark for specifications of goods not all included in one class:

In respect of every class 1,000 00 T.M. No. 5

Total fee in no case to exceed K5,000.00 for any number of classes.

2. On a request to the Registrar to state grounds of decision relating to an application to register a trade mark and materials used 2,000 00 T.M. No. 4

3. (a) On notice of opposition before the Registrar under section 23 of the Act for each application opposed, by opponent 1,000 00 T.M. No. 6

(b) On lodging a counter-statement in answer to a notice of opposition under section 23 of the Act for each application opposed, by the applicant; or in answer to an application under any of the sections 31, 32, 37 and 38 of the Act by the proprietor in respect of each trade mark; or in answer to a notice of opposition under section 40 or 41 of the Act, for each application or conversion opposed, by the proprietor 1,000 00 T.M. No. 7

(c) On the hearing of each opposition under section 23 of the Act by applicant and by opponent respectively; or on the hearing of an application under any of the sections 31, 32, 37 and 38 of the Act, by applicant and by proprietor, respectively; or on the hearing of an opposition under section 40 or 41 of the Act by proprietor and opponent, respectively 1,500 00 T.M. No. 8

(d) On notice of opposition before the Registrar under paragraph 2 of the First Schedule of the Act for each application opposed by the opponent 1,000 00 T.M. No. 37

(e) On lodging a counter-statement in answer to a notice of opposition before the Registrar under paragraph 2 of the First Schedule of the Act for each application opposed, by the Applicant 1,000 00 T.M. No. 38

(f) On the hearing of each opposition before the Registrar under paragraph 2 of the First Schedule of the Act by applicant and by opponent, respectively 1,000 00 T.M. No. 39

4. (a) For one registration of a trade mark not otherwise charged for a specification of goods included in one class 1,000 00 T.M. No. 10

(b) For one registration of a series of trade marks under section 26 (2) of the Act for a specification of goods included in one class:—

For the first mark 1,000 00 T.M. No. 10

And for every other mark of the series 200 00 —

(c) For registration under section 42 of the Act of a certification trade mark for a specification of goods included in one class 1,000 00 T.M. No. 10

(d) For registration upon application made at the same time of one certification trade mark under section 42 of the Act, for specifications of goods not all included in one class:

In respect of every class 1,000 00 T.M. No. 10

Total fee in no case to exceed K2,000.00 for any number of classes.

(e) For one registration of a defensive trade mark for a specification of goods included in one class 1,000 00 T.M. No. 10

5. (a) Upon each addition to the registered entry of a trade mark of a note that the mark is associated with a newly registered mark 500 00 T.M. No. 10

(b) On an application to dissolve the association between registered trade marks 500 00 T.M. No. 20

6. (a) On application to register a registered user of a registered trade mark in respect of goods within the specification thereof 1,000 00 T.M. No. 50

(b) On application to register the same registered user of more than one registered trade mark of the same respective specifications thereof and subject to the same conditions and restrictions in each case:—

(i) for the first mark 1,500 00 T.M. No. 50

(ii) for every other mark of the proprietor included in the application and statement of case 500 00 —

(c) On application by the proprietor of a single trade mark, under section 33 (8) (a) of the Act to vary the entry of a registered user thereof 700 00 T.M. No. 51

(d) On application by the proprietor of more than one trade mark, under section 33 (8) (a) of the Act to vary the entries of a registered user thereof:—

(i) for the first mark 600 00 T.M. No. 51

(ii) for every other mark of the proprietor for which the same user is registered, included in the application 200 00 —

(e) On application by the proprietor or registered user of a single trade mark; under section 33 (8) (b) of the Act for cancellation of the entry of a registered user thereof 500 00 T.M. No. 52

(f) On application by the proprietor or registered user of more than one trade mark, under section 33 (8) (b) of the Act, for cancellation of the entries of a registered user thereof:

(i) for the first mark 500 00 T.M. No. 52

(ii) for every other mark of the proprietor for which the same user is registered, included in the application 300 00 —

(g) On application, under section 33 (8) (c) of the Act, to cancel the entry of a registered user of single trade mark 500 00 T.M. No. 53

(h) On application, under section 33 (8) (c) of the Act, to cancel the entries of a registered user of more than one trade mark

(i) for the first mark 500 00 T.M. No. 53

(ii) for every other mark of the same proprietor for which the same user is registered, included in the application 300 00 —

(i) On notice, under section 33 (9) of the Act and regulation 101, of intention to intervene in one proceeding for the variation or cancellation of entries of a registered user of trade marks 500 00 T.M. No. 54

7. (a) On request to enter in the register and advertise a certificate of validity, under section 58 and regulation 88:

(i) for the first registration certificate 500 00 T.M. No. 49

(ii) for every other registration certificate in the same certificate 300 00

—

(b) On application, under section 34 (3) of the Act and regulation 76, for extension of time for registering a corporation as subsequent proprietor of trade marks on one assignment:—

(i) not exceeding two months 1,000 00 T.M. No. 15

(ii) not exceeding four months 1,500 00 T.M. No. 15

(iii) not exceeding six months 2,000 00 T.M. No. 15

8. (a) On application for certificate of the Registrar, under section 27 (5) of the Act and regulation 79:

(i) for the first mark proposed to be assigned 1,500 00 T.M. No. 40

(ii) for every other mark of the same proprietor included in that assignment 1,000 00 —

(b) On application for approval of the Registrar, under section 27 (6) and regulation 79—

(i) for the first mark 1,500 00 T.M. No. 41

(ii) for every other mark of the same proprietor included in the same transfer
1,000 00 —

(c) On application for directions by the Registrar for advertisement of assignment of trade marks in use, without good will—

(i) for one mark assigned 1,500 00 T.M. No. 42

(ii) for every other mark assigned with the same devolution of title 1,000 00
—

(d) On application for extension of time for applying for directions for advertisement of assignment of trade marks in use, without goodwill, in respect of one devolution of title—

(i) not exceeding one month 1,000 00 T.M. No. 43

(ii) not exceeding two months 1,500 00 T.M. No. 43

(iii) not exceeding three months 2,000 00 T.M. No. 43

9. (a) On application to register a subsequent proprietor in a case of assignment or transmission of a single trade mark—

(i) if made within six months from the date of acquisition of proprietorship
1,000 00 T.M. No. 16 or No. 17

(ii) if made after the expiration of six months but within twelve months from the date of acquisition of proprietorship 1,500 00 T.M. No. 16 or No. 17

(iii) if made after the expiration of twelve months from the date of acquisition of proprietorship 2,000 00 T.M. No. 16 or No. 17

(b) On application to register a subsequent proprietor of more than one trade mark standing in the same name, the devolution of title being the same in each case—

(i) if made within six months from the date of acquisition of proprietorship
1,000 00 T.M. No. 16 or No. 17

(ii) for every other mark 500 00 —

(iii) if made after expiration of six months but within twelve months from the date of acquisition of proprietorship:

(A) for the first mark 1,000 00 T.M. No. 16 or No. 17

(B) for every other first mark 300 00 —

10. (a) On application to change the name or description of a proprietor or a registered user of a single trade where there has been no change in the proprietorship or in the identity of the user 500 00 T.M. No. 22

(b) On application to change the name or description of a proprietor or a registered user of more than one trade mark standing in the same name, where there has been no change in the proprietorship or in the identity of the user, the change being the same in each case—

(i) for the first mark 500 00 T.M. No. 22

(ii) for every other mark 300 00 —

11. (a) For renewal of registration of a trade mark at expiration of last registration 3,000 00 T.M. No. 12

(b) For renewal of registration of a series of trade marks under section 26 (2) of the Act, at expiration of last registration—

(i) for the first mark of the series 3,000 00 T.M. No. 12

(ii) and for every other mark of the series 1,000 00 —

(c) For renewal of registrations of the same certification trade mark with the same date for goods in more than one class—

(i) in respect of every class 3,000 00 T.M. No. 12

(ii) total fee in no case to exceed K10,000.00 for any number of classes:

(d) Additional fee under regulation 67 2,000 00 T.M. No. 13

(e) Restoration fee under regulation 68 3,000 00 T.M. No. 14

12. (a) On an application to the Registrar for leave to add to or alter a single registered mark 1,000 00 T.M. No. 26

(b) On an application to the Registrar for leave to add to or alter more than one registered trade mark of the same proprietor, being identical marks, the addition or alteration to be made, in each case, being the same—

(i) for the first mark 1,000 00 T.M. No. 26

(ii) for every other mark 500 00 —

(c) On notice of opposition to application for leave to add to or alter registered trade marks, for each application opposed 1,000 00 T.M. No. 47

13. For altering one or more entries of the trade or business address or address for service of a registered proprietor or a registered user of a trade mark where the address in each case is the same

and is altered in the same way (unless exempted from fee under regulation 81)—

- (i) for the first entry 1,000 00 T.M. No. 19
- (ii) and for every other entry 500 00 —

14. For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged 500 00 T.M. No. 48

15. For cancelling the entry or part of the entry of a trade mark upon the register on the application of the registered proprietor of the trade mark 500 00 T.M. No. 23 or No. 24

16. (a) On application, under any of the sections 31, 32, 37 and 38 of the Act, for rectification of the register or removal of trade mark from the register 1,000 00 T.M. No. 27

(b) On application for leave to intervene in proceedings under any of the sections 31, 32, 37 and 38 of the Act, for rectification of the register or removal of trade mark from the register 1,000 00 T.M. No. 28

17. (a) On application for correction of one clerical error or effecting one amendment in one document before registration of any matter 500 00 T.M. No. 21

(b) On application for correction of clerical errors after registration of any matter, in respect of each trade mark 500 00 T.M. No. 21

(c) on application for amendment of trade mark before advertisement, in respect of each application

18. On request by registered proprietor of a trade mark for entry of disclaimer or memorandum in the register 500 00 T.M. No. 25

19. (a) On application to the Registrar under regulation 93 to expunge or vary the registration of a certification trade mark or to vary the deposited regulations of a certification trade mark or certification trade marks of the same registered proprietor where the regulations are substantially the same 1,000 00 T.M. No. 36

(b) On request to the Registrar by the registered proprietor of a certification trade mark to permit alteration of the deposited regulations thereof—

- (i) for the regulation of one such registration 500 00 T.M. No. 35

(ii) for the same or substantially the same regulations of each other registration proposed to be altered in the same way and included in the same request 400 00 —

20. (a) On application by registered proprietor under regulation 6, for conversion of specification. 500 00 T.M. No. 45
- (b) On notice of opposition to a conversion of the specification or specifications of a registered trade mark or registered trade marks—
- (i) for one trade mark 1,000 00 T.M. No. 46
- (ii) for every other trade mark of the same proprietor having the same specification 500 00 —
21. Notice to the Registrar that notice of appeal has been filed with the Registrar of the Tribunal 500 00 T.M. No. 31
22. For a search under regulation 113 in respect of one class—
- (a) without application for the Registrar's advice under regulation 20 500 00 T.M. No. 29
- (b) with application for the Registrar's advice under regulation 20 600 00 T.M. No. 29
23. On request for the Registrar's preliminary advice under regulation 20, for each trade mark submitted in respect of one class 200 00 T.M. No. 30
24. For certificate of the Registrar (other than certificate under section 24 (2) of the Act) relating to the registration of a trade mark 400 00 T.M. No. 32
25. For certificate of the Registrar (other than certificate under section 24 (2) of the Act relating to the registration of a series of trade marks under section 26 (2) of the Act 500 00 T.M. No. 32
26. (a) For permission to search in files and documents—
- for each file searched 500 00 —
- (b) for permission to search indices including terminal index 500 00 —
- (c) for permission to search registers per volume 500 00 —
27. For permission to search amongst the classified representations or scrap books of trade marks, per volume 500 00 —
28. For typewritten copy of any document, for every 100 words 200 00 —
29. For photographic copy of documents or drawings per sheet 200 00 —
30. For certifying office copies, M.S.S. or photographic or printed matter—
- (i) under seal 500 00

(ii) other 300 00

31. On every authorization of an agent 500 00 T.M. No. 1

For the purposes of these fees (except as specially provided above) every mark of a series under section 26 of the Act, or any preceding similar enactment, shall be deemed to be a mark separately registered.

SECOND SCHEDULE reg. 4

FORMS

Form	Corresponding
Fee No.	
T.M. No. 1	Authorization 31
T.M. No. 2	Application for registration of trade mark 1 or 1 (b)
T.M. No. 3	Additional representation of trade mark —
T.M. No. 4	Request for statement of grounds of decision 2
T.M. No. 5	Application for registration of trade mark under section 42 of the Act 1 (d), 1 (e)
T.M. No. 6	Opposition before Registrar to application for registration of trade mark 3
T.M. No. 7	Counter-statement to opposition before Registrar to application for registration of trade mark, or in certain other proceedings 3 (a)
T.M. No. 8	Application for hearing in opposition matter, or in rectification, removal or certain other proceedings 3 (b)
T.M. No. 9	Notice of non-completion of registration of trade mark —
T.M. No. 10	For registration of a trade mark 4, 4 (a), 4 (b), 4 (c), 4 (d) and 5
T.M. No. 11	Certificate of registration of trade mark under section 24(2) of the Act —
T.M. No. 12	Renewal of registration of trade mark 11, 11 (a), 11 (b)
T.M. No. 13	Additional fee to accompany renewal fee within one month after advertisement of non-payment of renewal fee 11 (c)
T.M. No. 14	Restoration of trade mark where removed for non-payment of fee 11 (d)

T.M. No. 15	Application under section 34(3) of the Act and regulation 76 for extension of time to request entry of corporation-assignee as subsequent proprietor	7 (a)
T.M. No. 16	Request by registered proprietor and transferee to register transferee as subsequent proprietor	9, 9 (a)
T.M. No. 17	Request to enter name of subsequent proprietor	9, 9 (a)
T.M. No. 18	Declaration in support of request to enter name of subsequent proprietor	—
T.M. No. 19	Application for alteration of trade or business address or address for service on register	13, or nil
T.M. No. 20	Application to Registrar to dissolve association between registered trade marks	5 (a)
T.M. No. 21	Correction of clerical error in the register or amendment of application	17
T.M. No. 22	Request to enter change of name or description of registered proprietor or user	10, 10 (a)
T.M. No. 23	Application by registered proprietor for cancellation of entry of trade mark in register	15
T.M. No. 24	Request by registered proprietor to strike out goods from those for which a trade mark is registered	15
T.M. No. 25	Request by registered proprietor to enter disclaimer or memorandum in register	18
T.M. No. 26	Application to add to or alter a registered trade mark	12, 12 (a)
T.M. No. 27	Application for rectification of register or removal of trade mark from register	16
T.M. No. 28	Application for leave to intervene in proceedings for rectification of register, or removal of trade mark from register	16 (a)
T.M. No. 29	Request for search	22
T.M. No. 30	Request for Registrar's advice on registrability	23
T.M. No. 31	Notice to Registrar that notice of appeal has been filed with the registrar of the Tribunal	—
T.M. No. 32	Request for general certificate	24, 25
T.M. No. 33	Application for registration of defensive trade mark	1 (c)
T.M. No. 34	Regulations governing the use of certification trade mark (title page)	—

T.M. No. 35	Request for alteration of certification trade mark regulations and consent of Registrar	19 (a)
T.M. No. 36	Application to the Registrar under regulation 93, respecting a certification trade mark	19
T.M. No. 37	Opposition before the Registrar concerning certification trade mark	3 (c)
T.M. No. 38	Counter-statement to opposition before Registrar concerning certification trade mark	3 (d)
T.M. No. 39	Application for hearing in opposition before Registrar concerning certification trade mark	3 (e)
T.M. No. 40	Application for certificate of Registrar upon proposed assignment of registered trade mark	8
T.M. No. 41	Application for approval by Registrar of transfer of trade mark (section 27(6) of the Act)	8 (a)
T.M. No. 42	Application for directions for advertisement of assignment of trade mark in use, without goodwill	8 (b)
T.M. No. 43	Application for extension of time for applying for directions for advertisement of assignment of trade mark in use, without goodwill	8 (c)
T.M. No. 44	General form of advertisement	—
T.M. No. 45	Application by registered proprietor for conversion of specification of a registration	20
T.M. No. 46	Opposition to Registrar's proposal for conversion	20 (a)
T.M. No. 47	Opposition to application to add to or alter a trade mark	12 (b)
T.M. No. 48	Notice of order of a High Court or Tribunal for alteration of register	14
T.M. No. 49	Request for entry and advertisement of certificate of validity	7
T.M. No. 50	Application for registration of registered user	6, 6 (a)
T.M. No. 51	Application by registered proprietor for variation of entry of registered user	6 (b), 6 (c)
T.M. No. 52	Application by registered proprietor or user for cancellation of entry of registered user	6 (d), 6 (e)
T.M. No. 53	Application under section 33(8)(c) of the Act for cancellation of entry of registered user	6 (f), 6 (g)
T.M. No. 54	Notice of intention to intervene in registered user proceedings	6 (h)

Form T.M. No. 1.

MALAWI

Regulation 14.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 1s.

Form of Authorization of Agent

I/We (1)
 have appointed (2)
 of
 to act as my/our agent for (3)
 No.
 and request that all notices, requisitions and communications relating thereto
 may be sent to such agent at the above address.(1) The full names of all the partners in a firm must
 be inserted, and the kind and country of incorporation of bodies corporate stated

I/We hereby revoke all previous authorizations, if any, in respect of the same matter or proceeding.

I/We hereby declare that I am/we are a (4) (2) Here
insert name and address of agent

Dated this..... day of, 19..... (3) Here state the
particular matter or proceeding for which the agent is appointed, giving the reference number. if
known

(5)

Address (6)

(To be struck out if the person appointing the agent desires his own address to be treated as the
address for service after registration.)

I/We also authorize the said (2)
 to complete the entry of an address for service as part of any
 registration obtained under the above authorization. (4) Here state nationality

Dated this..... day of, 19..... (5) To be signed by
person appointing the agent

(5)

Address (6) (6) Here insert the full trade or business address of the person appointing the agent

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 2.

MALAWI.

Section 22 or 26.

Regulation 21.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 1 or 1(b).

Application for Registration of Trade Mark in Part*of the Register

One representation to be fixed within

this space and six others to be pinned

on to and sent with Form T.M. No. 3. * Write distinctly here "A" or "B" according to the registration desired.

(1) Here specify the goods. Only goods included in one and the same class should be specified. A separate application form is required for each class.

(2) Here insert legibly the full name, description and nationality of the individual, firm, or body corporate making the application. The names of all partners in a firm must be given in full. If the applicant is a body corporate, the kind and country of incorporation should be stated.

(3) Here insert the full trade or business address of the applicant.

(4) Here insert the trading style (if any).

(5) If the mark is already in use, strike out the words:"proposed to be" and insert "being".

(6) For additional matter if required; otherwise to be left blank.

(7) Signature.

Application is hereby made for registration in Part* of the register of the accompanying trade mark in

Class in respect of (1)

.....

..... in the name of (2)

..... whose trade or business address is (3)

.....

..... trading as (4)

..... by whom it is (5) proposed to be used and

who claim(s) to be the proprietor(s) thereof.

(6)

.....

.....

Dated this day of, 19.....

(7).....

My/Our address for service in Malawi

.....

.....

.....

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 3.

MALAWI

Section 22 and 26 (2).

Regulations 24, 29, 30 and 38

TRADE MARKS ACT

(Cap. 49:01)

Additional Representation of Trade Mark to Accompany

Application for Registration

Six representations of the trade mark must be pinned within this space.

They must correspond exactly in all respects with the representations affixed to the application form.

Form T.M. No. 4.

MALAWI

Section 22 (4)

Regulation 35.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £1.

Request for Statement of Grounds of Decision

IN THE MATTER OF (1) the Registrar is hereby requested to state in writing the grounds of his decision, dated the day of, 19..... after the hearing on the day of, 19..... and the materials used by him in arriving at the decision. (1) Insert words and number identifying the matter or proceeding.

Dated this..... day of, 19.....

(2) (2) Signature.

My/Our address for service in Malawi

.....

.....

.....

If the Registrar has made any requirement to which the applicant does not object, the applicant shall comply therewith before the Registrar issues the grounds of his decision.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 5.

MALAWI

Section 42.

Regulations 21 and 38.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 1 (d) or 1 (e).

Application for Registration of Certification Trade Mark

One representation to be fixed within this space,
and six others to be pinned on to and
sent with form T.M. No. 3.

(1) Here specify the goods. Only goods in one and the same class should be specified. A separate application form is required for each class.

(2) State the full name, description and nationality of the applicant. If the applicant is a body corporate, the kind and country of incorporation should be stated.

(3) Here insert the full address of the applicant.

(4) Signature.

Application is hereby made for Registration in Part C of the Register of the accompanying certification trade mark in Class in respect of (1) of (2)

..... whose address is (3)
.....

Dated this..... day of, 19.....

(4)

My/Our address for service in Malawi:

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 6.

MALAWI

Section 23.

Regulation 46.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Notice of Opposition to Application for Registration of a Trade Mark

(To be lodged in duplicate)

IN THE MATTER OF an application No.....

by of (1) State full name and address.

I/WE (1)

hereby give notice of my/our intention to oppose the registration of the trade mark advertised under the above number for Class in the Gazette of the..... day of, 19....., No....., page

The grounds of opposition are as follows:

.....
.....
.....

(2) (2) If registration is opposed on the ground that the mark resembles marks already on the register, the numbers of those marks and of the Gazettes in which they have been advertised are to be set out

(3) Signature.

Dated this day of, 19.....

(3)

My/Our address for service in Malawi:

.....
.....
.....

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 7.

MALAWI

Section 23, 31, 32, 37, 38, 40 or 41.

Regulation 7, 48, 83 or 90.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £1.

Form of Counter-statement

(To be lodged in duplicate)

IN THE MATTER OF an opposition No.,

to Application No.

I/We,

applicant(s) for registration of the above trade mark, hereby give notice that the following are the grounds on which I/we rely as supporting my/our application:—

.....
.....
.....
.....

I/We admit the following allegations in the notice of opposition:—

.....
.....
.....

Dated this day of19.....

(1) (1) Signature.

My/Our address for service in Malawi:

.....
.....
.....

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 8

Section 23, 31, 32, 37, 38, 40 or 41.

Regulation 7, 54, 83 or 90.

TRADE MARKS ACT

(Cap. 49:01)

Fee. £2.

Notice to the Registrar of Attendance at Hearing

I/We (1)

of

hereby give notice that the hearing of the arguments in the case of: (1) State full name and address

(2) (a) opposition No., to application for registration of a trade mark

No.; (2) Strike out words here that are not applicable, so as to state one of the cases (a) to (e) only

(b) application that the entry in the register in respect of trade mark No. may be removed;

(e) may be amended by alteration of or addition to the trade mark;

(d) may be amended by a conversion of the specification of goods;

(c) may be amended otherwise than by any change in the mark or of the specification on conversion.

which, by the Registrar's Notice to me/us dated the day of, 19....., is fixed for a.m. or p.m. at the Trade Marks Office on the day of 19, will be attended by me/us or by some person on my/our behalf.

Dated this day of19.....

(3)..... (3) Signature.

(4)..... (4) Address.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 9

MALAWI

Section 24 (3).

Regulation 59.

TRADE MARKS ACT

(Cap. 49:01)

Notice of Non-completion of Registration

No.

The Registrar, as required by section 24 (3) of the Trade Marks Act, and regulation 59 of the Trade Marks Regulations, has to point out that the registration of the trade mark, in respect of which your application numbered as above was made on the day of,19, has not been completed by reason of your default. Unless it is completed within fourteen days from this date the application will be treated as abandoned.

Dated this day of, 19

To

.....
.....
.....

The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 10.

MALAWI

Section 24, 26 or 42.

Regulation 60

TRADE MARKS ACT

(Cap. 49:01)

Fee: 4, 4 (a), 4 (b), 4 (c), or 4 (d) and 5.

Fee for Registration of a Trade Mark

(If the Applicant has furnished a printing block for advertisement, this form must be accompanied by one unmounted representation of the mark, exactly as shown on the form of application.)

The prescribed fee for the registration of the trade mark No

in class is hereby transmitted.

Dated this day of, 19

(1) (1) Signature

The Registrar,

The Trade Marks Office,

P.O. Box 100, Blantyre.

Form T.M. No. 11.

MALAWI

TRADE MARKS ACT

(Cap. 49:01)

Certificate of Registration

The Trade Mark shown above has been registered in Part

.....of the Register in the name of

.....

.....

.....

.....

in Class under No. as of the, 19.....,

in respect of

Sealed at my direction, this day of 19.....

.....

Registrar

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Registration is for 7 years from the date first abovementioned, and may then be renewed, and also at the expiration of each period of 14 years thereafter.

NOTE.—Upon any change of ownership of this trade mark, or change in address, application should AT ONCE be made to the Registrar to register the change.

Form T.M. No. 12.

MALAWI

Section 25.

Regulation 64.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 11,11 (a) or 11 (b).

*Renewal of Registration of Trade Mark

I/We(1)

of

hereby leave the prescribed fee of for renewal of

registration of the trade mark No in class †,

which I am/we are directed by the proprietor of the trade mark, that is to say by (2)

to pay. (1) State the name and address of the person leaving the fee. † If the fee is left by the proprietor himself, this passage should be struck out.

(2) If the fee is not left by the proprietor him self, insert his name and address here.

(3) Signature and address of the person leaving the fee.

Dated this day of, 19.....

(3)

.....

The statement on the back of this form must be filled in and signed.

The Trade Marks Office,

P.O. Box 100,

Blantyre.

(To appear on the back of the form)

The Registrar is requested to send notice of renewal of the registration to (4) the registered proprietor at the following address:— (4) If the request is signed by the registered proprietor strike out here the words “the registered proprietor” and substitute the word “me”.

.....

.....

(5) (5) Signature.

Dated this day of 19.....

Form T.M. No. 13.

MALAWI

Section 25.

Regulation 67.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £1.

Additional Fee of £1 to accompany Renewal Fee (form T.M. No. 12) within one month after advertisement of Non-payment of Renewal Fee

(To accompany form T.M. No. 12)

In pursuance of the notices issued by the Registrar, I/We hereby transmit the additional fee of £1 (along with form T.M. No. 12) for the renewal of the registration of the trade mark No. in Class

Dated this day of, 19.....

(1) (1) Signature.

(2) (2) Address.

NOTE.—This form must be signed by the person(s) signing the form T.M. No. 12 which accompanies it.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 14.

MALAWI

Section 25.

Regulation 68.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Restoration of Trade Mark removed from Register for Non-payment of Fee

(To accompany form T.M. No. 12)

In pursuance of the notices issued by the Registrar, I/we hereby transmit the additional fee of £2 (along with form T.M. No. 12) for the restoration to the register of the trade mark No.

..... in Class

Dated this day of, 19.....

(1) (1) Signature.

(2) (2) Address.

NOTE.—This form must be signed by the person(s) signing the form T.M. No. 12 which accompanies it.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 15.

MALAWI

Section 34 (3).

Regulation 76.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 7 (a).

Application for extension of time, in accordance with section 34 (3), for the registration of the name of a Corporation as Subsequent Proprietor of a Trade Mark in the Register

Application is hereby made by (1)

.....of

..... for

an extension of time by (2) months of the period of six months allowed by section 34 (3) regulation 76 for registering its name, by force of one assignment, as proprietor of the following

trade mark(s) registered upon application(s) conforming to section 34 (1)(a):— (1) Here state the name and address of the applicant

(2) Here insert “two” or “four” or “six”.

(3) Registration Number Class (3) Additional numbers may be given in a signed schedule on the back of the form.

.....
.....
.....

Dated this day of, 19.....

(4) (4) Signature.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 16.

MALAWI

Section 27.

Regulation 71.

TRADE MARKS ACT

(CAp. 49:01)

Fee: 9 or 9 (a).

Joint Request to the Registrar by Registered Proprietor and Transferee to register the Transferee as Subsequent Proprietor of Trade Marks upon the same devolution of title

We (1)

.....

and (2)

.....

hereby request, under regulation 71, that the name of (3)

carrying on business as (4)

at (5)

may be entered in the register of trade marks as proprietor of the trade mark(s) No*
in Class as from the (6)

(7)

.....

..... (1) State name and address of
registered proprietor, or other assignor or transmitter.

(2) State full name, trade address and nationality of transferee.

(3) Name of transferee.

(4) Description of transferee.

*Additional numbers may be given in a signed schedule on the back of the form.

(5) Trade or business address of transferee.

(6) Date of acquisition of proprietorship.

(7) Full particulars of the instrument of assignment or transmission, if any, or statement of case.

(8) Strike out any words not applicable (see regulation 76).

(9) Signature of assignor or transmitter.

(10) Signature of transferee.

(8) The trade mark at the time of the assignment was (8) (not) used in a business in the goods in question, and the assignment (8) took/ did not take place on or after the commencement of the Act otherwise than in connexion with the goodwill of a business in the goods, (8) and there is sent herewith a copy of the Registrar's direction to advertise the assignment, a copy of each of the advertisements complying therewith, and a statement of the dates of issue of any publication containing them.

Dated this day of, 19....

(9)

(10)

Our address for service in Malawi:—

.....

.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 17.

MALAWI

Section 27.

Regulation 72.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 9 or 9 (a).

Request to the Registrar to register a Subsequent Proprietor of a Trade Mark or Trade Marks upon the same devolution of title

I/We (1)

.....

.....

hereby request that my/our names

may be entered in the register of trade marks as proprietor(s) of trade mark(s) No

..... *

in Class as from the (2)

..... (1)Here state full name, trade or business address, nationality and description.

* Additional numbers may be given in a signed schedule on the back of the form.

(2) Date of acquisition of proprietorship.

(3) Here insert full particulars of the instrument of assignment or transmission, if any, or statement of case.

(4) Strike out any words not applicable (see regulation 76).

I am/we are entitled to the trade mark(s) by virtue of (3)

.....
.....
.....

(4) The trade mark at the time of the assignment was (4) not/used in a business in the goods in question, and the assignment (4) took/ did not take place on or after the commencement of the Act otherwise than in connexion with the goodwill of a business in the goods,(4) and there is sent herewith a copy of the Registrar's direction to advertise the assignment.

Dated this day of, 19.....

(5) (5) Signature.

My/Our address for service in Malawi:—

.....
.....
.....

NOTE.—The instrument under which the transferee claims should preferably accompany this form.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 18.

MALAWI

Section 27.

Regulation 74.

TRADE MARKS ACT

(Cap. 49:01)

Affidavit / Solemn Declaration (only to be furnished when requested by Registrar) in support of Statement of Case accompanying form T.M. No. 16 or No. 17

I,

.....

of

do hereby make* oath and say/solemnly and sincerely declare that the particulars set out in the statement of case, exhibit marked, and left by me in connexion with my request to be registered as subsequent proprietor of the trade mark No in Class are true and comprise every material fact and document affecting the present proprietorship of the trade mark.

* Strike out whichever is inapplicable.

And I make this affidavit/solemn declaration conscientiously believing the same to be true.

(1) (1)To be signed here by the person making the affidavit/ solemn declaration.

Declared at, this

day of, 19.....

Before me (2) (2) Signature and title of authority before whom the affidavit/ solemn declaration is made.

.....

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 19.

MALAWI

Section 39.

Regulations 81, 85 and 102.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 13 or nil.

Request for Alteration of Trade or Business Address or Address for Service in Register of Trade Marks

IN THE MATTER OF the trade mark(s) No.*

registered in Class * Additional numbers may be given in a signed schedule on the back of the form.

I/We

of

being the registered (1) proprietor(s)/user(s) of the trade mark(s) numbered as above, request that my/our trade address in the register of trade marks be altered to

.....

..... (1) Strike out one of these words.

Dated this day of 19.....

(2) (2) Signature.

NOTE.—A registered proprietor or registered user whose address has been altered by a public authority, so that the changed address designates the same premises as before, may make also the statement below in order to avoid payment of the fee.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

(For use only in case of an address changed by a public authority, without change of premises) (3)
Here insert the name of the public authority ordering the change, and the date thereof.

The change of address, for the entry of which application is made above, was ordered by (3)

.....

.....

.....

on the day of....., 19.....

(4) (4) Signature of the registered proprietor or user, as the case may be.

NOTE.—If the above statement be made, and a certificate of the alteration given by the named authority be supplied, the Registrar, if satisfied as to the facts of the case, will not require the payment of a fee with Form T.M. No. 19 (See regulation 81.)

Form T.M. No. 20.

MALAWI

Section 28 (5).

Regulation 61.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Application to the Registrar under section 28 (5) to dissolve the Association between a registered Trade Mark and (an)other registered Trade Mark(s)

(To be accompanied by a Statement of Case)

IN THE MATTER of a trade mark No. registered in Class
.....

I/We
.....

being the registered proprietor(s) of the above-numbered trade mark, hereby apply that the association of this trade mark with the following trade mark(s) registered in my/our name:—

No registered in Class

No registered in Class

may be dissolved and the register amended accordingly.

The grounds for this application are set forth in the accompanying statement of case.

Dated this day of....., 19.....

(1) (1) Signature

The Registrar,

Dated this day of, 19.....

(2) (2) Signature.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 22.

MALAWI

Section 39.

Regulations 85 and 102.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 10 and 10 (a).

Request to enter Change of Name or Description of Registered Proprietor (or Registered User) of Trade Mark upon the Register

I/We (1)

.....

.....

.....

hereby request that my/our name(s) and description(s) may be entered in the register of trade marks as (2) proprietor(s)/registered user(s) of the trade mark(s) No* registered in Class (1) Here state present name, address and description of registered proprietor or registered user.

(2) Strike out the words that are not applicable.

* Additional numbers may be given on a signed schedule on the back of the form.

(3) Here state the circumstances under which the change of name took place.

I am/we are entitled to (2) the said trade mark/use the said trade mark as registered user(s).

There has been no change in the (2) actual proprietorship/identity of the registered user(s) of the said trade mark, but (3)

.....
.....
.....

The entry at present standing in the register gives my/our name(s) and description(s) as follows

.....

Dated this day of, 19.....

(4) (4) Signature.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 23.

MALAWI

Section 39 (1).

Regulations 85 and 86.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 10s.

Application by Registered Proprietor of Trade Mark for the Cancellation of Entry thereof in Register

IN THE MATTER OF trade mark No. Class

Name of registered proprietor

.....

Trade or business address

Description

Application is hereby made by

of (1) (or by

a member of the firm of

of (1)

on behalf of my said firm)

that the entry in the register of trade marks of the trade mark No in Class may be cancelled. (1) Here insert the trade or business address and description of the applicant(s) or his/their firm.

Dated this day of, 19.....

(2) (2) Signature.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 24.

MALAWI

Section 39 (1).

Regulations 85 and 86.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 10s.

Application by Registered Proprietor of Trade Mark to the Registrar to strike out Goods from those for which the Trade Mark is Registered

IN THE MATTER OF trade mark No. registered in Class

Name of registered proprietor

.....

Trade or business address

Description

Application is hereby made by

of (1) (or by

a member of the firm of

of (1)

on behalf of my said firm)

.....

for the striking out of (2)

from the goods for which the trade mark No. is

registered in Class (1) Here insert the trade or business address and description of the applicant(s) or his/their firm.

(2) Here designate the goods to struck out.

Dated this day of, 19.....

(3) (3) Signature.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 25

MALAWI

Section 39 (1).

Regulations 85,86 and 87.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 10s.

Request by Registered Proprietor of a Trade Mark that a Disclaimer or Memorandum relating thereto may be Registered

Request is hereby made by (1)

of

for the addition to the entry in the register in connexion with trade mark No in Class of the following namely:

.....

.....

..... (1) Here insert the name, trade or business address and description of the registered proprietor.

Dated this day of, 19.....

(2) (2) Signature.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 26.

MALAWI

Section 40.

Regulations 89 to 92.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 12 or 12 (a).

Application by Registered Proprietor under section 40 for an addition to or alteration of a Registered Trade Mark

IN THE MATTER OF the trade mark No in Class

Application is hereby made by (1)

..... of being the registered proprietor(s) of the registered trade mark numbered as above, that the Registrar shall add to it or alter it in the following particulars, that is to say— (2)

.....

..... (1) Here insert name, trade or business address and description.(2) Here fill in full particulars.

Six copies of the mark as it will appear when so altered are filed herewith.

Dated this day of, 19.....

(3) (3) Signature.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 27.

MALAWI

Section 31, 32, 37 or 38.

Regulation 82.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £3.

Application to the Registrar for the Rectification of the Register or the Removal of a Trade Mark from the Register

(To be lodged in duplicate and accompanied by a statement of case in duplicate)

IN THE MATTER OF the trade mark No. registered in the name of in Class

I/We (1)

.....

hereby apply that the entry in the register in respect of the abovementioned trade mark may be removed (2) rectified in the following manner

..... (1) Here state full name and address.

(2) Strikes out the word(s) that is/are not applicable.

The grounds of my/our application are as follows:—.....

.....

.....

No action concerning the trade mark in question is pending in the Tribunal or the High Court.

Dated this day of, 19.....

(3) (3) Signature.

My/Our address for service in Malawi:—

.....

.....

.....

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 28.

MALAWI

Section 31, 32, 37 or 38.

Regulation 84.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Application to the Registrar for Leave to intervene in Proceedings relating to the Rectification of the Register or the Removal of a Trade Mark from the Register

IN THE MATTER OF trade mark No. registered in the name of
.....

in Class

I/We (1)
.....

hereby apply for leave to intervene in the proceedings relating to the rectification or removal of the entry in the register in respect of the above-mentioned trade mark. (1) Here state full name and address

My/Our interest in the trade mark is
.....
.....
.....
.....

Dated this day of, 19.....

(2) (2) Signature.

My/Our address for service in Malawi:—

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,

Blantyre.

Form T.M. No. 29.

MALAWI

Section 43.

Regulations 20 and 113.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 22.

1.—Request for Search

The registrar is hereby requested under regulation 113 to search in Class* in respect of (1) to ascertain whether any trade marks are on record which resemble the trade mark sent herewith in duplicate (each representation being mounted on a half-sheet of foolscap). * The Registrar’s direction should be obtained if the class is not known.(1)Here specify the goods (in the class stated) in respect of which the search is to be made.

Dated this day of, 19.....

(2) (2) Signature.

(3) (3) Address.

2.—Request for Registrar’s Preliminary Advice as to Distinctiveness or Capability of Distinguishing, by a person proposing to apply for the Registration of a Trade Mark

I/We (4)

.....
.....

hereby request the Registrar to advise me /us whether the trade mark referred to above appears to him prima facie to be inherently adapted to distinguish or inherently capable of distinguishing my/our goods above-mentioned so as to comply with the requirement of section 14 or 15 respectively of the Act for registrability in Part A or Part B of the register. (4) Here state name and address in full.

Dated this day of, 19.....

(5) (5) Signature.

My/Our address for service in Malawi:

.....
.....
.....

NOTE.—Request 1 MUST be completed. The fee on the form is 15s. if request 2 is not completed, of £1 if both requests are completed.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 30.

MALAWI

Regulation 20.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 5s.

Request for Registrar’s Preliminary Advice as to Distinctiveness or Capability of Distinguishing, by a person proposing to apply for the Registration of a trade Mark

I/We (1)

.....
.....

hereby request the Registrar to advise me/us whether the trade mark shown on the accompanying foolscap sheet* appears to him prima facie to be inherently adapted to distinguish or inherently capable of distinguishing my/our goods so as to comply with the requirements of section 14 or 15, respectively of the Act for registrability in Part A or Part B of the register. (1) Here state name and address in full.

* To be sent in duplicate.

(2) Here specify the goods. Only goods included in one and the same class should be specified. A separate form of request is required for each class.

(3) Here insert the number of the class (if known). In case of doubt, the Registrar's direction may be obtained.

The goods in respect of which I/we propose to apply for registration of the said trade mark are (2)

.....

.....

.....

..... in Class (3)

Dated this day of, 19.....

(4) (4) Signature.

My/Our address for service in Malawi:

.....

.....

.....

NOTE.—If and when an application is made to register the trade mark, objection may arise if identical or resembling trade marks are found on the register. A prior notification of any such relevant marks (if any are to be found) can be obtained by a request to the Registrar made on Form T.M. No. 29.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 31.

MALAWI

Section 51.

Regulation 115.

TRADE MARKS ACT

(Cap. 49:01)

Fee: Nil.

Notice to Registrar that Notice of Appeal has been filed with registrar of Tribunal

I/We (1)

.....

hereby give you notice that I/we have this day filed with the registrar of the Tribunal a notice of appeal, a copy of which is attached hereto, together with a copy of my/our grounds of appeal. (1)
Here state full name and address.

Dated this day of, 19.....

(2) (2) Signature.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 32.

MALAWI

Section 45.

Regulation 111.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 24 or 25.

Request for General Certificate of the Registrar (including Certificate of Registration of a Trade Mark)

IN THE MATTER OF* the trade mark No. registered in Class

..... * * These words may be varied to suit other cases.

I/We

of

hereby request the Registrar to furnish me/us with (2) his certificate that (1)

(2) a certificate of registration of the trade mark (2) for use in obtaining registration abroad. (1)

Here set out the particulars which the Registrar is requested to certify.

Dated this day of, 19..... (2) Strike out words that are not applicable.

(3) (3) Signature.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 33.

MALAWI

Section 32.

Regulations 21 and 37.

TRADE MARKS ACT

Fee: £3.

(Cap. 49:01)

Application under section 32 of the Act for Registration of an Invented Word (or Words) in Part D of the Register as Defensive Trade Mark

One representation to be fixed within this space,

and six others to be pinned on to

and sent with form T.M. No. 3.

Application is hereby made for registration in Part D of the register of the above mark as a defensive trade mark in Class in respect of

(1)

.....

.....

.....

in the name of (2)

.....

.....

of (3)

trading as (4)

who is/are the proprietor(s) of the same trade mark registered in Class (5)....., in respect of under No. (1) Here specify the goods. Only goods included in one and the same class should be specified.

(2) Here insert legibly the full name, description and nationality of the individual, firm or body corporate making the application. The names of all partners in a firm must be given in full. If the applicant is a body corporate, the kind and country of incorporation should be stated.

(3) Here insert the full trade or business address of the applicant.

(4) Here insert the trading style (if any).

(5) Here insert particulars of the applicant's registration of the trade mark.

(6) To be furnished in duplicate.

(7) Signature.

The particulars of the facts on which I/we rely in support of this application are set forth in the accompanying statement of case (6).

Dated this day of 19.....(7)

My/Our address for service in Malawi:

.....

.....

.....

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 34.

MALAWI

Section 42.

Regulations 40.

TRADE MARKS ACT

(Cap. 49:01)

Regulations for governing the use of Certification Trade Mark No.

in Class in respect of (1)

..... (1) Here specify the goods of the registration.

(For Official Use)

Advertised in Gazette No.

at page on the day of

(Date of application and registration 19.....)

Form T.M. No. 35.

MALAWI

Section 42.

Regulation 94.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 19 (a).

Request for the consent of the Registrar to Alteration of the deposited Regulations for Use of a Certification Trade Mark

Application is hereby made by (1)

.....
.....

who is/are the proprietors(s) of the certification trade mark(s) No. (2) *registered in Class *in respect of (3)* that the deposited regulations for governing the use of the mark may be altered in the manner shown in red in the accompanying copies (4) of the regulations as proposed to be altered, and for the consent of the Registrar to such alteration. (1) Here state name and address of the proprietor(s) as registered.

(2) If the same regulations apply to more than one registration, the numbers of all the registrations should be stated.

(3) Here state the specifications of the respective registrations.

(4) Three copies should be furnished.

(5) Signature.

Dated this day of, 19.....

(5)

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 36.

MALAWI

Section 42.

Regulation 93.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £3.

Application to the Registrar for an order Expunging or Varying an entry in the Register relating to a Certification Trade Mark or Varying the deposited Regulations

(To be lodged in duplicate together with a statement of case in duplicate)

IN THE MATTER OF certification trade mark No.

registered in the name of

in Class

I/We (1)

.....

being (an) aggrieved person(s), hereby apply for an order of the Registrar that: (1) Here state full name and address.

1. (2) The entry in the register in respect of the above-mentioned trade mark may be expunged/varied in the following manner

.....

..... (2) Strike out either paragraph that is not applicable.

2. (2) The deposited regulations governing the use of the abovementioned trade mark may be varied in the following manner

.....

.....

The grounds of my/our application are as follows:

.....

.....

Dated this day of 19.....

(3) (3) Signature.

My/Our address for service in Malawi:

.....

.....

.....

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 37

MALAWI

Section 42.

Regulation 58.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Notice to the Registrar, under Paragraph 2 of the Schedule to the Act, of Opposition to an Application for Registration of a Certification Trade Mark

(To be lodged in duplicate)

IN THE MATTER OF an application No

by

of

I/We (1)

.....

hereby give notice of my/our intention to oppose the registration of the certification trade mark advertised under the above number for Class in the Gazette of the day of, 19....., No page (1) Here state full name and address

The grounds of opposition are as follows (2):

.....

.....

.....

..... (2) The grounds should be limited to matters referred to in paragraph 1 (5) of the Schedule to the Act

Dated this day of, 19.....

(3) (3) Signature

My/Our address for service in Malawi:

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 38.

MALAWI

Section 42.

Regulation 58.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £1.

Form of Counter-statement in reply to the Notice to the Registrar, under Paragraph 2 of the First Schedule to the Act, of Opposition to an Application for registration of a Certification Trade Mark

(To be lodged in duplicate)

IN THE MATTER OF an opposition, No.,

to application for registration of a certification trade mark No.

I/We

the applicant(s) for registration of the above numbered certification trade mark, hereby give notice that the following are the grounds on which I/we rely as supporting my/our application:

.....

.....
.....
.....
.....

I/We admit the following allegations in the notice of opposition:

.....
.....
.....

Dated this day of, 19.....

(1) (1) Signature

My/Our address for service in Malawi:

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 39.

MALAWI

Section 42.

Regulation 58.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Hearing by the Registrar of an Opposition under Paragraph 2 of the First Schedule to the Act, to an Application for Registration of a Certification Trade Mark

Notice of Attendance at Hearing

I/We (1)

of

hereby give notice that the hearing by the Registrar of the arguments in the case of opposition No to application No. for the registration of a certification trade mark, which, by the Registrar's notice to me/us dated the day of, 19..... is fixed for a.m. or p.m. at the Trade Marks Office on the day of, 19....., will be attended by me/us or by some person on my/our behalf. (1) Here state name and address.

Dated this day of, 19.....

(2) (2) Signature.

My/Our address for service in Malawi:

.....
.....
.....

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

From T.M. No. 40.

MALAWI

Section 27 (5).

Regulation 79.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 8.

Application for Certificate of the Registrar under section 27 (5) of the Act with reference to a proposed Assignment of a Registered Trade Mark

(To be accompanied by a statement of case in duplicate and a copy of the proposed assignment.)

IN THE MATTER OF trade mark(s) No.(s)

registered in the name of

in Class(es)

Application is hereby made by (1)

.....

.....

of being the registered proprietor(s) of the above-numbered registered trade mark(s), for the Registrar's certificate under section 27 (5) of the Act with reference to a proposed assignment of the registered trade mark(s) No.(s)

..... to (2)

.....

of

.....

in circumstances that are stated fully in the accompanying statement of case. (1) Here insert the name and trade or business address of the registered proprietor.

(2) Here insert the name and trade or business address of the proposed assignee.

Dated this day of, 19.....

(3) (3) Signature.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

MALAWI

Section 27 (6).

Regulation 79.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 8 (a).

Application for the Approval by the Registrar under section 27 (6) of the Act of a proposed assignment, or of a transmission (on or after the commencement of the Act), of a Trade Mark resulting in exclusive rights in different persons for different parts of Malawi

(To be accompanied by a statement of case in duplicate and a copy of the instrument proposed for the assignment or effecting the transmission.)

IN THE MATTER OF (a) trade mark(s) *registered No.(s) in Class(es)*, the property

of *To be struck out in the case of unregistered trade marks.

Strike out either paragraph I or paragraph II.

I. Application is hereby made by (1)

.....

of

the proprietor of the trade mark(s) shown in the accompanying statement of case (2) (registered in his name) and (2) (used by him) in respect of the following goods for the approval by the Registrar of a proposed assignment of the trade mark(s) to (3)

.....

of

.....

in respect of the following goods

to be sold or otherwise traded in in (4)

†[and to (3)

of

in respect of the following goods

to be sold or otherwise traded in in (4)

in circumstances that are stated fully in the accompanying statement of case. (1) Insert here the name and trade or business of the proprietor.

(2) Strike out either if not applicable.

(3) Insert here the names and trade or business addresses of the proposed assignee(s).

(4) Insert the name of the place or places in Malawi

†Strike out the bracketed passage if not required.

II. (5)

of

who claims that the trade mark(s) shown in the accompanying statement of case was/were, in respect of the following goods, namely

.....

.....

and on the (6) day of 19.....,

transmitted to (7) him [to (8)

of (who was his predecessor in title)]

by or from (9)

of

by whom the trade mark was then used in respect of the following goods, namely

.....

all in circumstances that are stated fully in the accompanying statement of case, for the approval by the Registrar of the aforesaid transmission. (5) Insert here the name and trade or business address of the person who claims a transmission to him.

(6) Insert here the date of the transmission' which must not precede the commencement of the Act.

(7) Strike out the words that are not applicable.

(8) Insert here the name and trade or business address of the predecessor in title, if any.

(9) Insert here the name and trade or business address of the person who transmitted.

Dated this day of, 19.....

(10) (10) Signature.

Assignee's address for service in Malawi is:—

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 42.

MALAWI

Section 27 (7).

Regulation 80.

TRADE MARKS ACT

(Cap. 49:01.)

Fee: 8(b).

Application to the Registrar under section 27 (7) of the Act for Directions for the Advertisement of an Assignment of Trade Marks otherwise than in connexion with the good will of the business

(To be lodged in duplicate.)

Application is hereby made by (1)

.....

of

for the Registrar's directions with respect to the advertisement of an assignment to him/them of the following trade marks otherwise than in connexion with the goodwill of the business in which they were used at the time of assignment,

namely

..... (1) Here insert the name and trade or business address of the assignee (applicant).

I. Registered Trade Marks:

*Registration Number Class Goods in respect of which the mark has been used and is assigned.

all of which are or were registered in the name of (2)

.....

of

who is the assignor; (2) Here insert the name and trade or business address of the proprietor (assignor).

II. Unregistered trade mark (3), all being marks used in his business at the time of the assignment in respect of the goods stated below, by (2)

.....

of

who is the assignor: (3) Only those unregistered trade marks passing by the one assignment and used in the same business and for the same goods as those for which one or more of the registered marks are registered may be stated here.

*Representation of mark Goods in respect of which the mark has been used and is assigned.

The date of assignment was the day of, 19.....

The instrument effecting the assignment is sent herewith, together with a copy thereof.

It is suggested that advertisement shall be directed as follows, namely, in

*Additional marks and numbers may be given in a signed schedule on the back of the form.

Dated this day of, 19.....

(4) (4) Signature.

The Registrar,

The Trade Marks Office.

P.O. Box 100,

Blantyre.

Form T.M. No. 43.

MALAWI

Section 27 (7).

Regulation 80.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 8 (c).

Application for Extension of Time in which to apply for the Registrar's Directions for the advertisement of an Assignment of Trade Marks otherwise than in connexion with the goodwill of the business

Application is hereby made by (1)

.....

of

for extension of time (2) month(s) in which to apply for the Registrar's directions for the advertisement of an assignment to him/them of the following trade marks otherwise than in connexion with the goodwill of the business in which they were used at the time of assignment, namely:— (1) Here insert the name and trade or business address of the assignee (applicant).

I. Registered Trade Marks: (2) Here insert "one" or "two" or "three".

*Registration Number Class Goods in respect of which the mark has been used and is assigned.

all of which are or were registered in the name of (3)

.....

of

who is the assignor;

II. Unregistered trade marks, all being marks used in his business at the time of assignment and in respect of the goods stated below, by (3)

.....

of

who is the assignor: (3) Here insert the name and trade or business address of the proprietor (assignor).

*Representation of mark Goods in respect of which the mark has been used and is assigned.

The date of assignment was the day of, 19.....

*Additional marks and numbers may be given in a signed schedule on the back of the form.

Dated this day of, 19.....

(4) (4) Signature.

My/Our address for service in Malawi is:—

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 44.

MALAWI

Sections 23 and 40.

Regulations 42 and 45.

TRADE MARKS ACT

(Cap. 49:01)

General Form of Advertisement

Notice is hereby given that in terms of

.....
.....
.....
.....

Dated this day of, 19.....

Form T.M. No. 45.

MALAWI

Section 41.

Regulation 6.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 5s.

RECLASSIFICATION

Application to the Registrar by the Proprietor of a Registered Trade Mark for the Conversion of the Specification from the Third Schedule to the Fourth Schedule of the Trade Marks Regulations

IN THE MATTER OF a trade mark No. registered in the name of

in Class of the Third Schedule. (1) Here insert the name and trade or business address of the registered proprietor (applicant).

(2) Cancel the words underlined if there are no registered users.

Application is hereby made by (1)

.....

the registered proprietor of the above numbered trade mark, for the conversion of the specification of the abovementioned registration (2) and the specification(s) of the registered user(s) thereunder from the Third Schedule to the Fourth Schedule of the Trade Marks Regulations.

The specification(s) entered in the register in accordance with the Third Schedule is/are:—

.....

.....

Application is made that the Registrar should propose the following specification(s) in accordance with the Fourth Schedule upon conversion :—

Class

Class

Dated this day of, 19.....

(3) (3) Signature.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 46.

MALAWI

Section 41 (3).

Regulation 7.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 20 (a).

RECLASSIFICATION

Notice of Opposition to Proposal for Conversion of Specification

(To be lodged in duplicate together with a statement, in duplicate, showing how the proposed conversion would be contrary to section 41 (2) of the Act.)

IN THE MATTER OF the*trade mark(s) No.(s)

registered in the name of

in Class of the Third Schedule of the Regulations. (1) Here state full name and address.

I/We (1)

.....

hereby give notice of my/our intention to oppose the proposal for the conversion of the specification(s) of the trade mark(s), advertised in the Gazette of the day of, 19..... No page

The grounds of opposition are as follows:—

.....
.....

Dated this day of, 19.....

(2) (2) Signature.

My/Our address for service in Malawi is:—

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 47.

MALAWI

Section 40.

Regulation 90.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2.

Notice of Opposition to Application under section 40 of the Act for addition to or alteration of a Registered Trade Mark

(To be lodged in duplicate.)

IN THE MATTER OF the trade mark No

registered in the name of

in Class

I/We (1)

.....

hereby give notice of my/our intention to oppose the addition to or alteration of the trade mark numbered and registered as above, so that it shall be in the form shown in the application advertised in the Gazette of the day of, 19..... No page

The grounds of opposition are as follows:—

.....

..... (1) Here state full name and address

Dated this day of, 19.....

(2) (2) Signature.

My/Our address for service in Malawi is:—

.....

.....

.....

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 48.

MALAWI

Sections 51 and 59.

Regulation 117.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 10s.

Notice of Order of High Court or Tribunal for alteration or rectification of Register of Trade Marks

IN THE MATTER OF the trade mark No.

registered in Class

in the name of

Notice is hereby given to the Registrar that, by an order of the High Court/Tribunal made on the
..... day of, 19..... it was directed that

.....

.....

.....

A certified copy of the order of the High Court/Tribunal is enclosed herewith.

Dated this day of, 19.....

(1) (1) To be signed by the person interested or his agent.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 49

MALAWI

Section 58.

Regulation 88.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 7.

Request to the Registrar for entry on the Register and advertisement of a note of a Certificate of Validity by the High Court or Tribunal

IN THE MATTER OF trade mark(s) No.(s)

registered in Class in the name

of (1) Here state the name and address of the registered proprietor.

(2) Here state the nature of the proceedings, with the names of the parties to them, in which the certificate was given.

I/We (1)

.....

hereby request the Registrar to add to the above numbered entry/entries of a trade mark in the Register, and to advertise in the Gazette a note that in (2)

.....

.....

the High Court Tribunal certified that the validity of the said registration(s) came into question and was decided in favour of the proprietor of the trade mark in the terms of the accompanying certificate of validity.

Dated this day of, 19.....

(3) (3) Signature.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

Form T.M. No. 50.

MALAWI

Section 33 (4).

Regulation 96.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 6 or 6 (a).

Application for Registration of Registered User

(To be accompanied by a statement of case giving particulars and stating as required by section 33 (4), verified by an affidavit or solemn declaration made by the proprietor, or by some person authorized to act on his behalf and approved by the Registrar.) (1) Here insert full name, trade or business address and description of the registered proprietor(s).

Application is hereby made by (1)

.....

.....

who is/are the registered proprietor(s) of trade mark(s) No. (s)*

.....

.....

..... registered in Class in respect of (2)

.....

.....

.....

that (3)

.....

.....

.....

.....

of (4)

.....

.....

trading as (5)

.....

who hereby joins in the application, may be registered as a registered user of the above numbered registered trade mark(s) in respect of (6)

.....
.....
.....

subject to the following conditions or restrictions:—

(7)
.....
.....

(8) The proposed permitted use is to end on the day of, 19...../The proposed permitted use is without limit of period. * Additional numbers may be given in a signed schedule on the back of the form.

(2) Here insert the specification in the register.

(3) Here insert the full name, description and nationality of the individual, firm or body corporate, proposed as registered user. The names of all partners in a firm must be given in full. In the case of a body corporate brief particulars of the kind and country of incorporation should be stated.

(4) Here insert the full trade or business address of the proposed registered user.

Dated this day of, 19..... (5) Here insert trading style (if any).

(9) (6) Here insert designation of goods (which must be comprised within the specification).

My/Our address for service in Malawi is:—

..... (7) Write
None if there are no conditions or restrictions.

..... (8)
Strike out the words that are not applicable

.....

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre. (9) Signature.

Form T.M. No. 51.

MALAWI

Section 33 (8) (a).

Regulation 98.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 6 (b) or 6 (c).

Application by the Registered Proprietor of a Trade Mark for variation of the registration of a Registered User thereof with regard to the goods or the conditions or restrictions

(To be accompanied by a statement of the grounds for the application and the written consent (if given) of the registered user.) (1) Here insert the full name, description and trade or business address of the registered proprietor.

Application is hereby made by (1)

.....

.....

the proprietor of trade mark(s) No. (s)*

registered in Class in respect of (2)

.....

.....

that the registration of (3)

.....

as a registered user of the above-numbered trade mark(s) in respect of (4)

.....

.....

may be varied in the following manner: (5)

.....

..... *Additional numbers may be given
in a signed schedule on the back of the form.

(2) Here insert the specification in the register.

(3) Here insert full name, description and trade or business address of the registered user..

Dated this..... day of, 19..... (4) Here insert the goods in respect of which
the user is registered.

(6) (5) Here state in terms the manner in which it is requested that the entry
should be varied.

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

(6) Signature

Form T.M. No. 52.

MALAWI

Section 33 (8) (b).

Regulation 99.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 6 (d) or 6 (e).

Application by the Registered Proprietor of a Trade Mark or by any of the Registered Users of the
Trade Mark for the cancellation of entry of a Registered User thereof

(To be accompanied by a statement of the grounds for the application.)

Application is hereby made by (1)

.....

.....

being (2) the registered proprietor/registered user of trade mark(s) No.(s)*

registered in Class..... in respect of (3)

.....
.....

for cancellation of the entry under the above-mentioned registration(s) of (4)

..... (1) Here insert the full name,
description and trade or business address of the applicant(s).

(2) Strike out words that are not applicable.*Additional numbers may be given in a signed schedule on the back of the form.

As a registered user of the trade mark(s) in respect of (5)

.....
.....

..... (3) Here insert the specification in
the register.

(4) Here insert the full name, description and trade or business address of the registered user whose entry is sought to be cancelled.

(5) Here insert goods in respect of which that registered user is entered.

The grounds for this application are set forth in the accompanying statement.

Dated this..... day of, 19.....

(6) (6) Signature(s).

.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 53.

MALAWI

Section 33 (8) (c).

Regulation 100.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 6 (f) or 6 (g).

Application for cancellation of entry of a Registered User of a Trade Mark

(To be accompanied by a statement of the grounds for the application.) *Additional numbers may be given in a signed schedule on the back of the form.

IN THE MATTER OF trade mark(s) No. (s)*

registered in Class..... in the name of (1)

.....

.....

Application is hereby made by (2)

.....

.....

for the cancellation of the entry under the above-mentioned registration(s) of (3)

.....

.....

.....

as the registered user thereof in respect of (4)

.....

..... (1) Here insert the name trade or business address and description of the registered proprietor as entered in the register.

(2) Here insert the name and address of the applicant for cancellation.

The grounds of this application, particulars of which are given in detail in the accompanying statement of case, are (5)

.....

.....

..... (3) Here insert the name, trade or business address and description of the registered user as entered in the register.

Dated thisday of....., 19..... (4) Here insert the goods in respect of which the registered, user is entered.

(5) Here insert one or more of the subparagraphs of section 33 (8) (c) numbered (i), (ii), (iii).

(6) Signature.

(6)

My/Our address for service in Malawi is:—

.....
.....
.....

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

Form T.M. No. 54.

MALAWI

Section 33 (9).

Regulation 101.

TRADE MARKS ACT

(Cap. 49:01)

Fee: 10s.

Notice to the Registrar under section 33 (9) of the Act of intention to intervene in proceedings for he variation or cancellation of an entry of a Registered User of a Trade Mark

(To be accompanied by a statement of the grounds for intervention)

IN THE MATTER OF a trade mark No. registered in Class

in the name of (1) (1) Insert here the name of the registered proprietor.

and

IN THE MATTER OF a registration of (2)

.....

thereunder as a registered user of the mark. (2) Insert here the name and trade or business address of the registered user.

.....

In reply to the Registrar's notification, dated theday of....., 19..... notice is hereby given of my intention to intervene in the proceedings in the above matter.

Dated this..... day of, 19.....

(3) (3) Signature.

My address for service in Malawi is:—

.....

.....

.....

The Registrar,

The Trade Marks Office,

P.O. Box 100,

Blantyre.

THIRD SCHEDULE reg. 5

CLASSIFICATION OF GOODS

Class 1

Chemical substances used in manufactures, photography, or philosophical research, and anti-corrosives.

Class 2

Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes.

Class 3

Chemical substances prepared for use in medicine and pharmacy.

Class 4

Raw, or partly prepared, vegetable, animal, and mineral substances used in manufactures, not included in other Classes.

Class 5

Unwrought and partly wrought metals used in manufacture.

Class 6

Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines and their parts included in Class 7.

Class 7

Agricultural and horticultural machinery, and parts of such machinery.

Class 8

Philosophical instruments, scientific instruments and apparatus for useful purposes; instruments and apparatus for teaching.

Class 9

Musical instruments.

Class 10

Horological instruments.

Class 11

Instruments, apparatus, and contrivances, not medicated, for surgical or curative purposes, or in relation to the health of men or animals.

Class 12

Cutlery and edge tools.

Class 13

Metal goods, not included in other Classes.

Class 14

Goods of precious metals and jewellery, and imitations of such goods and jewellery.

Class 15

Glass.

Class 16

Porcelain and earthenware.

Class 17

Manufactures from mineral and other substances for building or decoration.

Class 18

Engineering, architectural, and building contrivances.

Class 19

Arms, ammunition, and stores not included in Class 20.

Class 20

Explosive substances.

Class 21

Naval architectural contrivances and naval equipments not included in other Classes.

Class 22

Carriages.

Class 23

(a) Cotton yarn.

(b) Sewing cotton.

Class 24

Cotton piece goods.

Class 25

Cotton goods not included in other Classes.

Class 26

Linen and hemp yarn and thread.

Class 27

Linen and hemp piece goods.

Class 28

Linen and hemp goods not included in other Classes.

Class 29

Jute yarns and tissues, and other articles made of jute, not included in other Classes.

Class 30

Silk, spun, thrown, or sewing.

Class 31

Silk piece goods.

Class 32

Silk goods not included in other Classes.

Class 33

Yarns of wool, worsted, or hair

Class 34

Cloths and stuffs of wool, worsted, or hair.

Class 35

Woollen and worsted and hair goods, not included in other Classes.

Class 36

Carpets, floorcloth and oilcloth.

Class 37

Leather, skins unwrought and wrought, and articles made of leather not included in other Classes.

Class 38

Articles of clothing.

Class 39

Paper (except paper hangings), stationery and bookbinding.

Class 40

Goods manufactured from india-rubber and gutta-percha not included in other Classes.

Class 41

Furniture and upholstery.

Class 42

Substances used as food or as ingredients in food.

Class 43

Fermented liquors and spirits.

Class 44

Mineral and aerated waters, natural and artificial, including ginger beer.

Class 45

Tobacco, whether manufactured or unmanufactured.

Class 46

Seeds for agricultural and horticultural purposes.

Class 47

Candles, common soap, detergents; illuminating, heating, or lubricating oils; matches; and starch, blue and other preparations for laundry purposes.

Class 48

Perfumery (including toilet articles, preparations for the teeth and hair, and perfumed soap).

Class 49

Games of all kinds and sporting articles not included in other Classes.

Class 50

Miscellaneous:—

(1) Goods manufactured from ivory, bone or wood, not included in other Classes.

(2) Goods manufactured from straw or grass, not included in other Classes.

(3) Goods manufactured from animal and vegetable substances, not included in other Classes.

(4) Tobacco pipes.

(5) Umbrellas, walking sticks, brushes and combs for the hair.

(6) Furniture cream, plate powder.

(7) Tarpaulins, tents, rick-cloths, rope (jute or hemp), twine.

(8) Buttons of all kinds other than of precious metal or imitations thereof.

(9) Packing and hose.

(10) Other goods not included in the foregoing Classes.

FOURTH SCHEDULE reg. 5

CLASSIFICATION OF GOODS

NAMES OF THE CLASSES

[Parts of an article or apparatus are, in general, classified with the actual article or apparatus, except where such parts constitute articles included in other classes.]

(1) Chemical products used in industry, science, photography, agriculture, horticulture, forestry: manures (natural and artificial); fire-extinguishing compositions; tempering substances and chemical preparations for soldering; chemical substances for preserving food-stuffs; tanning substances; adhesive substances used in industry.

(2) Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colouring matters, dyestuffs; mordants; resins; metals in foil and powder form for painters and decorators.

(3) Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

(4) Industrial oils and greases (other than edible oils and fats and essential oils); lubricants; dust-laying and absorbing compositions; fuels (including motor spirit) and illuminants; candles, tapers, night lights and wicks.

(5) Pharmaceutical, veterinary and sanitary substances; infants' and invalids' foods; plasters, material for bandaging; material for stopping teeth, dental wax; disinfectants; preparations for killing weeds and destroying vermin.

(6) Unwrought and partly wrought common metals and their alloys; anchors, anvils, bells, rolled and cast building materials; rails and other metallic materials for railway tracks; chains (except driving chains for vehicles); cables and wires (non-electric); lock-smiths' work; metallic pipes and tubes; safes and cash boxes; steel balls; horseshoes; nails and screws; other goods in non-precious metal not included in other Classes; ores.

(7) Machines and machine tools; motors (except for vehicles); machine couplings and belting (except for vehicles); large-size agricultural implements; incubators.

(8) Hand tools and instruments; cutlery, forks and spoons; side arms.

(9) Scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; coin or counter-freed apparatus; talking machines; cash registers; calculating machines; fire-extinguishing apparatus.

(10) Surgical, medical, dental and veterinary instruments and apparatus (including artificial limbs, eyes and teeth).

(11) Installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

(12) Vehicles; apparatus for locomotion by land, air or water.

(13) Firearms; ammunition and projectiles; explosive substances; fireworks.

(14) Precious metals and their alloys and goods in precious metals or coated therewith (except cutlery, forks and spoons); jewellery, precious stones; horological and other chronometric instruments.

(15) Musical instruments (other than talking machines and wireless apparatus).

(16) Paper and paper articles, cardboard and cardboard articles; printed matter, newspapers and periodicals, books; bookbinding material; photographs; stationery, adhesive materials (stationery); artists' materials; paint brushes, typewriters and office requisites (other than furniture); instructional and teaching material (other than apparatus); playing cards (printers type and clichés (stereotype).

(17) Gutta-percha, india-rubber, balata and substitutes, articles made from these substances and not included in other Classes; materials for packing, stopping or insulating; asbestos, mica and their products; hose pipes (non-metallic); plastics in the form of sheets, blocks, rods and tubes, being for use in manufactures.

(18) Leather and imitations of leather, and articles made from these materials, and not included in other Classes; skins, hides, trunks and travelling bags; umbrellas, parasols and walking-sticks; whips, harness and saddlery.

(19) Building materials, natural and artificial stone, cement, lime, mortar, plaster and gravel; pipes of earthenware or cement; road-making materials; asphalt, pitch and bitumen; portable buildings; stone monuments; chimney pots.

(20) Furniture, mirrors, picture frames; articles (not included in other Classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, celluloid, and substitutes for all these materials.

(21) Small domestic utensils and containers (not of precious metal, nor coated therewith); combs and sponges; brushes (other than paint brushes); brushmaking materials; instruments and material for cleaning purposes; steelwool; glassware, porcelain and earthenware not included in other Classes.

(22) Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks, padding and stuffing materials (hair, capoc, feathers, seaweed, etc.); raw fibrous textile materials.

(23) Yarns, threads.

(24) Tissues (piece goods); bed and table covers; textile articles not included in other Classes.

(25) Clothing, including boots, shoes and slippers.

(26) Lace and embroidery, ribands and braid; buttons, press buttons, hooks and eyes, pins and needles; artificial flowers.

(27) Carpets, rugs, mats and matting; linoleums and other materials for covering floors; wall hangings (non-textile).

(28) Games and playthings; gymnastics and sporting articles (excepting clothing); ornaments and decorations for Christmas trees.

(29) Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk and other dairy products, edible oils and fats; preserves, pickles.

(30) Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; bread, biscuits, cakes, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; pepper, vinegar, sauces; spices; ice.

(31) Agricultural, horticultural and forestry products and grains not included in other Classes; living animals; fresh fruits and vegetables; seeds; live plants and flowers; foodstuffs for animals, malt.

(32) Beer, ale and porter; mineral and aerated waters and other non-alcoholic drinks; syrups and other preparations for making beverages.

(33) Wines, spirits and liqueurs.

(34) Tobacco, raw or manufactured; smokers' articles; matches.

TRADE MARKS (TRIBUNAL) RULES

ARRANGEMENT OF RULES

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G.N. 261/1957(F)

5/1964(M)

166/1967

TRADE MARKS (TRIBUNAL) RULES

under s. 53

PRELIMINARY

1. Citation

These rules may be cited as the Trade Marks (Tribunal) Rules.

2. Interpretation

In these Rules, unless inconsistent with the context—

“Office” means the Trade Marks Office;

“Chairman” means the Chairman of the Tribunal;

PART I

APPEALS

3. Entry of appeal

(1) Any person who desires to appeal to the Tribunal from a decision of the Registrar of Trade Marks in any matter in which a right of appeal is given under the Act shall, within three months after the date of the decision, file with the registrar of the Tribunal a notice in form T.M.T. No. 1.

(2) A notice of appeal shall state the nature of the decision appealed against and whether the appeal is from the whole or part only and, if so, what part of the decision.

(3) The notice in form T.M.T. No. 1 shall be accompanied—

(a) in case the appeal concerns an application within regulations 31 to 35 inclusive of the Trade Marks Regulations by a copy of the form of application containing a representation of the mark applied for and a copy of the grounds of the decision of the Registrar of Trade Marks; Above p. 49

(b) in other cases by a copy of the decision of the Registrar of Trade Marks.

(4) The notice shall also be accompanied by a statement in writing of the appellant's grounds of appeal.

(5) The appellant shall send a copy of the notice of appeal to the Registrar of Trade Marks and to any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(6) The appellant shall be responsible for the preparation of the record which shall be certified by the Registrar of Trade Marks as correct in terms of subrule (9).

(7) The Registrar of Trade Marks as well as the parties or their legal practitioners shall endeavour to exclude from the record all documents (more particularly such as are purely formal) that are not relevant to the subject matter of the appeal, and generally to reduce the bulk of the record as far as practicable, and to avoid the production of unnecessary exhibits, taking special care to avoid the duplication of documents and the unnecessary repetition of headings, and furnish merely the formal particulars of documents; but the documents omitted to be copied shall be enumerated in a list to be placed after the index or at the end of the record.

(8) The Registrar of Trade Marks, after consultation with the registrar of the Tribunal, shall direct the number of copies of the record to be prepared, having regard to whether or not one or more assessors are likely to sit upon the hearing of the appeal.

(9) After the completion of the preparation of the record the Registrar of Trade Marks shall certify the record to be correct and forward it to the registrar of the Tribunal together with such copies thereof as he has directed to be prepared in terms of subrule (8).

4. Application for an extension of time in which to appeal

(1) Any application for an extension of time in which to appeal shall be in form T.M.T. No. 2 and shall state briefly the grounds upon which the application is based and where facts are alleged such facts shall be verified by affidavit.

(2) The application accompanied by supporting documents shall be delivered to the registrar of the Tribunal and copies shall forthwith be served by the appellant on the Registrar of Trade Marks and on any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(3) The respondent shall be entitled to file an affidavit in reply within fourteen days from the date of service or within such longer period as may be ordered by the Tribunal, and the Tribunal may permit further affidavits to be filed. Copies of such affidavits shall be served on the Registrar of Trade Marks and on the appellant or the respondent, as the case may be, immediately after the affidavits are filed.

5. Notice of hearing

(1) The registrar of the Tribunal shall, after obtaining directions from the Chairman, give to the Registrar of Trade Marks, to the appellant and to any opposing party not less than fourteen days' notice of the time and place appointed for the hearing of the appeal, unless the Chairman directs that shorter notice shall be given.

(2) In any case where the setting down of the hearing of an appeal has been delayed any party may apply to the registrar of the Tribunal to fix a date for the hearing, and thereupon the registrar of the Tribunal, after consulting any other party and the Chairman, shall set down the appeal for hearing after having given to the Registrar of Trade Marks and to any other party not less than fourteen days' notice of the time and place appointed for the hearing of the appeal unless the Chairman directs that shorter notice shall be given.

(3) If in the opinion of the registrar of the Tribunal an appeal is not being prosecuted timeously he may lay the matter before the Chairman for directions and, if the Chairman is satisfied that the parties do not intend or are unable to proceed with the appeal, he may direct that the parties attend before him to show cause why the appeal should not be dismissed.

6. Evidence

Subject to section 51 (7) of the Act, the evidence used on appeal to the Tribunal shall be the same as that used before the Registrar of Trade Marks, and no further evidence shall be given except with the leave of the Tribunal.

7. Attendance of witnesses

The Tribunal may, at the request of any party, order the attendance at the hearing for the purpose of cross-examination of any person who has given evidence in the matter to which the appeal relates.

8. Security on appeal

(1) Subject to section 65 of the Act any party may, at any time before the hearing of an appeal, apply to the Tribunal for an order that any opposing party shall, within such time, in such amount and in such manner as the Tribunal directs, give security for the payment of any costs which such opposing party may be ordered to pay.

(2) The party applying for an order for security for costs shall serve upon the opposing party a copy of the notice of the application for security at least seven days before the date of the hearing thereof.

(3) Any party ordered to give security for costs in terms of this rule may apply to the Tribunal for an order extending the time within which any security is to be given, and shall give not less than four days' notice of such application to the other party.

(4) In the event of the security not being given or being only partly given within the time directed by the Tribunal or any extension thereof, all proceedings in the appeal shall be deemed to be stayed, unless the Tribunal otherwise orders, and the appeal shall be set down for such order, whether of dismissal or otherwise, as the Tribunal may think fit.

9. Abandonment or failure to prosecute appeal

(1) An appellant may at any time abandon his appeal by giving notice of abandonment in form T.M.T. No. 3 to the registrar of the Tribunal, and upon such notice being given the appeal shall be deemed to have been dismissed by the Tribunal.

(2) The appellant shall serve a copy of the notice of abandonment on the respondent and on the Registrar of Trade Marks.

(3) The respondent may, upon receipt of such notice, apply to the Tribunal for an order in respect of any costs incurred by him.

10. Frivolous or vexatious appeals

If it appears to the Tribunal that any notice of appeal against a decision of the Registrar of Trade Marks discloses grounds of appeal which are frivolous or vexatious and that the appeal can be determined without a hearing, the Tribunal may dismiss the appeal summarily without calling on any person to attend the hearing of such appeal.

PART II

APPLICATIONS TO TRIBUNAL

11. Application to Tribunal under section 31, 32, 37 or 38

(1) An application to the Tribunal under section 31, 32, 37 or 38 of the Act shall be made in form T.M.T. No. 4 and shall be filed with the Registrar of Trade Marks.

(2) The application shall set out fully the nature of the applicant's interest, the facts upon which he bases his case and the relief he seeks, and shall be accompanied by an affidavit verifying the facts set out therein.

(3) The applicant shall serve copies of the application and of the relevant affidavit upon the registered proprietor or registered user of the trade mark concerning which the application is made and upon any other person appearing from the register to be interested in the trade mark, and he shall advertise the application in one issue of the Gazette in such form as may be approved by the Registrar of Trade Marks.

(4) At any time within two months from the date of the advertisement the registered proprietor or registered user of the trade mark or any other person who wishes to oppose the application shall deliver to the Registrar of Trade Marks a counter-statement, verified by affidavit,

setting out fully the grounds on which the applicant is opposed, and shall at the same time serve upon the applicant a copy of the counter-statement and of such affidavit. Proof of service shall be furnished to the satisfaction of the said Registrar.

(5) When this rule has been complied with to the extent herein required the Registrar of Trade Marks shall hand all relevant papers to the registrar of the Tribunal.

12. Hearing of applications

(1) When the registrar of the Tribunal has received from the Registrar of Trade Marks the papers or written proceedings in relation to any application or other matter made to the Tribunal under the Act he shall, after taking directions from the Chairman, appoint a time and place for the hearing of the case, and shall give the parties at least fourteen days' notice of the appointment.

(2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Tribunal shall decide the case and notify its decision to the parties.

13. Evidence by affidavit

(1) All evidence shall be by affidavit unless otherwise directed by the Tribunal.

(2) Whenever a time is specified in this Part within which any act or thing is to be done the Registrar of Trade Marks may, on application made to him in writing, extend the time either before or after its expiration or within any extended period.

14. Costs

If the applicant notifies the Tribunal that he does not desire to proceed with an application, the Tribunal in deciding whether costs should be awarded to the other party shall consider whether proceedings might have been avoided if such other party had given reasonable notice to the applicant before the application to the Tribunal was filed.

PART III

TAXATION OF COSTS

15. Registrar of Tribunal to Taxing Officer

The registrar of the Tribunal shall be the Taxing Officer for the purpose of taxing a bill of costs of a legal practitioner, and in the taxation of costs shall comply with such instructions as may from time to time be given to him by the Tribunal for that purpose.

16. Necessary and proper costs to be allowed

(1) With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his application or opposition, and to ensure that all such costs shall be borne by the party against whom such order has been awarded by the Tribunal, the Taxing Officer shall on every taxation allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the

rights of any party, but, save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Officer to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to counsel, unless the Tribunal otherwise orders, or special charges and expenses to witnesses or other persons or by other unusual expenses.

(2) Upon the taxation of costs the Taxing Officer may, in determining the remuneration to be allowed, have regard to the skill, labour and responsibility involved. If, on having regard to the said matters, the Taxing Officer considers that there are special reasons why costs in excess of those prescribed in the Second Schedule should be allowed, he may, in respect of any particular application made or business done, allow such costs as seem to him reasonable and shall certify his decision in writing.

(3) Any person aggrieved by the charges made by any legal practitioner in respect of work performed by him under the Act may refer such charges to the Taxing Officer for taxation.

17. Scale of fees to be allowed

In the taxation of costs the Taxing Officer shall be guided, as far as the circumstances of each particular case will permit, by the scale of fees prescribed in Part IV of the Second Schedule. In addition to these charges all disbursements shall be separately charged and shall be allowed by the Taxing Officer when reasonable.

18. Witnesses' charges and allowances

(1) Witnesses requiring payment shall be paid for their attendance and travelling in accordance with the tariff prescribed in Part II of the Second Schedule.

(2) The charges for witnesses as fixed by tariff are to be considered as payable to the witness by the party who summoned or produced him, and in the event of any such party being awarded his costs against any other party the said charges shall be allowed against such other party in the taxation of costs.

(3) Any person applying to the registrar of the Tribunal for the issue of a subpoena to compel the attendance of any witness shall by endorsement of such subpoena give an undertaking that all expenses due to the witness shall be tendered to such witness upon service of the subpoena, failing which no subpoena shall issue. If upon service of the subpoena all expenses due to such witness have not been paid the subpoena shall have no force and effect.

(4) In the taxation of costs between party and party no amount shall be allowed for any witness whether for attendance or travelling expenses unless there is produced to the Taxing Officer proof that such amount has already been paid or tendered to or claimed by such witness.

(5) In the taxation of costs between party and party nothing shall be allowed for any witness not examined unless upon proof that his evidence might reasonably have been believed to be material and necessary.

(6) If the number of witnesses summoned, or if the number of affidavits filed, is manifestly greater than is reasonably necessary, there shall only be allowed against the other party the charges for such witnesses or affidavits as were reasonably necessary.

(7) In the taxation of costs between party and party no amount shall be allowed for any witness in respect of personal attendance or travelling expenses if the fact or facts which such witness is subpoenaed to prove have, before the issue of such subpoena, been admitted to the party taking out the subpoena by the opposite party:

Provided that such admission shall be in writing, signed by the party making it or his legal practitioner acting on his behalf.

(8) When the same person is a witness in more cases than one heard on the same day, he shall be entitled to no more than one fee for personal attendance and one allowance for travelling expenses, which shall be equally divided between such cases.

19. Taxation of costs

(1) In all cases where a notice of taxation is necessary seven days' notice together with a copy of the bill of costs shall be given by the legal practitioner on behalf of the party whose costs are to be taxed to the other party or to the legal practitioner of such other party.

(2) When the dwelling house or place of business of the party against whom costs are to be taxed is more than 36 miles from the seat of the Tribunal, the time for the service of such notice shall be extended to fourteen days.

(3) In the taxation of costs, the notice of taxation with a copy of the bill of costs may be transmitted by registered post to the party appearing in person.

20. Review of decision of Taxing Officer

Any party aggrieved by the decision of the Taxing Officer may apply to the Tribunal within four weeks after the taxation to review such taxation. Copies of the application shall be served on the Taxing Officer and on the opposite party. The application shall specify the items forming the subject of the grievance but the grounds upon which such items are sought to be reviewed shall not require to be verified by affidavit.

21. Reference to Chairman in chambers

The Taxing Officer may, without filing any formal documents, submit any point arising at a taxation for decision by the Chairman in chambers, and it shall be competent for the Taxing Officer and for the legal practitioners who appeared at the taxation to appear before the Chairman respecting such point.

PART IV

GENERAL

22. Adjournment of proceedings

The hearing of any application or other matter before the Tribunal may from time to time be adjourned upon such terms as the Tribunal thinks fit.

23. Place of hearing

(1) Except as provided in subrule (2) every hearing before the Tribunal shall be in Blantyre.

(2) One or more of the parties may, not later than fourteen days before the date approved for the hearing, apply to the Tribunal to conduct the hearing at some other place in Malawi. The Tribunal may, in its discretion and subject to such conditions as to notice and costs as it thinks fit, conduct the hearing at the place named in the application.

(3) Where an application under subrule (2) is not made by all the parties to the proceedings, the Tribunal shall not decide the application without giving the parties an opportunity to be heard.

24. Forms

The forms referred to in these Rules are those set out in the First Schedule and such forms shall be used in all cases to which they are applicable and may be modified as directed by the Chairman.

25. Fees

The Tribunal fees prescribed in Part I of the Second Schedule shall be paid to the Registrar of Trade Marks at the Office.

26. Endorsement of fee on document chargeable

(1) Upon receipt of any document chargeable with any fee payable in terms of these rules the Registrar of Trade Marks shall endorse upon the original of such document the amount of the fee paid and the date of payment.

(2) The Registrar of Trade Marks shall refuse to accept any document in respect of which a fee is payable under these rules, unless the appropriate fee accompanies such document.

27. Oath to be taken by assessors appointed under section 54

The form of oath to be taken by assessors shall be as follows—

I, hereby declare that I will to the best of my ability faithfully and diligently discharge any duties as assessor without favour, fear or prejudice.

28. Remuneration of assessors

The remuneration of any assessor appointed under section 54 of the Act shall be as prescribed in Part III of the Second Schedule.

FIRST SCHEDULE r. 24

FORMS

Form	Matter	Rule
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1.	Notice of appeal to Tribunal	3 (1)
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- 2. Application for an extension of time in which to appeal 4 (1)
- 3. Notice of abandonment of appeal 9 (1)
- 4. General form of application made to the Tribunal under section 31, 32, 37 or 38 of the Act 11 (1)

Form T.M.T. No. 1.

TRADE MARKS ACT

(Cap 49:01)

Sections 51 and 53.

Rule 3 (1)

Notice of Appeal to the Tribunal Fee: £2 10s

IN THE MATTER OF an application (1)

.....

..... (1) State nature of the application
or proceedings, the name of the applicant and the number of the application for registration of a
trade mark

and

IN THE MATTER OF an opposition by (2)

..... (2) State the name of the
opponent(s) if the application is opposed

(3) State full name and address of appellant(s)

(4) Here insert "the decision" or "that part of the decision", as the case may be

(5) Here insert brief particulars identifying the proceedings in which the decision was given

(6) Here insert statement of the nature of the decision in question

I/We (3)

of

hereby give notice of appeal to the Tribunal from (4)

.....

.....
of the Registrar of Trade Marks, dated the day of
..... 19....., relating to (5)

.....
..... whereby he
(6)

.....
.....
.....

Dated this.....day of....., 19.....

(7) (7) To be signed by the appellant(s) or his/their legal practitioner
.....

My/Our address for service in Malawi:

.....
.....
.....

The Registrar of the Patents Tribunal,
P.O. Box 100,
Blantyre.

Form T.M.T. No. 2.

Section 55.

Rule 4 (1)

TRADE MARKS ACT

(Cap. 49:01)

Fee: Nil.

Application for an Extension of Time in which to Appeal

IN THE MATTER OF an application (1)

.....

..... (1) State nature of the application
or proceedings, the name of the the number of the application for registration of a trade mark

and

IN THE MATTER OF an opposition by (2)

.....

..... (2) State the name of the
opponent(s) if the application is opposed

I/We (3)

of

.....

hereby make application for an order of the Tribunal extending the time in which to appeal from (4)

.....

.....

.....

of the Registrar of Trade Marks on the following grounds (5)

.....

.....

.....

.....

..... (3) State full name and address of
appellant(s)(4) Here insert "the decision" or "that part of the decision", as the case may be(5) Here
state briefly the grounds upon which the application is based, and where facts are alleged such facts
shall be verified by affidavit

Dated thisday of, 19.....

(6) (6) To be signed by the appellant(s) or his/their legal practitioner

.....

The Registrar of the Patents Tribunal,

P.O. Box 100,

Blantyre.

Form T.M.T. No. 3.

TRADE MARKS ACT

(Cap. 49:01)

Fee: Nil.

Notice of Abandonment of Appeal

IN THE MATTER OF an application (1).....

.....

..... (1) State nature of the application
or proceedings, the name of the applicant(s) and the number of the application for registration of a
trade mark

and

IN THE MATTER OF an opposition by (2).....

.....

.....

you are hereby notified that the above-named appellant(s) hereby abandon(s) all further
proceedings in the above matter. (2) State the name of the opponent(s) if the application is
opposed

Dated thisday of, 19.....

(3) (3) To be signed by the appellant(s) or his/their legal practitioner

.....

The Registrar of the Patents Tribunal,

P.O. Box 100,

Blantyre.

Form T.M.T. No. 4.

TRADE MARKS ACT

(Cap. 49:01)

Fee: £2 10s.

General Form of Application made to the Tribunal under section 31, 32, 37 or 38 of the Act

IN THE MATTER OF trade mark(s) No. (s).....

..... registered in class.....

in the name of

I/We (1)

.....

..... (1) State full name and address of applicant(s)

hereby make application to the Tribunal for an order (2)

.....

..... (2) Here insert nature of the relief sought

The grounds on which I/we base this application are as follows:—(3)

.....

.....

..... (3) State fully the grounds

Dated this day of, 19.....

(4) (4) To be signed by the applicant(s) or his/their legal practitioner

.....

My/Our address for service in Malawi:—

.....

.....

.....

NOTE.—The application must be accompanied by an affidavit verifying the facts upon which the case is based.

The Registrar,
The Trade Marks Office,
P.O. Box 100,
Blantyre.

SECOND SCHEDULE rr. 17, 18, 25 and 28

PART I

TRIBUNAL FEES

Item	Matter	Amount			
			£	s.	d.
1.	On every appeal to the Tribunal from decision or order of the Registrar of Trade Marks— inclusive fee		2	10	0
2.	On any application or matter made direct to the Tribunal under the Act —inclusive fee	2	10	0	
3.	On every search		0	2	6
4.	For typewritten copies of judgments or records, for additional copies of orders or for copies of documents or proceedings furnished upon direction of the registrar of the Tribunal:				
	The first copy for each folio of 100 words or part thereof		0	1	6
	Additional copies for each folio or 100 words or part thereof		0	0	6
5.	On certifying any document as an office copy		0	5	0
6.	Transcript of shorthand writers' notes	Such fee as may be determined by the Minister.			

PART II

SUBSISTENCE AND TRAVELLING ALLOWANCES PAYABLE TO WITNESSES

Witnesses attending the Tribunal shall be paid subsistence and travelling allowances at the rates prescribed.

PART III

REMUNERATION OF ASSESSORS

An assessor shall be remunerated at the rate of £1 1s. 0d. per hour or part thereof, but his remuneration shall not exceed £5 5s. 0d. per day, unless the Minister, with the approval of the Minister of Finance, otherwise directs. An assessor shall in addition be paid a travelling allowance at the rates prescribed.

PART IV

LEGAL PRACTITIONERS' FEES

Legal practitioners' fees in any appeal, application, opposition or other matter heard before the Tribunal shall be in accordance with the tariff of fees prescribed save as hereinafter provided—

Perusal of any necessary documents—

For the first 10 folios—per folio 2s. 6d.

For each subsequent folio 1s. 0d.

TRADE MARKS (AGENTS' FEES) REGULATIONS

under s. 81

G.N. 287/1962(F)

1. Citation

These Regulations may be cited as the Trade Marks (Agents' Fees) Regulations.

2. Fees

The fee (excluding disbursements) for any service specified in the first column of the Schedule and performed by a trade mark agent shall be not less than that specified opposite thereto in the second column of the Schedule.

SCHEDULE s.2

TARIFF OF FEES PAYABLE TO TRADE MARK AGENTS

Service Minimum Fee

£ s. d.

1. Ordinary trade mark applications—

(a) lodging of an application in one class, including normal prosecution and obtaining certificate 6 18 0

(b) lodging of each additional application at the same time and in the same name 5 3 0

(c) preparing documents, per application 1 10 0

2. Series trade mark applications—

(a) lodging of an application in one class, including normal prosecution and obtaining certificate—

(i) for first mark in series 6 18 0

(ii) for each additional mark in series 0 5 0

(b) lodging of each additional application for same series of marks in each additional class—

(i) for first mark of series 6 18 0

(ii) for each additional mark in series 0 10 0

3. Priority date; claiming priority under Convention on each ordinary or series application 1 0 0

4. Defensive trade mark applications—

(a) lodging of an application, including normal prosecution and obtaining certificate 6 18 0

(b) lodging of each additional application for same mark in each additional class 5 3 0

5. Certification trade mark applications—

(a) lodging of an application, including normal prosecution and obtaining certificate 6 18 0

(b) lodging of each additional application for same mark in each additional class 5 3 0

(c) preparing and lodging request to registrar for alteration of deposited regulations 5 0 0

(d) preparing and lodging of an application to Registrar for an order expunging or varying an entry in the register relating to a certification trade mark or varying the deposited regulations 5 0 0

(e) drawing statement of case 5 0 0

6. Registered users—

(a) lodging of an application for registration of user of one trade mark 5 7 0

(b) inclusion of each additional mark of the same proprietor in the same application of the same registered user 0 10 0

(c) drawing simple registered user agreement 6 6 0

(d) drawing simple declaration and statement of case 5 0 0

(e) lodging of an application for cancellation of registered user entry of a trade mark—

(i) for a single mark 5 0 0

(ii) for each additional mark included in the same application of the same proprietor or registered user 0 10 0

(f) lodging of an application for variation of the terms of appointment of a registered user—

(i) for a single trade mark 2 0 0

(ii) for each additional mark of the proprietor for which the same user is registered included in the same application 0 10 0

(g) preparation of statements to accompany (e) or (f) 5 0 0

(h) lodging of an application for leave to intervene in variation or cancellation of registered user 5 5 0

7. Assignments—

(a) preparing deed of assignment 2 0 0

(b) lodging of an application for assignment of a single trade mark—

(i)	within six months from the acquisition of proprietorship	6	8	0
(ii)	between six and twelve months from the acquisition of proprietorship	6	5	0
(iii)	after twelve months from the acquisition of proprietorship	6	5	0
(c)	inclusion of second mark in same application	3	0	0
(d)	inclusion of each subsequent mark in same application	1	0	0
(e)	lodging of an application for directions to advertise assignment of trade mark in use without goodwill—			
(i)	for a single trade mark	2	0	0
(ii)	for each additional mark included in the same application	0	5	0
(f)	lodging of an application for extension of time to advertise assignment without goodwill as in (e)—			
	for each month (up to three)	1	0	0
(g)	preparing and lodging affidavit in support of statement of case accompanying request to register subsequent proprietor	3	0	0
(h)	lodging of an application for extension of time for registration of company about to be formed as a subsequent proprietor—			
	for each application (up to six months)	1	0	0
(i)	lodging of an application for certificate of Registrar on proposed assignment of trade marks—			
(i)	for a single trade mark	2	0	0
(ii)	for each additional mark of the same proprietor included in the same application	0	5	0
(j)	lodging of an application for approval by Registrar of a proposed assignment of trade marks—			
(i)	for a single trade mark	2	0	0
(ii)	for each additional mark of the same proprietor included in the same application	0	5	0

	(k)	drawing statement of case	4	0	0
8.	Renewal—				
	(a)	making application and obtaining certificate	2	0	0
	(b)	for each subsequent application of the same proprietor lodged simultaneously with first application	1	0	0
	(c)	submitting additional fee for overdue renewal fee		1	0
				0	0
9.	Restoration—				
	(a)	lodging of an application in respect of one mark	5	0	0
	(b)	lodging of an application in respect of each additional mark in the name of same proprietor simultaneously with the first application		2	0
				0	
10.	Prosecution; attending to official objections against trade mark applications; charges according to services rendered, upon the following bases—				
	(a)	attendances at Trade Marks Office for formal matters		1	0
				0	0
	(b)	interviews and consultations with Trade Marks Office	1	10	0
	(c)	examining citations at Trade Marks Office	1	0	0
	(d)	obtaining uncertified print of cited device mark	1	0	0
	(e)	formal routine correspondence sent and received, per letter		0	5
				0	0
	(f)	correspondence involving merits, per letter	0	7	6
	(g)	hearings	4	0	0
	(h)	each affidavit	2	9	0
	(i)	obtaining block, including representations	1	0	0
	(j)	obtaining representations (other than block words simpliciter) for lodging	1	0	0
				0	0
	(k)	lodging application for grounds of Registrar's decision ...	1	5	0
	(l)	preparing and serving notice of advertisement of acceptance on one prior registrant	1	10	0

	(m)	application for extension of time (where no prescribed form)	2	0	0
.....					
11.	Amendments—				
	(a)	amendment of one trade mark registration under section 40 of the Act	6	18	0
.....					
	(b)	amendment of each additional mark in the same name at the same time	3	0	0
.....					
	(c)	amendment of the same mark in an additional class, in the same name and at the same time	3	0	0
	(d)	lodging of notice of opposition to alteration of or addition to a registered trade mark	8	0	0
	(e)	lodging of an application for correction of clerical error or permission to amend an application	1	0	0
12.	Miscellaneous—				
	(a)	lodging of an application for registration of memorandum in register or amendment of registered goods—			
	(i)	against one mark	2	10	0
	(ii)	against a second mark in the same name effected simultaneously	0	0	1
	(iii)	against each subsequent mark in the same name effected simultaneously	0	10	0
	(b)	lodging of an application for cancellation of trade marks registrations—			
	(i)	for first mark	2	10	0
	(ii)	for each additional mark in the same name effected simultaneously	0	0	1
	(c)	lodging of an application for registration of change of address or addresses for service and obtaining certificate—			
	(i)	against one mark	1	10	0
	(ii)	against each subsequent mark in the same name at the same time	10	0	0
	(d)	lodging of an application for registration of change of name and obtaining official certificate—			

- (i) against one mark 2 10 0
 - (ii) against second mark in same name at same time 1 0 0
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			0	0		
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	(a)	lodging of a formal notice of opposition	8	0	0	
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	(d)	lodging of an application for expungement of a registered trade mark		8	0	
			0			
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			0	0		
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			0	0		
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	(c)	lodging of an application requesting registration and advertisement of certificate of validity order of High Court or Tribunal—				
	(i)	for first mark	2	0	0	
	(ii)	for each additional mark at the same time		0	10	0

[Chap4902]CHAPTER 49:02

PATENTS

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13 of 1957(F)

12 of 1959(F)

36 of 1960(F)

1 of 1962(F)

58 of 1965

9 of 1985

G.N. 5/1964(M)

166/1967

An Act to make provision relating to Patents for Inventions and for other purposes incidental thereto

[1ST APRIL 1958]

PRELIMINARY

[Ch4902s1]1. Short title

This Act may be cited as the Patents Act.

[Ch4902s2]2. Interpretation

(1) In this Act, unless inconsistent with the context—

“applicant” includes a person in whose favour a direction has been given under section 23, or his legal representative;

“article” includes any substance or material, and any equipment, machinery or apparatus, whether affixed to land or not;

“assignee” means—

(a) the person who has derived his title to the invention for Malawi directly or indirectly from the inventor thereof or from the latter’s assignee; or

(b) the legal representative of such person;

“Convention” means the Union Convention of Paris, dated the 20th March, 1883, for the Protection of Industrial Property, revised at Brussels on the 14th December, 1900, at Washington on the 2nd June, 1911, at The Hague on the 6th November, 1925, and at London on the 2nd June, 1934, and any revision thereof to which Malawi may accede in terms of section 7;

“convention application” means an application made by a person referred to in section 11 (c);

“convention country”, in relation to any provision of this Act, means a country (including any colony, protectorate or territory subject to the authority or under the suzerainty of that country, or any territory over which a mandate or trusteeship is exercised) which the Minister has, with a view to the fulfilment of the provisions of the Convention, by notice published in the Gazette declared to be a convention country;

“Court” means the High Court;

“date of lodging”, in relation to any document lodged under this Act, means the date on which the document is lodged or, where it is deemed by virtue of any provision of this Act to have been lodged on any different date, the date on which it is deemed to have been lodged;

“effective date” means, in relation to—

(a) an application which has been ante-dated or post-dated under this Act, the date to which that application has been so ante-dated or post-dated;

(b) an application in a convention country, the date on which the application in respect of the relevant invention was made in the convention country in question or is in terms of the laws of that country deemed to have been so made;

(c) any other application, the date on which that application was lodged at the Patent Office;

“examiner” means an examiner appointed under section 4;

“exclusive licence” means a licence from a patentee which confers on the licensee, or on the licensee and persons authorized by him, to the exclusion of all other persons (including the patentee), any right in respect of the patented invention, and “exclusive licensee” shall be construed accordingly;

“former patents legislation” means this Act as in force from time to time prior to the 1st January, 1964;

“Government department” means a department of the Government;

“invention” means any new and useful art (whether producing a physical effect or not), process, machine, manufacture or composition of matter which is not obvious, or any new and useful improvement thereof which is not obvious, capable of being used or applied in trade or industry and includes an alleged invention;

“inventor” means the person who actually devised the invention and includes the legal representative of an inventor, but does not include a person to whom an invention has been communicated either from within or outside Malawi;

“legal representative” means—

(a) the liquidator or receiver of a company;

(b) the representative recognized by law of any person who has died, become insolvent or bankrupt, assigned his estate, is an infant or a minor, or of unsound mind, or is otherwise under a disability;

“new”, in relation to an invention, means, subject to sections 8, 10 and 46, that, on or before the effective date of application for a patent in respect thereof, the invention was not—

(a) known or used anywhere in Malawi by anyone other than the applicant or his agent, or the person or persons from or through whom such applicant has derived his right or title (secret knowledge or secret user otherwise than on a commercial scale being excluded);

(b) worked anywhere in Malawi otherwise than by way of reasonable technical trial or experiment by the applicant or any person or persons from or through whom such applicant has derived his right or title;

(c) described in a patent specification available to public inspection and bearing a date less than fifty years prior to such effective date;

(d) described in writing in any publication of which there was a copy anywhere in Malawi at the effective date of the application, or in a publication printed and published outside Malawi less than fifty years prior to such date;

(e) claimed in any complete specification for a patent which, though not available to public inspection at the effective date of the application, was deposited pursuant to an application for a patent which is, or will be, of prior date to the date of any patent which may be granted in respect of the said invention;

“patent” means letters patent for an invention granted for Malawi under section 25;

“patentee” means the person for the time being entered on the register as grantee or proprietor of a patent;

“patent agent” means a person who is registered as such in terms of section 68 (1);

“patent of addition” means a patent granted under section 31;

“Patent Office” means the Patent Office established under section 3;

“patented article” means any article in respect of which a patent has been granted and is for the time being in force;

“Patents Tribunal” means the Patents Tribunal established under section 74;

“published” means made available to the public and, without prejudice to the generality of the foregoing provision, a document shall be deemed, for the purposes of this Act, to be published if it can be inspected as of right by members of the public, whether upon payment of a fee or otherwise;

“register” means the register of patents kept at the Patent Office under section 6;

“register of patent agents” means the register of patent agents kept under section 68 (1);

“Registrar” means the Registrar of Patents appointed under section 4;

“specification” means a provisional or a complete specification, as the circumstances may require, referred to in section 14;

(2) A reference in this Act to the date of a patent shall be construed as a reference to the appropriate date specified in section 27 (1).

PART I

ADMINISTRATION

[Ch4902s3]3. Establishment of Patent Office

There shall be established under the direction of the Minister an office to be called the Patent Office.

[Ch4902s4]4. Appointment of officers

The Minister shall appoint—

(a) a Registrar of Patents who shall exercise the powers and perform the duties assigned to the Registrar by this Act and shall be responsible for its administration;

(b) one or more Deputy Registrars of Patents who shall, subject to the control of the Registrar, have all the powers conferred by this Act upon the Registrar;

(c) such examiners and other officers as he may consider necessary for carrying out this Act.

[Ch4902s5]5. Seal

There shall be a seal of the Patent Office, and impressions thereof shall be judicially noticed.

[Ch4902s6]6. Register of patents

(1) There shall be kept at the Patent Office a register of patents, in which shall be entered—

(a) particulars of patents in force, of assignments and transmissions of patents and of licences under patents; and

(b) notice of all matters which are required by or under this Act to be entered in the register and of such other matters affecting the validity or proprietorship of patents as the Registrar thinks fit.

(2) All registers of patents established and kept under the former patents legislation in respect of patents originating in Malawi shall, under arrangements made by the Registrar and with the approval of the Minister, be incorporated with and form part of the register established under

subsection (1), so, however, that such arrangements shall in no way be deemed to extend the term and effect of any patent registered in such registers beyond the term and effect provided in respect of such patent by the said legislation.

(3) Subject to this Act, the register of patents shall, at all convenient times, be open to inspection by the public, and certified copies, sealed with the seal of the Patent Office, of any entry in the register shall be given to any person requiring them on payment of the prescribed fee.

(4) The register of patents shall be prima facie evidence of any matters required or authorized by or under this Act to be entered therein.

(5) No notice of any trust, whether expressed, implied or constructive, shall be entered in the register, and the Registrar shall not be affected by any such notice.

PART II

INTERNATIONAL PROVISIONS

[Ch4902s7]7. Convention arrangements

If Malawi accedes to the Convention and any revision thereof as a country of the Union for the Protection of Industrial Property constituted thereunder, the Minister shall, by notice in the Gazette, declare that Malawi has become such a country with effect from the date stated in such notice.

[Ch4902s8]8. Convention applications

(1) Subject to section 11, any person who qualifies under Article 2 or 3 of the Convention and who has applied for protection for an invention in a convention country or his legal representative or assignee (if such assignee is also so qualified) shall be entitled to a patent for his invention under this Act in priority to other applicants if application therefor is made in terms of this Act within twelve months after the effective date of the first application for protection in the first convention country in which he made such application or, where more than one such application for protection has been made, from the effective date of the first such application, and the patent shall have the same date as the effective date of the application in such convention country but the term of the patent shall run from the date on which the complete specification is lodged at the Patent Office :

Provided that—

(a) nothing in this subsection shall entitle the patentee to recover damages for infringements occurring prior to the date on which his complete specification is advertised as having been accepted in Malawi;

(b) no patent granted on a convention application lodged within twelve months after the date stated in terms of section 7 shall bear a date or be effective from a date prior to the date so stated.

(2) Where, after the lodging of the first application in the first convention country in respect of any invention a subsequent application is lodged in that country in respect of the same invention such subsequent application shall be regarded as the first application in that country in respect of that invention, if at the time of the lodging thereof—

(a) the previous application has been withdrawn, abandoned or refused without having been open to public inspection; and

(b) no priority rights have been claimed by virtue of such previous application; and

(c) no rights are outstanding in that convention country in connexion with such previous application.

(3) An application which has been withdrawn, abandoned or refused shall not after the lodging of the subsequent application be capable of supporting a claim for priority rights under this section.

(4) Where all the rights of each of two or more applicants referred to in subsection (1) who have made application for protection of inventions in any one or more convention countries have become vested in the same person, those applications shall for the purposes of section 13 (4) be deemed to have been made by the same applicant.

(5) Where an applicant referred to in subsection (1) has applied for protection for any invention by an application which, in accordance with the law of any convention country, is equivalent to an application duly made in that convention country, he shall be deemed for the purposes of this section to have applied in that convention country.

(6) In determining for the purposes of this Act whether an invention described or claimed in a specification lodged in the Patent Office is the same as that for which protection has been applied for in a convention country, regard shall be had to the disclosure contained in the whole of the documents put forward at the same time as and in support of the application in the convention country, being documents of which copies have been lodged at the Patent Office within such time and in such manner as may be prescribed.

(7) A patent granted in Malawi for an invention upon an application made in terms of this section shall not be invalidated by reason only of—

(a) the invention having been known or used or published in Malawi or elsewhere on or after the effective date of the application in the convention country in which application was first made; or

(b) the granting in Malawi after the effective date of the application in the convention country of a patent of another person for the same invention:

Provided that—

(i) the effective date of the patent of such other person shall not be prior to the effective date in Malawi of the convention application; and

(ii) the convention patentee shall be entitled to have the patent of such other person revoked upon due application under and compliance with section 50.

(8) An application for a patent under this section shall be made in the same manner as for an application in terms of section 12, save that the application shall be accompanied by a complete specification.

(9) For the purpose of this Act, matter shall be deemed to have been disclosed in an application for protection in a convention country if it was claimed or disclosed (otherwise than by way of disclaimer or acknowledgement of prior art) in that application or in documents submitted by the applicant for protection in support of and at the same time as that application, but no account shall be taken of any disclosure by any such document unless a copy of the document is lodged at the Patent Office with the convention application or within such period as may be prescribed after the lodging of that application.

[Ch4902s9]9. Special provisions as to vessels, aircraft and land vehicles

(1) Where a vessel or aircraft registered in a convention country or a land vehicle owned by a person ordinarily resident in such a country comes into Malawi temporarily or accidentally only, the rights conferred by a patent for an invention shall not be deemed to be infringed by the use of the invention—

(a) in the body of the vessel or in the machinery, tackle, apparatus or other accessories thereof, so far as the invention is used on board the vessel and for its actual needs only; or

(b) in the construction or working of the aircraft or land vehicle or of the accessories thereof,

as the case may be.

(2) This section shall not affect any Act which exempts any or any class of aircraft from seizure on patent claims.

[Ch4902s10]10. Protection of inventions communicated under international agreements

(1) Subject to this section, the Minister may make regulations for securing that, where an invention has been communicated in accordance with any agreement or arrangement made by or on behalf of the Government with the government of any country for the supply or mutual exchange of information or articles—

(a) an application for a patent for an invention so communicated made by a person, his legal representative or assignee, entitled under section 11 to make such application, shall not be prejudiced, and a patent granted on such an application shall not be invalidated by reason only that the invention has been communicated as aforesaid or that in consequence thereof—

(i) the invention has been published, made, used, exercised or vended; or

(ii) an application for a patent has been made by any other person, or a patent has been granted on such an application;

(b) any application for a patent made in consequence of such a communication as aforesaid by a person who is not entitled so to do under section 11 may be refused and any patent granted on such an application may be revoked.

(2) Regulations made under subsection (1) may provide that the publication, making use, exercise or vending of an invention or the making of any application for a patent in respect thereof shall, in such circumstances and subject to such conditions or exceptions as may be prescribed by the regulations, be presumed to have been in consequence of such a communication as is mentioned in that subsection.

(3) The powers of the Minister under this section, so far as they are exercisable for the benefit of persons from whom inventions have been communicated to the Government by the government of any country, shall only be exercised if and to the extent that the Minister is satisfied that substantially equivalent provision has been or will be made under the law of that country for the benefit of persons whose inventions have been communicated by the Government to the government of that country.

(4) References in subsection (3) to the communication of an invention to or by the Government or the government of any country shall be construed as including references to the communication of the invention by or to any person authorized in that behalf by the government in question.

[Ch4902s10A]10A. Patents granted under the Protocol

9 of 1985(1) A patent granted under the Protocol shall, subject to the provisions of the Protocol, have effect in Malawi as if it were a patent granted under this Act.

(2) In this section, "Protocol" means the Protocol on Patents and Designs within the Framework of the Industrial Property Organization for English-speaking Africa adopted on 10th December, 1982, at Harare in the Republic of Zimbabwe to which Malawi acceded on 3rd January, 1984, and any revision thereof to which Malawi has acceded.

PART III

APPLICATIONS GENERALLY

[Ch4902s11]11. Persons entitled to make application

Application for a patent for an invention may be made by any of the following persons, that is to say—

- (a) a person claiming to be the inventor of the invention who owns the invention in respect of Malawi;
- (b) an assignee;
- (c) a person entitled under section 8 (1);
- (d) the legal representative of any person who immediately before his death or disability was entitled to make such application,

and may be made by any above-mentioned person either alone or jointly with any other person.

[Ch4902s12]12. Form of application

(1) Every application for a patent shall—

- (a) be made in the prescribed form, which must be signed by the applicant or by a person authorized to sign on his behalf;
- (b) be lodged at the Patent Office in the prescribed manner;
- (c) state an address for service in Malawi to which all notices and communications may be sent; and
- (d) in so far as they are not already stated for the purposes of paragraph (c) state the full postal, residential and business addresses of the applicant.

(2) An assignee or legal representative making or joining in an application shall furnish such proof of title or authority as the Registrar may require or as may be prescribed.

(3) Every application form shall—

- (a) state that the applicant owns the invention in respect of Malawi;
- (b) give the full name of the inventor; and
- (c) where the inventor is not the applicant or one of the applicants, contain a declaration that the applicant believes him to be the inventor.

(4) Every convention application, in addition to the requirements set out in subsection (3), shall state—

- (a) the convention country in which such application for protection was made;
- (b) its number;
- (c) the effective date of such application; and
- (d) the respect in which the applicant in the convention country and in Malawi qualifies under Article 2 or 3 of the Convention.

[Ch4902s13]13. Complete and provisional specifications

(1) Every application for a patent, other than a convention application, shall be accompanied by either a complete specification or a provisional specification and every convention application shall be accompanied by a complete specification.

(2) If a complete specification does not accompany an application, it shall be lodged within twelve months after the date of lodging of the application or within such further period, not exceeding three months, as the Registrar may in writing allow upon payment of the prescribed fee and if this subsection is not complied with the application shall lapse.

(3) Where two or more applications accompanied by provisional specifications have been lodged in respect of inventions which are cognate or of which one is a modification of another, a single complete specification may, subject to this section and section 14, be lodged in pursuance of those applications, or, if more than one complete specification has been lodged, may with the leave of the Registrar be proceeded with in respect of those applications.

(4) Where applications for protection have been made in one or more convention countries in respect of two or more inventions which are cognate or of which one is a modification of another, a single convention application may, subject to sections 11 and 14, be made in respect of those inventions at any time within twelve months from the effective date of the earliest of the said applications for protection.

(5) In considering the validity of applications made in terms of subsection (3) or (4) and in determining other relevant matters under this Act the Registrar shall have regard to the effective dates of the applications or the convention applications concerned relating to the several matters claimed in the specification, and the requirements of section 12 (4) shall, in the case of any such application, apply separately to the applications for protection in respect of each of the said inventions.

(6) Where an application for a patent, not being a convention application, is accompanied by a specification purporting to be a complete specification, the Registrar may, if the applicant so requests at any time before the acceptance of the specification, direct that it shall be treated for the purposes of this Act as a provisional specification and proceed with the application accordingly.

(7) Where a complete specification has been lodged in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under subsection (6) as a provisional specification, the Registrar may, if the applicant so requests at any time before the acceptance of the complete specification, cancel the provisional specification and post-date the application to the date of lodging of the complete specification.

[Ch4902s14]14. Contents of specification

(1) Every specification shall indicate whether it is a provisional or a complete specification and shall commence with a title sufficiently indicating the subject to which the relevant invention relates.

(2) A provisional specification shall fairly describe the invention.

(3) A complete specification shall—

- (a) fully describe the invention and the manner in which it is to be performed;
- (b) disclose the best method of performing the invention known to the applicant at the time when the specification is lodged at the Patent Office; and
- (c) end with a claim or claims defining the subject matter for which protection is claimed.

(4) The claim or claims of a complete specification must relate to a single invention, must be clear and succinct, and must be fairly based on the matter disclosed in the specification.

(5) Every specification shall be accompanied by drawings if required by the Registrar, and such drawings shall be deemed to be part of the specification, but if drawings which accompanied a provisional specification are sufficient for the purpose of a complete specification, it shall suffice if that complete specification refers to such drawings.

(6) Subject to the foregoing provisions of this section, a complete specification lodged at the Patent Office after a provisional specification, or with a convention application, may include claims in respect of developments of or additions to the invention which was described in the provisional specification or, as the case may be, in respect of which application for protection was made in a convention country, being developments of or additions in respect of which the applicant would be entitled to make a separate application for a patent:

Provided that an application shall, in so far as the complete specification contains claims in respect of any such developments or additions, be deemed to have been made on the date on which the complete specification was lodged at the Patent Office.

(7) Where a complete specification claims a new substance, the claim shall be construed as not extending to that substance when found in nature.

[Ch4902s15]15. Effective date of claims of complete specification

(1) Every claim of a complete specification shall have effect from the date prescribed by this section in relation to that claim and a patent shall not be invalidated by reason only of the publication or use of the invention, so far as claimed in any claim of the complete specification, on or after the effective date of that claim, or by the grant of another patent upon a specification claiming the same invention in a claim of the same or later effective date.

(2) Where the complete specification is lodged in pursuance of a single application preceded by a provisional specification or by a specification which is treated by virtue of a direction under section 13 (6) as a provisional specification, and the claim is fairly based on the matter disclosed in that specification, the effective date of that claim shall be the effective date of the application.

(3) Where the complete specification is lodged or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in subsection (2), and the claim is fairly based on the matter disclosed in one of those specifications, the effective date of that claim shall be the effective date of the application accompanied by that specification.

(4) Where the complete specification is lodged in pursuance of a convention application and the claim is fairly based on the matter disclosed in the application for protection in a convention country or, where the convention application is founded upon more than one such application for protection, in one of those applications, the effective date of that claim shall be the effective date of the relevant application for protection.

(5) Where, under the foregoing provisions of this section, any claim of a complete specification would, but for this provision, have two or more effective dates, the effective date of that claim shall be the earlier or earliest of those dates.

(6) In any case to which subsection (2), (3), (4) or (5) does not apply, the effective date of a claim shall be the date of lodging of the complete specification in Malawi.

[Ch4902s16]16. Examination of applications and specifications

(1) The Registrar shall examine every application for a patent and every specification accompanying such application or lodged at the Patent Office in pursuance of such application, in order to ascertain—

(a) whether such application or specification complies with the requirements of this Act;

(b) in the case of a complete specification lodged after a provisional specification, or of a convention application, whether the invention claimed is substantially the same as that disclosed in the provisional specification or in the application lodged in the convention country, as the case may be.

(2) Any examination or investigation required in terms of subsection (1) may, on the direction of the Registrar, be undertaken by an examiner who shall report his findings on any such examination or investigation to the Registrar.

(3) An examination or investigation required by this Act shall not be deemed to warrant the validity of any patent, and no liability shall be incurred by the Government, the Minister, the Registrar or any officer of the Patent Office by reason of or in connexion with any such examination or investigation or report or other proceeding consequent thereon.

[Ch4902s17]17. Ante-dating and post-dating of applications

(1) At any time after an application has been lodged under this Act and before acceptance of the complete specification, the Registrar may, at the request of the applicant and upon payment of the prescribed fee, direct that the application shall be post-dated to such date as may be specified in the request:

Provided that—

(a) no application shall be post-dated under this subsection to a date later than six months from the date on which it was actually lodged or would, but for this subsection, be deemed to have been so lodged; and

(b) a convention application shall not be post-dated under this subsection to a date later than the last date on which, under this Act, the application could have been made.

(2) Where an application or specification lodged under this Act is amended before acceptance of the complete specification, the Registrar may direct that the application or

specification shall be post-dated to the date on which it is amended or, if it has been returned to the applicant, to the date on which it is again lodged under this Act.

(3) Where, at any time after an application or specification has been lodged at the Patent Office and before acceptance of the complete specification, a fresh application or specification is lodged in respect of any part of the subject-matter of the first-mentioned application or specification, the Registrar may direct that the fresh application or specification shall be antedated to a date not earlier than the date of lodging of the first-mentioned application or specification.

(4) An appeal shall lie from any decision of the Registrar under subsection (2) or (3).

[Ch4902s18]18. Refusal of application in certain cases

(1) If it appears to the Registrar in the case of any application for a patent—

(a) that it is frivolous on the ground that it claims as an invention anything obviously contrary to well-established natural laws; or

(b) that the use of the invention in respect of which the application is made would be contrary to law or morality; or

(c) that it claims as an invention a substance capable of being used as food or medicine which is a mixture of known ingredients possessing only the aggregate of the known properties of the ingredients, or that it claims as an invention a process producing such a substance by mere admixture,

he may refuse the application.

(2) If it appears to the Registrar that any invention in respect of which an application for a patent is made might be used in any manner contrary to law, he may refuse the application unless the specification is amended by the insertion of such disclaimer in respect of that use of the invention, or such other reference to the illegality thereof, as the Registrar thinks fit.

(3) An appeal shall lie from any decision of the Registrar under this section.

[Ch4902s19]19. Powers of Registrar if specification or application defective

(1) If, in the case of a complete specification lodged in pursuance of an application for a patent, which application was accompanied by a provisional specification, the result of any examination or investigation made in terms of section 16 is adverse to the applicant in regard to any matter referred to in that section, or it is found that the invention described in the complete specification is not substantially the same as that described in the provisional specification or that the complete specification includes an invention not included in the provisional specification, the Registrar may, subject to section 14 (6)—

(a) refuse to accept the complete specification until it has been amended to his satisfaction;

(b) with the consent of the applicant, cancel the provisional specification and direct that the application be post-dated to the date upon which the complete specification was lodged at the Patent Office; or

(c) where the complete specification includes an invention not included in the provisional specification, allow the application to be proceeded with in so far as the invention included both in the provisional and in the complete specification is concerned and allow an application for the additional invention included in the complete specification to be made and authorize the application for such additional invention, if lodged at the Patent Office within such period as he may determine, to be dated with the date on which the complete specification was lodged at the Patent Office.

(2) If in the case of a convention application it is found that the invention claimed is not substantially the same as that claimed in the application made in the convention country in question, the Registrar may, subject to section 14 (6)—

(a) refuse to accept the application until it has been amended to his satisfaction; or

(b) with the consent of the applicant, treat the application as an application in terms of section 12.

(3) If in the case of a convention application it is found that the specification lodged in Malawi includes an invention not included in the specification lodged in the convention country, the Registrar may allow the application to be proceeded with in so far as the invention included in both the convention and the Malawi specification is concerned, and allow an application for the additional invention to be made and authorize such application, if lodged at the Patent Office within the period he may determine, to be dated with the date on which the Malawi specification was lodged at the Patent Office.

(4) An appeal shall lie from any decision of the Registrar under this section.

[Ch4902s20]20. Lapsing of applications

(1) If a complete specification is not accepted within eighteen months from the date of lodging of an application, the application shall lapse unless—

(a) an appeal has been lodged in respect of the application;

(b) the time within which such appeal may be lodged has not expired; or

(c) the delay in accepting the specification was not due to any neglect or default on the part of the applicant:

Provided that where an application is made for an extension of time for the acceptance of a complete specification, the Registrar shall, on payment of the prescribed fee, grant an extension of time to the extent applied for, but not exceeding three months.

(2) If, at the expiration of the period allowed under subsection (1), an appeal to the Patents Tribunal is pending under any of the provisions of this Act in respect of the application (or, in the

case of an application for a patent of addition, either in respect of that application or in respect of the application for the patent for the main invention) or the time within which such an appeal could be brought in accordance with Part X, apart from any future extension of time thereunder, has expired, then—

(a) where such an appeal is pending, or is brought within the time aforesaid or before the expiration of any extension of that time granted, in the case of the first extension, on an application made within that time or, in the case of a subsequent extension on an application made before the expiration of the last previous extension, the said period shall be extended until such date as the Patents Tribunal may determine;

(b) where no such appeal is pending or is so brought, the said period shall continue until the end of the time aforesaid, or, if any extension of that time is granted as aforesaid, until the expiration of the extension or the last extension so granted.

[Ch4902s21]21. Acceptance and publication of complete specification

(1) Subject to section 20, the complete specification may be accepted by the Registrar at any time after the applicant has complied with the requirements imposed upon him by this Act:

Provided that the applicant may give notice to the Registrar requesting him to postpone acceptance until such date, not being later than eighteen months from the date of lodging of the application, as may be specified in the notice and the Registrar may postpone acceptance accordingly.

(2) On the acceptance of a complete specification the Registrar shall give notice to the applicant who shall, within the prescribed period or within such further period as the Registrar may allow, advertise in the prescribed manner the fact that the specification has been accepted and, unless the acceptance of the specification is so advertised, the application shall lapse.

(3) Upon advertisement under subsection (2) the application form, the specification and other documents essential to obtain acceptance lodged in pursuance thereof shall be open to public inspection.

(4) After the date of the publication as prescribed in subsection (2) of notice of acceptance of a complete specification and until the sealing of a patent in respect thereof, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the publication of such notice.

[Ch4902s22]22. Opposition to grant of patent

(1) Any person interested, including the Government, may within three months from the date of the advertisement of the acceptance of a complete specification or within such further period as the Registrar, on application made to him within the said period of three months, may allow, or, with the consent of the applicant, at any time before the sealing of the patent, oppose the grant of a patent in accordance with this section by giving written notice to the Registrar of opposition to such grant on any of the following grounds and no others, namely—

- (a) that the applicant is not a person entitled under section 11 to make the application;
- (b) that the application is in fraud of the rights of the person giving such notice or of any persons under or through whom he claims;
- (c) that the invention does not relate to an art (whether producing a physical effect or not), process, machine, manufacture or composition of matter, which is capable of being applied in trade or industry;
- (d) subject to section 31, that the invention is obvious in that it involves no inventive step having regard to what was common knowledge in the art at the effective date of the application;
- (e) that the invention is not useful;
- (f) that the complete specification does not fully describe and ascertain the invention and the manner in which it is to be performed;
- (g) that the claims of the complete specification do not sufficiently and clearly define the subject-matter for which protection is claimed;
- (h) that the complete specification does not disclose the best method of performing the invention known to the applicant at the time when the specification was lodged at the Patent Office;
- (i) that the application contains a material misrepresentation;
- (j) that the invention described or claimed in the complete specification is not the same as that described in the provisional specification, and—
 - (i) in so far as it is not described in the provisional specification, was not new at the date when the complete specification was lodged at the Patent Office; or
 - (ii) forms the subject of a pending application made in Malawi for a patent the effective date of which is prior to the date on which the complete specification was lodged at the Patent Office;
- (k) in the case of a convention application, that the specification describes or claims an invention other than that for which protection has been applied for in the convention country and that such other invention either—
 - (i) forms the subject of an application for a patent in Malawi which, if granted, would bear a date in the interval between the lodging of the application in the convention country and the effective date of the application in Malawi; or
 - (ii) is not an invention as defined in this Act
- (l) that the invention was not new at the effective date of the application;
- (m) that the specification includes claims which, in terms of section 18 (1), should have been refused.

(2) A copy of any notice given under subsection (1), and of any statement which in terms of subsection (3) accompanies such notice, shall be served by the objector on the applicant for the patent.

(3) Any notice of opposition given under subsection (1) shall state the grounds on which the objector intends to oppose the grant of the patent, and shall be accompanied by a statement setting out particulars of the facts alleged in support of the said grounds, and proof of service on the applicant concerned of a copy of such notice and of such statement shall be furnished to the Registrar.

(4) If the applicant wishes to contest the opposition, he shall within such time as is prescribed, or such further time as the Registrar may allow, lodge at the Patent Office a counter-statement setting out particulars of the grounds upon which the opposition is to be contested.

(5) A copy of any such counter-statement lodged at the Patent Office shall be served by the applicant on the objector concerned.

(6) Particulars delivered may from time to time be amended by leave of the Registrar.

(7) No evidence shall be admitted in proof of any ground on which particulars have not been delivered as aforesaid, except by leave of the Patents Tribunal.

(8) When, in relation to any opposition, the foregoing provisions of this section have been complied with to the extent therein required, the Registrar shall hand all relevant papers to the registrar of the Patents Tribunal who shall arrange for the matter to be heard by that Tribunal in the manner prescribed and the Patents Tribunal may make such order therein as it deems just.

(9) Upon being notified of the order of the Patents Tribunal by the registrar thereof, the Registrar shall take such further action therein as may be necessary.

[Ch4902s23]23. Substitution of applicants

(1) If the Registrar is satisfied, on a claim made in the prescribed manner at any time before a patent has been granted, that by virtue of any assignment or agreement made by the applicant or one of the applicants for a patent, or by operation of law, the claimant would, if the patent were then granted, be entitled thereto or to the interest of an applicant therein, or to an undivided share of the patent or of that interest, the Registrar may, subject to this section, direct that the application shall proceed in the name of the claimant or in the names of the claimant and the applicant or the other joint applicant or applicants, as the case may require.

(2) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one of two or more joint applicants for a patent except with the consent of the other joint applicant or applicants.

(3) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the right to an invention unless—

(a) the invention is identified therein by reference to the number of the application for the patent;

(b) there is produced to the Registrar an acknowledgement by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made; or

(c) the rights of the claimant in respect of the invention have been finally established by a decision of the Patents Tribunal or any court to which an appeal against such a decision has been brought.

(4) Where one of two or more joint applicants for a patent has died at any time before the patent has been granted, the Registrar, if satisfied of such decease, may alter the application by substituting the legal representative of such deceased applicant and shall thereafter seal the application in the names of the surviving applicants and of such legal representative unless, upon a request in that behalf made by the survivor or survivors, and with the consent of such legal representative, the Registrar directs that the application shall proceed and be sealed in the name of the survivor or survivors alone.

(5) If any dispute arises between joint applicants for a patent whether or in what manner the application should be proceeded with, the Registrar may, upon application made to him in the prescribed manner by any of the parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it shall be proceeded with, or for both those purposes, as the case may require.

(6) An appeal shall lie from any decision of the Registrar under this section.

[Ch4902s24]24. Provisions for secrecy of certain inventions

(1) In this section the expression "competent authority" means the Minister.

(2) Where, before or after the date of commencement of this Act, an application for a patent has been made in respect of an invention, and it appears to the Registrar that the invention is one of a class notified to him by a competent authority as relevant for defence purposes, he may give directions for prohibiting or restricting the publication of information with respect to the invention, or the communication of such information to any person or class of persons specified in the directions, and while such directions are in force the application may, subject to the directions, proceed up to the acceptance of the complete specification, but the acceptance shall not be advertised nor the specification published, and no patent shall be granted in pursuance of the application.

(3) Where the Registrar gives any such directions as aforesaid, he shall give notice of the application and of the directions to the competent authority, and thereupon the following provisions shall have effect, that is to say—

(a) the competent authority shall, upon receipt of such notice, consider whether the publication of the invention would be prejudicial to the defence of Malawi and unless a notice under paragraph (c) of this subsection has previously been given by that authority to the Registrar, shall reconsider that question before the expiration of nine months from the date of lodging of the application for the patent and at least once in every subsequent year;

(b) for the purpose aforesaid, the competent authority may, at any time after the complete specification has been accepted or, with the consent of the applicant, at any time before the complete specification has been accepted, inspect the application and any documents furnished to the Registrar in connexion therewith;

(c) if upon consideration of the invention at any time it appears to the competent authority that the publication of the invention would not, or would no longer, be prejudicial to the defence of Malawi, that authority shall give notice to the Registrar to that effect;

(d) on the receipt of any such notice the Registrar shall revoke the directions and may, subject to such conditions, if any, as he thinks fit, extend the time for doing anything required or authorized to be done by or under this Act in connexion with the application, whether or not that time has previously expired.

(4) When directions have been given under this section, if any use of the invention is made during the continuance in force of such directions by or on behalf of or to the order of a Government department, section 40 shall apply in relation to that use as if a patent had been granted for the invention.

(5) If an applicant for a patent has suffered loss or damage by reason of his invention having been kept secret in pursuance of a direction under subsection (2), the Minister, with the consent of the Minister of Finance, shall pay to him such reasonable compensation as is agreed upon, or, in default of agreement, as may be determined by the Patents Tribunal on a reference under section 42 (1).

(6) Where a patent is granted in pursuance of an application in respect of which directions have been given under this section, no renewal fees shall be payable in respect of any period during which those directions were in force.

(7) If any person fails to comply with any direction given under this section he shall be guilty of an offence.

PART IV

GRANT, EFFECT AND TERM OF PATENT

[Ch4902s25]25. Grant and sealing of patent

(1) If the conditions precedent to the grant of a patent, as prescribed in this Act, have been complied with and there is no opposition to such grant or, in the event of such opposition, the final determination is in favour of the grant of a patent, a patent shall be granted to the applicant, or, in the case of an application by two or more persons jointly, to the applicants jointly, and the Registrar shall cause the patent to be sealed with the seal of the Patent Office:

Provided that—

(a) where an applicant under a joint application has died, the patent may, with the consent of his heir or legal representative, be granted to the survivors of the joint applicants;

(b) where an applicant has agreed in writing to assign the invention or a share in the invention or, in the case of an application by two or more persons jointly, his interest in the invention, to another person, the patent may upon proof of the agreement to the satisfaction of the Registrar be granted to and in the name of the assignee either solely or jointly with the applicant or, in the case of an application by two or more persons jointly, to and in the name of the assignee jointly with the other applicants or their assignees.

(2) A patent shall be sealed as soon as may be, but not later than twenty-two months after the date of lodging of the application therefor:

Provided that—

(a) where the Registrar or the Patents Tribunal has allowed an extension of the time within which a complete specification may be lodged or accepted, a corresponding extension of the time for the sealing of the relevant patent shall be allowed;

(b) where the sealing is delayed by an appeal or by opposition to the grant of the patent, the patent may be sealed at such time as the Registrar may determine;

(c) where the patent is to be granted to the heir or legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at such later time as the Registrar may decide;

(d) the Registrar may, on payment of the prescribed fee, extend the period of twenty-two months for such further time as may be prescribed;

(e) where it is proved to the satisfaction of the Registrar that hardship would arise in connexion with the prosecution of the corresponding application for a patent in any other country unless the period for the sealing of such patent is extended, that period may be extended from time to time by the Registrar to such periods as appear to him to be necessary in order to prevent the hardship arising, if an application in that behalf is made to him and the prescribed fee is paid within the first-mentioned period, or in the case of a subsequent application under this paragraph, within the period to which such first-mentioned period was extended on the last preceding application.

(f) in respect of applications lodged during the years 1964 and 1965 the period of twenty-two months shall be deemed to have been extended to forty-six months.

[Ch4902s26]26. Amendment of patent granted to deceased applicant

Where, at any time after a patent has been sealed in pursuance of an application under this Act, the Registrar is satisfied that the person to whom the patent was granted had died, or, in the case of a body corporate, had ceased to exist, before the patent was sealed, he may amend the patent by substituting for the name of that person the name of the person entitled thereto according to law, and the patent shall have effect, and shall be deemed always to have had effect, accordingly.

[Ch4902s27]27. Date of patent

(1) Subject to this Act, the date of a patent shall be the effective date of the application therefor.

(2) The date of a patent shall be entered in the register and shall be inserted in the patent.

[Ch4902s28]28. Extent, effect and form of patent

(1) Subject to this Act, a patent shall have the same effect against the Government as it has against a subject.

(2) A patent shall be in such form as may be prescribed.

(3) A patent shall be granted for one invention only, but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

(4) The effect of a patent shall be to grant to the patentee, subject to this Act and the conditions of the patent, full power, sole privilege and authority by himself, his agents and licensees during the term of the patent to make, use, exercise and vend the invention within Malawi in such a manner as to him seems meet, so that he shall have and enjoy the whole profit and advantage accruing by reason of the invention during the terms of the patent.

[Ch4902s29]29. Term of patent

The term of every patent shall, subject to this Act, be sixteen years from the date of lodging the complete specification in the Patent Office.

[Ch4902s30]30. Extension of patent

(1) A patentee or an exclusive licensee may, after advertising in the prescribed manner, apply to the Patents Tribunal for an extension of the term of the relevant patent on any one or more of the following grounds, namely—

(a) that he has not derived adequate remuneration from that patent;

(b) that by reason of hostilities between Malawi and any foreign state, he has suffered loss or damage including—

(i) loss or damage arising out of action taken in pursuance of an official request to keep secret the specification of the invention to which the patent relates; and

(ii) loss of opportunity for dealing in or developing the invention on account of—

(A) the fact that he or his employees were engaged in work of national importance; or

(B) lack of supplies or loss of markets as a result of such hostilities, wherever such lack or loss occurs.

(2) Any such application may be made—

(a) in the case of an application under subsection (1) (a), not more than twelve and not less than six months before the date of expiration of the term of the patent in question or at such later time, being not later than the date of expiration of the patent, as the Patents Tribunal may allow; and

(b) in the case of an application under subsection (1) (b) at any time before the date of expiration of the patent or within two years after the date on which hostilities ceased, whichever is the later date.

(3) Any person may within the prescribed time give written notice to the Registrar and the applicant of objection to any such extension, and the registrar of the Patents Tribunal shall fix a date for the hearing of the application by that Tribunal and shall advise the applicant and any objector of the date so fixed.

(4) The Patents Tribunal may, after hearing the applicant and any person who may have objected to the extension, refuse the application or order the extension of the term of the patent in question for such period and subject to such conditions as it may deem fit or, if the patent has already lapsed, order the issue of a new patent for such a period and subject to such conditions:

Provided that no such extension shall be granted—

(a) on the grounds mentioned in subsection (1) (a) for a term exceeding five years or, in what the Patents Tribunal may deem to be exceptional circumstances, ten years; or

(b) on the grounds mentioned in subsection (1) (b), for a term exceeding the period of hostilities.

(5) Section 34 shall mutatis mutandis apply in respect of any extension of the term of a patent granted as a result of an application under subsection (1) (b):

Provided that in the application of those provisions the reference in that section to a period of three months from the date on which any renewal fee referred to therein was due shall be construed as a reference to the date on which any patent whereof the term is extended under this section lapsed by effluxion of time.

(6) An extension of the term of a patent under this section shall be endorsed on the relevant patent by the Registrar and recorded in the register.

(7) Except where the Patents Tribunal otherwise decides, an application based on the grounds specified in subsection (1) (b), shall not be considered if the patentee or exclusive licensee is a subject of such foreign state as is referred to in that paragraph or is a company the business whereof is managed or controlled by such subjects or is carried on wholly or mainly for the benefit or on behalf of such subjects, notwithstanding that the company may be registered in accordance with any law relating to companies.

[Ch4902s31]31. Patents of addition

(1) Subject to this section, where an application for a patent is pending or has been granted thereon for an invention (hereinafter referred to as the main invention) and the applicant or

patentee applies for a further patent in respect of any improvement in or modification of the main invention, the Registrar may, if the applicant so requests, grant a patent for the improvement or modification as a patent of addition.

(2) Subject to this section, where an invention, being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the Registrar may, if the patentee so requests, by order revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date as the date of the patent so revoked.

(3) A patent shall not be granted as a patent of addition unless the date of lodging of the complete specification was the same as or later than the date of lodging of the complete specification in respect of the main invention.

(4) A patent of addition shall not be sealed before the sealing of the patent for the main invention, and if the period within which, but for this provision, the sealing of a patent of addition could be made under section 25 expires before the period within which the sealing of the patent for the main invention may be so made, the sealing of the patent of addition may be made at any time within the last-mentioned period.

(5) A patent of addition shall remain in force for as long as the patent for the main invention shall remain in force, including any extension of the term thereof but no longer, and no fees shall be payable for renewal of a patent of addition:

Provided that, where the patent for the main invention is revoked, the Registrar or the Patents Tribunal, as the case may be, may order that the patent of addition shall become an independent patent, and the fees payable in respect of such independent patent and the times for the payment thereof shall be determined according to the date of the former patent of addition, but the normal term of the independent patent shall not extend beyond the date on which the patent for the main invention would have expired if it had not been revoked.

(6) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for such a patent, and shall not be refused, nor shall any such patent be liable to be revoked or invalidated, on the ground only that the invention claimed in the complete specification does not involve any inventive step having regard to the main invention, so, however, that this subsection shall not apply to an independent patent referred to in the proviso to subsection (5).

(7) A patent for a main invention and its patent of addition shall not be capable of assignment apart from one another.

(8) An appeal shall lie from any decision of the Registrar under this section.

[Ch4902s32]32. Renewal of patents

(1) Subject to this section, every patent shall lapse if the fees prescribed for its renewal are not paid within the prescribed times.

(2) The Registrar may, upon application of the patentee and subject to the payment of such additional fees as may be prescribed, extend the time for payment of a fee referred to in subsection (1) for a period not exceeding six months.

(3) No fee referred to in subsection (1) shall be payable for the renewal of a patent granted or registered under any enactment repealed by the former patents legislation in respect of the period of its term which had elapsed before the 1st January, 1964.

[Ch4902s33]33. Restoration of lapsed patents

(1) Where a patent has lapsed owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may in the prescribed manner apply to the Registrar for the restoration of the patent.

(2) If the Registrar is satisfied that such failure was unintentional, and that no undue delay has occurred in making the application, he shall direct the patentee to advertise the application in the prescribed manner, and thereupon any person may within such time as may be prescribed give notice in the prescribed manner of opposition to the restoration of the patent.

(3) If there is no opposition to such restoration the Registrar shall, on payment of the unpaid renewal fees, make an order restoring the patent.

(4) Where notice of opposition is given, the Registrar shall notify the applicant thereof and shall, after the expiration of the prescribed period and after hearing the applicant and the objector, decide the matter and make an order either restoring the patent, subject to section 34, or dismissing the application.

(5) An appeal shall lie from any decision of the Registrar under this section.

[Ch4902s34]34. Protective provisions to be inserted in order for restoration of patent

In every order restoring a lapsed patent made under section 33, there shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after a lapse of a period of three months from the date on which the renewal fee was due, the following provisions, namely, that the patentee shall not commence or prosecute any action or other proceedings or recover damages—

(a) in respect of any infringement of the patent which has taken place after the lapse of the said period and before the date of the order;

(b) in respect of any use of the subject-matter of the patent at any time after the date of the order by the employment of any means or composition of matter actually made within or imported into Malawi, or in respect of any process put into operation in Malawi in infringement of the patent after the lapse of the said period and before the date of the order, or in respect of the sale, purchase or use of any article which is the product of the use of the said means, composition of matter, or process:

Provided that the employment of the said means, composition of matter or process shall be limited to the person by or for whom the said means, composition of matter, or process was so

made, imported or put into operation, his legal representative, his successors or assigns, or his vendees, as the case may be;

(c) in respect of the employment at any time after the date of the order of any further means, composition of matter, or process, being a reproduction or improvement of the means, composition of matter, or process referred to in paragraph (b) or in respect of the sale, purchase or use of any article which is the product of the said further means, composition of matter, or process;

Provided that the employment of the said further means, composition of matter, or process shall be limited to a person entitled to use as aforesaid the means, composition of matter, or process specified in that paragraph.

[Ch4902s35]35. Endorsement of patent “licences of right”

(1) At any time after the sealing of a patent the patentee may apply to the Registrar for the patent to be endorsed with the words “licences of right” and where such an application is made, the Registrar shall notify the application to any person entered on the register as entitled to an interest in the patent and if satisfied, after giving any such person an opportunity to be heard, that the patentee is not precluded by contract from granting licences under the patent, cause the patent to be endorsed accordingly, so, however, that no such endorsement shall be made in respect of an exclusive licence.

(2) Where a patent is endorsed under this section—

(a) any person shall, at any time thereafter, be entitled as of right to a licence under the patent upon such terms as may, in default of agreement and subject to subsection (3), be settled by the Registrar on the application of the patentee or the person requiring the licence;

(b) the Registrar may, on the application of the holder of any licence granted under the patent before the endorsement, order the licence to be exchanged for a licence to be granted by virtue of the endorsement upon terms to be settled as aforesaid;

(c) if in proceedings for infringement of the patent, otherwise than by the importation of goods, the defendant undertakes to take a licence upon terms to be settled by the Registrar as aforesaid, no injunction shall be granted against him, and the amount, if any, recoverable against him by way of damages shall not exceed double the amount which would have been payable by him as licensee if such a licence had been granted before the earliest infringement;

(d) the renewal fees payable in respect of the patent after the date of the endorsement shall be one half of the renewal fees which would be payable if the patent were not so endorsed.

(3) In settling the terms of the licence for the purposes of subsection (2) (a) or (b), the Registrar shall—

(a) take cognisance of section 38 with respect to a patent falling under that section; and

(b) provide, inter alia, for the following matters—

(i) the period of the licence;

- (ii) the terms of renewal, if any;
- (iii) the amount of and method for payment of royalties;

(iv) arrangements for cancellation of the licence upon application made to him by the patentee after failure by the licensee to pay royalties or to observe any other conditions included in the licence by the Registrar, who is hereby authorized to include such conditions, so, however, that no such licence may be cancelled unless the licensee, after reasonable notice given to him by the patentee, has failed to observe such conditions.

(4) The licensee under any licence granted by virtue of the endorsement of a patent under this section shall, unless in the case of a licence the terms of which are settled by agreement the licence otherwise expressly provides, be entitled to call upon the patentee to take proceedings to prevent any infringement of the patent, and if the patentee refuses or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as if he were patentee, making the patentee a defendant:

Provided that a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(5) An application for the endorsement of a patent under this section shall contain a statement, to be verified in such manner as may be prescribed, that the patentee is not precluded by contract from granting licences under the patent, and the Registrar may require from the applicant such further evidence as he may think necessary.

(6) An application made under this section for the endorsement of a patent of addition shall be treated as an application for the endorsement of the patent for the main invention also, and an application made under this section for the endorsement of a patent in respect of which a patent of addition is in force shall be treated as an application for the endorsement of the patent of addition also, and where a patent of addition is granted in respect of a patent already endorsed under this section, the patent of addition shall also be so endorsed: Provided that no royalty shall be paid by a licensee in respect of such endorsement.

(7) All endorsements of patents under this section shall be entered in the register and shall be published in the prescribed manner.

(8) An appeal shall lie from any decision of the Registrar under this section.

[Ch4902s36]36. Cancellation of endorsement made under section 35

(1) Within such time as may be prescribed after a patent has been endorsed under section 35, the patentee may apply to the Registrar for cancellation of the endorsement and where such an application is made and the balance paid of all renewal fees which would have been payable if the patent had not been endorsed, the Registrar may, if satisfied that there is no existing licence under the patent or that all licensees under the patent consent to the application, cancel the endorsement accordingly.

(2) Within the prescribed period after a patent has been endorsed as aforesaid, any person who claims that the patentee is, and was at the time of the endorsement, precluded by a contract in

which the claimant is interested from granting licences under the patent may apply to the Registrar for cancellation of the endorsement.

(3) Where the Registrar is satisfied, on application made under subsection (2), that the patentee is and was precluded as aforesaid, he shall cancel the endorsement, and thereupon the patentee shall be liable to pay, within such period as may be prescribed, a sum equal to the balance of all renewal fees which would have been payable if the patent had not been endorsed, and if that sum is not paid within that period the patent shall cease to have effect at the expiration of that period.

(4) Where the endorsement of a patent is cancelled under this section, the rights and liabilities of the patentee with respect to it shall thereafter be the same as if the endorsement had not been made.

(5) An applicant shall advertise in the prescribed manner any application made by him under this section and within the prescribed period after such advertisement—

- (a) in the case of an application under subsection (1), any person interested; and
- (b) in the case of an application under subsection (2), the patentee and either additionally or alternatively any person interested,

may give notice to the Registrar of opposition to the cancellation.

(6) Where any such notice of opposition is given, the Registrar shall fix a date for the hearing of the application and shall advise in writing the parties of the date so fixed, and shall, after giving the applicant and the opponent an opportunity to be heard, give such decision on the application as he may consider just.

(7) An application made under this section for the cancellation of the endorsement of a patent of addition shall be treated as an application for the cancellation of the endorsement of the patent for the main invention also, and an application made under this section for the cancellation of the endorsement of a patent in respect of which a patent of addition is in force shall be treated as an application for the cancellation of the endorsement of the patent of addition also.

(8) An appeal shall lie from any decision of the Registrar under this section.

[Ch4902s37]37. Compulsory licence in case of abuse or insufficient use of patent rights

(1) Subject to subsection (14), any person interested who can show that he has been unable to obtain a licence under a patent on reasonable terms may, after the expiration of a period of three years subsequent to the date on which that patent was sealed, or four years subsequent to the date on which the application in respect thereof was lodged whichever period last expires, apply to the Registrar in the prescribed manner for a compulsory licence on the ground that the reasonable requirements of the public with respect to the invention in question have not been or will not be satisfied.

(2) Every application under this section shall set out fully the nature of the applicant's interest, the facts on which he bases his case and the relief he seeks, and shall be accompanied by an affidavit verifying the facts set out in such application.

(3) If, after consideration of any such application, the Registrar is satisfied that the applicant has a bona fide interest, and that a prima facie case for relief has been made out, he shall direct the applicant to serve copies of the application and of the relevant affidavit upon the patentee and upon any other person appearing from the register to be interested in the patent, and to advertise the application in the prescribed manner.

(4) If the patentee or any other person wishes to oppose the grant of a licence under this section, he may within the prescribed period, or within such further period as the Registrar may on application allow, deliver to the Registrar a counter-statement, verified by affidavit, setting out fully the grounds on which the application is opposed, and shall at the same time serve upon the applicant copies of the counter-statement and of such affidavit.

(5) When, in relation to an application or an opposition thereto, the foregoing provisions of this section have been complied with to the extent therein required, the Registrar shall hand all relevant papers to the registrar of the Patents Tribunal, who shall arrange for the matter to be heard by that Tribunal in the manner prescribed and, subject to this section, the Patents Tribunal may make such order therein as it deems just.

(6) The reasonable requirements of the public referred to in subsection (1) shall be deemed not to have been satisfied in any of the following circumstances, namely—

(a) if the patented invention, being an invention capable of being worked in Malawi, is not being worked therein on a commercial scale and there is no satisfactory reason for such non-working:

Provided that, if an application for a compulsory licence is made on this ground and the Patents Tribunal is of the opinion that the time which has elapsed since the sealing of the patent has by reason of the nature of the invention or for any other reason been insufficient to enable the invention to be worked within Malawi on a commercial scale, the Patents Tribunal may make an order adjourning the hearing of the application for such period as will in its opinion be sufficient for that purpose;

(b) if the working of the invention within Malawi on a commercial scale is being prevented or hindered by the importation of the patented article by the patentee or persons claiming under him, or by persons directly or indirectly purchasing from him or by persons against whom the patentee is not taking or has not taken proceedings for infringement;

(c) if the demand for the patented article in Malawi is not being met to an adequate extent and on reasonable terms;

(d) if by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of Malawi or the trade of any person or class of persons trading in Malawi, or the establishment of any new trade or industry in Malawi, is being prejudiced, and it is in the public interest that a licence or licences should be granted;

(e) if any trade or industry in Malawi, or any person or class of persons engaged therein, is being prejudiced by unfair conditions attached by the patentee, whether before or after the date of commencement of this Act, to the purchase, hire, licence or use of the patented article, or to the using or working of the patented process;

(f) if any condition which under section 49 is null and void as being in restraint of trade and contrary to public policy, has been inserted in any contract made in relation to the sale or lease of or any licence to use or work any article or process protected by the patent:

Provided that, for the purpose of determining whether there has been any abuse of the monopoly rights under a patent, due regard shall be had to the fact that patents are granted not only to encourage invention but also to secure that inventions shall so far as possible be worked on a commercial scale in Malawi without undue delay.

(7) The Patents Tribunal may order the grant to the applicant of a licence on such terms as it may think expedient, including a term precluding the licensee from importing into Malawi any goods whereof the importation by persons other than the patentee or persons claiming under him, would be an infringement of the patent.

(8) If in respect of an application under this section the Patents Tribunal is satisfied that the invention which is the subject of the application is not being worked on a commercial scale within Malawi, and is such that it cannot be so worked without the expenditure of capital for the raising of which it will be necessary to rely on the patent monopoly, it may, unless the patentee or those claiming under him will undertake to find such capital, order the grant to the applicant or any other person, or to the applicant jointly with one or more other persons, if able and willing to provide such capital, of an exclusive licence on such terms as the Patents Tribunal may think just, but subject as hereinafter provided.

(9) The terms of any exclusive licence ordered to be granted under subsection (8) shall, with due regard to the risks to be undertaken by the licensee in providing the capital and working the invention, be so framed as—

(a) to secure to the patentee the maximum royalty compatible with the successful working of the invention within Malawi on a commercial scale and at a reasonable profit;

(b) to guarantee to the patentee a minimum yearly sum by way of royalty, if and so far as it is reasonable to do so;

and in addition to any other terms of the licence or order, the licence and the order shall be made revocable at the discretion of the Patents Tribunal if the licensee fails to—

(i) work the invention within the time specified in the order;

(ii) expend the amount specified in the licence as being the amount which he is able and willing to provide for the purpose of working the invention on a commercial scale within Malawi; or

(iii) pay to the patentee the royalties payable in terms of the licence.

(10) In deciding to whom an exclusive licence is to be granted, the Patents Tribunal shall, unless good reason is shown to the contrary, prefer an existing licensee to a person who, according to the register, has no interest in the patent.

(11) The order directing the grant of an exclusive licence under this section shall operate to divest the patentee of any right which he may have as patentee to work or use the invention, and to revoke all existing licences, unless otherwise provided in the order, and may, if considered fair and equitable by the Patents Tribunal, be made subject to the condition that the licensee shall give proper compensation to be fixed by the Patents Tribunal for any money or labour expended by the patentee or any existing licensee in developing or working the invention.

(12) A licensee under this section shall be entitled to call upon the patentee concerned to institute any proceedings which may be necessary to prevent infringement of the patent in question and shall in all other respects have the same rights as any other licensee, and if the patentee fails within two months after being called upon by the licensee, or within such further period as the Patents Tribunal may allow, to institute any such proceedings, the licensee may himself institute such proceedings as if he were the patentee, making the patentee a defendant, but the patentee shall not be liable for any costs in connexion with such proceedings unless he enters an appearance and takes part in those proceedings.

(13) The existence of a compulsory licence granted solely on the ground that an invention is not being worked in Malawi on a commercial scale shall not preclude the grant of further licences (including compulsory licences) in respect of that invention, but the holder of any compulsory licence shall not be entitled to transfer that licence or grant a sub-licence thereunder except to a person to whom the business or the part of the business in connexion with which the rights under the licence were exercised, has been transferred.

(14) Except in the case of a licence to be granted under subsection (8), no licence shall be granted in terms of this section or of section 38 while the relevant patent remains endorsed "licences of right" under section 35.

(15) For the purposes of this section, the expression "patented article" includes any article made by a patented process.

[Ch4902s38]38. Inventions relating to food or certain other commodities

(1) Subject to section 37 (14) and without prejudice to the other foregoing provisions of this Act, where a patent is in force in respect of—

- (a) a substance capable of being used as food or medicine, or in the production of food or medicine;
- (b) a process for producing such a substance as aforesaid; or
- (c) any invention capable of being used as or as part of a surgical or curative device,

the Patents Tribunal shall, on application made to it by any person interested, order the grant to the applicant of a licence under the patent on such terms as it thinks fit unless it appears to such Tribunal that there are good reasons for refusing the application.

(2) In settling the terms of licences under this section the Patents Tribunal shall endeavour to secure that food, medicines, and surgical and curative devices shall be available to the public at the lowest prices consistent with the patentees deriving a reasonable advantage from their patent rights.

(3) A licence granted under this section shall entitle the licensee to make, use, exercise and vend the invention as a food or medicine, or for the purposes of the production of food or medicine or as part of a surgical or curative device, but for no other purposes.

[Ch4902s39]39. Supplementary provisions as to licences

(1) Any order under this Act for the grant of a licence shall, without prejudice to any other method of enforcement, have effect as if it were an agreement executed by the patentee and all other necessary parties granting a licence in accordance with the order.

(2) No order shall be made in pursuance of any application under section 37 which would be at variance with the Convention.

[Ch4902s40]40. Use of patented inventions for services of the Government

(1) Notwithstanding anything in this Act, any Government department or any person authorized in writing by the Minister may make, use or exercise any invention disclosed in any specification lodged at the Patent Office for the service of the Government in accordance with this section.

(2) If and so far as the invention has, before the effective date of the relevant claim of the completed specification, been duly recorded by or tried by or on behalf of a Government department or a person authorized in terms of subsection (1) otherwise than in consequence of the communication thereof directly or indirectly by the patentee or any person from whom he derives title, any use of the invention by virtue of this section may be made by such Government department or person free of any royalty or other payment to the patentee.

(3) If and so far as the invention has not been so recorded or tried as aforesaid, any use of the invention made by virtue of this section at any time after the acceptance of the complete specification in respect of the patent, or in consequence of any such communication as aforesaid, shall be made upon such terms as may be agreed upon, either before or after the use, between the Minister and the patentee with the approval of the Minister of Finance, or as may in default of agreement be determined by the Patents Tribunal on a reference under section 42 (1).

(4) The authority of the Minister in respect of an invention may be given under this section either before or after the patent is granted and either before or after the acts in respect of which the authority is given are done, and may be given to any person, whether or not he is authorized directly or indirectly by the patentee to make, use, exercise or vend the invention.

(5) Where any use of an invention is made by or with the authority of the Minister under this section, then, unless it appears to him that it would be contrary to the public interest so to do, the Minister shall notify the patentee as soon as practicable after the use is begun, and furnish him with such information as to the extent of the use as he may from time to time require.

(6) For the purposes of this section, section 41 and section 42, any use of an invention for the supply to the government of any other country, in pursuance of any agreement or arrangement between the Government of Malawi and the government of that country, of articles required for the defence of that country shall be deemed to be a use of the invention for the services of the Government, and the power of a Government department or a person authorized by the Minister under this section to make, use and exercise an invention shall include power—

(a) to sell such articles to the government of any country in pursuance of any such agreement or arrangement as aforesaid:and

(b) to sell to any person any articles made in the exercise of the powers conferred by this section which are no longer required for the purpose for which they were made.

(7) The purchaser of any articles sold in the exercise of powers conferred by this section, and any person claiming through him, shall have power to deal with them in the same manner as if the patent were held on behalf of the Government.

(8) The Minister may make regulations governing the rights of third parties in relation to any use of a patented invention, or an invention in respect of which an application for a patent is pending, made for the services of the Government in terms of this section or section 41.

[Ch4902s41]41. Special provisions as to Government use during emergency

(1) For the purposes of this section, the expression “period of emergency” means any period beginning on such date as may be declared by the Minister by notice published in the Gazette to be the commencement, and ending on such date as may be so declared to be the termination, of a period of emergency.

(2) During any period of emergency the powers exercisable in relation to an invention by a Government department, or a person authorized by the Minister under section 40, shall include power to make, use, exercise and vend the invention for any purpose which appears to the Minister necessary or expedient—

- (a) for the efficient prosecution of any war in which Malawi may be engaged;
- (b) for the maintenance of supplies and services essential to the life of the community;
- (c) for securing a sufficiency of supplies and services essential to the well-being of the community;
- (d) for promoting the productivity of industry, commerce and agriculture;
- (e) for fostering and directing exports and reducing imports or imports of any classes, from all or any countries and for redressing the balance of trade;
- (f) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community; or

(g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of Malawi or any other countries that are in grave distress as the result of war;

and any reference in that section or in section 42 to the services of the Government shall be construed as including a reference to the purposes aforesaid.

[Ch4902s42]42. Reference of disputes as to Government use

(1) Any dispute as to—

(a) the exercise by a Government department or a person authorized by the Minister of the powers conferred by section 40;

(b) the terms for the use of an invention for the services of the Government thereunder;

(c) the compensation payable upon a reference to the Patents Tribunal under section 24 (5); or

(d) the right of any person to receive any part of a payment determined in terms of paragraph (b) or (c);

may be referred to the Patents Tribunal by any party to the dispute in such manner as may be prescribed.

(2) In any proceedings under this section to which a Government department is a party, the Minister may—

(a) if the patentee is a party to the proceedings, apply for revocation of the patent upon any ground upon which a patent may be revoked under section 50;

(b) in any case, put in issue the validity of the patent without applying for its revocation.

(3) If in such proceedings as aforesaid any question arises whether an invention has been recorded or tried as mentioned in section 40, or has been used by or on behalf of or to the order of a Government department under section 24 (4), and the disclosure of any document recording the invention, or of any evidence of the trial or use thereof, would, in the opinion of the Minister, be prejudicial to the public interest, the disclosure may be made confidentially to counsel appearing for the other party or to an independent expert agreed upon by the parties.

(4) In determining under this section any dispute between a Government department and any person as to terms for the use of an invention for the services of the Government, the Patents Tribunal shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received, or may be entitled to receive, directly or indirectly from any Government department in respect of the invention in question.

PART V

SPECIAL PROVISIONS RELATING TO SPECIFICATIONS, ANTICIPATION AND RIGHTS IN INVENTIONS

[Ch4902s43]43. Amendment of specification by Registrar

(1) An applicant for a patent or a patentee may at any time by request in writing lodged at the Patent Office seek leave to amend either his provisional or his complete specification, including drawings forming part thereof, and shall in making any such request state the nature of the proposed amendment and the reasons therefor.

(2) Where there are joint applicants or patentees, the request shall be made by them jointly or by one or more of them with the written consent of the other or others, and in the case of disagreement between them the Registrar may, if satisfied that one or more of them should be allowed to proceed alone and subject to such conditions as he may impose, permit the request to be made without the consent of the others:

Provided that all parties interested shall be notified by the applicant of the request and be entitled to be heard before any decision is given thereon.

(3) An amendment of an accepted complete specification shall be allowed only if it is by way of disclaimer, correction or explanation, and no amendment of any specification, except by way of correcting an obvious mistake, shall be allowed if the result would be that the specification as amended would claim or describe matter not in substance disclosed in the specification before amendment, or would include any claim not wholly within the scope of a claim included in the specification before amendment.

(4) The request for an amendment of an accepted complete specification and its nature shall be advertised by the applicant in the prescribed manner, and at any time within three months of the advertisement, or such further time as the Registrar, subject to such conditions as he may impose, may allow, any person may give notice at the Patent Office of opposition to the amendment.

(5) Notice of opposition shall be given in the prescribed manner to the Registrar and to the person making the request, and the Registrar shall hear the person making the request and the person who has given notice of opposition and determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6) Where a complete specification has not been accepted or, if it has been accepted, no notice of opposition has been given or any such notice has been withdrawn, the Registrar shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(7) No request for amendment under this section shall be allowed if and so long as any proceedings are pending for infringement or revocation of the patent in question.

(8) An appeal shall lie from any decision of the Registrar made under this section.

[Ch4902s44]44. Amendment of specification with leave of Court or Patents Tribunal

In any action for infringement of a patent or any proceedings before the Patents Tribunal for the revocation of a patent, the Court or the Patents Tribunal, as the case may be, may, subject to section 43 (3), allow the patentee to amend his complete specification in such manner and subject to such terms as to costs, advertisement or otherwise as the Court or the Patents Tribunal may think fit, and, if in any such proceedings for revocation the Patents Tribunal decides that the patent is

invalid, it may allow the specification to be amended under this section instead of revoking the patent.

[Ch4902s45]45. Restrictions on recovery of damages in certain cases

Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act after the publication of the specification, no damages shall be awarded in any proceedings in respect of the use of the invention before the date of the decision allowing the amendment, unless the Court or the Patents Tribunal is satisfied that the specification as originally published was framed in good faith and with reasonable skill and knowledge.

[Ch4902s46]46. Savings for anticipation

(1) A patent shall not be refused or held to be invalid by reason only of the fact that the invention in respect of which the patent is applied for or was granted or any part thereof was published, used or known prior to the effective date of the application, if the applicant or the patentee, as the case may be, proves that the knowledge was acquired or the publication or use was made without his knowledge or consent, and that the knowledge acquired or the matter published or used was derived or obtained from him, and, if he learnt of the disclosure, use or knowledge before the effective date of his application for the patent, that he applied for and obtained protection for his invention with all reasonable diligence after learning of the disclosure:

Provided that the protection afforded by this section shall not extend to a patentee or an applicant for a patent who has or whose predecessors in title have prior to the effective date of the application worked the invention in Malawi commercially, otherwise than for the purpose of reasonable technical trial thereof.

(2) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to a Government department or to any person authorized by the Minister to investigate the invention or its merits, or of anything done by any person whomsoever in consequence of such a communication, for the purpose of the investigation.

[Ch4902s47]47. Co-ownership of patents

(1) Where a patent is granted to two or more persons, each of those persons shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in the patent.

(2) Subject to this section, where two or more persons are registered as patentees, then, unless an agreement to the contrary is in force, each of those persons shall be entitled by himself or his agents, to make, use, exercise and vend the patented invention for his own benefit without accounting to the other or others.

(3) Subject to subsections (6), (7) and (8) and to any agreement for the time being in force, a licence under a patent shall not be granted, and a share in a patent shall not be assigned, except with the consent of all persons, other than the licensor or assignor, who are registered as patentees.

(4) Where a patented article is sold by one of two or more persons registered as patentees the purchaser and any person claiming through him shall in respect of such article be entitled to deal with it in the same manner as if it has been sold by a sole patentee.

(5) Subject to this section, the rules of law applicable to the ownership and devolution of movable or personal property generally shall apply in relation to patents as they apply in relation to other incorporeal rights or choses in action.

(6) Where two or more persons are registered as patentees, the Registrar may, upon application made to him in the prescribed manner by any of those persons, give such directions in accordance with the application as to the sale or lease of the patent or any interest therein, the grant of licences under the patent or the exercise of any right under subsections (1) to (5) inclusive in relation thereto, as he thinks fit.

(7) If any person registered as patentee fails to execute any instrument or to do any other thing required for the carrying out of any direction given under this section within fourteen days after being requested in writing so to do by any of the other persons so registered, the Registrar may, upon application made to him in the prescribed manner by any such other person, give directions empowering any person to execute that instrument or to do that thing in the name and on behalf of the person in default.

(8) Before giving directions in pursuance of an application under subsection (6) or (7), the Registrar shall give an opportunity to be heard—

(a) in the case of an application under subsection (6), to the other person or persons registered as patentees;

(b) in the case of an application under subsection (7), to the person in default.

(9) An appeal shall lie from any decision of the Registrar under this section.

(10) No directions shall be given under this section so as to affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person, or their rights or obligations as such.

[Ch4902s48]48. Disputes as to inventions made by employees

(1) Where a dispute arises between an employer and a person who is or was at the material time his employee as to the rights of the parties in respect of an invention made by the employee either alone or jointly with other employees or in respect of any patent granted or to be granted in respect thereof, the Registrar may, upon application made to him in the prescribed manner by either of the parties, and after giving to each of them an opportunity to be heard, determine the matter in dispute, and may make such orders for giving effect to his decision as he considers expedient.

(2) In proceedings before the Patents Tribunal between an employer and a person who is or was at the material time his employee, or upon an application made to the Registrar under subsection (1), the Patents Tribunal or Registrar, as the case may be, may unless satisfied that one or other of the parties is entitled, to the exclusion of the other, to the benefit of an invention made by the employee, by order provide for the apportionment between them of the benefit of the

invention, and of any patent granted or to be granted in respect thereof, in such manner as the Patents Tribunal or Registrar considers just.

(3) A decision of the Registrar under this section shall have the same effect as between the parties and persons claiming under them as a decision of the Patents Tribunal.

(4) An appeal shall lie from any decision of the Registrar under this section.

[Ch4902s49]49. Avoidance of certain restrictive conditions in contracts

(1) It shall not be lawful in any contract made after the date of commencement of this Act in relation to the sale or lease of or a licence to use or work any article or process protected by a patent to insert a condition the effect of which will be—

(a) to prohibit or restrict the purchaser, lessee or licensee from using any article or class of articles, whether patented or not, or any patented process, supplied or owned by any person other than the seller, lessor or licensor or his nominee; or

(b) to require the purchaser, lessee or licensee to acquire from the seller, lessor or licensor or his nominee any article or class of articles not protected by the patent;

and any such condition shall be null and void, as being in restraint of trade and contrary to public policy:

Provided that this subsection shall not apply if—

(i) the seller, lessor or licensor proves that at the time the contract was entered into the purchaser, lessee or licensee had the option of purchasing the article or obtaining a lease or licence on reasonable terms without such conditions as aforesaid; and

(ii) the contract entitles the purchaser, lessee or licensee to relieve himself of his liability to observe any such condition on giving the other party three months' notice in writing and on payment, if the Registrar so directs, of compensation for such relief, in the case of a purchase of such sum, or in case of a lease or licence of such rent or royalty for the residue of the term of the contract, as may be fixed by the Registrar.

An appeal shall lie from any decision of the Registrar under proviso (ii).

(2) Any contract relating to the lease of or licence to use or work any patented article or patented process may, at any time after the patent or all the patents by which the article or process was protected in Malawi at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything to the contrary in the same or in any other contract, be determined by either party on giving three months' notice in writing to the other party.

(3) Nothing in this section shall—

(a) affect any condition in a contract whereby any person is prohibited from selling any goods other than those of a particular person;

(b) be construed as validating any contract which would, apart from this section, be invalid;

(c) affect any right of determining a contract or condition in a contract exercisable independently of this section;

(d) affect any condition in a contract for the lease of or a licence to use a patented article, whereby the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the patented article as may be required to put or keep it in repair.

[Ch4902s50]50. Revocation of patents

(1) Application for revocation of a patent may be made to the Patents Tribunal by any person interested, including the Government, upon any one or more of the grounds on which the grant of a patent might have been opposed, but, subject to subsection (2), proviso (ii) to section 8 (7) (b), and section 10 (1) (b), on no other grounds.

(2) Where an order for the granting of a licence under the patent has been made in pursuance of an application under section 37 any person interested may, at any time after the expiration of two years from the date of that order, apply to the Patents Tribunal for the revocation of the patent upon any of the grounds specified in subsection (6) of the said section 37; and if upon such application the Patents Tribunal is satisfied—

(a) that any of the said grounds are established; and

(b) that the purpose for which an order may be made in pursuance of an application under the said section 37 could not be achieved by the making of any further order under that section,

it may order the patent to be revoked.

(3) Any such application shall state the grounds on which the applicant relies, and shall be accompanied by a statement setting out particulars of the facts alleged in support of the said grounds, and a copy of the application and of the statement shall be served by the applicant on the patentee and proof of such service shall be furnished to the Registrar.

(4) If the patentee wishes to contest the application made in terms of subsection (1) or subsection (2), he shall within such time as may be prescribed, or such further time as the Patents Tribunal may allow, lodge at the Patent Office a counter-statement setting out particulars of the grounds upon which the application is contested and deliver to the applicant a copy of that statement.

(5) Except by leave of the Patents Tribunal, no evidence shall be admitted in proof of any ground, particulars of which are not delivered as aforesaid.

(6) Particulars delivered may from time to time be amended by leave of the Patents Tribunal.

(7) The Patents Tribunal shall appoint a time for the hearing of any such application, and shall thereafter decide whether the patent shall be revoked or whether and, if so, subject to what amendments, if any, of the specification or claims thereof, the patent shall be upheld:

Provided that the Patents Tribunal—

(a) shall not allow any amendment of the specification or claims as aforesaid if it is established to its satisfaction that the original complete specification and claims were not framed in good faith and with reasonable skill and knowledge; and

(b) may, in the exercise of its discretion as to costs, take into consideration the conduct of the patentee in framing his original specification and claims and permitting them to remain as so framed.

(8) An order for the revocation of a patent under this section may be made so as to take effect either unconditionally or in the event of failure to comply, within such reasonable period as may be specified in the order, with such conditions as may be imposed by the order with a view to achieving the purposes aforesaid, and the Patents Tribunal may, on reasonable cause shown in any case, by subsequent order, extend any period so specified.

[Ch4902s51]51. Consequences of revocation on grounds of fraud

(1) Where a patent is revoked on the ground of fraud, or a patent fraudulently obtained has been surrendered and revoked, or the grant of a patent has been refused under section 22 (1) (b), the Patents Tribunal may, on the application of the person entitled to the invention for Malawi or his legal representative, made in accordance with this Act, direct the grant to him of a patent for the whole or any part of the invention, bearing the same date as the patent so revoked or as would have been borne by the patent which has been refused, if the grant thereof had not been refused.

(2) Where in proceedings before the Patents Tribunal in connexion with opposition to the grant of a patent, the Patents Tribunal has found that an invention was in part obtained from the objector and has required that the specification be amended by the exclusion of that part of the invention, the Patents Tribunal may direct that, on the application of the inventor or any person claiming through or under him made in accordance with this Act within three months after the date of the direction or within such further period as the Patents Tribunal may allow, a patent for that excluded part of the invention bearing the date of and having the same effective date as the opposed application be granted to the applicant concerned.

(3) No action shall be brought for any infringement of a patent committed—

(a) in the case of a patent granted under subsection (1), before the date of sealing thereof; or

(b) in the case of a patent granted under subsection (2), before the date of advertisement of acceptance of the complete specification lodged in pursuance of the application for such patent.

[Ch4902s52]52. Surrender of patents

(1) A patentee may at any time by notice given to the Registrar offer to surrender his patent.

(2) Where such an offer is made the patentee shall advertise the offer in the prescribed manner, and within the prescribed period after such advertisement any person interested may give notice to the Registrar of opposition to the surrender.

(3) Where any such notice of opposition is duly given the Registrar shall notify the patentee.

(4) If the Registrar is satisfied, after hearing the patentee and any opponent, if desirous of being heard, that the patent may properly be surrendered he may accept the offer and by order revoke the patent.

(5) An appeal shall lie from any decision of the Registrar under this section.

PART VI

INFRINGEMENTS

[Ch4902s53]53. Procedure and conditions in action for infringement

(1) An action for infringement of a patent may only be instituted by the patentee or the exclusive licensee. Such action shall be heard and determined by the High Court and, subject to any rules made under section 81, the following provisions shall apply in connexion therewith, namely—

(a) any ground upon which a patent may be revoked under this Act may be relied upon by way of defence;

(b) the defendant may, by way of counter-claim in the action, apply for the revocation of the patent;

(c) the plaintiff shall, with his statement of claim or declaration or on the order of the Court at any subsequent time, deliver full particulars of the infringement complained of;

(d) the defendant shall, with his statement of defence or plea or on the order of the Court at any subsequent time, deliver particulars of any objections on which he relies in support thereof;

(e) at the hearing no evidence shall, except by leave of the Court, be admitted of any infringement or on any objections of which particulars have not been so delivered;

(f) the Court may allow the patentee to amend his specification, subject to such terms as to costs, advertisement or otherwise as it may impose and to section 43 (3).

(2) In any action under this section where an exclusive licensee is the plaintiff, the patentee shall, unless he is joined as plaintiff in such action, be added as defendant:

Provided that a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(3) If the patentee is the plaintiff in any such action, he shall give notice thereof to the exclusive licensee under the patent in question and any such licensee shall be entitled to intervene as a co-plaintiff and to recover any damages he may have suffered as a result of the infringement.

(4) No action under this section shall lie in respect of an infringement which took place before the publication referred to in section 21 (2).

(5) In an action for infringement of a patent the plaintiff shall be entitled to relief by way of injunction and damages and the Court may, on application, make such order for an injunction, damages, inspection or account and impose such terms and give such directions as it may deem fit.

(6) In an action for infringement of a patent in respect of an invention which relates to the protection of a new substance, any substance of the same chemical composition and constitution shall in the absence of proof to the contrary be deemed to have been produced by the patented process.

[Ch4902s54]54. Relief for infringement of partially valid specification

(1) Where, in any action for the infringement of a patent, the Court finds that any claim in the specification in respect of which the infringement is alleged is valid, but that any other claim thereunder is invalid, then, notwithstanding section 53, the following provisions shall apply, namely—

(a) unless the Court is satisfied that the invalid claim was not framed in good faith and with reasonable skill and knowledge, the Court shall, subject to its discretion as to costs and as to the date from which damages should be reckoned, and to such terms as to amendment of the specification as it may deem desirable, grant relief in respect of any valid claim which is or has been infringed, without regard to the invalidity of any other claim in the specification, and in exercising such discretion the Court may take into consideration the conduct of the patentee in inserting the invalid claim in the specification or permitting that claim to remain there;

(b) if the Court is so satisfied, it shall not grant any relief by way of damages or costs, but may grant such other relief in respect of any valid claim which is or has been infringed as to it seems just and may impose such terms as to amendment of the specification as a condition of granting any such relief as it may deem desirable;

(c) if a counter-claim for revocation of the patent has been made in the action on the ground of invalidity of any claim in the specification, the Court may postpone the operation of any order made thereon for such time as may be requisite to enable the patentee to effect any amendment of the specification pursuant to terms imposed by the Court and may attach such other conditions to any order to be made on the counter-claim as the Court may deem desirable.

[Ch4902s55]55. Restrictions of recovery of damages for infringement

(1) In proceedings for the infringement of a patent, damages shall not be awarded against a defendant who proves that, at the date of the infringement, he was not aware, and had no reasonable grounds for supposing and had no reasonable means of making himself aware, that the patent existed, and the application to an article of the word “patent”, “patented”, or any word or

words expressing or implying that a patent has been obtained for the article, shall not constitute such grounds or means unless the number and year of the patent accompanied the word or words in question.

(2) If proceedings are taken in respect of infringement of a patent committed after the failure to pay any fee within the prescribed time and before any extension of time for such payment, the Court may, if it thinks fit, refuse to award any damages in respect of such infringement.

(3) Nothing in this section shall affect the power of the Court to grant an injunction in any proceedings for the infringement of a patent.

[Ch4902s56]56. Remedy for groundless threats of infringement proceedings

(1) Where any person (whether entitled to or interested in a patent or an application for a patent or not) by circulars, advertisements or otherwise threatens any other person with proceedings for infringement of a patent, any person aggrieved thereby may in the prescribed manner bring an action against him in the High Court for any such relief as is mentioned in subsection (2).

(2) Unless in any action brought by virtue of this section the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute, an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid, the plaintiff shall be entitled to the following relief, that is to say—

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an injunction against the continuance of the threats; and
- (c) such damages, if any, as he has sustained thereby.

(3) For the avoidance of doubt, it is hereby declared that a mere notification of the existence of a patent does not constitute a threat of proceedings within the meaning of this section.

(4) The defendant in any such action as aforesaid may apply, by way of counter-claim in the action, for any relief to which he would be entitled in a separate action in respect of any infringement by the plaintiff of the patent to which the threats relate.

[Ch4902s57]57. Power of Court to make declaration as to non-infringement

(1) A declaration that the use by any person of any process, or the making or use or sale by any person of any article, does not or would not constitute an infringement of a claim of a patent may be made by the High Court in proceedings between that person and the patentee or the holder of an exclusive licence under the patent, notwithstanding that no assertion to the contrary has been made by the patentee or licensee, if it is shown—

(a) that the plaintiff has applied in writing to the patentee or licensee for a written acknowledgement to the effect of the declaration claimed, and has furnished him with full particulars in writing of the process or article in question; and

(b) that the patentee or licensee has refused or neglected to give such an acknowledgement.

(2) The costs of all parties in proceedings for a declaration brought by virtue of this section shall be ordered as the Court may deem fit:

Provided that a patentee or holder of an exclusive licence under the patent shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(3) The validity of a claim of the specification of a patent shall not be called in question in proceedings for a declaration brought by virtue of this section, and accordingly the making or refusal of such a declaration in the case of a patent shall not be deemed to imply that the patent is valid.

(4) Proceedings for a declaration may be brought by virtue of this section at any time after the date of the notice of the acceptance of the complete specification in pursuance of an application for a patent, and references in this section to the patentee shall be construed accordingly.

PART VII

ASSIGNMENTS AND CORRECTIONS

[Ch4902s58]58. Provisions as to assignments

(1) Subject to section 31 (7), the rights granted to a patentee by a patent shall be capable of assignment and of devolution by operation of law and of being mortgaged and pledged.

(2) Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent, or becomes entitled as mortgagee, licensee or otherwise to any other interest in a patent, he may apply to the Registrar in the prescribed manner for the registration of his title as proprietor or co-proprietor, or, as the case may be, of notice of his interest, in the register, and the Registrar shall, upon proof of such entitlement to his satisfaction, register such title or notice against the patent accordingly.

(3) Except for the purposes of an application to rectify the register under this Act, a document in respect of which no entry has been made in the register under subsection (2) shall not be admitted in any proceedings as evidence of the title of any person to a patent, or a share of or interest in a patent, unless the Patents Tribunal or Court concerned otherwise directs.

[Ch4902s59]59. Power of Registrar to authorize corrections

(1) The Registrar may authorize—

(a) the correction of any clerical error or omission, or error in translation in any patent, application for a patent or document lodged in pursuance of such an application, or in the register;

(b) the amendment otherwise of any documents for the amending of which no express provision is made in this Act;

(c) the condonation or correction of any irregularity in procedure in any proceedings before him, if such condonation or correction is not detrimental to the interests of any person.

(2) A correction may be made in pursuance of this section, either upon a request in writing accompanied by the prescribed fee or without such a request.

(3) Where it is proposed to make a correction otherwise than upon such a request, the Registrar shall give notice of the proposal to the patentee or the applicant for the patent, as the case may be, and to any other person who appears to him to be concerned, and shall give any such person an opportunity of being heard before the correction is made.

(4) Where a request is made for the correction of any such clerical error or omission and it appears to the Registrar that the correction would materially alter the scope of the document to which the request relates, the Registrar may require notice of the request to be advertised in the prescribed manner and to be served upon such persons as he considers necessary.

(5) Any opposition to the request for such correction may be lodged and shall be dealt with by the Registrar in the manner prescribed.

(6) An appeal shall lie from any decision of the Registrar under this section.

[Ch4902s60]60. Rectification of register

(1) The Patents Tribunal may, on the application of any person aggrieved, order the register to be rectified by the making of any entry therein or the variation or deletion of any entry therein.

(2) The Patents Tribunal may determine any question which it may be necessary or expedient to decide in connexion with the rectification of the register.

(3) Notice of any application to the Patents Tribunal under this section shall be given in the prescribed manner to the Registrar and all interested parties, and the Registrar and all such parties shall be entitled to appear and be heard on the application.

(4) Any order made by the Patents Tribunal under this section shall be served on the Registrar in the prescribed manner, and the Registrar shall, on the receipt of the notice, rectify the register accordingly.

PART VIII

FUNCTIONS OF REGISTRAR IN RELATION TO CERTAIN EVIDENCE, DOCUMENTS AND POWERS

[Ch4902s61]61. Evidence of certain entries and documents

(1) A certificate purporting to be signed by the Registrar and certifying that any entry which he is authorized by or under this Act to make has or has not been made, or that any other thing which he is so authorized to do has or has not been done, shall be prima facie evidence of the matters so certified.

(2) A copy of any entry in any register or of any document kept in the Patent Office or of any patent, or an extract from any such register or document, certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence without further proof and without production of the original.

[Ch4902s62]62. Requests for information as to patent or patent application

The Registrar shall, on the request of any person and on payment of the prescribed fee, furnish copies of any documents which are open to public inspection and which are lodged at the Patent Office or particulars from the register, or furnish a certificate in respect thereof.

[Ch4902s63]63. Loss or destruction of patent

Where the Registrar is satisfied that a patent has been lost or destroyed or cannot be produced, he may at any time cause a duplicate thereof to be sealed on payment of such fees as may be prescribed.

[Ch4902s64]64. Exercise of discretionary powers of Registrar

(1) Without prejudice to any provisions of this Act requiring the Registrar to hear any party to proceedings thereunder, or to give to any such party an opportunity to be heard, the Registrar shall give to any applicant for a patent, or for amendment of a specification, an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Registrar by or under this Act.

(2) Subject to section 80 (2), where by this Act any time is specified within which any act or thing is to be done, the Registrar may, save where it is expressly otherwise provided, extend the time, either before or after its expiration, if he is satisfied that the failure to comply with the provisions relating to such time has not been or will not be due to any neglect or default on the part of the person concerned.

[Ch4902s65]65. Proceedings before Registrar

(1) Evidence in any proceedings before the Registrar under this Act shall be given by affidavit, so, however, that the Registrar may, if he thinks fit in any particular case, take oral evidence on oath in lieu of or in addition to such evidence as aforesaid, and may allow any witness to be cross-examined on his affidavit or oral evidence.

(2) The powers, rights and privileges of the Registrar in proceedings before him under this Act shall be the same as those conferred upon commissioners by the Commissions of Inquiry Act and sections 9, 10 and 12 of that Act shall, mutatis mutandis, apply in relation to the hearing and determination of any matter before the Registrar under this Act and to any person summoned to give evidence or giving evidence before him. Cap. 18:01

[Ch4902s66]66. Advertisements to be approved by Registrar

No advertisement or notice, other than a notice issued under the authority of the Minister, shall be published by any person under this Act unless it is in the prescribed form and the Registrar has approved the contents of such advertisement or notice, and no advertisement or notice which has not been so approved shall have any force or effect for the purposes of this Act.

PART IX

PATENT AGENTS

[Ch4902s67]67. Patent agents and their functions

(1) Subject to this Act, a patent agent may act as agent on behalf of any person in connexion with any matter or proceeding before the Registrar under this Act and may draw and sign all documents and make all communications between an applicant and the Patent Office and may represent an applicant at all attendances before the Registrar.

(2) A patent agent shall not be guilty of an offence under any law prohibiting the preparation for reward of certain documents by persons not legally qualified, by reason only of the preparation by him of any document relating to patents for use in the Patent Office or required in any proceedings under this Act before the Registrar or the Patents Tribunal.

[Ch4902s68]68. Qualification and registration of patent agents

(1) The Registrar shall keep a register of patent agents in which the name of every person, immediately upon his being accepted for registration, shall be registered, showing against his name such particulars as the Registrar shall from time to time deem necessary, and the Registrar shall enter in such register of patent agents all changes relating to registrations.

(2) Any person who—

- (a) has passed the prescribed examinations;
- (b) produces proof that he is a Fellow in good standing of the Chartered Institute of Patent Agents of the United Kingdom, incorporated by Royal Charter on the 11th August, 1891;
- (c) produces proof that he is a British Oversea Member in good standing of such Institute;
- (d) produces proof that he holds any qualification recognized by the Minister as being equivalent to the qualifications required for the purposes of paragraph (a), (b) or (c); or

58 of 1965(e) is a legal practitioner and satisfies the Registrar that prior to the date* of commencement of the Patents (Amendment) Act, he has, within Malawi, performed the functions of a Patent Agent as set out in section 67 and has publicly described himself as a Patent Agent in Malawi,

may make application to the Minister in the prescribed manner to be registered as a Patent Agent, and the Minister shall arrange such registration by the Registrar if he is satisfied that there is no good reason why it should not be arranged and that the applicant is not a person whose name could be removed from the register of Patent Agents under section 69 (1), (b), (c) or (f):

Provided that—

- (i) the Minister may refuse to arrange such registration without assigning any reason therefor;
- (ii) a public officer who has been employed in the patent office shall not be registered as a Patent Agent or be permitted to practise as such until at least twelve months have expired since he ceased to be so employed.

(3) No appeal shall lie from any decision of the Minister made under subsection (2).

[Ch4902s69]69. Removal of names from register of patent agents

(1) The Registrar may remove from the register of patent agents the name of any patent agent upon proof to his satisfaction that such patent agent—

- (a) has died;
- (b) has become of unsound mind;
- (c) has been adjudged or otherwise declared bankrupt or insolvent under any law or has made an assignment to or composition with his creditors;
- (d) has ceased to maintain a place of business in Malawi;
- (e) has applied for his name to be so removed;
- (f) has at any time been convicted (whether in Malawi or elsewhere) of theft, any offence involving an element of fraud, forgery, uttering a forged document, perjury or any similar offence, by whatever name called, and has been sentenced therefor to serve a term of imprisonment without the option of a fine, whether such sentence is suspended or not, and has not received a free pardon;
- (g) having been entitled to practise as a legal practitioner, or to be registered as a patent agent, has ceased to be so entitled; or
- (h) having been entitled to practise as a legal practitioner or a patent agent, has ceased to practise as such.

An appeal shall lie from any decision of the Registrar made under this subsection.

(2) Subject to this section and such procedure as may be prescribed, the Patents Tribunal may order the Registrar to remove the name of any patent agent from the register of patent agents or may suspend any patent agent from practising as such for such time as it thinks fit if it is satisfied, after due inquiry, that such person has been guilty of conduct discreditable to a patent agent or has been guilty of a breach of any regulations prescribed for the conduct of patent agents.

(3) No order shall be made by the Patents Tribunal in terms of subsection (2) unless the patent agent concerned has been given notice of any allegations made against him and has had an opportunity to adduce evidence and to be heard.

(4) Any institute or other organization recognized by the Minister as being representative of the patent agents in Malawi shall be entitled to be represented, to adduce evidence and to be heard by the Patents Tribunal before it makes any order in terms of subsection (2).

(5) Where the name of any patent agent has been removed from the register of patent agents under subsection (1) or (2), his name shall not be restored to that register except by direction of the Patents Tribunal, which may further direct that such restoration shall be made either without

fee or on payment of such fee, not exceeding the registration fee, as it may fix, and the Registrar shall restore the name accordingly.

[Ch4902s70]70. Privileges of legal practitioners

Every person entitled to practise as a legal practitioner may practise as a patent agent and perform the functions set out in section 67 without being registered as a patent agent, but no such person shall be entitled to be so registered except under section 68.

[Ch4902s71]71. Entitlement to practise as patent agent

(1) No person shall practise as a patent agent unless he is registered as such or is, by virtue of section 70, entitled so to practise.

(2) A person shall be deemed to practise as a patent agent if he performs any of the functions of a patent agent set out in section 67 or if he carries on within Malawi the business of applying for or obtaining for others patents in Malawi or elsewhere.

(3) No person who is not a legal practitioner or registered as a patent agent shall describe himself as, or hold himself out to be, a patent agent or any term implying such a meaning, such as “patent attorney” or “attorney for patents”, nor shall he permit himself to be so described or held out.

(4) Any person who contravenes this section shall be guilty of an offence.

[Ch4902s72]72. Prohibition of certain acts by patent agents

(1) No patent agent shall have an interest either as a partner or manager or otherwise in more than one firm of patent agents in Malawi.

(2) No patent agent shall practise under a name or title which includes the name of any person who is not or was not—

- (a) in his lifetime ordinarily resident in Malawi; or
- (b) registered as a patent agent under this Act.

(3) No person shall practise as a patent agent if he is a party to—

- (a) a contract of partnership; or
- (b) an arrangement providing for the sharing or paying over of any professional fees,

relating to the business of a patent agent with any person who is prohibited from practising as a patent agent.

(4) Any person who contravenes this section shall be guilty of an offence.

PART X

PATENTS TRIBUNAL AND APPEALS

[Ch4902s73]73. Appeals from Registrar

Where this Act provides for appeals from decisions of the Registrar, all such appeals shall be made to the Patents Tribunal in accordance with this Part.

[Ch4902s74]74. Patents Tribunal

(1) For the purposes of hearing and determining appeals in accordance with section 73 and of exercising the other powers conferred upon it by this Act, there is hereby established a Patents Tribunal, which shall consist of a Chairman appointed by the Minister.

(2) The Chairman shall be a person who—

(a) has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Common-wealth; or

(b) is and has for not less than ten years been qualified and entitled to practise as an advocate or barrister in any court or courts having such jurisdiction.

(3) The Patents Tribunal shall sit at such times and places as it may appoint.

(4) There shall be paid to the Chairman such remuneration and allowances as the Minister may determine with the approval of the Minister of Finance.

(5) The Minister shall appoint a registrar of the Patents Tribunal and such other officers thereof as he may deem necessary.

[Ch4902s75]75. General powers of Patents Tribunal

(1) The Patents Tribunal shall, in connexion with any proceedings before it under this Act, have all the powers of the High Court, and without prejudice to the foregoing and to the other powers conferred upon it by this Act, the Patents Tribunal shall have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any document, or the investigation or punishment of any contempt of court, which the High Court has power to make.

(2) The procedure and practice of the Patents Tribunal shall, save as otherwise provided for by rules made under this Part, be those prevailing in such High Court, in so far as the same are applicable, and if any matter should arise which is not contemplated by either such procedure, practice or rules, the Patents Tribunal may give instructions regarding the course to be pursued, which instructions shall be binding on all parties.

(3) Upon any appeal to the Patents Tribunal under this Part, such Tribunal may—

(a) confirm, set aside or vary the order or decision in question;

(b) exercise any of the powers which could have been exercised by the Registrar in the proceedings in connexion with which the appeal is brought;

(c) make such order as to costs as it may think fit.

(4) In any proceedings before it, the Patents Tribunal may, subject to section 91, accept evidence by affidavit or take oral evidence on oath and allow any witness to be cross-examined on his affidavit or oral evidence.

[Ch4902s76]76. Right of audience

In any proceedings before the Patents Tribunal under this Act the parties to such proceedings may appear in person or be represented and appear by a legal practitioner and, in any case where the Patents Tribunal deems fit, it may grant leave to the Registrar to intervene and he may thereafter appear or be so represented.

[Ch4902s77]77. Costs and security for costs

(1) If any party to any proceedings before the Patents Tribunal is resident outside Malawi, the Patents Tribunal may, on the application of any other party to the proceedings, order that security to its satisfaction be lodged or given by the first-mentioned party in respect of any costs which may be awarded against him in those proceedings and may refuse to permit such proceedings to be continued until such security has been lodged or given.

(2) Unless otherwise agreed between the parties, any costs awarded in terms of section 75 (3) shall be taxed by the registrar of the Patents Tribunal in accordance with rules made under this Part, which taxation shall be subject to appeal to the Patents Tribunal, and any such costs may be recovered by action in a court of competent jurisdiction.

[Ch4902s78]78. Appeals to High Court

(1) Any party to proceedings before the Patents Tribunal may appeal in accordance with rules made under this Part from any order or decision of such Tribunal to the High Court.

(2) Upon the hearing of an appeal under this section, the High Court may, without prejudice to its other powers—

- (a) confirm, set aside or vary the order or decision in question;
- (b) remit the proceedings to the Patents Tribunal with such instructions for further consideration, report, proceedings or evidence as the High Court may think fit to give;
- (c) exercise any of the powers which could have been exercised by the Patents Tribunal in the proceedings in connexion with which the appeal is brought;
- (d) make such order it may think just as to the costs of the appeal or of earlier proceedings in the matter before the Patents Tribunal.

[Ch4902s79]79. Assessors

The Patents Tribunal may appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to such Tribunal that such knowledge is required for the proper determination of the case.

[Ch4902s80]80. Time for appeals

(1) Appeals under this Part, whether from decisions of the Registrar or orders or decisions of the Patents Tribunal, shall be brought within three months after the date of the decision or order in question, or within such further time as the Patents Tribunal or High Court to which the appeal is brought may allow upon application by the appellant concerned.

(2) The powers of the Registrar as to extensions of time under section 64 (2) shall not apply in relation to times for bringing appeals under this Part.

[Ch4902s81]81. Rules

The Minister may make rules for regulating generally the practice and procedure of the Patents Tribunal and with respect to appeals or references to such Tribunal as to the time within which any requirement of the rules is to be complied with, as to the costs and expenses of and incidental to any proceedings in such Tribunal, as to the fees to be charged in respect of proceedings therein, as to the fees to be paid to assessors, and in particular may make rules providing for the summary determination of any appeal which appears to the Patents Tribunal to be frivolous or vexatious or to be brought for the purpose of delay.

[Ch4902s82]82. References to Patents Tribunal by Registrar

(1) When any matter to be decided by the Registrar under this Act appears to him to involve a point of law or to be of unusual importance or complexity, he may, after giving notice to the parties, refer such matter to the Patents Tribunal for a decision and shall, thereafter, in relation to such matter, act in accordance with the decision of that Tribunal or any decision substituted therefor on appeal to the High Court.

(2) Where any matter has been referred to the Patents Tribunal in terms of subsection (1), the Registrar and the parties shall be entitled to be heard by the Patents Tribunal before any decision is made in such matter and may appear or be represented in accordance with section 76.

PART XI

OFFENCES AND PENALTIES

[Ch4902s83]83. Falsification of certain documents

If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence.

[Ch4902s84]84. Deceiving or influencing the Registrar or an officer

(1) Any person who—

(a) for the purpose of deceiving the Registrar or any other officer of the Patent Office in the execution of this Act; or

(b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder,

makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, shall be guilty of an offence.

(2) Any person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act, or any matter thereunder and who on becoming aware that such statement or representation was false fails to advise the Registrar forthwith of such falsity, shall be guilty of an offence.

[Ch4902s85]85. Witness giving false evidence

Any person who, after having been sworn, or having in lieu thereof made an affirmation or declaration, wilfully gives false evidence before the Registrar or the Patents Tribunal concerning the subject-matter of the proceeding in question, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence.

[Ch4902s86]86. Prohibition on trafficking in patents by officers in Patent Office

(1) Any officer of the Patent Office who buys, sells, acquires, or traffics in any invention or patent or any right under a patent shall be guilty of an offence.

(2) Every purchase, sale or acquisition, and every assignment of any invention or patent, by or to any such officer shall be null and void.

(3) Nothing in this section contained shall apply to the inventor or to any acquisition by bequest or devolution in law.

[Ch4902s87]87. Unauthorized claim for patent right

If any person falsely represents that any article sold by him is a patented article, he shall be guilty of an offence, and for the purposes of this provision a person who sells an article having stamped, engraved or embossed thereon or otherwise applied thereto the word "patent" or "patented" or any other word expressing or implying that the article is patented, shall be deemed to represent that the article is a patented article.

[Ch4902s88]88. Unauthorized use of certain words

If any person other than a person appointed in terms of section 4 uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office" or any other words suggesting that his place of business is, or is officially connected with, the Patent Office, he shall be guilty of an offence.

[Ch4902s89]89. Penalties

Any person who is guilty of an offence under this Act shall be liable to a fine of £500 and to imprisonment for three years.

PART XII

MISCELLANEOUS

[Ch4902s90]90. Lodging and authentication of documents

(1) Any application, notice or document authorized or required under this Act to be lodged, made or given at the Patent Office, or to the Registrar or any other person, may be delivered by hand or sent by registered post.

(2) No authentication shall be required in respect of any document lodged in the Patent Office under the provisions of this Act and used in proceedings before the Registrar or the Patents Tribunal.

[Ch4902s91]91. Oaths and affirmations

Any person who is required under this Act to take any oath or swear to the truth of any affidavit may, in lieu thereof, make an affirmation or declaration in accordance with the law relating to affirmations or declarations.

[Ch4902s92]92. Expenses of administration

All moneys necessary for the purpose of this Act shall be paid out of moneys provided by Parliament.

[Ch4902s93]93. Provisions as to fees

(1) Where under this Act—

(a) a fee is payable in respect of the performance of any act by the Registrar, the Registrar shall not perform that act until the fee has been paid;

(b) a fee is payable in respect of the doing of any act by any person other than the Registrar, the act shall be deemed not to have been done until the fee has been paid; or

(c) a fee is payable in respect of the lodging of a document, the document shall be deemed not to have been lodged until the fee has been paid.

(2) All fees shall be paid at the Patent Office in such manner as the Registrar, with the approval of the Minister, may accept.

[Ch4902s94]94. Saving for certain forfeitures

Nothing in this Act shall affect the right of the Government or of any person deriving title directly or indirectly from the Government to sell or use articles forfeited to the Government under any enactment in force in Malawi.

[Ch4902s95]95. Patent Journal

(1) The Minister may, when he deems fit, direct the publication by the Registrar of a journal, to be referred to as the Patent Journal, containing particulars of applications for patents and other proceedings or matters arising under this Act, together with such reports of cases and other relevant matters as the Minister may deem fit.

(2) The Registrar shall make provision for selling copies of the Patent Journal at such price and in such manner as the Minister may direct.

[Ch4902s96]96. Power to make regulations

(1) The Minister may make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

(2) Without derogation from the generality of subsection (1), regulations made by the Minister may provide for—

(a) the form of applications for patents and of any specifications, drawings or other documents which may be lodged at the Patent Office, and the furnishing of copies of any such documents;

(b) the procedure to be followed in connexion with any application or request to the Registrar, or any proceeding before him, and the authorizing of the rectification of irregularities of procedure;

(c) the service of notices and other documents required to be served in connexion with proceedings under this Act;

(d) examinations for the qualification of patent agents in terms of this Act, the recognition for such purpose of qualifications obtained either in or outside Malawi, and the fees to be paid in connexion with the registration of patent agents;

(e) the conduct of the business of the Patent Office;

(f) other fees payable under this Act, and fees which may be charged in relation to the conduct of patent business by patent agents and legal practitioners performing the functions of patent agents;

(g) authorizing the publication and the sale of copies of specifications, drawings and other documents in the Patent Office, and of indexes to and abridgements of such documents;

(h) the professional conduct of patent agents.

PART XIII

APPLICATION

[Ch4902s97]97. Application of Act

21 of 1932Any patent which immediately before the 1st January, 1964, was registered in Malawi under any enactment relating to patents and was protected under the former patents legislation and any patent which immediately before the commencement of the said legislation was registered in the United Kingdom under any agreement relating to patents and was protected in Malawi under the Registration of Patents Ordinance (now repealed) shall be deemed to be

registered under this Act and shall be protected under this Act while it would have been protected in the Federation of Rhodesia and Nyasaland or in the United Kingdom as the case may be:

Provided that—

(a) a patent referred to in this section shall not be liable to revocation except upon some ground upon which it would have been liable to revocation in terms of the said legislation;

(b) an application in respect of a patent referred to in this section which was pending in the Federation of Rhodesia and Nyasaland immediately prior to the 1st day of January, 1964, may be refused by the Registrar only in accordance with the provisions of this Act;

(c) fees in respect of an application referred to in paragraph (b) shall continue to be payable at appropriate rates provided under the said legislation except that they shall be paid in terms of section 93 and shall thereafter be paid into the Consolidated Fund.

SUBSIDIARY LEGISLATION

APPOINTMENT NOTICE

under s. 4

G.N. 234/1965

The Minister has appointed—

- (i) the Registrar General to be Registrar of Patents;
- (ii) the Assistant Registrar General to be Deputy Registrar of Patents.

PATENTS TRIBUNAL RULES

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PATENTS TRIBUNAL RULES

under s. 81

PRELIMINARY

1. Citation

These Rules may be cited as the Patents Tribunal Rules.

2. Interpretation

In these Rules, unless inconsistent with the context—

“Office” means the Patent Office;

“Chairman” means the Chairman of the Patents Tribunal;

“Tribunal” means the Patents Tribunal.

PART I

APPEALS

3. Entry of appeal

(1) Any person who desires to appeal to the Tribunal from a decision of the Registrar of Patents in any matter in which a right of appeal is given under the Act shall, within three months after the date of the decision, file with the registrar of the Tribunal a notice in form P.T. No. 1.

(2) A notice of appeal shall state the nature of the decision appealed against and whether the appeal is from the whole or part only and, if so, what part of the decision, and shall be accompanied by a statement in writing of the appellant's grounds of appeal.

(3) The appellant shall send a copy of the notice of appeal to the Registrar of Patents and to any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(4) The appellant shall be responsible for the preparation of the record which shall be certified by the Registrar of Patents as correct in terms of subrule (7).

(5) The Registrar of Patents as well as the parties or their legal practitioners shall endeavour to exclude from the record all documents (more particularly such as are purely formal) that are not relevant to the subject matter of the appeal, and generally to reduce the bulk of the record as far as practicable, and to avoid the production of unnecessary exhibits, taking special care to avoid the duplication of documents and the unnecessary repetition of headings, and furnish merely the formal particulars of documents; but the documents omitted to be copied shall be enumerated in a list to be placed after the index or at the end of the record.

(6) The Registrar of Patents, after consultation with the registrar of the Tribunal, shall direct the number of copies of the record to be prepared, having regard to whether or not one or more assessors are likely to sit upon the hearing of the appeal.

(7) After the completion of the preparation of the record the Registrar of Patents shall certify the record to be correct and forward it to the registrar of the Tribunal together with such copies thereof as he has directed to be prepared in terms of subrule (6).

4. Application for an extension of time in which to appeal

(1) Any application for an extension of time in which to appeal shall be in form P.T. No. 2 and shall state briefly the grounds upon which the application is based and where facts are alleged such facts shall be verified by affidavit.

(2) The application accompanied by supporting documents shall be delivered to the registrar of the Tribunal and copies shall forthwith be served by the appellant on the Registrar of Patents and on any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(3) The respondent shall be entitled to file an affidavit in reply within fourteen days from the date of service or within such longer period as may be ordered by the Tribunal, and the Tribunal may permit further affidavits to be filed. Copies of such affidavits shall be served on the Registrar of Patents and on the appellant or the respondent, as the case may be, immediately after the affidavits are filed.

5. Notice of hearing

(1) The registrar of the Tribunal shall, after obtaining directions from the Chairman, give to the Registrar of Patents, to the appellant and to any opposing party not less than fourteen days' notice of the time and place appointed for the hearing of the appeal, unless the Chairman directs that shorter notice shall be given.

(2) In any case where the setting down of the hearing of an appeal has been delayed any party may apply to the registrar of the Tribunal to fix a date for the hearing, and thereupon the registrar of the Tribunal, after consulting any other party and the Chairman, shall set down the appeal for hearing after having given to the Registrar of Patents and to any other party not less than fourteen days' notice or such shorter notice of the time and place appointed for the hearing of the appeal as directed by the Chairman.

(3) If in the opinion of the registrar of the Tribunal an appeal is not being prosecuted timeously he may lay the matter before the Chairman for directions and, if the Chairman is satisfied that the parties do not intend or are unable to proceed with the appeal, he may direct that the parties attend before him to show cause why the appeal should not be dismissed.

6. Evidence

Subject to section 75 (4) of the Act the evidence used on appeal to the Tribunal shall be the same as that used before the Registrar of Patents and no further evidence shall be given, except with the leave of the Tribunal.

7. Attendance of witnesses

The Tribunal may, at the request of any party, order the attendance at the hearing for the purpose of cross-examination of any person who has given evidence in the matter to which the appeal relates.

8. Security on appeal

(1) Subject to section 77 of the Act any party may, at any time before the hearing of an appeal, apply to the Tribunal for an order that any opposing party shall, within such time, in such amount and in such manner as the Tribunal directs, give security for the payment of any costs which such opposing party may be ordered to pay.

(2) The party applying for an order for security for costs shall serve upon the opposing party a copy of the notice of the application for security at least seven days before the date of the hearing thereof.

(3) Any party ordered to give security for costs in terms of this rule may apply to the Tribunal for an order extending the time within which any security is to be given, and shall give not less than four days' notice of such application to the other party.

(4) In the event of the security not being given or being only partly given within the time directed by the Tribunal or any extension thereof, all proceedings in the appeal shall be deemed to be stayed, unless the Tribunal otherwise orders, and the appeal shall be set down for such order, whether of dismissal or otherwise, as the Tribunal may think fit.

9. Abandonment or failure to prosecute appeal

(1) An appellant may at any time abandon his appeal by giving notice of abandonment in form P.T. No. 3 to the registrar of the Tribunal and upon such notice being given the appeal shall be deemed to have been dismissed by the Tribunal.

(2) The appellant shall serve a copy of the notice of abandonment on the respondent and on the Registrar of Patents.

(3) The respondent may, upon receipt of such notice, apply to the Tribunal for an order in respect of any costs incurred by him.

10. Frivolous or vexatious appeals

If it appears to the Tribunal that any notice of appeal against a decision of the Registrar of Patents discloses grounds of appeal which are frivolous or vexatious and that the appeal can be determined without a hearing, the Tribunal may dismiss the appeal summarily without calling on any person to attend the hearing of such appeal.

PART II

APPLICATIONS AND OPPOSITIONS

11. Application for extension of patent

(1) Subject to section 64 of the Act an application to the Tribunal under section 30 of the Act for an order extending the term of a patent shall be made in form P.T. No. 4 and shall be filed with the Registrar of Patents after the applicant has duly advertised his application in two consecutive issues of the Gazette and notified in writing the registered licensee or patentee, as the case may be, of the advertisement.

(2) The application shall state the period of the extension which is sought and shall be supported by evidence setting out fully the facts relied upon, such evidence being filed either with the application or at any time within three months from the date thereof.

(3) At any time within two months from the date of the second advertisement of the application in the Gazette any person may give notice of opposition.

(4) Such notice shall be in form P.T. No. 5 and shall be accompanied by a statement setting out fully the nature of the objector's interest, the grounds of opposition and the relief which he seeks and evidence of the facts upon which he relies.

(5) Within two months from the receipt of the notice of opposition the applicant may file evidence confined to matters strictly in reply and shall serve on the objector a copy of the evidence. Proof of service must be furnished to the satisfaction of the Registrar of Patents.

(6) An objector shall be entitled at his own expense to be supplied with a copy of the application and of any evidence filed in support thereof.

(7) When this rule has been complied with to the extent herein required, the Registrar of Patents shall hand all relevant papers to the registrar of the Tribunal.

12. Application for compulsory licence in respect of patents relating to food or certain other commodities

(1) An application under section 38 of the Act for a licence under a patent shall be made in form P.T. No. 6 and shall be filed with the Registrar of Patents.

(2) The application shall set out fully the nature of the applicant's interest, the facts upon which he bases his case and the relief he seeks and shall be accompanied by an affidavit verifying the facts set out therein.

(3) The applicant shall serve copies of the application and of the relevant affidavit upon the patentee and upon any other person appearing from the register to be interested in the patent, and he shall advertise the application in one issue of the Gazette in such form as may be approved by the Registrar of Patents.

(4) At any time within two months from the date of the advertisement the patentee or any other person who wishes to oppose the application shall deliver to the Registrar of Patents a counter-statement, verified by affidavit, setting out fully the grounds upon which the application is opposed, and shall at the same time serve upon the applicant a copy of the counterstatement and of such affidavit. Proof of service shall be furnished to the satisfaction of the said Registrar.

(5) When this rule has been complied with to the extent herein required, the Registrar of Patents shall hand all relevant papers to the registrar of the Tribunal.

13. Dispute as to Government use

(1) Any reference to the Tribunal under section 42 of the Act by a party to a dispute (hereinafter referred to as “the Claimant”) shall be made in form P.T. No. 7 and shall be filed with the Registrar of Patents.

(2) The claimant shall by affidavit verify the facts upon which he relies and shall state fully the nature of his interest in the matter in dispute and the relief which he seeks.

(3) The claimant shall serve a copy of his claim and of the relevant affidavit upon the other party to the dispute.

(4) The other party shall within two months from the date of receipt of such copy deliver to the Registrar of Patents a counter-statement, verified by affidavit, setting out fully the nature of his interest and the facts upon which he relies, and shall at the same time serve upon the claimant a copy of the counter-statement and of such affidavit.

(5) Proof of service shall be furnished to the satisfaction of the Registrar of Patents.

(6) When this rule has been complied with to the extent herein required, the Registrar of Patents shall hand all relevant papers to the registrar of the Tribunal.

(7) Any party to the dispute may at any time during the proceedings under this rule make application to the Tribunal for an order for the hearing of oral evidence, and the Tribunal shall make such order as it deems fit.

14. Revocation of patent

(1) An application for the revocation of a patent under section 50 of the Act shall be made in form P.T. No. 8 and shall be filed with the Registrar of Patents.

(2) The applicant shall serve copies of the application upon the patentee and shall advertise the application in one issue of the Gazette in such form as may be approved by the Registrar of Patents.

(3) The period within which a counter-statement may be lodged by the patentee shall be two months from the date of receipt by him of the application. If such counter-statement is not lodged within the said period, opposition to the application shall be deemed to be abandoned.

(4) The applicant may within two months from the receipt of the copy of the counter-statement file evidence in support of his case and shall serve on the patentee a copy thereof.

(5) Within two months from the receipt of the copy of the applicant’s evidence or, if the applicant does not file any evidence, within two months from the expiration of the time within which the applicant’s evidence might have been filed, the patentee may file evidence in support of his case and shall serve on the applicant a copy of the evidence; and within two months from the receipt of the copy of the patentee’s evidence the applicant may file evidence confined to matters strictly in reply and shall serve on the patentee a copy of the evidence.

(6) No further evidence shall be filed by either party except by leave or direction of the Tribunal.

(7) Proof of service of all notices, statements or other documents referred to in this rule shall be furnished to the satisfaction of the Registrar of Patents.

(8) When this rule has been complied with to the extent herein required, the Registrar of Patents shall hand all relevant papers to the registrar of the Tribunal.

15. Rectification of register

An application for the rectification of the register under section 60 of the Act shall be made to the Tribunal in form P.T. No. 9 and a copy thereof shall be served on the Registrar of Patents and on any other person appearing from the register to be interested in the patent.

16. Hearing of applications

(1) When the registrar of the Tribunal has received from the Registrar of Patents the papers or written proceedings in relation to any application or other matter made to the Tribunal under the Act or in matters where applications to the Tribunal are not required to be transmitted through the said Registrar, he shall, after taking directions from the Chairman, appoint a time and place for the hearing of the case, and shall give the parties at least fourteen days' notice of the appointment.

(2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Tribunal shall decide the case and notify its decision to the parties.

17. Evidence by affidavit

(1) All evidence shall be by affidavit unless otherwise directed by the Tribunal.

(2) Whenever a time is specified in this Part within which any act or thing is to be done, the Registrar of Patents, may, on application made to him in writing, extend the time either before or after its expiration or within any extended period.

18. Costs

If the applicant notifies the Tribunal that he does not desire to proceed with an application, the Tribunal in deciding whether costs should be awarded to the other party shall consider whether proceedings might have been avoided if such other party had given reasonable notice to the applicant before the application to the Tribunal was filed.

PART III

PATENT AGENTS

19. Procedure under section 69 (2)

(1) Every person applying under section 69 (2) of the Act for an order to remove the name of any patent agent from the register of patent agents or to suspend any patent agent from practising as such shall make application in that behalf to the Tribunal, and such application, accompanied by affidavits of the facts upon which it is based, shall be filed with the registrar of the Tribunal.

(2) A copy of the application and of the accompanying affidavits shall be served upon the patent agent concerned, who within one month after receipt thereof shall notify the registrar of the Tribunal in writing whether he wishes to adduce evidence and to be heard by the Tribunal.

(3) Thereafter the registrar of the Tribunal, after consultation with the Chairman, shall appoint a time for the hearing of the application and shall give the parties and the Registrar of Patents at least fourteen days' notice of the appointment.

(4) If, after due inquiry into the allegations made, the Tribunal is satisfied that the patent agent concerned has been guilty of conduct discreditable to a patent agent or has been guilty of a breach of any regulation prescribed for the conduct of patent agents, the Tribunal shall make such order therein as it considers just.

PART IV

TAXATION OF COSTS

20. Registrar of Patents Tribunal to be Taxing Officer

The registrar of the Tribunal shall be the Taxing Officer for the purpose of taxing a bill of costs of a legal practitioner, and in the taxation of costs shall comply with such instructions as may from time to time be given to him by the Tribunal for that purpose.

21. Necessary and proper costs to be allowed

(1) With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his application or opposition, and to ensure that all such costs shall be borne by the party against whom such order has been awarded by the Tribunal, the Taxing Officer shall on every taxation allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Officer to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to counsel, unless the Tribunal otherwise orders, or special charges and expenses to witnesses or other persons or by other unusual expenses.

(2) Upon the taxation of costs the Taxing Officer may, in determining the remuneration to be allowed, have regard to the skill, labour and responsibility involved. If, on having regard to the said matters, the Taxing officer considers that there are special reasons why costs in excess of those prescribed in these Rules should be allowed, he may, in respect of any particular application made or business done, allow such costs as seem to him reasonable and shall certify his decision in writing.

(3) Any person aggrieved by the charges made by any legal practitioner in respect of work performed by him under the Act may refer such charges to the Taxing Officer for taxation.

22. Scale of fees to be followed

In the taxation of costs the Taxing Officer shall be guided, as far as the circumstances of each particular case will permit, by the scale of fees prescribed in rule 35. In addition to these charges all

disbursements shall be separately charged and shall be allowed by the Taxing Officer when reasonable.

23. Witnesses' charges and allowances

(1) Witnesses requiring payment shall be paid for their attendance and travelling in accordance with rule 34.

(2) The charges for witnesses as fixed by rule 34 are to be considered as payable to the witness by the party who summoned or produced him, and in the event of any such party being awarded his costs against any other party the said charges shall be allowed against such other party in the taxation of costs.

(3) Any person applying to the registrar of the Tribunal for the issue of a subpoena to compel the attendance of any witness shall by endorsement of such subpoena give an undertaking that all expenses due to the witness shall be tendered to such witness upon service of the subpoena, failing which no subpoena shall issue. If upon service of the subpoena all expenses due to such witness have not been paid the subpoena shall have no force and effect.

(4) In the taxation of costs between party and party no amount shall be allowed for any witness whether for attendance or travelling expenses unless there is produced to the Taxing Officer proof that such amount has already been paid or tendered to or claimed by such witness.

(5) In the taxation of costs between party and party nothing shall be allowed for any witness not examined unless upon proof that his evidence might reasonably have been believed to be material and necessary.

(6) If the number of witnesses summoned, or if the number of affidavits filed, is manifestly greater than is reasonably necessary, there shall only be allowed against the other party the charges for such witnesses or affidavits as were reasonably necessary.

(7) In the taxation of costs between party and party no amount shall be allowed for any witness in respect of personal attendance or travelling expenses if the fact or facts which such witness is subpoenaed to prove have, before the issue of such subpoena, been admitted to the party taking out the subpoena by the opposite party:

Provided that such admission shall be in writing, signed by the party making it or his legal practitioner acting on his behalf.

(8) When the same person is a witness in more cases than one heard on the same day, he shall be entitled to no more than one fee for personal attendance and one allowance for travelling expenses, which shall be equally divided between such cases.

24. Taxation of costs

(1) In all cases where a notice of taxation is necessary seven days' notice together with a copy of the bill of costs shall be given by the legal practitioner on behalf of the party whose costs are to be taxed to the other party or to the legal practitioner of such other party.

(2) When the dwelling-house or place of business of the party against whom costs are to be taxed is more than thirty-six miles from the seat of the Tribunal, the time for the service of such notice shall be extended to fourteen days.

(3) In the taxation of costs, the notice of taxation with a copy of the bill of costs may be transmitted by registered post to the party appearing in person.

25. Review of decision of Taxing Officer

Any party aggrieved by the decision of the Taxing Officer may apply to the Tribunal within four weeks after the taxation to review such taxation. Copies of the application shall be served on the Taxing Officer and on the opposite party. The application shall specify the items forming the subject of the grievance but the grounds upon which such items are sought to be reviewed shall not require to be verified by affidavit.

26. Reference to Chairman in chambers

The Taxing Officer may, without filing any formal documents, submit any point arising at a taxation for decision by the Chairman in chambers, and it shall be competent for the Taxing Officer and for the legal practitioners who appeared at the taxation to appear before the Chairman respecting such point.

PART V

GENERAL

27. Adjournment of proceedings

The hearing of any application or other matter before the Tribunal may from time to time be adjourned upon such terms as the Tribunal thinks fit.

28. Place of hearing

(1) Except as provided in subrule (2) every hearing before the Tribunal shall be in Blantyre.

(2) One or more of the parties may, not later than fourteen days before the date approved for the hearing, apply to the Tribunal to conduct the hearing at some other place in Malawi. The Tribunal may, in its discretion and subject to such conditions as to notice and costs as it thinks fit, conduct the hearing at the place named in the application.

(3) Where an application under subrule (2) is not made by all the parties to the proceedings, the Tribunal shall not decide the application without giving the parties an opportunity to be heard.

29. Forms

The forms referred to in these Rules are those set out in the First Schedule and such forms shall be used in all cases to which they are applicable and may be modified as directed by the Chairman.

30. Fees

The Tribunal fees prescribed in the Second Schedule shall be paid to the Registrar of Patents at the Office.

31. Endorsement of fee on document chargeable

(1) Upon receipt of any document chargeable with any fee payable in terms of these Rules the Registrar of Patents shall endorse upon the original of such document the amount of the fee paid and the date of payment.

(2) The Registrar of Patents shall refuse to accept any document in respect of which a fee is payable under these Rules, unless the appropriate fee accompanies such document.

32. Oath to be taken by assessors appointed under section 79

The form of oath to be taken by assessors shall be as follows—

I,hereby declare that I will to the best of my ability faithfully and diligently discharge any duties as assessor without favour, fear or prejudice.

33. Remuneration of assessors

The remuneration of assessors attending the Tribunal shall be that payable to assessors attending the High Court in criminal matters.

34. Witnesses' allowances

The subsistence and travelling allowances payable to witnesses attending the Tribunal shall be the same allowances as are payable to witnesses attending the High Court in civil matters.

35. Legal practitioners' fees

Legal practitioners' fees in any appeal, application, opposition or other matter heard by the Tribunal shall be in accordance with the fees prescribed for legal practitioners in civil matters in the High Court.

FIRST SCHEDULE r. 29

FORMS

Form Matter Rule

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6.	Application for licence under section 38 of the Act	12	(1)
7.	Reference to the Patents Tribunal under section 42 of the Act	13	(1)
8.	Application under section 50 of the Act for the revocation of a patent	14	(1)
9.	Application for rectification of register of patents	15	

Form P.T. No. 1

Sections 73 and 80

Rule 3 (1)

THE PATENTS ACT

(Cap 49:02)

Fee: £2 10s.

Notice of Appeal to Patents Tribunal

IN THE MATTER of an application (1)

.....

..... (1) State nature of application or proceedings, the name of the applicant and the number of the application for Letters Patent

and

IN THE MATTER of an opposition by (2)

.....

..... (2) State the name of the objector(s) if the application is opposed

I/We (3)

of

..... (3)State full name and address of appellant(s)

hereby give notice of appeal to the Tribunal from (4)

.....

of the Registrar of Patents, dated theday of, 19....., whereby he (4)
Here insert "the decision" or "that part of the decision", as the case may be

(5)

.....

.....

.....

..... (5) Here insert "refused application
for Letters Patent" or "refused (or allowed) application for leave to amend specification" or
otherwise, as the case may be

Dated this day of, 19.....

(6)

..... (6) To be signed by the appellant(s)
or his/their legal practitioner

My/Our address for service in Malawi:—

.....

.....

.....

The Registrar of the Patents Tribunal,

Blantyre

Form P.T. No. 2

Sections 80

Rule 4 (1)

THE PATENTS ACT

(Cap. 49:02)

Application for an Extension of Time in which to Appeal

Fee: Nil

IN THE MATTER of an application (1)

.....

.....

.....

..... (1) State nature of application or proceedings, the name of the applicant and the number of the application for Letters Patent

and

IN THE MATTER of an opposition by (2)

.....

..... (2) State the name of the objector(s) if the application is opposed

I/We (3)

of

..... (3) State full name and address of appellant(s)

hereby make application for an order of the Tribunal extending the time in which to appeal from (4)

.....

.....

..... (4) Here insert "the decision" or "that part of the decision" as the case may be

of the Registrar of Patents on the following grounds (5)

.....

.....

..... (5) Here state briefly the grounds upon which the application is based and where facts are alleged such facts shall be verified by affidavit

Dated this..... day of 19.....,

(6) (6) To be signed by the appellant(s) or his/their legal practitioner

.....

The Registrar of the Patents Tribunal,
Blantyre

Form P.T. No. 3

Rule 9 (1)

THE PATENTS ACT

(Cap. 49:02)

Fee: Nil

Notice of Abandonment of Appeal

IN THE MATTER of an application (1)

.....

.....

.....

..... (1) State nature of application or
proceedings, the name of the applicant(s) and the number of the application for Letters Patent

and

IN THE MATTER of an opposition by (2)

.....

.....

you are hereby notified that the abovenamed appellant(s) hereby abandon(s) all further proceedings
in the above matter. (2) State the name of the objector(s) if the application is opposed

Dated this..... day of, 19.....

(3) (3) To be signed by the appellant(s) or his/their legal practitioner

.....

The Registrar of the Patents Tribunal,
Blantyre

Form P.T. No. 4

Section 30 (1)

Rule 11 (1)

THE PATENTS ACT

(Cap. 49:02)

Fee: £3

Application under section 30 of the Act for Extension of Term of Patent

I/We (1).....

.....

..... (1) Slate full name and address of applicant(s)

hereby apply for an extension of the term of Patent No. for a period of (2) year(s), on the following grounds (3)

.....

.....

.....

..... (2)Insert period for which extension is sought

(3) Here state briefly the nature of the grounds

Dated this..... day of, 19.....

(4) (4) To be signed by the applicant(s) or his/their legal practitioner

.....

My/Our address for service in Malawi:—

.....

.....

.....

NOTE.— The application must be accompanied by evidence setting out fully the facts relied upon.

The Registrar,
The Patent Office,
Blantyre

Form P.T. No. 5

Section 30 (3)

Rule 11 (4)

THE PATENTS ACT

(Cap. 49:02)

Fee: £2

Notice of Opposition to Application for Extension of Term of Patent

I/We (1)

.....

..... (1) State full name and address of
objector(s)

hereby give notice of opposition to the application for extension of the term of Patent No.
.....upon the following grounds (2)

.....

.....

.....

..... (2) Here state briefly the grounds

Dated this day of, 19.....

(3) (3) To be signed by the objector(s) or his/their legal practitioner

.....

My/Our address for service in Malawi:—

.....
.....
.....

NOTE.—The application must be accompanied by evidence in support of the opposition.

The Registrar,
The Patent Office,
Blantyre

Form P.T. No. 6

Section 38

Rule 12 (1)

THE PATENTS ACT

(Cap. 49:02)

Fee: £2 10s.

Application for Licence under section 38 of the Act.

I/We (1)

..... (1) State name and address of
applicant(s)

hereby apply for a licence under Patent No.for making, using and exercising the
invention—

- (a) as food or medicine; (a), (b) and (c) Delete whichever is not applicable
- (b) for the purpose of the production of food or medicine;
- (c) as or as part of a surgical or curative device;

for the following reasons (2)

.....
.....

..... (2) State nature of applicant'(s')
interest and the facts relied upon

Dated this day of, 19.....

(3) (3) To be signed by the applicant(s) or his/their legal practitioner

.....

My/Our address for service in Malawi:—

.....

.....

.....

NOTE.—The application must be accompanied by evidence verifying the statements set out in the application.

The Registrar,

The Patent Office,

Blantyre

Form P.T. No. 7

Section 42

Rule 13 (1)

THE PATENTS ACT

(Cap. 49:02)

Fee: £2 10s.

Reference to the Patents Tribunal under section 42 of the Act

IN THE MATTER of a reference by (1)

.....

..... (1) State name of claimant(s) and
nature of matter in dispute

against

(2)

..... (2) State name of other party to
dispute

I/We (3)

..... (3) State full name and address of
claimant(s)

hereby refer for the determination of the Tribunal my/our claim against (4)

..... (4) State full name of respondent

The following are the grounds on which I/we base my/our claim:—

(5)

.....

.....

.....

..... (5) Here state briefly the nature of
the grounds

Dated this day of, 19.....

(6) (6) To be signed by the claimant(s) or his/their legal practitioner

.....

My/Our address for service in Malawi:—

.....

.....

.....

NOTE.—The claim must be accompanied by an affidavit verifying the facts and stating fully the nature of the interest in the matter in dispute and the relief sought.

The Registrar,

The Patent Office,

Blantyre

Form P.T. No. 8

Section 50

Rule 14 (1)

THE PATENTS ACT

(Cap. 49:02)

Fee: £2

Application under section 50 of the Act for the Revocation of a Patent

I/We (1)

.....

..... (1) State full name and address of applicant(s)

hereby apply for an order for the revocation of Patent No. on the following grounds:—

(2)

.....

.....

..... (2) The grounds of the application can only be one or more of the grounds on which grant of the patent could have been opposed under section 22

(3) I/We declare that no action for infringement or proceedings in any Court for the revocation of the Letters Patent are pending. (3) If such action or proceedings are pending in any Court the application cannot be made without the leave of the Court

Dated this day of19,.....

(4) (4) To be signed by the applicant(s) or his/their legal practitioner

.....

My/Our address for service in Malawi:—

.....
.....
.....

NOTE.—The application must be accompanied by a statement setting out fully the nature of the applicant's interest, the facts relied upon and the relief sought.

The Registrar,
The Patent Office,
Blantyre

Form P.T. No. 9

Section 60

Rule 15

THE PATENTS ACT

(Cap. 49:02)

Fee: £1

Application for Rectification of Register of Patents

I/We (1)

.....

..... (1) State name and address of applicant(s)

hereby apply in respect of Patent No. that the register may be rectified in the following manner (2)

..... (2) State manner in which register is to be rectified

The grounds upon which I/we base this application are as follows:—

(3)

.....

..... (3) State briefly the grounds

Dated this day of, 19

(4) (4) To be signed by the applicant(s) or his/their legal practitioner

.....

My/Our address for service in Malawi:—

.....

.....

.....

The Registrar,
The Patent Office,
Blantyre

SECOND SCHEDULE rr. 32 and 35

TRIBUNAL FEES

Item	Matter	Amount		
		£	s.	d.
1.	On every appeal to the Tribunal from decision or order of the Registrar of Patents—inclusive fee	2	10	0
2.	On application under section 30 of the Act for extension of term of patent	3	0	0
3.	On notice of opposition to application for extension of term of patent	2	0	0
4.	On application for licence under section 38 of the Act	2	10	0
5.	On a reference to the Tribunal under section 42 of of the Act	2	10	0
6.	On application under section 50 of the Act for the revocation of a patent ²	2	0	0

- | | | | | |
|-----|--|---|---|---|
| 7. | On application for rectification of register of patents | 1 | 0 | 0 |
| 8. | On any other application or matter made direct to the Tribunal under the Act | The fees as prescribed in the First Schedule to the Patents Regulations Below p. 87 | | |
| 9. | On every search | 0 | 2 | 6 |
| 10. | For typewritten copies of judgments or records, for additional copies of orders or for copies of documents or proceedings furnished upon direction of the registrar of the Tribunal: | | | |
| | The first copy for each folio of 100 words or part thereof | 0 | 1 | 6 |
| | Additional copies for each folio of 100 words or part thereof | 0 | 0 | 6 |
| 11. | On certifying any document as an office copy | 0 | 5 | 0 |
| 12. | Transcript of shorthand writers' notes Such fee as may be determined by the Minister | | | |

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PATENTS REGULATIONS

under s. 96

PRELIMINARY

1. Citation

These Regulations may be cited as the Patents Regulations.

2. Interpretation

In these Regulations, unless inconsistent with the context—

“Agent” means a patent agent registered as such in terms of section 68 of the Act, and includes a legal practitioner;

“Office” means the Patent Office;

“Tribunal” means the Patents Tribunal.

PART I

APPLICATION FOR PATENTS AND SPECIFICATIONS

3. Appropriate application forms to be used

(1) An application, other than a convention application, shall be made in form No. 1.

(2) A convention application shall be made in form No. 2.

(3) An application for a patent of addition shall be made in form No. 3.

(4) An application in terms of section 31 (2) of the Act for the grant of a patent of addition instead of an independent patent shall be made in form No. 4.

(5) Every application (other than a convention application) shall be accompanied by either a provisional specification in duplicate in form No. 5 or a complete specification in duplicate in form No. 6; and every convention application shall be accompanied by a complete specification in duplicate in form No. 6.

4. Assignee or legal representative to establish right to act

An application for a patent by an assignee or the legal representative of a person who was the owner of an invention when he died shall be accompanied by the deed of assignment or the

probate of the will of the deceased or the letters of administration, as the case may be, or a certified copy thereof, and such further evidence and proof of the applicant's title as the Registrar may require.

5. Cognate application

Where, in pursuance of section 13 (3) of the Act, the Registrar allows a single complete specification to be proceeded with in respect of two or more applications in respect of which two or more complete specifications have been lodged, the single complete specification may include any matter disclosed in any of the said specifications and shall be deemed to have been lodged on such date, not earlier than the earliest date on which all the matter disclosed in the said single complete specification has been disclosed to the office in or in connexion with the applications, as the Registrar may direct.

6. Division of application if not cognate

Where a complete specification has been lodged pursuant to two or more applications accompanied by provisional specifications for inventions which the applicant believes to be cognate or modifications one of another and the Registrar is of the opinion that such inventions are not cognate or modifications one of another, the Registrar may allow the complete specification to be divided into such number of complete specifications as may be necessary to enable the applications to be proceeded with as two or more separate applications for patents.

7. Evidence in support of convention application

(1) In addition to the specification lodged with every convention application, there shall be lodged with the application, or within six months thereafter, a copy of the specification and drawings or documents lodged in respect of the relevant first application or applications for protection in a convention country, duly certified by the official chief or head of the patent office of the convention country, or otherwise verified to the satisfaction of the Registrar.

(2) If any specification or other document relating to the application is in a foreign language, it shall be accompanied by a translation thereof in the English language verified to the satisfaction of the Registrar.

8. Division of convention application

Where a single convention application has been made in respect of all or part of the inventions in respect of which two or more applications for protection have been made in one or more convention countries, the Registrar may, if he is satisfied that the claims of the specification lodged with the said convention application relate to more than one invention, allow one or more further applications to be lodged and the specification to be divided into such number of specifications as may be necessary to enable two or more separate convention applications to be proceeded with, and may direct that the said applications be deemed to have been lodged on the date of lodging of the original application.

9. Extension of period for lodging complete specification

A request in terms of section 13 (2) of the Act for an extension of time for lodging a complete specification shall be made in form No. 7.

10. Request for post-dating an application

A request in terms of section 17 (1) of the Act for the post-dating of an application shall be made in form No. 8.

PART II

DRAWINGS

11. When supplied, drawings to accompany specification

Drawings, when supplied, shall accompany the provisional or complete specification to which they refer, except in the case provided for by regulation 18. A true copy of the original drawings shall be lodged at the same time as the original drawings.

12. Drawing paper

(1) Drawings shall be made on pure white tough drawing paper, not thinner than 100 sheets to the inch, of smooth surface and good quality, and without colour or washes, in such a way as to admit of being clearly reproduced on a reduced scale by photography.

(2) Mounted drawings may not be used.

13. Size of sheets, etc.

(1) Drawings shall be on sheets which measure 13 inches from top to bottom and are either 8 inches or 16 inches wide, and shall be made on one side of the paper only and have 1 1/2 inches clear binding margin on the left-hand side of the sheet and a 1/2; inch clear margin on the top, bottom and right-hand side of the sheet.

(2) If there are more figures than can be shown on one of the smaller sized sheets, two or more of these sheets shall be used unless the large size is required by the size of any one figure.

(3) An exceptionally large figure may be continued on subsequent sheets.

(4) No more sheets shall be employed than are necessary.

(5) The figures shall be numbered consecutively without regard to the number of sheets, and shall as far as possible be arranged in numerical order, separated by a sufficient space to keep them distinct.

(6) Where figures on a number of sheets form in effect a single complete figure, they shall be so arranged that the complete figure can be assembled without concealing any part of another figure.

14. Preparation of drawings

Drawings shall be prepared in accordance with the following requirements—

- (a) they shall be executed in durable black or very dark markings;
- (b) each line shall be firmly and evenly drawn, sharply defined, and of the same strength throughout;
- (c) section lines, lines for effect, and shading lines shall be as few as possible, and shall not be closely drawn;
- (d) shading lines shall not contrast excessively in thickness with the general lines of the drawing;
- (e) sections and shading shall not be represented by solid black or washes;
- (f) they shall be on a scale sufficiently large to show the invention clearly, and only so much of the apparatus, machine or article may appear as effects this purpose;
- (g) if the scale is given, it shall be drawn and not denoted by words, and no dimensions may be marked on the drawings;
- (h) where convenient, the figures shall be drawn in an upright position in regard to the top and bottom of the sheet;
- (i) subject to any special directions of the Registrar in any particular case, reference letters and numerals and index letters and numerals used in conjunction therewith shall be bold, distinct and not less than 1/8 inch in height; the same letters or numerals shall be used in different views of the same parts; and where the reference letters or numerals are shown outside the parts referred to they shall be connected with the said parts by fine lines.

15. Identification of drawings

(1) Drawings shall bear—

- (a) in the left-hand top corner the name of the applicant and, in the case of drawings lodged with a complete specification after one or more provisional specifications, the numbers and years of the applications;
- (b) in the right-hand top corner the number of sheets of drawings sent and the consecutive number of each sheet, and the words “original” or “true copy”, as the case may require;
- (c) in the right-hand bottom corner the signature of the applicant or his agent.

(2) The title of the invention shall not appear on the drawings.

16. Descriptive matter

(1) No descriptive matter shall appear on constructional drawings, but drawings in the nature of flow sheets may bear descriptive matter to show the materials used and the chemical or other reactions or treatments effected in carrying out the invention.

(2) Drawings showing a number of instruments or units of apparatus and their interconnexions, either mechanical or electrical, where each such instrument or unit is shown only

symbolically, may bear such descriptive matter as is necessary to identify the instruments or units or their interconnexions.

(3) Such descriptive matter shall be in black or very dark markings on both the original and the true copy drawings and on the latter the letters shall be not less than 1/4 inch in height.

(4) No drawing or sketch, other than a graphic chemical formula or a mathematical formula, symbol or equation, shall appear in the verbal part of the specification and if such a formula, symbol or equation is used therein a copy thereof, prepared in the same manner as original drawings, except that it may be a hand-made drawing on tracing-cloth, shall be furnished if the Registrar so directs.

17. Drawings not to be creased

Drawings shall be delivered at the Office free from folds, breaks or creases which would render them unsuitable for reproduction by photography.

18. Drawings lodged with provisional specification

If an applicant desires to adopt the drawings lodged with his provisional specification as the drawings or part of the drawings for his complete specification, he shall refer to them in the complete specification as those lodged with the provisional specification.

PART III

EXAMINATION OF APPLICATIONS AND ACCEPTANCE OF COMPLETE SPECIFICATIONS

19. Examination procedure under section 16

(1) When the Registrar, in making the investigation under section 16 of the Act, finds that the application or specification does not comply with the requirements of subsection (1) of that section, the Registrar may refuse to accept the application or require the application or the specification which accompanied it to be amended in such manner as may be necessary.

(2) The Registrar may appoint a hearing if he considers it desirable to do so, having regard to the time remaining for putting the application in order or other circumstances of the case.

(3) When a hearing is appointed the applicant shall be given fourteen days' notice of the appointment or such shorter notice as appears to the Registrar to be reasonable in the circumstances and shall as soon as possible notify the Registrar whether he will attend the hearing.

(4) After hearing the applicant, or without a hearing if the applicant has not attended or has notified that he does not desire to be heard, the Registrar may direct or permit such amendment of the specification as will be to his satisfaction, and may refuse to accept the specification unless such amendment is made within such period as he may fix.

20. Extension of time under section 20

An application for extension of time for accepting a complete specification shall be given in form No. 9.

21. Extension of time under section 21

A notice under the proviso to section 21 (1) of the Act requesting postponement of the acceptance of a complete specification to a date, not being later than eighteen months from the date of lodging of the application, shall be given in form No. 10.

22. Publication of acceptance

(1) When notice of acceptance of a complete specification has been given by the Registrar in terms of section 21 (2) of the Act the applicant shall advertise the acceptance in the Gazette within one month of the date of such acceptance or within such further time as the Registrar may allow.

(2) At any time prior to the publication of the acceptance of a complete specification the Registrar may, if he thinks fit, on application made in form No. 11, cancel such acceptance.

23. Inspection of application, specification and drawings

The fee for inspecting an application, specification and drawings shall be as set out in item 50 of the First Schedule.

PART IV

OPPOSITION TO GRANT OF PATENT

24. Notice of opposition

A notice of opposition to the grant of a patent shall be given in form No. 12.

25. Counter statement

The period within which a counter-statement may be lodged by the applicant shall be two months from the date of receipt by him of the notice of opposition. If such counter-statement is not lodged within the said period or within such further period as the Registrar may allow the application shall be deemed to be abandoned.

26. Filing of evidence by objector

The objector may within two months from the receipt of the copy of the counter-statement file evidence in accordance with section 65 of the Act in support of his case and shall serve on the applicant a copy thereof.

27. Filing of evidence by applicant

Within two months from the receipt of the copy of the objector's evidence or, if the objector does not file any evidence, within two months from the expiration of the time within which the objector's evidence might have been filed, the applicant may file evidence in accordance with section 65 of the Act in support of his case and shall serve on the objector a copy of the evidence; and within two months from the receipt of the copy of the applicant's evidence the objector may file evidence confined to matters strictly in reply and shall serve on the applicant a copy of the evidence.

28. Extension of time under regulations 25, 26 and 27

The Registrar may extend the periods mentioned in regulations 25,26 and 27 if a request in writing for such extension is made at any time within the said periods or extended periods.

29. Proof of service of notices, statements, etc.

Proof of service of all notices, statements or other documents referred to in these Regulations shall be furnished to the Registrar.

30. Supply of documents, etc., to Tribunal

(1) When the foregoing provisions of this Part have been complied with, the Registrar shall hand all relevant papers to the registrar of the Tribunal.

(2) Copies of all documents, other than Government specifications, referred to in the notice of opposition or in any statement or evidence filed in connexion with the opposition shall be furnished for the use of the Tribunal, unless the Tribunal otherwise directs.

PART V

SUBSTITUTION OF APPLICANTS, ETC.

31. Procedure under section 23 (1)

(1) A claim under section 23 (1) of the Act that an application for a patent shall proceed in the name of the claimant or in the names of the claimant and the applicant or the other joint applicant or applicants shall be made in form No. 13 and shall be accompanied by a copy of any assignment or agreement upon which the claim is based, which copy shall be certified by the claimant, the applicant or the agent of either of them as the case may be.

(2) If so required by the Registrar the original assignment or agreement shall also be produced for his inspection and he may also call for such other proof of title or written consent as he may require.

32. Procedure under section 23 (5)

(1) An application under section 23 (5) of the Act by any party to a joint application for the directions of the Registrar as to the name of the party, or the manner in which an application for a patent shall be proceeded with, shall be made in form No. 14 and shall be accompanied by a statement setting out fully the facts upon which the applicant relies and the directions which he seeks.

(2) A copy of the application and statement shall be sent by the Registrar to each other joint applicant (the applicant shall supply a sufficient number of copies for that purpose) and thereafter the Registrar shall appoint a time for the hearing of the case and shall give the parties at least fourteen days' notice of the appointment.

(3) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Registrar shall in accordance with section 23 (5) of the Act give directions as he thinks fit for enabling the application to proceed in the name of one or more of the

parties or for regulating the manner in which it shall be proceeded with or for both those purposes, according as the case may require.

PART VI

SEALING AND FORM OF PATENT, AND RENEWAL FEES

33. Request for sealing

An application for the sealing of a patent shall be made in form No. 15.

34. Time for sealing under section 25 (2)

(1) An application for an extension of time under proviso (d) to section 25 (2) of the Act shall be made in form No. 16 and the period of extension shall not exceed three months.

(2) An application under proviso (e) to section 25 (2) of the Act for a further extension of time shall be made in form No. 17.

35. Form of patent

A patent shall be in the form set out in the Second Schedule or in such form modified as directed by the Registrar to meet the circumstances.

36. Amendment of patent

An application under section 26 of the Act for the amendment of a patent shall be made in form No. 18 and shall be accompanied by evidence verifying the statements therein and by the letters patent.

37. Payment of renewal fees

If it is desired at the expiration of the third year of the term of a patent or of any succeeding year during the term of the patent to keep the patent in force, the renewal fees set out in item 18 of the First Schedule shall be paid by lodging form No. 19 before the expiration of that year:

Provided that where the sealing of the patent is delayed beyond the periods set out herein, by reason of opposition or the application having been kept secret or an extension under proviso (e) to section 25 (2) of the Act having been granted, the renewal fees may be paid at the time the patent is sealed. The Registrar may in his discretion grant an extension of time not exceeding six months from the date of sealing for payment of such fees.

38. Renewal fees may be paid in advance

All or any of the prescribed renewal fees may be paid in advance.

39. Extension of time for payment

An application for extension of time for payment of any renewal fee shall be made in form No. 20.

40. Certificate of payment

On due compliance with the terms of regulation 37, the Registrar shall issue a certificate in form No. 21 that the prescribed fee has been duly paid, and he shall cause to be entered in the register the fact that the fee has been paid and the date of payment as stated on the certificate.

PART VII

RESTORATION OF LAPSED PATENTS

41. Application

(1) An application under section 33 of the Act for the restoration of a patent shall be made in form No. 22 and shall be accompanied by evidence by affidavit in support of the statements made in the application.

(2) The Registrar shall direct the patentee to advertise the application (if in compliance with section 33 (2) of the Act) in two consecutive issues of the Gazette.

42. Notice of opposition

(1) At any time within two months of the advertisement of the application any person may give notice of opposition thereto in form No. 23.

(2) Such notice shall be accompanied by a copy thereof together with a statement, in duplicate, setting out fully the nature of the objector's interest and the facts upon which he relies.

(3) Upon notice of opposition being given regulations 25 to 29 inclusive shall mutatis mutandis apply in respect of the proceedings held before the Registrar under section 33 of the Act.

43. Hearing

(1) On completion of the evidence (if any), or at such other time as the Registrar may see fit, the Registrar shall appoint a time for the hearing of the application and shall give the parties at least fourteen days' notice of the appointment.

(2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Registrar shall decide the matter and notify his decision to the parties.

PART VIII

VOLUNTARY ENDORSEMENT OF PATENTS "LICENCES OF RIGHT"

44. Application under section 35 (1)

An application under section 35 (1) of the Act for endorsement of a patent "licences of right" shall be made in form No. 24 and shall be accompanied by evidence verifying the statement in the application and by the letters patent.

45. Application under section 35 (2)

(1) An application under section 35 (2) (a) or (b) of the Act for settlement of the terms of a licence under a patent endorsed "licences of right" shall be made in form No. 25 and shall be accompanied by a copy thereof and a statement, in duplicate, setting out fully the facts upon which the applicant relies and the terms of the licence which he is prepared to accept or grant.

(2) A copy of the application and statement shall be sent by the Registrar to the patentee or the person requiring a licence, as the case may be, who, if he does not agree to the terms set out in the statement, shall within two months of the receipt of such copies file a counter-statement setting out fully the grounds of the objection and serve a copy thereof on the applicant.

(3) The Registrar shall give such directions as he may think fit with regard to the filing of evidence and the hearing of the parties.

46. Advertisement of endorsement

Upon the endorsement of a patent in terms of section 35 (1) of the Act the Registrar shall direct the applicant to publish notification thereof forthwith in the Gazette.

47. Cancellation of endorsement under section 36 (1)

An application under section 36 (1) of the Act for the cancellation of an endorsement shall be made in form No. 26 and shall be accompanied by evidence verifying the statement in the application and by a memorandum in form No. 19 with fees to the amount of the balance of all renewal fees which would have been payable if the patent had not been endorsed.

48. Cancellation of endorsement under section 36 (2)

(1) An application under section 36 (2) of the Act for the cancellation of an endorsement shall be made in form No. 27 within six months after the patent has been endorsed and shall be accompanied by a copy thereof and a statement, in duplicate, setting out fully the nature of the applicant's interest and the facts upon which he relies.

(2) The period within which renewal fees shall be paid on cancellation of an endorsement in terms of section 36 (3) of the Act shall be one month from the date of cancellation.

49. Advertisement and opposition

(1) Every application under section 36 (1) or (2) of the Act shall be advertised by the applicant in the Gazette and the period within which notice of opposition to the cancellation of an endorsement may be given under section 36 (5) of the Act shall be two months after the advertisement.

(2) Such notice shall be given in form No. 28 and shall be accompanied by a copy thereof and a statement, in duplicate, setting out fully the facts upon which the opponent relies, and, in the case of opposition to an application under section 36 (1) of the Act, the nature of his interest.

(3) A copy of the notice and of the statement shall be sent by the Registrar to the applicant for cancellation of the endorsement and thereafter the Registrar shall appoint a time for the hearing of the application and shall give the parties at least fourteen days' notice of the appointment.

(4) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Registrar shall give such decision on the application as he may consider just.

PART IX

COMPULSORY LICENCES

50. Application under section 37

An application under section 37 of the Act for a licence under a patent shall be made in form No. 29.

51. Preliminary consideration by Registrar

(1) If upon consideration of the evidence the Registrar is satisfied that the application falls within section 37 of the Act, he shall direct the applicant to serve copies of the application and of the relevant affidavit upon the patentee and upon any other person appearing from the register to be interested in the patent and to advertise the application in one issue of the Gazette in such form as he may approve.

(2) If the Registrar is not so satisfied he shall notify the applicant accordingly, and unless within one month the applicant requests to be heard in the matter the Registrar shall refuse the application.

52. Opposition

(1) At any time within two months from the date of the advertisement, or within such further time as the Registrar may allow, the patentee or any other person who wishes to oppose the application shall deliver to the Registrar a counter-statement, verified by affidavit, setting out fully the grounds on which the application is opposed, and shall at the same time serve upon the applicant a copy of the counter-statement and of such affidavit.

(2) Proof of service shall be furnished to the satisfaction of the Registrar.

53. Supply of documents, etc., to Tribunal

When the foregoing provisions of this Part have been complied with, the Registrar shall hand all relevant papers to the registrar of the Tribunal.

PART X

AMENDMENT OF SPECIFICATION

54. Application to amend unaccepted specification

(1) An application for leave to amend a provisional specification or a complete specification which has not been accepted, except when the amendment is made to meet an objection by the Registrar, shall be made in form No. 30.

(2) The Registrar shall, if he thinks fit, appoint a time for a hearing of the application and shall give the applicant at least twenty-one days' notice of such appointment. If the applicant desires to be heard he must, not later than seven days prior to the date of the hearing or within such further time as the Registrar may allow, notify the Registrar to that effect.

(3) After hearing the applicant or, if the applicant does not desire to be heard, then without a hearing, the Registrar shall decide the case and notify his decision to the applicant.

55. Application to amend accepted complete specification

An application for leave to amend an accepted complete specification shall be made in form No. 31 and the application and the nature of the proposed amendment shall be advertised by the applicant in the Gazette in the manner provided for in form No. 32.

56. Certified copy of original specification to accompany application

An application for leave to amend a specification shall be accompanied by a copy certified by the applicant or his agent of the original specification, or of those pages of specification or drawings in which the proposed amendment appears, clearly showing in red ink the amendment sought.

57. Opposition

(1) Any person wishing to oppose an application for amendment under regulation 55 shall give notice to the Registrar in form No. 33.

(2) Such notice shall be accompanied by a statement setting out fully the nature of the objector's interest, the facts upon which he relies and the relief he seeks.

(3) A copy of the notice and of any statement which accompanies such notice shall be served by the objector on the applicant.

(4) Upon notice of opposition being given regulations 25 to 29 inclusive and 43 shall mutatis mutandis apply in respect of the proceedings held before the Registrar under section 43 of the Act.

58. New specification and drawings as amended may be required

(1) When leave to amend a specification is given the applicant shall, if the Registrar so requires and within a time to be fixed by him, lodge a new specification and drawings as amended.

(2) Where an application for leave to amend a specification is made pursuant to an order of the Tribunal or of a Court such application shall be accompanied by a copy of such order certified by the registrar of the Tribunal or Court, as the case may be.

PART XI

DIRECTIONS TO CO-OWNERS

59. Application under section 47 (6)

(1) An application for directions under section 47 (6) of the Act by any one or more of the proprietors of a patent shall be made in form No. 34 and shall be accompanied by a statement setting out fully the facts upon which the applicant relies and the directions which he seeks.

(2) A copy of the application and of the statement shall be sent by the Registrar to each of the other proprietors of the patent, and the applicant shall supply a sufficient number of copies for that purpose.

(3) Thereafter the Registrar shall appoint a time for the hearing of the case and shall give the parties at least fourteen days' notice of the appointment.

(4) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Registrar shall give directions in accordance with section 47 (6) of the Act.

60. Application under section 47 (7)

(1) An application for directions under section 47 (7) of the Act shall be made in form No. 35 and shall be accompanied by a copy thereof and a statement, in duplicate, setting out fully the facts upon which the applicant relies and the directions which he seeks.

(2) A copy of the application and of the statement shall be sent by the Registrar to the person in default.

(3) Thereafter regulation 59 (3) and (4) shall apply.

PART XII

DISPUTES AS TO INVENTIONS MADE BY EMPLOYEES

61. Application under section 48 (1)

(1) An application under section 48 (1) of the Act to determine a dispute as to rights in respect of an invention or in respect of a patent granted or to be granted in respect thereof shall be made in form No. 36 and shall be accompanied by a copy thereof together with a statement, in duplicate, setting out fully the facts of the dispute and the relief which is sought.

(2) A copy of the application and of the statement shall be sent by the Registrar to the other party to the dispute, who within three months after receipt thereof shall file a counter-statement, in duplicate, setting out fully the grounds on which he disputes the right of the applicant to the relief sought.

(3) The Registrar shall send a copy of this counter-statement to the applicant and thereafter, subject to such directions as the Registrar may think fit to give, regulations 26 to 29 inclusive shall mutatis mutandis apply in respect of proceedings held before the Registrar, and references to the objector shall be substituted for references to the applicant and references to the applicant for references to the other party.

62. Hearing

(1) Should the Registrar decide to hear the application he shall thereafter appoint a time for the hearing and shall give the parties at least fourteen days' notice of the appointment.

(2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Registrar shall determine the matter in dispute and make such orders for giving effect to his decision as he considers expedient.

PART XIII

SURRENDER OF PATENT

63. Form of offer to surrender a patent

A notice of an offer by a patentee under section 52 of the Act to surrender his patent shall be given in form No. 37 and shall be advertised by the patentee in one issue of the Gazette.

64. Opposition

(1) At any time within two months from such advertisement any person may give notice of opposition to the Registrar in form No. 38, which shall be accompanied by a copy thereof and a statement, in duplicate, setting out fully the nature of the opponent's interest, the facts upon which he relies and the relief which he seeks.

(2) A copy of the notice and of the statement shall be sent by the Registrar to the patentee.

(3) Upon such notice of opposition being given and a copy thereof sent to the patentee, regulations 25 to 29 inclusive and regulation 43 shall mutatis mutandis apply and references to the patentee shall be substituted for references to the applicant.

PART XIV

REGISTER OF PATENTS

65. Register to record grant of patents

(1) In addition to the particulars referred to in the Act, the Registrar shall cause to be entered in the register the name, address and nationality of the patentee as the grantee thereof, the title of the invention, the date of the patent and the date of the sealing thereof, together with the full postal address for service.

(2) The Registrar may at any time enter in the register such other particulars as he may deem necessary.

66. Alteration of entries

(1) A request by a patentee for the alteration of a name, nationality, address, or address for service entered in the register in respect of his patent shall be made in form No. 39.

(2) Before acting on a request to alter a name or nationality, the Registrar may require such proof of the alteration as he may think fit.

(3) If the Registrar is satisfied that the request may be allowed, he shall cause the register to be altered accordingly.

67. Registration of assignments, etc.

(1) An application for the registration of the title of any person becoming entitled by assignment to a patent or to a share in a patent shall be made in form No. 40 by the person becoming so entitled.

(2) Application may be made in form No. 41 for entry in the register of notification of an interest by way of mortgage, licence or otherwise.

68. Copies of documents

(1) A copy of any document which is referred to in an application under regulation 67, duly certified to the satisfaction of the Registrar, shall be produced to the Registrar with the application.

(2) Unless the Registrar otherwise directs, the original of any other document so referred to shall be produced to him with the application, and a certified copy of any such document shall be lodged therewith, and such original document shall be returned to the person who produced it.

69. Correction of errors

A request under section 59 of the Act for the correction of a mistake in the register, in any patent, or application for a patent or any document lodged in pursuance of such application, or in proceedings in connexion with any patent, shall be made in form No. 42.

70. Advertisement

Where the Registrar requires notice of the nature of the proposed correction to be advertised in terms of section 59 (4) of the Act, the advertisement shall be made by publication in the Gazette of the request and the nature of the proposed correction.

71. Opposition

(1) Where such application is advertised in terms of regulation 70, notice of opposition may at any time within two months from the date of publication be given in form No. 43.

(2) Upon notice of opposition being given regulations 25 to 29 inclusive and regulation 43 shall mutatis mutandis apply in respect of the proceedings held before the Registrar under section 59 of the Act.

72. Certified copies of entries, etc.

Copies of any entry in the register, or copies of, or extracts from, patents, specifications and other public documents in the Office, or of or from registers and other records kept there, certified by the Registrar, may be furnished by the Registrar on payment of the fees prescribed in the First Schedule.

73. Lost patent

An application under section 63 of the Act for a further patent to be sealed shall be made in form No. 44 and shall be accompanied by evidence setting out fully and verifying the circumstances in which the patent was lost or destroyed or cannot be produced.

PART XV

PATENT AGENTS

74. Application for registration

(1) An application to be registered as a patent agent in terms of section 68 (2) of the Act shall be—

- (a) made by affidavit on form No. 45 sworn before a Commissioner for Oaths;
- (b) accompanied by—
 - (i) documentary proof that the applicant is entitled to be registered;
 - (ii) the appropriate fee.

(2) A certificate of the registration of a Patent Agent shall be in form No. 46.

PART XVI

MISCELLANEOUS

75. Fees

The fees to be paid in respect of the grant of patents and applications therefor and in respect of other matters relating to patents arising under the Act shall be those prescribed in the First Schedule.

76. Forms

The forms referred to in these Regulations are those set out in the Third Schedule and such forms shall be used in all cases to which they are applicable and may be modified as directed by the Registrar.

77. Size, etc., of documents

(1) All documents and copies of documents, except drawings, lodged at the Office shall, unless the Registrar otherwise directs, be written, typewritten, lithographed or printed in the English language—

- (a) upon strong white paper of a size approximately 13 inches by 8 inches, leaving a margin of at least $\frac{1}{2}$ inches on the left-hand part thereof;
- (b) in legible characters with a dark, indelible ink;
- (c) with the lines widely spaced;

(d) except in the case of affidavits, on one side only.

(2) Duplicates of any documents shall at any time be lodged, if required by the Registrar.

(3) Duplicate documents required under these Regulations may be carbon copies of the original documents:

Provided that they shall be on paper of good quality and the typing shall be black and distinct.

78. Address for service

Every person concerned in any proceedings to which these Regulations relate, and every patentee, shall furnish to the Registrar an address for service in Malawi and that address may be treated for all purposes connected with such proceedings or patent as the address of the person concerned in the proceedings or the patentee.

79. Method and proof of service

(1) Where any notice, application or other document is required to be served on any person under the Act, such service may be effected by the delivery of a copy thereof either—

(a) at the address for service furnished to the Registrar in terms of these Regulations; or

(b) to such person personally, or to his duly authorized agent; or

(c) at his residence or place of business or employment, to some responsible person there residing or employed.

(2) Service effected by any person in accordance with this regulation shall be proved by a certificate made in form No. 47 and such certificate shall be filed with the Registrar.

80. Lodging of documents

Any notice, application or other document sent to the Office by post shall not be deemed to have been given, made or lodged until it is actually received in the Office.

81. Power of Registrar to fix time and place of proceedings

The Registrar may in any proceedings held before him decide the hours, times and places at which he will sit and he may adjourn any proceedings for such time and to such place as he may think fit.

82. Agency

(1) Any application, request or notice which is required or permitted under this Act to be made or given to the Registrar, and all other communications between an applicant or a person making a request or giving a notice and the Registrar, and between the patentee and the Registrar or any other person, may be signed, made or given by or through an agent:

Provided that the Registrar is satisfied that the agent has been duly authorized so to act on behalf of such applicant, person or patentee.

(2) No power of attorney or any form of authorization need be filed at the office or exhibited to the Registrar in connexion with any matter or proceeding under these Regulations unless the Registrar otherwise directs.

83. Refusal to recognize agent

The Registrar may refuse to recognize as agent in respect of any proceedings under this Act a person who neither resides nor maintains a place of business in Malawi.

84. Signature of documents

(1) A document purporting to be signed for or on behalf of a partnership shall contain the names of all the partners in full and may be signed by a partner, or by any other person who satisfies the Registrar that he is authorized to sign the document.

(2) A document purporting to be signed for or on behalf of a body corporate shall be signed by a director or by the secretary or other principal officer of the body corporate, or by any other person who satisfies the Registrar that he is authorized to sign the document.

85. Amendment of documents

Any document lodged in any proceedings before the Registrar may, if the Registrar thinks fit, be amended, and any irregularity in procedure may be rectified on such terms as he may direct.

86. Power of Registrar to waive requirements

(1) Where, under these Regulations, any person is required to do any act or thing, or any document or evidence is required to be produced or lodged, the Registrar may, upon the production of such evidence and subject to such terms and conditions as he thinks fit, modify or dispense with the doing of the act or thing or the production or lodging of the document or evidence if he is satisfied that it is reasonable so to do.

(2) The Registrar may allow an application for a patent or a provisional or complete specification, although not in accordance with these Regulations, to be left on such terms and conditions as he thinks fit. In any such case the Registrar shall require the applicant to comply with these Regulations within the time specified by him. Until the prescribed requirements are complied with no further action shall be taken by the Registrar in respect of the application.

87. Order of Court or Tribunal

(1) Where an order relating to a patent has been made by any Court or by the Tribunal, the person in whose favour such Court or order has been made shall forthwith file at the Office an office copy of such order together with an application in form No. 48.

(2) The specification shall thereupon be amended or the register rectified or the purport of such order shall otherwise be duly entered in the register, as the case may be.

88. Days and Hours of business

The Office shall be open to the public and the register shall be open to inspection on payment of the fee specified in item 48 of the Hours of First Schedule, every weekday, except Saturday, between the hours of business nine and twelve, and half-past one and half-past three, and on Saturday between the hours of nine and twelve; except on public holidays.

FIRST SCHEDULE reg. 75, G.N. 36/2000, 3/2006

PAYABLE TO THE OFFICE

Corresponding Patents Form

Item	Matter	Amount	No.
		K t	
1.	On application for a patent (non-convention)	2,000 00	1
2.	On convention application in respect of each application for protection in a convention country	2,000 00	2
3.	On application for a patent of addition	1,000 00	3
4.	On application for a grant of an additional patent instead of an independent patent	1,000 00	4
5.	On lodging specification—		
	(a) Provisional	200 00	5
	(b) Complete	1,000 00	6
6.	For extension of the period for lodging complete specification	500 00	7
7.	On request for the postdating of an application under section 17 (1) of the Act	300 00	8
8.	For extension of time under section 20 of the Act—		
	(a) not exceeding one month	500 00	9
	(b) not exceeding two months	700 00	
	(c) not exceeding three months	800 00	
9.	For each extension of time under section 21 of the Act	300 00	10
10.	On application for withdrawal of acceptance	300 00	11

- | | | | | |
|-----|---|-------|----|----|
| 11. | On notice of opposition to grant of patent by objector | 1,000 | 00 | 12 |
| 12. | On claim under section (23) (1) of the Act for application to proceed in name of claimants | 450 | 00 | 13 |
| 13. | On application for directions under section 23 (5) of the Act | 800 | 00 | 14 |
| 14. | On a request for sealing of a patent | 1,000 | 00 | 15 |
| 15. | On application for extension of the period for requesting the sealing of a patent under proviso (d) to section 25 (2) of the Act— | | | |
| | (a) not exceeding one month | 400 | 00 | 16 |
| | (b) not exceeding two months | 500 | 00 | |
| | (c) not exceeding three months | 600 | 00 | |
| 16. | On application for extension of the period for requesting the sealing of a patent under proviso (e) to section 25 (2) of the Act— | | | |
| | (a) not exceeding one month | 400 | 00 | 17 |
| | (b) not exceeding two months | 500 | 00 | |
| 17. | On application under section 26 of the Act for amendment of patent | 500 | 00 | |
| | | 18 | | |
| 18. | On application for certificate of payment of renewal fee— | | | |
| | (a) 4th, 5th and 6th year, each year | 500 | 00 | 19 |
| | (b) 7th, 8th and 9th year, each year | 600 | 00 | |
| | (c) 10th and 11th year | 700 | 00 | |
| | (d) 12th and 13th year | 800 | 00 | |
| | (e) 14th year | 900 | 00 | |
| | (f) 15th year | 1,000 | 00 | |
| | (g) 16th year | 1,100 | 00 | |

(One-half only of these fees is payable on patents endorsed “Licences of Right”).

- | | | | | |
|-----|---|-----|----|----|
| 19. | On extension of the period for payment of renewal fees— | | | |
| | (a) not exceeding one month | 400 | 00 | 20 |

	(b)	not exceeding two months	500	00	
	(c)	not exceeding six months	600	00	
20.		Certificate of payment of renewal fee	—		21
21.		On application for restoration of lapsed patent—			
	(a)	if made within 1 year of lapsing	1,000	00	22
	(b)	if made after 1 year of lapsing	1,200	00	
22.		On notice of opposition to application for restoration of lapsed patent	1,000	00	
			23		
23.		On application for endorsement of patent “Licences of Right”	600	00	24
24.		On application for settlement of terms of licence under patent endorsed “Licences of Right”	700	00	25
25.		On application by patentee for cancellation of endorsement of patent “Licences of Right” under section 36 (1) of the Act	600	00	26
26.		On application for cancellation of endorsement “Licences of Right” under section 36 (2) of the Act	600	00	27
27.		On notice of opposition to cancellation of endorsement of patent “Licences of Right”	1,000	00	28
28.		On application for compulsory licence under section 37 of the Act	1,500	00	
			29		
29.		On application for amendment of provisional specification or of complete specification not yet accepted	400	00	30
30.		On application for amendment of complete specification after acceptance up of sealing—			
	(a)	by applicant	500	00	31
	(b)	after sealing, by patentee	600	00	
31.		Form of advertisement of request to amend specification	300	00	32
32.		On notice of opposition to amendment, by objector	1,500	00	33
33.		On application for directions under section 47 (6) of the Act	1,500	00	34

34.	On application for directions under section 47 (7) of the Act	1,500	00	35
35.	On application under section 48 (1) of the Act to determine disputes	1,500	00	
	36			
36.	On offer to surrender a patent under section 52 of the Act	300	00	37
37.	On notice of opposition to surrender a patent	1,000	00	38
38.	For altering name, nationality, address or address for service in register, for each patent	300		
	00		39	
39.	On application for registration of an assignment under section 58 of the Act	1,000	00	
	40			
40.	On request to enter notice of interest in register	1,000	00	41
41.	On request to correct a clerical error—			
	(a) up to sealing	300	00	42
	(b) after sealing	600	00	
42.	On notice of opposition to the correction of a clerical error	1,500	00	43
43.	For duplicate of patent	450	00	44
44.	On application for registration of patent agent	2,000	00	45
45.	Form of certificate of registration of patent agent	1,000	00	46
46.	Certificate of service	500	00	48
47.	Application for entry of order of court or tribunal	500	00	—
48.	For inspection of register	200	00	—
49.	For certifying office copies, MSS, or photographic or printed matter—			
	(a) under seal	500	00	—
	(b) other	450	00	—
50.	For inspection and making copies of documents, in respect of each application of patent	200		
	00		—	
51.	For typewritten copy of any specification or document, for every 100 words	200	00	
	—			

- 52. For photographic copy of any specification or other document or drawing, per sheet
Contract price at reasonable cost as fixed by the Registrar from time to time
- 53. Power to Attorney 200 00

SECOND SCHEDULE

FORM OF PATENT

To all whom these presents shall come, the President of the Republic of Malawi sends greetings:

WHEREAS

.....

.....

(hereinafter called the "patentee") has pursuant to the Patents Act, made application for Letters Patent for an invention for and has made a declaration that he is the owner of that invention and that there is no lawful ground of objection to the grant of a patent to him and has by a complete specification fully described and ascertained the said invention.

NOW THEREFOR, the President on behalf of the Government of Malawi, does by these Letters Patent give and grant to the patentee special licence, full power, sole privilege and authority that the patentee by himself, his agent or licensees and no others may at all times hereafter during the term herein mentioned make, use, exercise and vend the said invention within Malawi in such manner as to him seems meet, and the patentee shall have and enjoy the whole profit and advantage from time to time occurring by reason of the said invention during the term of Sixteen Years from

Provided always that these Letters Patent shall be granted subject to the provisions of the said Act.

In witness whereof the President caused these Letters to be made Patent and to be sealed as of the day of one thousand nine hundred and

Dated this day of, 19.....

.....

Registrar of Patents

THIRD SCHEDULE reg. 76

FORMS

Form Matter Corresponding Fee

Item No.

1. Application for a patent 1
2. Convention application for a patent 1
3. Application for a patent of addition 3
4. Application for the grant of a patent of addition instead of an independent patent 4
5. Provisional specification—
6. Complete specification 5
7. Application for extension of time for lodging a complete specification 6
8. Request for the post-dating of an application 7
9. Application for extension of time for acceptance of a complete specification 8
10. Request for postponement of acceptance of complete specification 9
11. Application for withdrawal of acceptance 10
12. Notice of opposition to grant of patent 11
13. Claim under section 23 (1) of the Act to proceed as an applicant or co-applicant 12
14. Application for directions under section 23 (5) of the Act as to proceeding with an application for a patent in case of dispute between joint applicants 13
15. Request for the sealing of a patent 14
16. Application under proviso (d) to section 25 (2) of the Act for extension of the period for making a request for sealing of a patent 15
17. Application under proviso (e) to section 25 (2) of the Act for an extension of the period for making a request for the sealing of a patent 16
18. Application under section 26 of the Act for the amendment of a patent 17
19. Payment of renewal fee 18
20. Application for extension of the period for payment of renewal fee 19
21. Certificate of payment of renewal fee —
22. Application for the restoration of a lapsed patent 21
23. Notice of opposition to an application for the restoration of a lapsed patent 22

24. Voluntary application for endorsement of patent "Licences of Right" 23
25. Application under section 35 (2) (a) or (b) of the Act for settlement of terms of licence under patent endorsed "Licences of Right" 24
26. Application under section 36 (1) of the Act by patentee for cancellation of endorsement of a patent "Licences of Right" 25
27. Application under section 36 (2) of the Act by any person interested for cancellation of endorsement of patent "Licences of Right" 26
28. Notice of opposition by patentee or by any person interested for cancellation of endorsement of a patent "Licences of Right" 27
29. Application for compulsory licence under section 37 of the Act 28
30. Application under section 43 of the Act for amendment of a provisional specification or of a complete specification not yet accepted 29
31. Application under section 43 of the Act for amendment of complete specification after acceptance 30
32. Form of advertisement of request to amend specification 31
33. Notice of opposition to amendment of specification under section 43 (5) of the Act 32
34. Application for directions under section 47 (6) of the Act 33
35. Application for directions under section 47 (7) of the Act 34
36. Application under section 48 (1) of the Act to determine a dispute between employer and employee as to rights in an invention 35
37. Offer to surrender a patent under section 52 of the Act 36
38. Notice of opposition under section 52 of the Act to offer to surrender a patent 37
39. Request for alteration of a name or nationality or an address or an address for service in the register of patents 38
40. Application for registration of assignment 39
41. Request to enter in the register of patents a notice of an interest in a patent 40
42. Request for correction of clerical error 41
43. Notice of opposition to the correction of a clerical error 42
44. Application for duplicate of Letters Patent 43
45. Application for registration as a patent agent under section 68 of the Act 44

- 46. Certificate of registration of patent agent —
- 47. Certificate of service —
- 48. Application for entry of order of Court or Tribunal 47
- 49. Form of advertisement—general —

Patents Form No. 1

Sections 11 and 12

Regulations 3 (1)

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K30

Application for a Patent (Non-Convention)

I/We(1)

.....

..... (1) State full name and address of applicant(s)

being a national/nationals of

do hereby declare that I am/we are the owner(s) of an invention in respect of Malawi (2) by having invented it/by having acquired it by assignment, which invention is described in the accompanying (2) provisional/complete specifications under

the title (3)

..... (2) Delete if not applicable

(3) Here insert title of invention

that (2) I am/we are the assignee(s)/legal representative(s) of (4) (4)
Here insert name(s) of inventor(s)

.....

.....

who claim(s) to be the inventor(s) thereof, and that to the best of my/our knowledge and belief there is no lawful ground of objection to the grant of a patent to me/us on this application and I/we pray that a patent may be granted to me/us for the invention.

Dated this day of, 19.....

(5) (5) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

The Registrar,

The Patent Office,

P.O. Box 100,

Blantyre

Patents Form No. 2

Sections 8, 11, 12

Regulations 3 (2)

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K30

Convention Application for a Patent

(This is a comprehensive form and points inappropriate to a particular application should be deleted)

I/We(1).....

.....

.....

being a national/nationals of (1) State full name and address of applicant(s)

do hereby declare that I am/we are the owner(s) of an invention in respect of Malawi (2) by having invented it/by having acquired it by assignment, which invention is entitled (3)

..... (2) Delete if not applicable

and which invention is described in the accompanying complete specification, and that (2) I am/we are the assignee(s)/legal representative(s) of (4)

..... (3) Here insert title of invention

who claim(s) to be the inventor(s) thereof; that an application or applications for protection for the invention or inventions has or have been made in the following country or countries and on the following effective date or dates, namely— (4) Here insert name(s) of inventor(s)

in (5) on (6) (5) Here insert the name of the convention country in which the first application was made

numbered (7)

in (5) on (6) (6) Here insert the official date of the first application in a convention country

numbered (7)

in (5) on (6) (7) Here insert official number of first application in convention country

numbered (7)

and that the said application or each of the said applications was the first application in a convention country in respect of the relevant invention by me/us or by any person from whom I/We derive title, and that the applicant(s) in the abovementioned country/countries qualify under (8) Article 2/3 of the Convention by reason of being (8) a national of/domiciled in/having a place of business in a member state, namely and that I/We qualify under the said (8) Article 2/3; by reason of being (8) a national of/domiciled in/having a place of business in a member state, namely and that to the best of my/our knowledge and belief there is no lawful ground of objection to the grant of a patent to me/us on this application and that I/We pray that a patent may be granted to me/us for the invention in priority to other applicants, and that such patent shall have the date (6)

..... and (8) I/We declare the said invention(s) is/are an improvement in or modification of my/our invention for which a patent was applied for/granted under No. (9)and (8) I/We pray that a patent may be granted to me/us for the said invention(s) as a patent of addition and request that the term of such further patent may be

the same as that of the patent for the main invention or so much of that term as is unexpired. (8)
Delete whichever does not apply

(9) Insert number of main patent or patent application

Dated this day of, 19.....

(10) (10) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

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The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 3

Sections 11, 12 and 31 (1)

Regulations 3 (3)

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee:K30

Application for a Patent of Addition

I/We (1)

.....

..... (1) State full name and address of applicant(s)

being a national/nationals of do hereby declare that I am/we are the owner(s) of an invention the title of which is (2) (2) Here insert title of invention

and that I am/we are the (3) assignee(s)/legal representative(s) of (4)

.....

..... (3) Delete if not applicable

who claim(s) to be the inventor(s) thereof; that the said invention is an improvement in or modification of my/our invention for which a patent was applied for/granted under number (5)

..... (4) Here insert name(s) of inventor(s)

that to the best of my/our knowledge and belief there is no lawful ground of objection to the grant of a patent to me/us on this application and I/we pray that a patent may be granted to me/us for the said invention as a patent of addition and request that the term of such further patent may be the same as that of the patent for the main invention or so much of that term as is unexpired. (5) Here insert number of main patent or patent application

Dated this day of, 19.....

(6) (6) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

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The Registrar

The Patent Office

P.O. Box 100

Blantyre

Regulations 3 (4)

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee:K60

Application for the Grant of a Patent of Addition instead of an Independent Patent

I/We (1)

.....

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being a national/nationals of

hereby request that patent No.

of which I am/we are the patentee(s) be revoked and that instead thereof a patent of addition to patent No. of which I am/we are also the patentee(s) be granted to me/us, such patent of addition to bear the same date as the patent so revoked. (1) State full name and address of patentee(s)

Dated this day of, 19.....

(2) (2) To be signed by patentee(s) or his/their agent

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My/Our address for service in Malawi

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The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 5

Regulations 3 (4)

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K5

Provisional Specification

(1)

.....

..... (1) State title verbally agreeing with
that in the application form

(2) I/We

.....

..... (2) State full name, description and
address of applicant(s) as in application form

do hereby declare this invention to be described in the following statement—

(3)

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..... (3) Here begin description of the invention. The continuation of the specification should be upon paper of foolscap size on one side only, with the lines well spaced and with a margin of one inch and a half on the left-hand part of the paper. The specification must be signed by the applicant(s) or his/their agent on the last sheet and dated (thus):

“Dated this day of 19.....”

Patents Form No. 6

Regulations 3 (5)

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K130

Complete Specification

(To be furnished in duplicate)

(1)

.....

..... (1) State title verbally agreeing with that in the application form.

(2) I/We

.....

.....

(2) State full name, description and address of applicant(s) as in application.

do hereby declare this invention, the manner in which and the method by which it is to be performed, to be particularly described and ascertained in and by the following statement—

(3)

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..... (3) Here begin full description of invention. The continuation of the specification should be upon paper of foolscap size on one side only with the lines well spaced and with a margin of one inch and half on the left-hand part of the paper. The, completion of the description should be followed by the words “Having now particularly described and ascertained my /our said invention and in what manner the same is to be performed, I/we declare that what I/we claim is after which should be written the claim or claims numbered consecutively) (see note below). The specification and the duplicate thereof must be signed by the applicant(s) or his/ their agent on the last sheet and dated (thus): “Dated this day of 19.....”

NOTE.—The claims must relate to a single invention, must be clear and succinct and must be fairly based on the matter disclosed in the specification. They should form in brief a clear statement of that which constitutes the invention. Applicants should be careful that their claims include neither more nor less than they desire to protect by their patent. Any unnecessary multiplicity of claim or prolixity of language should be avoided. Claims should not be made for the efficiency or advantages of the invention.

Patents Form No. 7
Section 13 (2)
Regulation 9
MALAWI
PATENTS ACT

(CAP. 49:02)

Fee: K50

Application for Extension of Time for lodging a Complete Specification

I/We (1)

.....

hereby in respect of application No.,

request an extension of time until,

in which to lodge a complete specification. (1) State name and address of applicant(s)

Dated this day of, 19.....

(2) (2) To be signed by applicant(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 8

Section 17 (1)

Regulation 10

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K20

Request for the Post-dating of an Application

I/We (1)

.....

hereby request that application No. lodged

on the of 19....., be deemed

to have been made on the following date, namely, the day of, 19..... (1)

State name and address of applicant(s)

Dated this day of, 19.....

(2) (2) To be signed by applicant(s) or his/their agent

.....

.....

My/Our address for service in Malawi

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The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 9

Section 20 (1)

Regulation 20

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: Item 8

Application for Extension of Time for Acceptance of a Complete Specification

I/We hereby apply for months' extension of time for acceptance of the complete specification upon application No. dated

Dated this day of, 19.....

(1) (1) To be signed by applicant(s) or his/their agent

.....

.....

My/Our address for service in Malawi

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.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 10

Section 21 (1)

Regulation 21

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K20

Request for Postponement of Acceptance of Complete Specification

I/We hereby request a postponement of the acceptance of the complete specification of application

No. dated to a date not later than the expiration of
..... months from the date of lodging of the application.

Dated this day of, 19.....

(1) (1) To be signed by applicant(s) or his/their agent

.....

My/Our address for service in Malawi

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The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 11

Regulation 21

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K15

Application for Withdrawal of Acceptance

I/We (1)

.....

.....

apply for withdrawal of the acceptance of the specification of patent application

No. (1) State name and address of applicant(s)

My/Our reasons for desiring such withdrawal are as follows—

(2)

.....

.....

.....

.....

..... (2) The circumstances and grounds must be stated in full

Dated this day of, 19.....

(3) (3) To be signed by the applicant(s) or his/their agent

.....

.....

My/Our address for service in Malawi

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The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 12

Section 22 (1)

Regulation 24

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K90

Notice of Opposition to Grant of Patent

I/We (1)

.....

.....

hereby give notice of opposition to the grant of Letters Patent upon application No.

applied for by

.....

.....

upon the ground (2)

.....

.....

.....

.....

(1) State full name and address

(2) State upon which of the grounds of opposition permitted by section 22 the grant is opposed and identify all specifications and other publications relied upon

Dated this day of, 19.....

(3) (3) To be signed by objector(s) or his/their legal practitioner

.....

My/Our address for service in Malawi

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The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 13

Section 23 (1)

Regulation 31 (1)

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K30

Claim under section 23 (1) of the Act to proceed as an Applicant or Co-applicants

I/We (1)

..... (1) State name of claimant(s)

hereby request that patent application No.(2) dated

..... made by (2) State the number and date of
the application for patent

(3)

..... (3) State name of applicant(s) for
patent

may proceed in the name(s) of (4)

.....

.....

..... (4) Here insert name, address, and
nationality of the person or persons in whose name(s) it is requested that the application shall
proceed

I/We claim to be entitled to proceed as applicant(s) for the patent by virtue of (5)

.....

.....

.....

..... (5) Give the particulars of such documents, giving its date and the parties to the same, and showing how the claim here made is substantiated

And in proof whereof I/we transmit the accompanying (6)

.....

..... (6) State the nature of the document. The certified copy should be written, typewritten or printed on foolscap paper

My/Our address for service in Malawi

.....

.....

(7) (7) To be signed by claimant(s) or his/their agent

.....

I/We (8)

.....

consent to the above request. (8) To be signed by the applicant(s) or his/their agent

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 14

Section 23 (5)

Regulation 32

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K100

Application for Directions under section 23 (5) of the Act as to proceeding with an Application for a Patent in Case of Dispute between Joint Applicants

I (1)

.....

..... (1) State full name and address

being a joint applicant with (2)

.....

..... (2) State name and address of other applicant(s)

in the application for a patent No. hereby declare that a dispute has arisen between us and request that an order of the Registrar be made giving directions for enabling the application to proceed.

Particulars of the matter in dispute are given in the annexed statement setting out the facts upon which I rely and the relief which I seek.

Dated this day of, 19.....

(3) (3) To be signed by applicant or his agent

My/Our address for service in Malawi

.....

.....

.....

NOTE—The application must be accompanied by a statement of case and by copies of the application and statement as required by Regulation 32.

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 15

Section 25 (1)

Regulation 33

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K50

Request for the sealing of a Patent

I/We (1)

.....

request that a patent may be sealed on my/our application No. of 19....., and I/we hereby transmit the prescribed fee for sealing, and further request that the following may be entered on the register as my/our address for service in Malawi. (1) State name of applicant(s)

.....

.....

.....

Dated this day of, 19.....

(2) (2) To be signed by the applicant(s) or his/their agent

.....

.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 16

Section 25 (2)

Regulation 34 (1)

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: Item 15

Application under proviso (d) to section 25 (2) of the Act for Extension of the Period for making a Request for Sealing of a Patent

I/We hereby apply for months' extension of time for the sealing of a patent upon application No. dated

Dated this day of, 19.....

(1) (1) To be signed by applicant(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 17

Section 25 (2)

Regulation 34 (2)

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: Item 16

Application under proviso (e) to section 25 (2) of the Act for an Extension of the Period for making a Request for the Sealing of a Patent

I/We hereby apply for (1) months' extension of the period for the sealing of a patent upon application No. The circumstances and the grounds upon which the extension is applied for are as follows— (1) Not more than six months' extension may be applied for at one time

(2)

.....

..... (2) The circumstances and grounds must be stated in detail

I/We hereby declare that—

(a) an extension of time of three months for making a request for sealing has been allowed under proviso (d) to section 25 (2) of the Act and has not yet expired: (a) and (b) Delete the words which are not applicable

(b) an extension of time of months for making a request for sealing has been allowed under proviso (e) to section 25 (2) of the Act and has not yet expired.

Dated this day of,19.....

(3) (3) To be signed by the applicant (s) or his/their agent

.....

My/Our address for service in Malawi

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.....

.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 18

Section 26

Regulation 36

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K50

Application under section 26 of the Act for the Amendment of a Patent

I/We (1)

.....

..... (1) State name and address

hereby request that Letters Patent No.

granted to

.....

.....

may be amended by substituting the name of (2)

.....

.....

.....

for the name of the grantee. (2) State name and address of person to whom patent should have been granted

Dated this day of, 19.....

(3) (3) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

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NOTE—Application to be accompanied by evidence verifying the statements made therein and by the Letters Patent.

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 19

Section 30 (4)

Regulations 37, 47

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: Item 18

Payment of Renewal Fee

I/We (1)

..... (1) State name of person(s)
tendering the fee

hereby transmit the fee prescribed for the continuation in force of (2)

.....

..... (2) Here insert name of patentee(s)

Patent No. for a further period of and
request that the Certificate of Payment may be sent to me/us at (3)

.....

..... (3) Here insert full address to which
certificate is to be sent

Dated this day of, 19.....

NOTE.—If the address given above is not that entered in the register as the patentee’s address for
service and it is desired to amend the entry in the register, application therefor must be made in
Patents Form No. 39.

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 20

Section 30 (4)

Regulation 39

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: Item 19

Application for Extension of the Period for Payment of Renewal Fee

I/we hereby apply for an extension of month(s) of the period prescribed
for payment of the years’ renewal fee upon my/our Patent No.

.....

(1) (1) Here insert name and full address to which receipt is to
be sent

.....

.....

Dated this day of 19...

(2) (2) To be signed by the applicant(s) or his/their agent

.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 21

Regulation 40

MALAWI

PATENTS ACT

(CAP. 49:02)

Certificate of Payment of Renewal Fee

Letters Patent No.

This is to certify that did this
..... day of, 19..... make the prescribed payment of

K in respect of a period of from

.....

.....

Registrar of Patents

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 22

Section 33

Regulation 41

MALAWI

PATENTS ACT

(CAP. 49:02)

Item 31

Application for the Restoration of a Lapsed Patent

I/We

of

being the owner(s) of Patent No. hereby apply for an order for the restoration of the said patent.

The circumstances which have led to the failure to pay the renewal fee of (1) on or before the (1) Here state amount of fee

(2) are as follows— (3)

.....
.....
.....
.....
.....
.....
.....

..... (2) State last day when fee was due

(3) State circumstances. The application must be accompanied by one or more affidavits setting out fully all the material facts on which the applicant(s) base(s) his/ their case

Dated this day of, 19.....

(4) (4) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

.....
.....
.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 23

Section 33 (4)

Regulation 42

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K90

Notice of Opposition to an Application for the Restoration of a Lapsed Patent

I/We (1)

.....

..... (1) Here state full name and address
of objector(s)

hereby give notice of opposition to the application for restoration of Patent No.
for the following reasons (2)

.....

.....

.....

.....
.....
.....

..... (2) Here state reasons for opposition. The notice must be accompanied by a copy thereof together with a statement, in duplicate, setting out fully the nature of the objector's(s) interest and the facts upon which he relies/ they rely

Dated this day of, 19.....

(3) (3) To be signed by the objector(s) or his/ their agent

.....

My/Our address for service in Malawi

.....
.....
.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 24

Section 35 (1)

Regulation 44

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K60

Voluntary Application for Endorsement of Patent "Licences of Right"

I/We (1)

.....

..... (1) State name and address of
Patentee(s)

being the owner(s) of Patent No., hereby request that the said patent may be endorsed
“Licences of Right”, I am/we are not precluded by contract from granting licences under the patent.

Dated this day of, 19.....

(2) (2) To be signed by the patentee(s) or his/their
agent

.....

My/Our address for service in Malawi

.....

.....

.....

NOTE—The application must be accompanied by evidence verifying the statement in the application
and by the Letters Patent.

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 25

Section 35 (2)

Regulation 45

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K100

Application under section 35 (2) (a) or (b) of the Act for Settlement of Terms of Licence under Patent endorsed "Licences of Right"

I/We (1)

.....

..... (1) State name and address of applicant(s)

hereby apply for settlement of the terms of a licence to be granted under Patent No.

I am/We are the—

(a) patentee(s); (a), (b), (c) Delete the two categories not applicable

(d) Delete if the applicant(s) is/are not the holder(s) of a licence

(b) person(s) requiring a licence

(c) holder(s) of a licence under the patent granted before endorsement.

I/We (d) request that an order may be made entitling me/us to exchange my/our existing licence for a licence to be granted upon the terms as settled.

Dated this day of,19.....

(2) (2) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

NOTE.—The application must be accompanied by a copy thereof and a statement of case in duplicate.

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 26

Section 36 (1)

Regulation 47

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K60

Application under section 36 (1) of the Act by Patentee for Cancellation of Endorsement of a Patent
“Licences of Right”

I/We (1)

.....

..... (1) State name and address of
patentee(s)

being the owner(s) of Patent No., hereby request that the endorsement of the said
patent as “Licences of Right” may be cancelled, and I/we enclose Patents Form No. 19 bearing the
balance of all renewal fees which would have been payable if the patent had not been endorsed.

(a), (b) Delete whichever is not applicable

I/We declare (a) that there is no existing licence under the patent: or (b) all the licensees consent to
this application.

Dated this day of, 19.....

(2) (2) To be signed by the patentee(s) or his/ their agent

.....

My/Our address for service in Malawi

.....

.....

.....

NOTE—The application must be accompanied by evidence in support of the application.

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 27

Section 36 (2)

Regulation 48

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K60

Application under section 36 (2) of the Act by any Person interested for Cancellation of Endorsement of Patent "Licences of Right"

I/We (1)

.....

..... (1) State name and address of applicant(s)

hereby claim that the endorsement of Patent No. "Licences of Right" is and was at the time of the endorsement contrary to a contract in which I am/we are interested and I/we request that such endorsement may be cancelled.

Dated this day of, 19.....

(2) (2) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

.....
.....
.....

NOTE—The application must be completed in duplicate and accompanied by a statement of case in duplicate.

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 28

Section 36 (5)

Regulation 49

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K90

Notice of Opposition by Patentee or by any Person interested to Cancellation of Endorsement of a Patent "Licences of Right"

I/We (1)

.....

..... (1) State name and address of
opponent(s)

hereby give notice of opposition to the application for the cancellation of the endorsement
"Licences of Right" in respect of Patent No.

Dated this day of, 19.....

(2) (2) To be signed by the opponent(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

NOTE—The notice must be accompanied by a copy thereof and a statement of case in duplicate.

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 29

Section 37

Regulation 50

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee:K100

Application for Compulsory Licence under section 37 of the Act

I/We (1)

.....

.....

applicant(s)

(1) State name and address of

hereby apply for an order of the Tribunal for a licence to be granted to me/us in respect of Patent No. for the following reasons—

(2)
.....
.....
.....
.....

..... (2) State the nature of the applicant's(s') interest, the facts upon which he relies/they rely and the grounds upon which the application is made

Dated this day of, 19.....

(3) (3) To be signed by the applicant(s) or his/their legal practitioner

.....

My/Our address for service in Malawi

.....
.....
.....

NOTE—The application must be accompanied by evidence verifying the statements set out in the application.

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 30

Section 43

Regulation 54

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K20

Application under section 43 of the Act for Amendment of a Provisional Specification or of a Complete Specification not yet accepted

I/We (1)

.....

..... (1) State full name and address of applicant(s)

seek leave to amend the provisional/complete specification of Patent Application No. as shown in red ink in the certified copy of the original specification hereunto annexed.

My/Our reasons for making this amendment are in detail as follows—

.....

.....

.....

.....

..... (2) State full particulars of the reasons for seeking amendment

Dated this day of, 19.....

(3) (3) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 31

Section 43

Regulation 55

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: Item 30

Application under section 43 of the Act for Amendment of Complete Specification after Acceptance

I/We (1)

.....

..... (1) Here state full name and address
of applicant(s)

seek leave to amend the specification of Letters Patent No. / Patent Application No.
..... as shown in red ink in the certified copy of the original specification hereunto
annexed.

I/We (2) declare that no action for infringement or proceedings for
the revocation of the Letters Patent in question are pending. (2) These words are to be struck out
when Letters Patent have not been sealed

My/Our reasons for making this amendment are as follows—

(3)

.....

..... (3) State full particulars of the
reasons for making amendment

Dated this day of, 19.....

(4) (4) To be signed by applicant(s) or patentee(s) or his/ their agent

.....

My/Our address for service in Malawi

.....

.....

.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 32

Section 43

Regulation 55

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K10

(Form of advertisement of request to amend specification)

Application to amend Specification

I/We (1)

.....

..... (1) State full name and address of

applicant(s)

seek leave to amend by way of (2)

the specification of Letters Patent/Application No.

for (3)

..... (2) State whether by way of disclaimer, correction or explanation

(3) Title of invention

A copy of the original specification, showing in red ink the proposed amendment, is now open to public inspection at the Patent Office.

A notice of opposition (in Patents Form No. 33) may be filed at the Patent Office within three months from the date of this advertisement.

Dated this day of, 19.....

(4) (4) To be signed by applicant(s) or his/their agent

.....

Patents Form No. 33

Section 43 (5)

Regulation 57

MALAWI

PATENTS ACT

(CAP. 49:02)

Fee: K90

Notice of Opposition to Amendment of Specification under section 43 (5) of the Act

I/We (1)

.....

..... (1) State full name and address of objector(s)

hereby give notice of opposition to the proposed amendment of the specification of Letters Patent/Patent Application No., for the following reasons—

(2)

.....
.....
.....
.....
.....

(2) Here state reasons of opposition

Dated this day of, 19.....

(3) (3) To be signed by objector(s) or his/their agent

.....

My/Our address for service in Malawi

.....
.....
.....

The Registrar
The Patent Office
P.O. Box 100
Blantyre

Patents Form No. 34

MALAWI

Section 47 (6)

Regulation 59

PATENTS ACT

(CAP. 49:02)

Fee: K100

Application for Directions under section 47 (6) of the Act

I/We (1)

.....

..... (1) State name and address of
patentee(s)

hereby apply for the following directions in respect of Patent No.

(2)

..... (2) State the directions sought

Dated this day of, 19.....

(3) (3) To be signed by the patentee(s) seeking
directions or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

NOTE—The application must be accompanied by a statement of case and by copies of the
application and statement as required by regulation 59.

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 35

MALAWI

Section 47 (7)

Regulation 60

PATENTS ACT

(CAP. 49:02)

Fee: K100

Application for Directions under section 47 (7) of the Act

I/We (1)

.....

..... (1) State name and address of
patentee or joint patentees

hereby apply for directions in respect of the failure of (2)

.....

to comply with the directions of the Registrar given under section 47 (6) of the Act on the
day of 19..... in the following manner— (2) State name of person in default

(3) (3) State the directions sought

.....

Dated this day of, 19.....

(4) (4) To be signed by the patentee(s) or his/ their
agent

.....

My/Our address for service in Malawi

.....

.....

.....

NOTE—The application must be accompanied by a copy thereof and a statement of case in
duplicate..

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 36

MALAWI

Section 48 (1)

Regulation 61

PATENTS ACT

(CAP. 49:02)

Fee: K100

Application under section 48 (1) of the Act to determine a Dispute between Employer and Employee as to Rights in an Invention

I/We (1)

.....

..... (1) State name and address of applicant(s)

hereby declare that in respect of the rights in the invention for which an application for a patent was made by

and numbered, (2) and upon which a patent

No. has been granted, a dispute has arisen between

me/us and (3)

..... and I/we hereby apply to the Registrar/Patents Tribunal to determine the dispute. (2) Delete if a patent has not been granted

(3) State name and address of other party to dispute

The facts of the dispute and the relief which I/we seek are set out fully in the accompanying statement.

Dated this day of, 19.....

(4) (4) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

.....
.....
.....

NOTE—Application must be accompanied by a copy thereof and a statemen in duplicate setting out the facts of the dispute and the relief which is sought.

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 37

MALAWI

Section 52 (1)

Regulation 63

PATENTS ACT

(CAP. 49:02)

Fee: K10

Offer to surrender a Patent under section 52 (1) of the Act

I/We (1)

.....

..... (1) State full name and address of
patentee(s)

hereby offer to surrender Patent No.

I/We declare that no action for infringement, proceeding for revocation or proceeding in which the validity of the patent or of a clause in the complete specification is disputed, is pending.

My/Our reasons for making this offer are

.....
.....
.....

Dated this day of, 19.....

(2) (2) To be signed by the patentee(s) or his/ their agent

.....

My/Our address for service in Malawi

.....
.....
.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 38

MALAWI

Section 52 (2)

Regulation 64

PATENTS ACT

(CAP. 49:02)

Fee: K90

Notice of Opposition under section 52 (2) of the Act to offer to surrender a Patent

I/We (1)

.....

..... (1) State full name and address of
opponent(s)

hereby give notice of opposition to the offer to surrender Patent No. for the following
reasons (2) (2) State briefly the reasons for opposition

.....

.....

Dated this day of, 19.....

(3) (3) To be signed by the opponent(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

NOTE—The application must be accompanied by a copy thereof and a statement of case in
duplicate.

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 39

MALAWI

Section 6

Regulation 66

PATENTS ACT

(CAP. 49:02)

Fee: K10

Request for Alteration of a Name or Nationality or an Address or an Address for Service in the Register of Patents

In the matter of Patent No.

I/We (1)

.....

..... (1) State full name and address of applicant(s)

hereby request that the (2) name, nationality, address, address for service, now upon the register of patents may be altered to (3)

.....

..... (2) Strike out words not applicable

(3) Insert name, nationality, address or address for service, as the case may be

Dated this day of, 19.....

(4) (4) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

NOTE—Where the request is for alteration in a name or nationality, proof of the alteration must be furnished.

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 40

MALAWI

Section 58 (2)

Regulation 67 (1)

PATENTS ACT

(CAP. 49:02)

Fee: K20

Application for Registration of Assignment

I/We (1)

.....

..... (1) State full name and address of applicant(s)

hereby request that you will enter my/our name in the register of patents as proprietor/co-proprietor of Patent No. at present registered in the name of (2)

.....

..... (2) Here give name of registered proprietor(s)

(3) Here specify the particulars of each document, giving its date, and the parties to the same, and showing how the claim here made is substantiated

(4) Here insert the nature of the document

I/We claim to be so entitled by virtue of (3)

.....

.....

.....

.....

And in proof whereof I/we transmit the accompanying (4)

.....

Dated this day of, 19.....

(5) (5) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 41

MALAWI

Section 58 (2)

Regulation 67 (2)

PATENTS ACT

(CAP. 49:02)

Fee: K20

Request to enter in the Register of Patents a Notice of an Interest in a Patent

I/We (1)

.....

..... (1) State full name and address of applicant(s)

hereby request that you will enter in the register of patents a notice of the following interest in a patent—

I/We claim to be entitled (2)

.....

to an interest in Patent No. at present registered

in the name of (3)

by virtue of (4)

.....

.....

..... (2) Here insert the nature of the claim, whether by way of licence or otherwise

(3) Here give the name of registered proprietor(s)

(4) Here specify the particulars of such document, giving its date, and the parties to the same and showing how the claim here made is substantiated,

(5) Here insert the nature of the document

And in proof whereof I/we transmit the accompanying (5)

.....

with a certified copy thereof.

Dated this day of, 19.....

(6) (6) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 42

MALAWI

Section 59 (2)

Regulation 69

PATENTS ACT

(CAP. 49:02)

Fee: Item 41

Request for Correction of Clerical Error

I/We (1)

.....

..... (1) State full name and address of applicant(s)

hereby request that the clerical error(s) in the (2)

.....

relating to Application/Patent No. indicated in red ink in the annexed copy of the said (2)

or shown as follows— (2) State whether in application, specification, entry in register, patent or the particular relevant document

.....

.....

may be corrected.

Dated this day of, 19.....

(3) (3) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 43

MALAWI

Section 59 (5)

Regulation 71

PATENTS ACT

(CAP. 49:02)

Fee: K90

Notice of Opposition to the Correction of Clerical Error

I/We (1)

.....

..... (1) State full name of objector(s)

hereby give notice of opposition to the correction of an alleged clerical error in

.....

which said correction has been applied for by

.....

The grounds upon which the said correction is opposed are as follows—

.....

.....

.....

.....

Dated this day of, 19.....

(2) (2) To be signed by the objector(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 44

MALAWI

Section 63

Regulation 73

PATENTS ACT

(CAP. 49:02)

Fee: K20

Application for Duplicate of Letters Patent

I/We (1)

.....

..... (1) State full name and address of applicant(s)

have to inform you that the Letters Patent dated (2)

No. granted to for an invention the title of which is (3)
..... has been lost or destroyed, or cannot be produced in the following
circumstances— (2) State date, number and full name of grantee(s)

(3) Insert title of invention

(4)

.....

..... (4) State full circumstances of the
case, which must be verified by evidence

I/We beg therefore to apply for the issue of a duplicate of such Letters Patent.

(5)

..... (5) State interest possessed by
applicant(s) in the patent

Dated this day of, 19.....

(6) (6) To be signed by the patentee(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 45

MALAWI

Section 68 of

Regulation 74

PATENTS ACT

(CAP. 49:02)

Fee: K90

Application for Registration as a Patent Agent under section 68 of the Act

I/We (1)

.....

.....

do hereby make oath and say as follows— (1) State full name and address

I am and have (always) been (2) (since) a Commonwealth citizen (or British Protected Person). (2) Delete whichever does not apply

I am ordinarily resident in Malawi and have been so resident since (3)

I possess the following qualifications which entitle me to be registered as a patent agent in terms of section 68 of the Act— (3) State date of entry into Malawi

(4)

.....

..... (4) Here insert full particulars of qualifications

I desire to be registered as a patent agent.

Sworn before me at

this day of, 19.....

.....

Commissioner for Oaths

Patents Form No. 46

MALAWI

Section 6

Regulation 74 (2)

PATENTS ACT

(CAP. 49:02)

Certificate of Registration of Patent Agent

PURSUANT to regulation 74 (2) of the Patents Regulations, I do hereby certify that

.....

of was registered as a Patent Agent on
the day of, 19

The Registrar

The Patent Office

P.O. Box 100

Blantyre

.....

Registrar of Patents

Patents Form No. 47

MALAWI

Regulation 79

PATENTS ACT

(CAP. 49:02)

Certificate of Service

I/We (1)

.....

..... (1) State name and address

hereby certify that at (2)

.....

on the day of, 19.....

ato'clock in the noon, I/we served the following

documents upon

by (3)

..... (2) State precisely where service was effected(3) Here describe the service

Dated this day of, 19.....

(4) (4) To be signed by the person effecting service

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 48

MALAWI

Regulation 87

PATENTS ACT

(CAP. 49:02)

Fee: K10

Application for Entry of Order of Court or Tribunal

I/We (1)

.....

..... (1) State name and address of applicant(s)

in respect of Patent/Patent Application No. hereby transmit an office copy of an order by the High Court of by the Tribunal with reference to (2)

.....

..... (2) Here state purport of the order

Dated this day of, 19.....

(3)
agent

(3) To be signed by the applicant(s) or his/their

.....

My/Our address for service in Malawi

.....

.....

.....

The Registrar

The Patent Office

P.O. Box 100

Blantyre

Patents Form No. 49

MALAWI

Sections 21 (2),

30 (1), 36 (5),

52 (2), 59 (4),

Regulation 76

PATENTS ACT

(CAP. 49:02)

General Form of Advertisement

Notice is hereby given that in terms of section

of the Patents Act

.....

.....

.....

Dated this day of, 20.....

(1) (1) Name and address of applicant(s) or his/their agent

.....
.....

NOTE— The contents of this advertisement must be approved by the Registrar in terms of section 66.

PATENTS (AGENTS' FEES) REGULATIONS

under s. 96

1. Citation

These Regulations may be cited as the Patents (Agents' Fees) Regulations.

2. Interpretation

In these Regulations, unless inconsistent with context—

“patent agent” includes a legal practitioner when performing the functions of a patent agent.

3. Fees

The fee (excluding disbursements) for any service specified in the first column of the Schedule and performed by a patent agent shall be not less than that specified opposite thereto in the second column of the Schedule.

SCHEDULE reg. 3

TARIFF OF FEES PAYABLE TO PATENT AGENTS

Service Minimum Fee

£ s. d.

Applications

- 1. Lodging complete application in the first instance for ordinary patent or patent of addition, including normal prosecution 14 0
0
- 2. Extra for each Convention priority
15 0

- 3. Lodging provisional application 8
0 0
- 4. Completion of provisional application including normal Prosecution
11 0 0

Amendment

- 5. Making amendments not requiring formal application
1 5 0
- 6. Lodging formal application to amend specification—
 - (a) before acceptance 5
10 0
 - (b) after acceptance or after sealing and advertisement
8 0 0

(These fees include recopying portions of the specification up to 600 words, but not the drafting of the amendment)

- 7. Registering change of address or address for service—
 - (a) against one patent 2
0 0
 - (b) against each additional patent at the same time in the same name
15 0

- 8. Registering change of name—
 - (a) against one patent 2
10 0
 - (b) against each additional patent at the same time in the same name
15 0

- 9. Lodging application for correction of clerical errors and amendment of application form (in pending applications)—
 - (a) in one pending application 3
0 0
 - (b) for same corrections or amendment in each additional application
10 0

- 10. Lodging application for correction of clerical error after sealing
3 0 0

Opposition, appeal, revocation and extension of term

11. In general the tariff of the High Court applies

Service Minimum Fee

K t

Extensions

12. Obtaining each extension of time for leaving complete specification

..... 3 00

13. Obtaining each extension of time for acceptance of complete specification—

(a) up to eighteen months

..... 2 00

(b) each further extension

..... 3 00

14. Obtaining each extension of time for sealing a patent

..... 3 00

15. Obtaining or agreeing to each extension of time for lodging opposition or ensuing responses

..... 3 00

Working

16. Nominal working one patent; fee according to number of advertisements effected and direct offers made—

(a) two advertisements and no direct offers

..... 8 00

(b) two advertisements and up to five direct offers

..... 12 00

(c) three advertisements and up to ten direct offers

(In cases of combined working of two or more patents, add 25 per centum in respect of each patent after the first) 16 00

Assignment of patent

17. Recording assignment, notice of interest or licence against—

(a) the first or a single patent

..... 8 00

(b) each subsequent patent simultaneously and in the same name
..... 5 00

18. (1) Preparing simple deed of assignment
..... 3 00

(2) Certifying copies of such deed, according to the length thereof (For preparing copies
and certifying same see items 29 and 37) 2
00

19. Substitution of applicant
10 00

Renewal

20. (1) Paying one year's renewal fee on each patent
..... 4 00

(2) For each further year paid at the same time
..... 1 00

21. Obtaining enlargement of time for paying renewal fees on each patent— for each extension
(up to six months)
2 00

Restoration

22. Lodging and prosecuting application for restoration of a lapsed patent and advertisement
costs 20 00

Licences of right

23. (1) Lodging application to endorse one patent "Licence of Right"
..... 12 00

(2) Obtaining cancellation of such endorsement
..... 10 00

(3) For each additional patent in same name at same time
..... 1 50

(4) Drawing declaration
..... 4 20

General

24. Inspecting register
2 50

25. Name search in index and register
4 00

26.	Subject matter searches	6	00
27.	Obtaining withdrawal of acceptance	4	00
28.	Obtaining certificate of Registrar	2	50
29.	Copying specifications and other documents, per 100 words—		
	(a) original (including one carbon copy, if required)		
	.....	0	50
	(b) each additional carbon copy		
	.....	0	10
30.	Obtaining photocopies of documents on record—		
	(a) one to five copies, per document		
	.....	1	50
	(b) six to ten copies after the first five, per document		
	.....	0	75
	(c) each copy after the tenth		
	.....	0	50
31.	(1) Obtaining translations of documents		
	.....	1	50
	(2) Revising documents sent from abroad when necessary, but not involving restatement of subject matter		
	.....	0	75
32.	Correspondence—		
	(a) formal routine correspondence, sent and received, per folio of 100 words		
	.....	0	50
	(b) correspondence involving discussion of merits, sent and received, per folio of 100 words	0	75
33.	Late filing of any document (not otherwise provided for)		
	.....	1	00
34.	Lodging authorizations or powers of attorney as may be required— add for each		
	.....	0	50
35.	Lodging affidavits or declarations as may be required— add for each		
	.....	0	50

36. Preparing and lodging forms and authorizations of any kind other than renewal forms	2	10
.....		
37. Certification (by agent) of any document other than assignment deed as true copy of original	1	00
.....		
38. Offer to surrender patent and advertising same	3	00
.....		

DECLARATION

under s. 7

Gen. N. 307/1966

The Minister has declared that Malawi is a Country of the Union for Protection of Industrial Property.

[Chap4903]CHAPTER 49:03

COPYRIGHT

ARRANGEMENT OF SECTIONS

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Schedule

9 of 1989

22 of 1989

30 of 1994

G.N. 55/1989

An Act to make provision for copyright in literary, dramatic, musical and artistic works, audio-visual works, sound recordings and broadcasts; the rights of performers; the establishment of the Copyright Society of Malawi; and for matters incidental thereto or connected therewith

[22ND JUNE 1989]

PART I

PRELIMINARY

[Ch4903s1]1. Short title

This Act may be cited as the Copyright Act.

[Ch4903s2]2. Interpretation

In this Act, unless the context otherwise requires—

“adaptation”—

(a) in relation to a literary work, (whether the work is in its original language or in a different language) in non-dramatic form, means a version of the work in a dramatic form; or

(b) in relation to a literary work (whether in its original language or in a different language) in a dramatic form, means a version of the work in non-dramatic form; or

(c) in relation to a literary work (whether in a non-dramatic form or in a dramatic form) means—

(i) a translation of the work; or

(ii) a version of the work in which the story or action is conveyed solely or principally by means of pictures; or

(d) in relation to a musical work, means an arrangement or transcription of the work;

“artistic work”, irrespective of artistic quality, means any of the following works—

(a) paintings, drawings, etchings, lithographs, woodcuts, engravings, product of photogravure and prints; or

(b) photography not comprised in a cinematograph film; or

(c) maps, plans, charts or diagrams; or

(d) sculpture; or

(e) works of architecture in the form of buildings or models; or

(f) works of applied art, whether handicraft or produced on an industrial scale;

“audio-visual work” means a fixation in any physical medium of images synchronized with or without sound from which a moving picture may by any means be reproduced and includes cinematograph films, videotapes and videograms but does not include a broadcast;

22 of 1989 “association” means an association of persons whose works are protected under this Act;

“author” means the person who creates a work, and—

(a) in the case of a cinematograph film or sound recording, means a person by whom arrangements for the making of the film or recording were undertaken; and

(b) in the case of a broadcast transmitted from within a country, includes the person by whom the arrangements for the making of the transmission within that country were undertaken;

22 of 1989 “Board” means the Board for the management of the Society as referred to in section 46;

“broadcast” means the transmission of programmes or materials for reception by the general public over a distance by means of radio, television, electromagnetic emissions, light beams, wire cable or other means;

“building” includes any structure;

“choreographic work” means a dance composition or design by a dance composer of dance patterns which may be used as blue print for unified dance presentations on stage or in recordings of any kind regardless of how long they may last;

“broadcasting organization” means the Malawi Broadcasting Corporation, established by the Malawi Broadcasting Act and any other broadcaster whether licensed under that Act or any other written law; Cap. 20:01

“commissioned work” means a work created in pursuance of a contract between the author and an individual or a legal entity commissioning a specified work from the author against an agreed author’s fee;

“communication by cable”, in relation to a work, means transmission over wires or other paths provided by a material substance of the work, production or performance of the work;

“communication to the public” means making a work accessible to the public;

“computer software” means a set of instructions, whether expressed in words or in schematic or other form, which is capable, when incorporated in a machine-readable medium, of causing an electronic or other device having information processing capabilities to indicate, perform or achieve a particular function, task or result;

“copy” means a reproduction of a work in a written form, or in the form of a recording or in any other material form, but an object shall not be taken to be a copy of an architectural work unless the object is a building or model;

“copyright” means copyright protected under this Act;

“derivative work” means a work resulting from adaptation, translation or other transformation of an original work in so far as it constitutes an independent creation;

“distribution” means the distribution to the public for commercial purposes of copies of a work or production by way of sale, rental, lease, hire, loan or similar arrangement;

“distributor” means the person who decides that the distribution should take place;

“dramatic work” includes—

- (a) a choreographic show or entertainment in dumb show;
- (b) a scenario or script for an audio-visual work but does not include the audio-visual work;

“engraving” does not include a photograph;

“fixation” means the embodiment of images or sounds or both in a material form sufficiently permanent or stable to permit them to be perceived, reproduced or communicated;

“folklore” means all literary, dramatic, musical and artistic works belonging to the cultural heritage of Malawi created, preserved and developed by ethnic communities of Malawi or by unidentified Malawi authors, and includes, in particular—

- (a) folk tales, folk poetry and riddles;
- (b) folk songs and instrumental folk music;
- (c) folk dances, plays and artistic forms of rituals;
- (d) production of folk art, in particular drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, basket and costumes;
- (e) traditional musical instruments; and
- (f) any works designated as such by the Minister by notice published in the Gazette;

“infringement of copyright” has the meaning assigned thereto in section 47;

“infringing copies of a work” means copies of a work produced by any process and in any form the making of which involves infringement of the copyright in the work or the rights granted to performers, broadcasters and producers of sound recordings under this Act and includes copies the making of which infringe the provisions of this Act relating to folklore;

“literary work” irrespective of literary quality, includes any of the following—

- (a) novels, stories or poetical works;
- (b) plays, stage direction, film, scenario or broadcasting scripts;

- (c) textbooks, treatises, histories, biographies, essays or articles;
- (d) encyclopaedias, dictionaries, directories or anthologies;
- (e) letters, reports or memorandum;
- (f) lectures, addresses or sermons; and
- (g) computer programmes;

“manuscript”, in relation to a work, means the original document embodying the work whether written by hand or otherwise;

“musical work” includes any musical work irrespective of its musical quality, and includes words composed for musical accompaniment;

“performance” means the presentation of a work by such action as dancing, playing, reciting, singing, delivering, declaiming or projecting to listeners or spectators, live or by any means whatsoever;

“performer” means actor, singer, declaimer, musician, or other person who performs a literary or artistic work and includes the conductor or director of a performance of any such work;

“photograph” includes photolithograph and other work produced by any process analogous to photography but does not include any part of an audio-visual work;

“plate” means any material object in which a work, production, performance or edition has been embodied and by the means of which copies or reproductions of the work, production performance or edition may be made;

“public performance” means the performance of a work which is presented to listeners or spectators not restricted to specific persons belonging to private group;

“publication of a sound recording” means the offering of a sound recording to the public in a quantity sufficient to satisfy a reasonable demand for the sound recording;

“published works” means works reproduced with the consent of their authors in copies made available to the public in a quantity sufficient to satisfy a reasonable demand for the work;

“rebroadcasting” means the simultaneous or subsequent broadcasting in part or in whole by one broadcasting organization of the broadcast of another broadcasting organization;

“reproduction” means the making of one or more copies of a literary, dramatic, musical or artistic work or expressions of folklore or fixation in any material form including any audio-visual work or sound recording, and in the case of an artistic work, includes converting a work into a three dimensional form or, if existing in three dimensional, converting it into a two dimensional form;

“Society” means the Copyright Society of Malawi established under section 41;

“sound recording” means—

- (a) a recording of sounds from which the sounds may be reproduced;
- (b) a recording of a literary, dramatic or musical work from which sounds reproducing the work may be produced, in either case, regardless of the medium on which the recording is made or the method by which the sounds are reproduced;

“work” means any work or other matter in which copyright subsists under this Act;

“works of applied art” means an artistic work applied to objects for practical use whether handicraft or works produced on industrial scale;

“works published in Malawi” includes works published abroad but thereafter published in Malawi within thirty days;

“works of joint-authorship” means a work created by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors.

PART II

COPYRIGHT

[Ch4903s3]3. Copyright

Subject to the provisions of this Act, an author of any work shall, by the mere fact of its creation, enjoy an exclusive property right in the work against all persons.

[Ch4903s4]4. Works in which copyright subsist

(1) Copyright shall subsist in accordance with this Act in—

- (a) literary, dramatic, musical and artistic works—
 - (i) of an author who is a national of, or is resident in, Malawi;
 - (ii) which are first published in Malawi, irrespective of the nationality or residence of their authors;
- (b) expressions of folklore developed and maintained in Malawi;
- (c) performance, if—
 - (i) the performer is a national of Malawi; or
 - (ii) the performance took place in Malawi; or
 - (iii) the performance is fixed in a sound recording qualifying for copyright under paragraph (d); or
 - (iv) the performance, which has not been fixed in a sound recording, is embodied in a broadcast qualifying for protection under paragraph (e);

- (d) audio-visual work and sound recording, where—
 - (i) the producer of audio-visual work or sound recording is a national of, or is resident in, Malawi; or
 - (ii) the first fixation of the audio-visual work or sound recording was made in Malawi; or
 - (iii) the audio-visual work or sound recording was first published in Malawi;
- (e) broadcasts, where—
 - (i) the headquarters of the broadcasting organization is situated in Malawi; or
 - (ii) the broadcast was transmitted from a transmitter situated in Malawi; and
- (f) typographical arrangements of works published in Malawi.

PART III

LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS

[Ch4903s5]5. Copyright in literary, dramatic, musical and artistic works

(1) Literary, dramatic, musical or artistic work shall not be eligible for copyright under this Part unless—

- (a) it is original in character; or
- (b) it is derivative work,

and it is in writing or recorded or otherwise reduced to material form.

(2) A work shall be eligible for copyright under this Part irrespective of its form of expression, its quality and purpose for which it was created.

(3) For the purposes of this Part, a work is original if it is the product of the independent efforts of the author.

[Ch4903s6]6. Derivative works

(1) The following derivative works shall be subject to copyright protection as if they were original works—

- (a) translations, adaptations, arrangements and any other transformations of original literary, dramatic, musical and artistic works;
- (b) collections of literary, dramatic, musical and artistic works in the form of encyclopaedias and anthologies which, by reason only of the selection and arrangements of their contents, constitute intellectual creations; and

(c) works inspired by expressions of folklore. (2) The protection of any work referred to under subsection (1) shall be without prejudice to any protection of a pre-existing work or expression of folklore.

[Ch4903s7]7. Works not subject to copyright protection

Copyright protection shall not extend to—

- (a) written laws and decisions of courts and administrative bodies as well as to official translations thereof;
- (b) news of the day published, broadcast or publicly communicated by any other means;
- (c) a report made by a commission of inquiry appointed by the Government or any agency thereof which is published by the Government.

[Ch4903s8]8. Economic rights

Subject to section 10, the author of any work eligible for copyright under this Part shall have the exclusive right in respect of such work to do, or authorize any other person to do, the following acts in relation to the whole work or any part thereof—

- (a) the reproduction of the work; or
 - (b) the distribution of the work to the public; or
 - (c) the translation, adaptation, arrangement or any other transformation of the work;
- or
- (d) its communication to the public.

[Ch4903s9]9. Moral rights

(1) The author of any work eligible for copyright under this Part shall have the exclusive right—

- (a) to claim authorship of his work and in particular to demand that his name or pseudonym be mentioned when any of the acts referred to in section 8 is done in relation to such work, except when the work is included when reporting current event by means of photography, audio-visual work, sound recording and broadcasting;
- (b) to object to, and to seek relief in connexion with any distortion, mutilation or other modification of the work where such act would be or is prejudicial to his honour or reputation or where the work is discredited thereby; and
- (c) to alter the work at any time.

(2) The rights conferred by subsection (1) shall not be transferable except upon and by reason only of the death of the author and henceforth such rights shall be exercisable by his heirs.

[Ch4903s10]10. Permitted free uses of a work

The following uses of a work under this Part, either in its original language or in its translation, shall be permissible without the author's consent and without the obligation to pay remuneration for the use of such work—

- (a) in the case of any work that has been lawfully published—
 - (i) the reproduction, translation, adaptation, arrangement or other transformation of such work exclusively for the user's own personal or private use;
 - (ii) the inclusion, subject to mention of the source and the name of the author, of quotations from such work in another work, provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries;
 - (iii) use of the work by way of illustration in publications, broadcasts, programmes distributed by cable, or audio-visual works or sound recordings for teaching to the extent justified by the purpose, or communication for teaching purposes of the work broadcast or distributed by cable for use in schools, universities and professional training, provided that such use is compatible with fair practice and that the source and the name of the author are mentioned in the publication, the broadcast, the programme distributed by cable or the recording;
- (b) the distribution by cable of any work broadcast or played back from lawful recording thereof, where the beneficiaries of the distribution by cable live in one and the same building, or group of buildings none of which is separated from another building by public street or road, if the cable distribution originates in such building or group of buildings and the distribution by cable is done without direct or indirect gainful intent;
- (c) in the case of any article published in newspapers or periodicals on current economic, political, social or religious topics, and in the case of any work of the same character broadcast or distributed by cable, the reproduction of such article or such work in the press, or the communication of it to the public, unless the article, when first published, or the work, when broadcast or distributed by cable, was accompanied by any express condition prohibiting such use, and provided that the source of the article or the work when used in such manner is clearly indicated;
- (d) for the purpose of reporting on a current event by means of photography, cinematography or communication to the public, the reproduction or making available to the public, to the extent justified by the informative purpose, of any work that can be seen or heard in the course of the said current event;
- (e) the reproduction of works of art or of architecture in an audio-visual work or video recording, if such works are permanently located in a place where they can be viewed by the public or are included in the audio-visual work or video recording or by way of background or as incidental to the essential matters represented;
- (f) the reproduction, the photography, audio-visual work or sound recording or electronic storage by public libraries, non-commercial documentation centres, scientific institutions

and educational establishments, or literary, dramatic, musical and artistic works which have already been lawfully made available to the public;

Provided that such reproduction, the number of copies made and the use thereof are limited to the needs of the regular activities of the body reproducing the work, and neither conflict with the normal uses of the work nor unreasonably prejudice the legitimate interests of the author;

(g) the reproduction in the press or the communication to the public of—

(i) any political speech delivered in public or any speech delivered during legal proceedings; or

(ii) any lecture, address, sermon or other work of the same nature delivered in public, provided that the use is exclusively for the purpose or current information and the author retains the right to publish a collection of such works;

(h) the recording by any broadcasting organization for the purpose of its own broadcasts and by means of its own facilities, in one or several copies, of any work which it is authorized to broadcast, so however that all copies of such recording shall be destroyed within six months of the making thereof or within any longer period agreed to by the author:

Provided that, where such recording has an exceptional documentary character, one copy of it may be preserved in the official archives, without prejudice to the application of provision of section 9.

[Ch4903s11]11. Ownership of copyright

In determining the person vested with the copyright under this Part, the following principles shall apply—

(a) if one person was the author of the work, the rights vest in that person;

(b) if two or more persons were the authors of the work of joint ownership, the rights vest in them jointly; and

(c) if there is no evidence to the contrary, the author of a work is the individual whose name is indicated on the work as its author.

[Ch4903s12]12. Employed authors

Subject to any written law relating to contracts of employment and to the terms of any specific contract of service or for services, when a work is created by an author—

(a) in the course of his employment for the Government, a body corporate or another individual; or

(b) under a contract for services with, or as a work commissioned by, the Government, a body corporate or another individual,

then, in respect of that work, the author's rights, under section 8, shall vest in the Government, body corporate or other person who employed the author or commissioned the work.

[Ch4903s13]13. Duration of copyright

(1) Unless otherwise expressly provided in this Act, the rights referred to in sections 8 and 9 shall be protected—

(a) during the life of the author and for fifty years after his death; or

(b) in the case of a work of joint authorship, during the life of the last surviving author and for fifty years after his death; or

(c) in the case of the work published anonymously or under a pseudonym, until the expiration of fifty years from the date on which such work was first lawfully published:

Provided that where, before the expiration of such period, the author's identity is known or is no longer in doubt, protection shall be for the duration specified in paragraph (a) or (b), as the case may be; or

(d) in the case of any audio-visual work, until the expiration of fifty years from the date on which such work is created or, if the work is made available to the public during such period with the consent of the author, for fifty years from the date of its first communication to the public; or

(e) subject to paragraphs (f) and (g), in the case of a work owned by the Government or any body corporate, for fifty years commencing from the date on which the work was first made available to the public;

(f) in the case of computer programmes, for ten years calculated from either the date when the programme is first used or the date when the computer software is first sold, leased or licensed; and

(g) in the case of photographic work or a work of applied art, until the expiration of twenty-five years from the date on which the work was first published or made.

(2) Every period specified in subsection (1) shall run to the end of the calendar year in which it would otherwise expire.

PART IV

TRANSFER OF RIGHTS AND COMPULSORY LICENCES

Division I—Transfer of Copyright

[Ch4903s14]14. Transferability of copyright

(1) Except as limited or restricted by this Act, any right protected by copyright under this Act shall be transferable and may be so transferred by assignment, testamentary disposition or by operation of law.

(2) A contract which requires the total transfer of the economic rights specified in section 8 shall be limited in scope to the use provided for in that contract.

(3) An assignment of right under this Act shall be in writing and shall be signed by the owner of the rights or by the person authorized by him for the purpose.

(4) A licence to do any act falling within a copyright may be oral or in writing.

(5) In case of work of joint authorship an assignment or licence in respect of such work shall be subject to the authorization of the joint authors thereof.

(6) Where a work is work of joint authorship and one of the joint authors withholds his consent to an assignment or the granting of a licence, the matter shall be referred to the Society to determine whether or not consent should be granted in respect of the assignment or licence and upon what conditions.

(7) The Society shall assign reasons for its decision under subsection (8) and any appeal against that decision shall lie to the High Court.

(8) An assignment, a licence or testamentary disposition may be made or granted in respect of a future or an existing work.

(9) Where under bequest, whether specific or general, a person is entitled to a manuscript of a literary dramatic, musical or artistic work which was not published before the death of the testator, such bequest shall be constructed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death, unless contrary intention is indicated in the testator's will or codicil thereto.

[Ch4903s15]15. Contracts for authorization of use of rights under this Act

(1) Authorization by the owner of copyright for the use of a work shall be granted to the user under a contract in writing conferring on the latter the rights required for the envisaged use upon such conditions as may be stipulated in the contract.

(2) A contract made pursuant to subsection (1) shall clearly specify the rights conferred on the user and such rights shall be non-exclusive unless the contract clearly specifies that they are exclusive rights.

(3) The user of rights under a contract made pursuant to subsection (1) shall not be entitled to transfer such rights except if the transfer is made under a contract in writing and subject to the prior consent in writing of the owner of the rights.

(4) Where a contract has been entered into and it is found that there is a gross disproportion between the remuneration paid by the user of the work and the income derived by user from the use thereof, the owner of the copyright may request an amendment of the contract so as to secure for himself an equitable share of income, corresponding to standards generally prevailing in similar cases, but such claim may not be made in advance of the use and it shall not be enforceable after the lapse of two years from the time when the owner of copyright work first received knowledge of the circumstances which give rise to the claim:

Provided that the owner of the copyright may not claim to have received such knowledge after the expiration of six years from the date of the contract to be amended.

(5) Where the user does not exercise an exclusive right conferred on him by the owner of copyright the owner may revoke such right if the non-exercise thereof was prejudicial to his legitimate interests.

(6) The right of revocation under subsection (5) may be exercised only after the period of delay stipulated in the contract for commencing the exercise of the exclusive right by the person on whom it is granted has expired but, in any case, not earlier than two years—

(a) from the grant of such right; or

(b) if the work to be used was supplied subsequent to the grant of the right, from the date of its delivery.

(7) In each of the cases under paragraph (a) or (b) of subsection (6) the owner of copyright shall notify the user of the proposed revocation, allowing him a reasonable additional time in which to exercise the exclusive right, but where the exercise of the right by the user has become or is impossible or the user has refused the right, the owner's right of revocation may be exercised in accordance with subsection (6).

(8) A contract on future grant of rights for the use of works to be created thereafter and not specified in detail but only mentioned in general or by reference to their nature, may be terminated by either party with six months notice after a period of four years from the conclusion of the contract.

[Ch4903s16]16. Commissioned work

(1) Where a contract is in respect of work to be created (in this Act referred to as "commissioned work") the user shall be under an obligation to make a declaration respecting acceptance of the work within sixty days from the date on which the work was handed over or, if such work is regulated under another written law, within such period as is prescribed for acceptance under that law, and if the user fails to make such declaration within such period he shall be deemed to have accepted the work.

(2) Within the time allowed under subsection (1) for acceptance of commissioned work, the user may, once or repeatedly, return the work to the author and require him to amend or correct the work taking into consideration the purpose for which the creation of the work was agreed upon and such requests shall be made in writing and fix reasonable dates by which the amendment or correction shall be done.

(3) If the author fails to comply with the request made under subsection (2) or if the amended, or corrected work is still not suitable for the stipulated purpose, the user may terminate the contract but shall be obliged to pay to the author, in consideration of the work done, an appropriate fee which shall be less than, the agreed remuneration for use of the commissioned work.

[Ch4903s17]17. Compulsory translation licence

(1) Where a work is expressed exclusively in words the right to make a translation of that work and to publish it in Malawi may be subject to compulsory licensing under the conditions specified in this section.

(2) A person who is a citizen of Malawi or is ordinarily resident in Malawi may, subject to the provisions of this section, apply to the Minister for a non-exclusive licence to make a translation of a work which is expressed exclusively in words, into a foreign language or any language of Malawi, and to publish or authorize the publication of the translation in copies.

(3) No application for a licence under this section may be filed until the expiration of a period of—

(a) three years commencing from the date of the first publication of the work in copies, if the licence is for translation into any language other than a language of Malawi; or

(b) one year commencing from the date of the first publication of the work in copies, if the licence is for translation into any language of Malawi.

(4) No licence under this section shall be granted unless the Minister is first satisfied that—

(a) no translation of the work into the language in question has ever been published in copies by or under the authority of the owner of the right of translation, or that all previous editions in that language are out of print;

(b) following the expiration of the relevant period specified in subsection (3) the applicant either has requested the owner of the right of the translation for consent to translate the work but has been refused or, in spite of genuine efforts made by the applicant, he has been unable to locate the owner;

(c) the applicant, at the time of making the request referred to in paragraph (b), sent a notice of his request to the International Information Centre established by the United Nations Educational Scientific and Cultural Organization, or to a national or regional copyright information centre identified as such in a notification deposited with the Director General of that organization or with the Director General of the World Intellectual Property Organization by the state in which the publisher is believed to have his principal place of business; or

(d) where the applicant cannot locate the owner of the right of translation, he has by registered mail sent copies of his application to the publisher whose name appears on the work and also to the centres specified in paragraph (c).

(5) For the purpose of subsection 4 (c) the Society shall keep and maintain addresses of national and regional copyright information centres for easy reference or contact by interested persons.

(6) A licence under this section shall not be granted, unless the following periods from the date of the application have expired—

(a) in the case of an application for a licence required for translation into any language other than a language of Malawi, six months; and

(b) in the case of an application for a licence required for translation into a language of Malawi, nine months.

(7) If during any period specified in subsection (6) a translation of the work in the language in question is published in copies by or under the authority of the owner of the right of translation, then, no licence shall be granted for translation of the work.

(8) When a work is composed mainly of illustrations, a licence to translate the text and to reproduce the illustrations shall be granted only if the conditions prescribed under section 18 are also fulfilled.

(9) Where the author of a work has withdrawn all copies of the work from circulation no licence shall be granted in respect of the work under this section.

[Ch4903s18]18. Conditions of a compulsory licence

(1) A licence granted under section 17 shall—

(a) be limited to the non-exclusive right to translate the work into the language in respect of which it is granted and to publish copies of the translation in Malawi;

(b) be for a translation required only for the purpose of teaching, scholarship or research;

(c) not be transferable by the licensee;

(d) not authorize the exportation of copies of the translation prepared under the licence;

(e) be valid only for publication in Malawi; and

(f) provide for just compensation to the owner of the work, consistent with standards of royalties normally payable in the case of licences freely negotiated between a person in Malawi and the owner of the right of translation in any other country.

(2) Where a licence is granted under section 17 the licensee shall ensure that the work in respect of which the licence is granted is correctly translated and that all published copies include—

(a) the original title and name of the author of the work;

(b) a notice in the language of the translation stating that copies of the translated version of the work are available for distribution in Malawi only; and

(c) a reprint of the copyright notice, namely, the symbol C, accompanied with the name of the owner of the copyright and the year of the first publication of the work and the place where the work of which the translation is made is published with the copyright notice.

(3) A licence granted under section 17 shall terminate if a translation of the work in the same language and with substantially the same content as the edition for which the licence is granted is published in copies in Malawi by or under the authority of the owner of the right in translation at a price reasonably related to that normally charged in Malawi for comparable work; but so however that any copies already published before the licence is terminated may continue to be distributed until the stock is exhausted.

[Ch4903s19]19. Translation licence for broadcasting purposes

(1) Subject to the provisions of sections 17 and 18, a licence to translate a work published in printed form or other form of reproduction may also be granted under this section to a broadcasting organization where the translation is—

- (a) made from a work made or acquired in accordance with this Act;
- (b) for use only in broadcasts intended exclusively for teaching or for the dissemination of the result of specialized research to experts in a particular profession;
- (c) in fact used exclusively for the purpose specified in paragraph (b) through broadcasts that are lawfully made and are intended for reception in Malawi, including broadcasts made from audio-visual works or sound recordings that are lawfully made for the sole purpose of such broadcasts.

(2) A translation under this section of an audio-visual work of sound recording may be exchanged only between departments or divisions of the broadcasting organization.

(3) A licence may also be granted under this section to a broadcasting organization to translate any text incorporated in an audio-visual work that is itself prepared and published for the sole purpose of being used in connexion with systematic instructional activities.

(4) A translation made under a licence issued under this section shall not be used for commercial purposes.

[Ch4903s20]20. compulsory reproduction licence

(1) Where a literary, dramatic, musical or artistic work, is published in printed form or other form of reproduction, the exclusive right to reproduce the work and publish it in copies may be subject to compulsory licence under the conditions specified in this section.

(2) A person who is a citizen of Malawi or is ordinarily resident in Malawi may, subject to the provisions of this section, apply to the Minister for a non-exclusive licence to reproduce a particular edition of a work referred to in subsection (1) and to publish or authorize the publication of such reproduction in copies.

(3) A licence under this section shall not be granted—

- (a) until the expiration of a period of—
 - (i) three years commencing from the date of publication of a work in the field of technology or of a natural or physical science including mathematics; or

(ii) seven years commencing from the date of publication of a work of fiction, poetry, drama or music or a book of art; or

(iii) five years commencing from the date of publication of any other work; and

(b) unless the Minister is first satisfied that—

(i) there has never been a sale or other distribution, authorized by the owner of the reproduction right, of copies of the particular edition in Malawi to the general public in connexion with systematic instructional activities, at a price reasonably related to that charged in Malawi for comparable works, or that there has been no such sale or other distribution during the immediately preceding six months;

(ii) the applicant either has requested from the owner of the right of reproduction for his authorization to reproduce the work and has been refused or, in spite of genuine efforts made by the applicant, he has been unable to locate the owner;

(iii) the applicant, at the time of making the requests referred to in subparagraph (ii), sent a notice of his request either to the International Copyright Information Centre established by the United Nations Educational, Scientific and Cultural Organization, or a national or regional copyright information centre identified as such in a notification deposited with that organization or with the World Intellectual Property Organization by the state in which the publisher is believed to have his principal place of business; or

(iv) where the applicant cannot locate the owner of the right of reproduction, the applicant has by registered mail sent copies of the application to the publisher whose name appears in the work and also to the centres specified in subparagraph (iii).

(4) For the purpose of subsection (3) (b) (iii) the Society shall keep and maintain addresses of such centres for easy reference or contact by interested persons.

(5) A licence under this section shall not be granted in respect of any application made until expiration of a period of six months commencing from the date of—

(a) the request referred to in subsection 3 (b) (iii); or

(b) the dispatch of the copies of the application referred to in subsection (3) (b) (iv).

(6) Where the author of a work has withdrawn all copies of an edition of the work from circulation, no licence shall be granted under this section in respect of that edition.

[Ch4903s21]21. Conditions of a compulsory reproduction licence for

(1) A licence granted under section 20 shall—

(a) be limited to the non-exclusive right to reproduce the particular edition of the work in respect of which it is granted, and to publish copies of the reproduction in Malawi for use in connexion with systematic instructional activities, but the price at which the reproduced copies are sold shall be at a level not higher than such amount as is reasonably related to the price normally charged in Malawi for comparable work;

- (b) not be transferable by the licensee;
- (c) not authorize the exportation of copies of the particular edition of the work in respect of which it is granted;
- (d) be valid for publication in Malawi; and
- (e) provide for just compensation to the owner of the work, consistent with standards of royalties normally payable in the case of licenses negotiated between persons in Malawi and owners of the right of reproduction in any other country.

(2) Where a licence is granted under section 20 the licensee shall ensure that the particular edition of the work in respect of which the licence is granted is accurately reproduced and that all published copies include the following—

- (a) the title of the particular edition of the work and the name of the author;
- (b) a notice in the appropriate language stating that copies of the reproduced version of the work are available for distribution in Malawi only; and
- (c) if the edition which is reproduced bears a copyright notice, a reprint of that notice.

(3) A licence granted under section 20 shall terminate—

- (a) whenever copies of an edition of the work in respect of which the licence is granted is distributed to the general public in Malawi; or
- (b) whenever copies of the edition of the work is distributed in Malawi in connexion with systematic instructional activities, by or under the authority of the owner of the right of reproduction at a price reasonably related to that normally charged in Malawi for comparable work, if such edition is in the same language and is substantially the same in content as the edition published under the licence, but so however that any copies already made before the licence is terminated may continue to be distributed until the stock is exhausted.

[Ch4903s22]22. Compulsory reproduction licence for audio-visual works

(1) The Minister may, upon application in writing made to him by any person, grant a licence authorizing such person—

- (a) to reproduce in audio-visual form a lawfully made audio-visual work, including any protected work incorporated in it; or
- (b) to translate any text incorporated in such work into either a foreign language or any language of Malawi.

(2) No licence shall be granted under this section unless the audio-visual work is prepared or published for the sole purpose of being used in connexion with systematic instructional activities.

[Ch4903s23]23. Production of recording of musical works

(1) A manufacturer of sound recordings may make a sound recording of any musical work or a similar adaptation thereof, including any literary work intended as an accompaniment to the work, if—

(a) copies of the musical work or a similar adaptation of them have previously been made in or imported into Malawi for the purpose of retail sale, and were so made with the licence of, or so imported by, the owner of the copyright in such work; and

(b) before the making of the copies the manufacturer gives the owner of the copyright work notice of his intention to make the copies and the address at which he intends to make them.

(2) The manufacturer shall, not later than fifteen days before the sale of any of the copies made by him under this section, send to the owner of the copyright or the person authorized by him for that purpose, by registered post notice of his intention to sell or otherwise distribute the copies made and such notice shall contain—

(a) the name and address of the manufacturer;

(b) the title of the work to which the notice under subsection (1) (b) relates, with a description sufficient to identify the author of the work and the publisher thereof;

(c) the type of sound recording on which the manufacturer intends to produce the work and an estimate of the number of copies he initially intends to sell;

(d) the ordinary selling price of the copies the manufacturer intends to reproduce and the amount of royalty payable in respect of them; and

(e) the earliest date on which any of the copies may be available for sale.

(3) The manufacturer shall, within ninety days after he has sent the notice referred to in subsection (2), pay royalties to the owner of the copyright and shall have affixed to each copy of the sound recording made by him an adhesive label issued by the Society as evidence of such payment.

(4) The royalty payable by the manufacturer under subsection (3) shall be an amount not less than ten per centum of the ordinary retail selling price of each copy of the sound recording or its similar adaptation.

(5) It shall be an infringement of copyright where the manufacturer exhibits for sale or sells, without the adhesive label referred to in subsection (3) affixed thereto, any copy of a sound recording or its similar adaptation made by him under this section.

PART V

EXPRESSIONS OF FOLKLORF

[Ch4903s24]24. Copyright in expressions of folklore to vest in Government

Subject to the provisions of this Part, copyright in expressions of folklore shall vest in perpetuity in the Government on behalf and for the benefit of the people of Malawi.

[Ch4903s25]25. Certain uses of expressions of folklore to be subject to authorization

Subject to the provisions of section 29, the following uses of the expressions of folklore shall be subject to prior written authorization by the Minister when they are made for gainful purposes or outside their traditional and customary context—

- (a) any publication, reproduction and any distribution of copies of expressions of folklore; or
- (b) any communication to the public, including recitation, performance, broadcasting or distribution by cable, of expressions of folklore.

[Ch4903s26]26. Free uses of expressions of folklore

The provisions of section 25 shall not apply to any use of the expressions of folklore in the following cases—

- (a) for the purposes of education;
- (b) by way of illustration in an original work of an author provided that the extent of such use is compatible with fair practice;
- (c) using expressions of folklore for creating an original work by an author inspired by folklore; and
- (d) incidental use of expressions of folklore, including, in particular—
 - (i) that which can be seen or heard in the course of a current event by means of photography, broadcasting or audio-visual work or sound recording, provided that the extent of such use is justified by the informative purposes thereof; and
 - (ii) use of objects containing the expressions of folklore which are permanently located in a place where they can be viewed by the public, if the use consists in the inclusion of their image in a photograph, a film or a television broadcast.

[Ch4903s27]27. Source of expressions of folklore to be acknowledged

In any printed publication or communication to the public wherein expressions of folklore have been used, except for uses referred to in section 25 (c) and (d), the user of the expression of folklore shall acknowledge in such publication or communication the source from where the expressions of folklore so used by him have been derived.

[Ch4903s28]28. Authorization for use of expressions of folklore

(1) Authorization of any use of expressions of folklore may be either general or special and may be granted upon application in writing to the Minister.

(2) In granting or refusing to grant an application for authorization under this Part, the Minister shall not be required to assign any reasons and his decision shall be final and not subject to appeal to, or review or question by, any court:

Provided that the Minister's refusal to grant an application shall not act as a bar to any subsequent application respecting the same or other expression of folklore.

[Ch4903s29]29. Non-hindrance of development of folklore

The protection of expressions of folklore under this Act shall not in any way be construed so as to hinder the normal use, maintenance and development of expressions of folklore.

[Ch4903s30]30. Protection under this Part to be additional

Protection of any expressions of folklore conferred by this Part shall be additional to, and shall not in any way limit or prejudice protection on such expressions conferred by any other written law or treaty or convention to which Malawi is a party.

PART VI

BROADCASTERS, PERFORMERS AND PRODUCERS OF SOUND RECORDINGS

[Ch4903s31]31. Rights of broadcasters, performers, and producers of sound recording not to affect copyright

The protection granted under sections 32 to 39 relating to rights of broadcasters, performers and producers of sound recording shall not in any way affect copyright in a literary, dramatic, musical or artistic work under this Act, and accordingly no provision in any of those sections shall be construed so as to affect copyright in any such work.

[Ch4903s32]32. Acts requiring authorization of performers

(1) Without the authorization of the performers, no person shall do any of the following acts—

(a) the broadcasting or distribution by cable of their performance except where the broadcast or distribution by cable—

(i) is made from fixation of the performance, other than a fixation made under the provisions of section 39; or

(ii) is a broadcast or distribution by cable of performance, and is made or authorized by the organization initially broadcasting the performance;

(b) the communication to the public of their performance, except where the communication—

(i) is made from a fixation of the performance; or

(ii) is made from a broadcast or distribution by cable of the performance;

(c) the fixation of their unfixed performance;

(d) the reproduction of a fixation of their performance, in any of the following cases—

(i) where the performance was initially fixed without their authorization; or

(ii) where the reproduction is made for purposes different from those for which the performers gave their authorization; or

(iii) where the performance was initially fixed in accordance with the provisions of section 39, but the reproduction is made for purposes different from any of those referred to in that section.

(2) In the absence of any agreement to the contrary or of circumstances of employment from which the contrary would ordinarily be inferred—

(a) the authorization to broadcast or distribute a performance by cable does not imply—

(i) an authorization to license other organization to broadcast or distribute the performance by cable;

(ii) an authorization to fix the performance;

(iii) an authorization to reproduce the fixation; and

(b) the authorization to fix the performance and to reproduce the fixation does not imply an authorization to broadcast or distribute the performance by cable from the fixation or any reproduction of such fixation.

(3) Where the performers have authorized the fixation of their performance by the broadcaster and the broadcast or distribution by cable of that fixation, the performer shall have the right to equitable remuneration in respect of any such broadcast or distribution by cable whether or not such fixation has been used commercially.

(4) Nothing in this section shall be construed to deprive performers of the right to agree by contracts on terms and conditions more favourable for them in respect of any use of their performance.

(5) The protection under this section shall subsist for twenty years computed from the end of the year in which the performance took place.

[Ch4903s33]33. Granting of authorization by performers

(1) A binding authorization under section 32 may be given by the performer or by a duly appointed representative to which the performer has in writing granted the right to give such authorization.

(2) Any authorization given by the performer claiming that he has retained the relevant rights or by a person claiming to be the duly appointed representative of a performer shall be considered valid unless the recipient knew or had good reason to believe that the claim or appointment, as the case may be, was not a valid one.

[Ch4903s34]34. Acts requiring the authorization of producers of sound recording

30 of 1994(1) Without the authorization of the producer of sound recording, no person shall do any of the following acts—

- (a) direct or prohibit reproduction;
- (b) importation for the purpose of distribution to the public;
- (c) distribution to the public of copies of his sound recording; or
- (d) communication to the public of the sound recording by performance or other means.

(2) For the purposes of this section, a copy of a sound recording shall be unlawful if with or without imitating the outward characteristics of the original work it incorporates all or part of the producer's sound recording without his authorization.

(3) Where a sound recording is published for commercial purposes or a reproduction thereof is used for broadcasting or for any other form of communication to the public the user shall, in respect of the use thereof, pay to the producer of the sound recording such remuneration as is equitable to the producer and the performers.

30 of 1994(4) The protection referred to in subsection (1) shall subsist for fifty years computed from the end of the year in which the sound recording was published for the first time.

[Ch4903s35]35. Obligations of producers of sound recordings

(1) The producer of a sound recording shall state on the label of the recording or on its container—

- (a) the names of the author and those of the main performer;
 - (b) the title of the work;
 - (c) the name, whether individual or corporate, or distinguishing mark of the producer;
- and
- (d) that the rights accruing to the producer under this Act are reserved, and it shall be sufficient to use any words to that effect.

(2) For the purposes of subsection (1) (a) choirs, orchestras and composers shall be referred to by their proper names and by the name of the leader, if any.

[Ch4903s36]36. Notice of protection of rights of producers of sound recordings

(1) Where copies of a sound recording are made for commercial purposes, there shall be printed on the copies a notice consisting of—

- (a) the symbol P; and
- (b) the year of first publication of the sound recording,

placed in such a manner as to give reasonable notice of claim of protection of the rights of producer.

(2) Where the copies of the sound recording or their containers do not identify the producer or his licence in relation thereto by his name, description or trade mark, the notice shall also include the name of the owner of the copyright in the recording.

(3) Where the notice specified in subsection (1) is printed on a sound recording or on the container thereof such notice shall be prima facie evidence of the facts stated thereon for the purposes of any proceedings brought under this Act with respect to the rights of the producer.

[Ch4903s37]37. Sound recording performance in public places

Where in any public place, by means of broadcasting, cinematography, jukebox or other apparatus, sound recording or other devices are used in public performance the authors, performers and the producers of sound recording shall be entitled to royalties in accordance with the provisions of this Act.

[Ch4903s38]38. Rights of broadcasting organizations

(1) A broadcasting organization shall have the exclusive right to authorize or prohibit—

- (a) the rebroadcasting of its broadcasts;
- (b) the fixation of its broadcasts; or
- (c) the reproduction of its fixation of its broadcasts where—

- (i) the fixation used to make the reproduction is made without authorization;

or

- (ii) the broadcast is initially fixed in accordance with the provisions of this Act, but the reproduction is made for purposes other than those authorized.

(2) The protection under this section shall subsist for twenty years computed from the end of the year in which the broadcast took place.

[Ch4903s39]39. Exceptions to certain provisions under this Part

The provisions of sections 33, 34, 35, 36 and 37 shall not apply where the acts referred to therein are concerned with—

- (a) private use;
- (b) the reporting of current events, except that no more than short excerpts of a performance, sound recording or broadcast are used;
- (c) teaching or research;
- (d) quotations in the form of short excerpts of a performance, sound recording or broadcast, which are compatible with fair practice and are justified by the informative purpose of those quotations.

PART VII

PUBLIC DOMAIN

[Ch4903s40]40. Works in the public domain

(1) The following works shall belong to the public domain—

- (a) works whose terms of protection have expired;
- (b) works in respect of which authors have renounced their rights; and
- (c) foreign works that do not enjoy protection in Malawi.

(2) For the purpose of paragraph (b), renunciation by an author or his successor in title of his rights referred to section 9 shall be in writing and made public but any such renunciation shall not be contrary to any previous contractual obligation relating to the work.

(3) Subject to the payment of such fee as may be determined by the Minister in relation thereto, a work that has fallen into the public domain may be used without any restriction.

PART VIII

THE COPYRIGHT SOCIETY OF MALAWI

[Ch4903s41]41. Establishment of a Copyright Society of Malawi

There is hereby established an institution to be known as the Copyright Society of Malawi (in this Act referred to as the “Society”) which shall be a body corporate having perpetual succession and a common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating moveable or immoveable property and, subject to the provisions of this Act, of doing or performing all such acts and things as bodies corporate may by law do or perform.

[Ch4903s42]42. Functions of the Society

The functions of the Society shall be—

- (a) to promote and protect the interests of authors, performers, translators, producers of sound recordings, broadcasters, publishers and in particular to collect and distribute any royalties or other remuneration accruing to them in respect of their rights provided for in this Act;
- (b) to maintain registers of works, productions and associations of authors, performers, translators, producers of sound recordings, broadcasters and publishers;
- (c) to publicize the rights of owners and give evidence of the ownership of these where there is a dispute or an infringement;
- (d) to print, publish, issue or circulate any information, report, periodical, books, pamphlet, leaflet or any other material relating to copyright, expressions of folklore, rights of broadcasters, performers and producers of sound recordings; and

- (e) to advise the Minister on all matters under this Act.

[Ch4903s43]43. Powers of the Society

For the better performance of its functions, the Society shall, subject to this Act, have power—

- (a) to acquire, hire or dispose of property;
- (b) with the approval of the Minister and subject to the Finance and Audit Act, to borrow money whether by way of loan, overdraft or otherwise, on the security of its assets; Cap. 37:01
- (c) with the approval of the Minister to accept and administer any trust or donation;
- (d) to determine minimum rates of royalties to be levied in respect of uses to be made of works registered by it;
- (e) to levy fees upon registering works and associations;
- (f) to perform such other functions as may be assigned to it by the Minister; and
- (g) generally, to do and perform all such acts or things as it may deem necessary or expedient to achieve the objects of this Act.

[Ch4903s44]44. Funds of the Society

The funds of the Society shall consist of—

- (a) such sums as may be appropriated by Parliament for the purposes of the Society;
- (b) all fees payable under this Act; and
- (c) such other moneys and assets as may vest in or accrue to the Society, whether in course of its functions or otherwise.

[Ch4903s45]45. Accounts and audit

(1) The Society shall—

- (a) keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act; Cap. 37:01
- (b) furnish to the Minister annually, or as often as the Minister may direct, accounts in respect of finances and property, including an estimate of income and expenditure for the following financial year.

(2) The accounts of the Society shall be examined and audited annually by auditors appointed by the Society and approved by the Minister.

(3) The financial year of the Society shall be a period of twelve months beginning on 1st April every year and ending on 31st March the following year:

Provided that the first financial year of the Society may be such longer period not exceeding eighteen months from the commencement of this Act as the Minister may approve.

[Ch4903s46]46. Constitution, proceedings and other matters of the Society

22 of 1989(1) The Society shall be managed by a board of management (in this Act referred to as the “Board”), the constitution, composition and proceedings of which shall be as provided for in the Schedule.

(2) The Minister may, by order published in the Gazette, amend the Schedule.

PART IX

INFRINGEMENT OF COPYRIGHT, OFFENCES AND MISCELLANEOUS PROVISIONS

[Ch4903s47]47. Infringement of copyright, etc.

(1) Infringement of copyright is where, without valid transfer, licence or authorization under this Act a person does, permits or causes another person to—

(a) reproduce, fix, duplicate, extract, imitate or import into Malawi otherwise than for his private use or permit or cause to be reproduced, fixed, duplicated, extracted, imitated or imported into Malawi otherwise than for his private use; or

(b) distribute or permit or cause to be distributed in Malawi by way of sale, hire, rental or like manner; or

(c) offer or expose to the public for distribution by way of sale, hire, rental or otherwise; or

(d) exhibit or permit or cause to be communicated to the public, for commercial purposes by way of broadcast, public performance or otherwise,

any work or performance protected under this Act.

(2) For the purposes of this section the use of a work in a manner prejudicial to the honour or reputation of the author of that work shall be deemed an infringement of the right of the author.

[Ch4903s48]48. Offences and penalties

(1) Any person who infringes any copyright shall be guilty of an offence and liable to a fine of not less than K200 and not exceeding K15,000 and to imprisonment for a term not exceeding one year and in the case of a continuing offence to a further fine of not less than K5 and not exceeding K50 for each day during which the offence continues.

(2) Any person who, without the authorization of the Minister imports, sells, offers or exposes for sale or distribution in Malawi any copies of the following works made outside Malawi—

(a) works of Malawian folklore; or

(b) translations, adaptations, or arrangements of Malawian folklore,

shall be guilty of an offence and shall be liable to a fine of not less than K200 and not exceeding K10,000 and to imprisonment for a term not exceeding one year and in the case of a continuing offence to a further fine of not less than K10 and not exceeding K50 for each day during which the offence continues.

(3) Any person who contravenes sections 25, 27 or 28 shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

(4) Any person who has in his possession any infringing copy of a work other than for his private or domestic use or who has in his possession any machinery, plate, matrix or other device with the intention of using such device to produce infringing copies, shall be guilty of an offence and shall be liable to a fine of not less than K2,000 and not exceeding K10,000 and to imprisonment for a term not exceeding one year and, in the case of a continuing offence to a further fine of K50 for each day during which the offence continues.

(5) For the purposes of subsection (4) any person who has in his possession three or more infringing copies of the same work shall, unless the contrary is proved, be presumed to be in possession of such copies otherwise than for private or domestic use.

[Ch4903s49]49. Compensation to victims of offence

(1) Subject to the provisions of this Act, infringement of copyright shall be actionable at the suit of the owner of the copyright.

(2) In addition to any punishment imposed by the court in respect of an offence under this Act in any action for an infringement, all such relief by way of damages, injunction, account of profits or otherwise, shall be available to the plaintiff as in any other corresponding proceedings in respect of infringements of other proprietary rights, and in any such action the court may give such orders as are necessary to—

(a) enable the plaintiff obtain evidence of any infringement which he intends to adduce at the trial;

(b) prohibit the defendant from removing his assets from the jurisdiction of the court or otherwise wasting them, to the extent that such assets are necessary to satisfy the plaintiff's claim if he succeeds at the trial.

(3) in any proceedings to which subsection (2) (a) applies—

(a) a person shall not be excused from answering any question put to that person or complying with any order made pursuant to that subsection by reason only that to do so would tend to expose that person or his spouse to criminal proceedings under this Act;

(b) no statement of admission made by a person in answer to a question put, or an order made, in accordance with that subsection shall be admissible in criminal proceedings brought under this Act against that person or his spouse, save that nothing in this paragraph shall render any such statement or admission inadmissible in proceedings against that person for perjury or contempt of court.

(4) The court may order that all reproductions, duplications, extracts, imitations and other material involved in the infringement and all implements or devices used in such infringement be given to the copyright owner, or, if such material be dangerous to the public, be destroyed by the court.

(5) For the purposes of this part, “owner of copyright” means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright.

[Ch4903s50]50. Proof of facts in proceedings

An affidavit made on oath, affirmation or other like manner before a magistrate, notary public or other person competent to administer an oath or affirmation under the law of the country where the oath was made, which—

- (a) purports to have been made by or on behalf of the owner of the copyright or his successor in title, and
 - (b) states all or any of the following—
 - (i) that at the time specified therein the rights of the owner of the copyright work subsisted;
 - (ii) the nationality of the owner of the copyright;
 - (iii) the place where the work was first made;
 - (iv) the date and place of first publication of the work and the date of publication thereof in Malawi, if such publication was not first publication;
 - (v) that the person named therein is the owner of the copyright or his successor in title;
 - (vi) that a copy of the work exhibited to the affidavit is a true copy of the work,
- shall be admitted without further proof in any proceedings under this Act.

[Ch4903s51]51. Inspectors

(1) The Society shall, for the purposes of enforcing the provisions of this Act, appoint such number of inspectors as the Society considers appropriate and shall issue to them, in writing or in such form as may be prescribed, certificates of authority to act as such inspectors.

(2) In addition to inspectors appointed under subsection (1) any member of the Society, a police officer of the rank of SubInspector and above shall perform the functions of an inspector under this Act.

(3) A person appointed as an inspector shall hold office subject to such conditions as the Society may determine with approval of the Minister.

[Ch4903s52]52. Entry into premises

Subject to the provisions of this section, an inspector may, at any reasonable time and on production of his certificate of authority enter any premises, ship, aircraft or vehicle for the purpose of ascertaining whether there is or has been, on or in connexion with those premises, ship, aircraft or vehicle any contravention of this Act.

[Ch4903s53]53. Mode of inspection

(1) For the purpose of ascertaining whether there is or has been a contravention of this Act, an inspector may inspect—

- (a) any substance or article appearing to him to be a work;
- (b) any container or package used or intended to be used to contain any work; or
- (c) any plant or equipment appearing to him to be used or intended to be used in connexion with the production, reproduction or otherwise manufacture of a work.

(2) An inspector may seize and detain any substance or article which he has reasonable cause to believe to be an infringing copy of any work or in relation to which or by means of which he has reasonable cause to believe that an offence under this Act has been or is being committed, and any document which he has reasonable cause to believe to be a document which may be required in proceedings under this Act.

(3) Where an inspector seizes any work he shall notify in writing the person from whom it is seized the fact of that seizure and shall in that notification specify any item seized.

(4) Any person who—

- (a) wilfully obstructs an inspector in the discharge of the inspector's duties: or
 - (b) wilfully fails to comply with any requirement properly made to him by an inspector;
- or
- (c) without reasonable cause fails to give to the inspector any assistance or information which the inspector may reasonably require of him for the purpose of the performance of his duties under this Act; or

(d) in giving any such information as is mentioned in sub-paragraph (c) makes any statement which he knows to be false or which he does not believe to be true,

shall be guilty of an offence and shall be liable to a fine of K1,000 and to imprisonment for a term not exceeding six months.

[Ch4903s54]54. Inspectors not personally liable for acts done under this Act

An inspector shall not be personally liable in respect of any act done by him in the course of his employment and in the execution or purported execution of any duty under this Act.

[Ch4903s55]55. Extension of the application of this Act

The Minister may, by notice published in the Gazette, extend the application of this Act to any works, expressions of folklore, performances, sound recordings and broadcasts which are first publications in a country or created by a person who is a national of or resident in or a company incorporated in a country which is a party to a copyright treaty or convention to which Malawi is also a party and which grants reciprocal provisions.

[Ch4903s56]56. Regulations

22 of 1989The Minister may make regulations for carrying out or giving effect to the provisions of this Act and without prejudice to the generality to the foregoing, such regulations may—

- (a) provide for the registration and deposit of works;
- (b) prescribe forms—
 - (i) of applications to be made;
 - (ii) of licences to be issued;
 - (iii) of contracts to be concluded,

pursuant to the provisions of this Act;

- (c) prescribe fees payable under this Act;
- (d) prescribe anything to be prescribed under this Act;

22 of 1989(e) provide for the affiliation of associations to the Society and for the membership with such associations or with the Society of any persons whose works are protected under this Act.

[Ch4903s57]57. Applications to works created before and after commencement of this Act

This Act shall apply in relation to works created before the commencement of this Act as it applies in relation to works made thereafter.

SCHEDULEs. 46(1), G.N. 66/1990, 11/2001

CONSTITUTION, PROCEEDINGS AND OTHER MATTERS OF THE SOCIETY

1. Composition of the Society

(1) The Board shall consist of the following members each of whom shall except in the case of an ex officio member, be a citizen of Malawi—

- (a) a chairman, who is a member of the Society and has knowledge of and competence in copyright matters, appointed by the Minister;
- (b) the Secretary for Sports and Culture or his designated representative;
- (c) the Secretary for Justice or his designated representative; and

(d) five persons nominated at the annual general assembly of the Society and appointed by the Minister.

(2) A member of the Board, not being a member ex-officio, shall hold office for two years.

(3) Upon the appointment to the Board of any member, the Minister shall cause notice of such appointment to be published in the Gazette and shall in such notice specify the current membership of the Board resulting upon such appointment.

(4) Members of the Board shall not, by virtue only of their appointment to the Board, be deemed to be officers in the public service.

2. Vacation, etc., of members from office

(1) The Minister may require a member of the Board to vacate his office if the Minister is satisfied that the member— G.N. 66/1990

(a) has become insolvent or has assigned his estate for the benefit of, or made a composition or other arrangement with his creditors; or

(b) has been absent from three consecutive meetings of the Board, of which he has had notice, without the leave of the Chairman of the Board.

(c) has been convicted of an offence under this Act;

(d) has been convicted within Malawi of a criminal offence, or outside Malawi of an offence by whatever name called which, if committed within Malawi, would have been a criminal offence, and sentenced to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon; or

(e) is mentally or physically incapable of efficiently performing his duties as member of the Board.

(2) The Minister may suspend from office a member of the Board against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed.

(3) A member of the Board may resign his office by notice in writing to the Minister and if the Minister accepts such resignation.

3. Filling of vacancies in the Board

(1) On vacation of office by a member of the board, the vacancy shall be filled by a person appointed in accordance with paragraph 1 (a) under which the former member was appointed: G.N. 66/1990

Provided that if the remaining period is less than six months the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Board is granted leave of absence by the Board, the Board may, if it sees fit, co-opt a person who belongs to the same profession or calling as the member who has granted leave to fill the vacancy during the absence of the member.

4. Co-opted persons

The Board may in its discretion at any time and for any length of time invite any person, and the Minister may in the like manner nominate any officer in the public service, to attend any meeting of the Board and take part in the deliberations of the Board, but such person or officer shall not be entitled to vote at that meeting. G.N. 66/1990

5. Chairman and Vice-Chairman

(1) The Board shall elect a Vice-Chairman from amongst its members. The Vice-Chairman shall, subject to subparagraph (2) hold office for the duration of his membership in the Board. G.N. 66/1990, 11/2001

(2) The office of the Vice-Chairman shall become vacant—

- (a) if the holder resigns his office by notice in writing to the Board; or
- (b) if the holder of the office ceases to be a member of the Board; or
- (c) if the Board so determines.

(3) Whenever the Chairman is absent or is for any reason unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

6. Meetings of the Board

(1) Subject to subparagraph (2), the Board shall hold ordinary meetings for the dispatch of its business at least four times in each year. G.N. 66/1990

(2) An extraordinary meeting of the Board—

- (a) may be convened by the Chairman at any time;
- (b) shall be convened by the Chairman within twenty-one days of the receipt by him of a request in writing signed by not less than any three members of the Board and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Board—

- (a) the Chairman or, in his absence, the Vice-Chairman, shall preside;
- (b) in the absence of both the Chairman and the Vice-Chairman the members present and forming the quorum shall elect one of their number to preside; and
- (c) the quorum shall be formed by any six members.

(4) At any meeting the decision of the Board on any matter shall be that of the Majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairman or the person presiding shall have a casting vote in addition to his deliberative vote.

(5) Subject to this Act, the Board may make standing orders for the regulation of its proceedings and business and may vary, suspend or revoke any such standing orders.

7. Remuneration and expenses of members of the Board

Members of the Board shall be paid from the funds of the Board such allowances as the Minister may determine, and in determining the allowances the Minister may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board in connexion with the business of the Board. G.N. 66/1990

8. Appointment of Copyright Administrator and other staff

(1) Subject to this paragraph, the Board— G.N. 66/1990

(a) shall appoint a Copyright Administrator upon such terms and conditions as may be approved by the Minister;

(b) may appoint such other staff as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) The Copyright Administrator, after consultation with the Chairman of the Board, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by written law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Board at its next meeting.

(3) The Copyright Administrator shall be the secretary to the Board.

(4) Subject to any general or special directions of the Board, the Copyright Administrator shall be the chief executive officer of the Board and as such he shall be responsible to the Board for the administration and management of its affairs, including the supervision of the other staff of the Board.

SUBSIDIARY LEGISLATION

COPYRIGHT (EXTENSION OF THE APPLICATION OF THE ACT) NOTICE

under s. 55

G.N. 40/1990

100/1993

1. Citation

This Notice may be cited as the Copyright (Extension of the Application of the Act) Notice.

2. Extension of application of the Act

The Act shall apply to any works, including expressions of folklore, performances, sound recordings and broadcasts which are first publications in a country, or created by a person who is a national of or resident, or a company incorporated, in a country specified in the Schedule, being a country which is a party to a treaty or convention specified in the Schedule in relation to that country and which grants reciprocal provisions in Malawi.

SCHEDULE para. 2

Berne Convention for the Protection of Literacy and Artistic Works as revised at Paris on 24th July, 1991, which has the following membership—

Argentina	Libya
Australia	Liechtenstein
Austria	Luxembourg
Bahamas	Madagascar
Barbados	Malaysia
Belgium	Mali
Benin	Malta
Brazil	Mauritania
Bulgaria	Mauritius
Burkina Faso	Mexico
Cameroon	Monaco
Canada	Morocco
Central African Republic	Netherlands
Chad	New Zealand
Chile	Niger
China	Nigeria
Colombia	Norway
Congo	Pakistan
Costa Rica	Paraguay
Cote d'voire	Peru

Cyprus	Phillipines
Czech Republic	Poland
Denmark	Portugal
Ecuador	Romania
Egypt	Rwanda
Fiji	Senegal
Finland	Slovakia
France	Slovenia
Gabon	South Africa
Gambia	Spain
Ghana	Sri Lanka
Germany	Surinam
Greece	Sweden
Guinea	Switzerland
Guinea-Bissau	Thailand
Holy See	Togo
Honduras	Trinidad and Tobago
Hungary	Tunisia
Iceland	Turkey
India	United Kingdom
Ireland	United States of America
Israel	Uruguay
Italy	Venezuela
Japan	Yugoslavia
Kenya	Democratic Republic of Congo
Lebanon	Zambia
Lesotho	Zimbabwe

Liberia

COPYRIGHT (LICENSING OF PUBLIC PERFORMANCES) REGULATIONS

under s. 56

G.N. 61/1994

82/1998

31/2001

1. Citation

These Regulations may be cited as the Copyright (Licensing of Public Performances) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—“licence” means a licence issued under regulation 5(1).

3. Licence to hold public Performance

No person shall hold a public performance of a work in which copyright subsists except under a licence issued by the Society under these Regulations in respect of such public performance.

4. Application for Licence

Every application for a licence shall be made to the Society in the form set out in Part I of the Schedule hereto. Schedule, Part I

5. Issue of licence

(1) Subject to subregulation (3), the Society shall issue a licence in the form set out in Part II of the Schedule hereto subject to—Schedule, Part II

(a) Such conditions as it shall think fit including the submission, in the form set out in Part III of the Schedule hereto, of a performance return for each public performance; and Schedule, Part III

(b) the payment by the applicant of the fees corresponding to the appropriate tariff classifications specified in Part IV of the Schedule hereto. Schedule, Part IV

(2) A licence shall be valid only for the purposes in respect of which it has been issued and for the period, and with respect to the premises, specified thereon.

(3) The Society may refuse to issue a licence and the reasons for such refusal shall be communicated to the applicant.

6. Licence to be displayed

The applicant shall publicly display the licence in a prominent and visible position at or near the main entrance to the premises at which the public performance is to be held.

7. Issue of licence for foreign bands or groups

(1) Any person or organization that promotes and brings in any foreign band or foreign performing group into Malawi shall enter into a Contract with the Society at least twenty-one days before the foreign band or foreign performing group enters Malawi. G.N. 82/1998

(2) The Society shall after the signing of the Contract, facilitate the issuance of government clearance allowing the foreign band or foreign performing group to perform in Malawi.

(3) Any person or organization that promotes or brings any foreign band or performing group shall pay to the Society a non-refundable fee of K500 for the processing of the Contract.

8. Royalties

The Society shall pay in accordance with its procedures royalties or other appropriate remuneration accrued or due to the person entitled thereto out of the fees collected by the Society under these Regulations.

9. Appeals

An applicant who is aggrieved with any condition endorsed by the Society on a licence or with the decision of the Society refusing to issue a licence may, before the public performance is held and, in any case, within fourteen days from the date the condition is endorsed or the decision is made, appeal to the Minister to review or rescind the condition of decision, as the case may be.

10. Fees

The fees prescribed in Part V of the Schedule shall be payable in respect of the matters specified therein in relation to such fees. G.N. 31/2001

11. Penalty for failure to pay fees

In addition to the fees payable under these Regulations there shall be payable the infringement fees relatively specified in Part V of the Schedule hereto. Schedule, Part V

12. Validity of acts

Anything done by the Society before the commencement of these Regulations in respect of a public performance of any work and which thing is capable of being done under these Regulations shall be deemed to have been validly done under or pursuant to these Regulations.

SCHEDULE regs. 4 and 5, G.N. 31/2001

PART I

FORM APP 1

COPYRIGHT SOCIETY OF MALAWI

COPYRIGHT ACT

(CAP. 49:03)

Application No.

COPYRIGHT (LICENSING OF PUBLIC PERFORMANCES) REGULATIONS

APPLICATION FOR LICENCE FOR PUBLIC PERFORMANCES OF WORKS IN WHICH COPYRIGHT SUBSISTS

I/We Proprietor(s)/Manager(s)

of apply for a licence to hold public performances of works in which copyright neighbouring rights subsists under the Copyright Act.

Address..... Telephone No.

..... Location

..... District

Activities of Establishment Capacity—Area in m² (1 Customer = 1 m²)

- | | |
|-----------------|-------------------------------------|
| 1. Hotel | No. of Bars and Area |
| 2. Inn | No. of Restaurants and Area |
| 3. Motel | No. of Shops and Area |
| 4. Rest-house | No. of Buses/Minibuses and capacity |
| 5. Restaurant | No. of Discotheques and Area |
| 6. Bar | Live Band (Yes) (No.) |
| 7. Bottlestore | Other (specify) |
| 8. Supermarket | |
| 9. Shop/Store | |
| 10. Tavern | |
| 11. Night Club | |
| 12. Discotheque | |

- 13. Entertainment Hall
- 14. Salon
- 15. Bus/Minibuses
- 16. Taxi Operator
- 17. Car Hire Operator
- 18. Other (specify)

Mark with x in the appropriate box and tick where appropriate

Name of place/recorded music

No. of rooms with radio/TV

No. of lounges and sitting capacity

I/We the manager/proprietor of the above mentioned
 certify that the above information is true to the best of my/our knowledge and
 belief.

.....

Signature of Manager or Proprietor

FOR OFFICIAL USE ONLY

Tariff applicable

Fee Payable

File Number

Application Number

.....

Signature of Licensing Officer

Checked by:

Return to:

The Executive Director

Copyright Society of Malawi

P.O. Box 30784

Lilongwe 3

Tel. 01 751 148/783 992/752 717

PART II

FORM APP 2

COPYRIGHT SOCIETY OF MALAWI

Licence No.

COPYRIGHT ACT

(CAP. 49:03)

COPYRIGHT (LICENSING OF PUBLIC PERFORMANCES) REGULATIONS LICENCE

(Regulation 5 (1))

..... of

(name)

.....

(address)

is hereby licensed to hold public performances of works in which copyright subsists under the Copyright Act at

.....

(name and location of premises)

in the district of subject to the conditions specified hereunder.

This certificate is valid from, 20

to 20

.....

Copyright Administrator

CONDITIONS

*Date of application

Previous certificate number

PART III G.N. 31/2001

FORM APP 3

COPYRIGHT SOCIETY OF MALAWI

COPYRIGHT ACT

(CAP. 49:03)

COPYRIGHT (LICENSING OF PUBLIC PERFORMANCES) REGULATIONS

PROGRAMME RETURN OF WORKS PERFORMED

SEQ	Title of Work	Author	Composer	Arranger	Producer
-----	---------------	--------	----------	----------	----------

/1.

2.

PLAYS

Titles	Author	Director	Producer
--------	--------	----------	----------

I/We declare that the works stated above were to the best of my/our knowledge and belief actually performed as stated.

/ Date Band/Group Leader /.....

Return to:

The Executive Director

Copyright Society of Malawi

P.O. Box 30784

Lilongwe 3

Telephone No. 01 751 148/783 992/752717

PART IV G.N. 82/1998 31/2001

FEES

Tariff Classification Fee, per year Infringement fee

1. Tariff B

For radio/television /broadcasts in 787Malawi Percentage of gross air time revenue/gross operating costs as follows— Nil

revenue/operating costs Percentage of musical content Percentage of gross

1–10 1%

11–20 2%

21–30 3%

31–40 4%

41–50 5%

51–60 6%

61–70 7%

71–80 8%

81–90 9%

91–100 10%

Minimum fee = K50,000.00

2. Tariff PBG

For public performance of sound recordings in or upon premises where liquor is sold or consumed 1–50 m² = K24.00/m²

51–75 m² = K22.00/m²

76–100 m² = K18.00/m²

Over 100 m² = K12.00m²

Minimum fee = K800.00

(1 customer's dancing/

seating capacity = 1 m² For unauthorized performance, the infringement fee shall be assessed at double the tariff in the "fee, per year" column.

3. Tariff PHS

For public performance of sound recordings in restaurants, cafes, coffee shops or workers eating houses Class A—restaurants, cafes or coffee shops in hotels, motels or inns

1–50 m² = K24.00/m²

51–75 m² = K22.00/m²

76–100 m² = K18.00/m²

Over 100 m² = K12.00/m²

Minimum fee = K800.00

Class B—all other restaurants, cafes or coffee shops

1–50 m² = K18.00/m²

51–75 m² = K15.00/m²

76–100 m² = K12.00/m²

Over 100 m² = K10.00/m²

Minimum fee = K700.00

Class C—Workers eating houses

1–50 m² = K15.00/m²

51–75 m² = K12.00/m²

76–100 m² = K10.00/m²

Over 100 m² = K7.00/m²

Minimum fee = K600.00 For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee per year” column.

4. Tariff AT

For public performance of sound recordings in or upon airport terminals—

For unauthorized performance, the infringement fee shall be assessed double the tariff in the “fee, per year” column.

(a) for domestic flights K3,000.00

(b) for international flights K6,000.00

5. Tariff PD

For public performance of sound recording at discotheques 1–50 m² = K120.00/m²

51–75 m² = K90.00/m²

76–100 m² = K60.00/m²

Over 100 m² = K30.00/m²

Minimum fee = K4,800.00

(1 Customer's dancing area = 1 m²) For unauthorized performance, the infringement fee shall be assessed at double the tariff in the "fee, per year" column.

6. Tariff ML

For live public performances in Malawi by local musicians in hotels, motels, inns, clubs and similar establishments K1,500.00 per function For unauthorized performance, the infringement fee shall be assessed at double the tariff in the "fee, per year" column.

7. Tariff MF

For live public performance in Malawi by foreign musicians 5 per cent of gross admission charges per performance For unauthorized performance, the infringement fee shall be assessed at 10 percentage of gross revenue of the performance.

8. Tariff MLF

For public performances of musical, literary and dramatic works at festivals, fan-fairs, concerts, balls or similar functions K1,500.00 per function For unauthorized performance, the infringement fee shall be assessed at double the tariff in the "fee, per year" column.

9. Tariff L

For public distribution of video or audio cassettes for sale, hire or rental—

For unauthorized performance, the infringement fee shall be assessed at double the tariff in the "fee, per year" column.

(a) distribution of video cassettes K3,500.00

(b) distribution of audio cassettes—

(i) up to 1000 cassettes in stock K8,000.00

(ii) above 1000 cassettes in stock K2,000.00

10. Tariff J

For public performances of sound recordings by means of juke boxes

K2,000.00 For unauthorized performance, the infringement fee shall be assessed at double the tariff in the "fee, per year" column.

11. Tariff V

For projection of cinematographic films and other sound or visual recordings—
For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee per year” column.

- (a) for cinematographic film/shows K2,000.00
- (b) for other sound or visual recordings including video shows K600.00

12. Tariff PT

For public performances of sound recordings in— For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee, per year” column.

- (a) buses, trains, minibuses, taxis, ships and hire vehicles K15.00 per seat
- (b) commercial aeroplanes K25.00 per seat

13. Tariff H

For indoor public performances or presentation of musical, literary and dramatic works in hall— For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee, per year” column.

- (a) at education institutions 1–50 m² = K5.00/m²

51–75 m² = K3.00/m²

76–100 m² = K2.00/m²

Over 100 m² = K1.50/m²

Minimum fee = K500.00

(Customer’s seating/

dancing area = 1 m²)

- (b) in other places 1–50 m² = K70.00/m²

51–75 m² = K5.00/m²

76–100 m² = K3.00/m²

Over 100 m² = K2.00/m²

Minimum fee = K800.00

(Customer’s seating/

dancing area = 1 m²

14. Tariff R

For public reception of radio/television broadcasts of national or foreign origin or recorded music in places such as shops, stores, saloons show-rooms, etc. 1–50 m² = K24.00/m²

51–75 m² = K22.00/m²

76–100 m² = K18.00/m²

Over 100 m² = K12.00/m²

Minimum fee = K800.00

(Customer's standing/seating/

area = 1 m² For unauthorized reception the infringement fee shall be assessed at double the tariff in the "fee, per year" column.

15. Tariff RT

For public reception of radio or television broadcasts of national or foreign origin in hotels, motels boarding houses and similar multi-roomed establishments (a) hotel rooms
K100.00 per room For unauthorized performance, the infringement fee shall be assessed at double the tariff in the "fee, per year" column.

(b) Lounge—

1–10 seats = K60.00 per seat/customer

11–20 seats = K50.00 per seat/customer

Over 20 seats = K40.00 per seat/customer

Minimum fee K700.00

COPYRIGHT (PRODUCTION, IMPORTATION AND DISTRIBUTION OF SOUND AND AUDIO-VISUAL RECORDINGS) LICENSING REGULATIONS

under s. 56

G.N. 27/1998

7/2003

1/2008

1. Citation

These Regulations may be cited as the Copyright (Production, Importation and Distribution of Sound and Audio-Visual Recordings) Licensing Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“hologram” means an adhesive label issued by the Society.

3. Licence

No person shall produce, distribute or import for distribution sound recordings, audio-visual recordings or audio works in Malawi except under a licence issued by the Society and as set out in Parts V, VI, VII, VIII and IX of the First Schedule. First Schedule

4. Adhesive label

A hologram shall be affixed to each and every sound recording, audio-visual recording or audio works which is distributed or offered or otherwise exposed to the public for distribution by way of sale, hire, rental or otherwise within Malawi.

5. Society to issue adhesive labels

The hologram shall be delivered exclusively by the Society after verification that the sound recording, audio-visual recording or audio works has been produced and/or published in Malawi or imported into Malawi without infringing any copyright granted under the Act.

6. Seizure

Any sound recording, audio-visual recording or audio works without a hologram and which is imported, distributed, offered or exposed to the public for sale, rental or otherwise within Malawi shall be considered as a copy infringing copyright granted under the Act and shall be seized by the Society, a police officer or an officer of the Department of Customs and Excise.

7. Length of seizure and revocation

(1) The Society shall retain the seized infringing copies for a period of up to sixty days from the date of the seizure.

(2) The owner of the seized infringing copies may submit an objection against the seizure to the Society within the sixty days of giving reasons for the objection.

8. Destruction of recordings

The Society under the supervision of officers from the Department of Customs and Excise or Malawi Police Service, shall destroy the sound recording, audio-visual recording or audio works seized and kept for more than sixty days where—

(a) no person raises an objection against the seizure of the recordings; or

(b) the Society deems that despite the objection, the seized recordings are infringing copies.

9. Seizure by a customs officer

A customs officer shall seize or impound or retain any sound recording, audio-visual recording or audio works imported into Malawi exceeding a quantity of three copies of the same recording until such importation has been consented to or verified and authenticated by the Society.

10. Clearance of application form

Every application to clear imported pre-recorded sound recordings, audio-visual recording or audio works shall be made to the Society in the form set out in Part I of the First Schedule hereto.
First Schedule

11. Authorization Certificate

The Society shall issue an authorization certificate in the form set out in Part II of the First Schedule subject to— First Schedule

(a) evidence being given that the recordings are or shall be produced in conformity with the Act and the regulations made thereunder;

(b) the applicant shall affix a hologram to each recording offered for sale, hire or rental;

(c) the levy for the holograms acquired by the applicant shall be paid to the Society.

12. Application to purchase holograms

Every application to purchase a hologram shall be made in the form set out in Part III of the First Schedule hereto. First Schedule

13. Approval to purchase holograms

The Society shall give the approval to purchase holograms in the form set out in Part IV of the First Schedule hereto. First Schedule

14. Application for importation Licence

Every application for importation licence shall be made to the Society in the form set out in Part V of the First Schedule hereto. First Schedule

15. Importation Licence

The Society shall issue an importation licence in the form set out in Part VI of the First Schedule hereto. First Schedule

16. Application for a production licence

Every application for a production licence shall be made to the Society in the form set out in Part VII of the First Schedule hereto. First Schedule

17. Production licence

The Society shall issue a production licence in the form set out in Part VIII of the First Schedule hereto. First Schedule

18. Application form for distribution licence

Every application for a distribution licence shall be made to the Society in the form set out in Part IX of the First Schedule hereto. First Schedule

19. Distribution licence

The Society shall issue a distribution licence in the form set out in Part X of the First Schedule hereto. First Schedule

20. Cost of hologram

A hologram shall be purchased at a price set out in the Second Schedule hereto. Second Schedule

21. Offence

Any person who contravenes these Regulations shall be guilty of an offence and if convicted liable to a fine of K1,000 and to imprisonment for three months.

22. Legal proceedings

In any legal proceedings, the Society shall, unless proved to the contrary, be presumed to represent all national and foreign authors and other copyright holders.

FIRST SCHEDULE reg. 10

PART I

COPYRIGHT ACT

(CAP. 49:03)

FORM A

APPLICATION FOR CLEARANCE OF IMPORTED SOUND RECORDINGS, AUDIO-VISUAL RECORDINGS OR AUDIO WORKS FROM THE CUSTOMS AND EXCISE DEPARTMENT

1. Name of Importer/Applicant:
2. Address:
Telephone Number:..... Fax:.....
3. (1) Title of work(s) for which clearance is being sought:
(2) Quantity of material being imported:
4. Name of author(s) or work:.....
5. (1) Name of producer of work:
(2) Address:

.....
6. (1) Has importer obtained the authorization of the producer or his authorized representative to import the said work(s)? Yes/No;

(2) If yes please attach proof of authorization.

7. Declaration:

I/We declare on my/our honour that the information given above is true to the best of my/our knowledge and that any misinformation provided by me/us renders my/ our application null and void.

Declared at: on..... 20.....

.....

Signature of Applicant

NOTE:

IMPORTER SHOULD HAVE—

(1) Genuine hologram of the country of origin of the imported works affixed on to the work; or

(2) Authorization from the producer of the work to import.

PART II reg. 11

COPYRIGHT ACT

(CAP. 49:03)

FORM B

AUTHORIZATION CERTIFICATE

Approval is hereby given to of
..... to clear the sound recordings, audio-visual recordings or
audio works entitled and produced by
..... of from the Customs and Excise Department.

.....

Copyright Administrator Date

NOTE:

Clearance is for specific works only and is not applicable to any work not mentioned in the clearance.

PART III reg. 12

COPYRIGHT ACT

(CAP. 49:03)

FORM C

APPLICATION TO PURCHASE HOLOGRAM FROM THE COPYRIGHT SOCIETY OF MALAWI

1. Name of Importer/Applicant:
2. Address:
Telephone Number: Fax:
3. Number of holograms required:
4. Name of author(s) of work:
5. (1) Has importer obtained the authorization of the producer or his authorized representative to import the said work(s): Yes/No.
(2) If yes please attach evidence.
6. Declaration:

I/We declare on my/our honour that the information given above is true to the best of my/our knowledge and that any misinformation provided by me/us renders my/ our application null and void.

Declared at: on..... 20.....

.....

Signature of Applicant

NOTE:

1. Genuine hologram of the country of origin of the imported works affixed on to the works; or
2. Authentication from the producer of the work to import the work(s) for which this approval is being sought.

PART IV reg. 13

COPYRIGHT ACT

(CAP. 49:03)

FORM D

APPROVAL TO PURCHASE HOLOGRAMS FROM THE COPYRIGHT SOCIETY OF MALAWI

Approval is hereby given to:of
..... to purchase holograms
numbered..... to in respect of the sound
recordings, audio-visual recordings or audio works as detailed hereunder:

Serial No.	Title	Composer	Producer	Quantity	For Official Use
1.					
2.					
3.					
4.					
5.					

For Official Use

Checked by:

Date:

Payment received by:.....

Approved by:

NOTE:

Holograms are not transferable from one work to the other without the express permission of the Copyright Administrator.

PART V reg. 14

COPYRIGHT ACT

(CAP. 49:03)

FORM E

APPLICATION FOR IMPORTATION LICENCE

1. Name of Importer:

.....

2. Postal Address:
.....

3. Physical Address:
.....

4. Telephone Number:..... Fax:
.....

5. Name of Foreign Supplier:
.....

6. Postal Address:
.....

7. Physical Address:
.....

8. Telephone Number: Fax:

9. E-mail Address (If there are several suppliers give their details on a separate sheet).

10. Declaration:

I/We declare that the information given above is true to the best of my/our knowledge and that any misinformation provided by me/us renders my/our application null and void.

Declared at: on..... 20.....
.....

Signature of Applicant

For Official Use Only

Checked by:

Date:

Approved by:

PART VI reg. 15

COPYRIGHT ACT

(CAP. 49:03)

FORM F

IMPORTATION LICENCE

Name: of
..... is hereby licensed to import pre-recorded sound

recordings or audio-visual recordings or audio works subject to conditions set out at the back of the licence.

This licence may be revoked if any one of the conditions are not adhered to. Copies imported in contravention of the conditions shall be considered infringing copies and subject to seizure as provided for in the Act.

The licence is valid from:

.....

Amount: K

.....

Amount in words:

.....

.....

.....

.....

Copyright Administrator

CONDITIONS OF THE IMPORTATION LICENCE

(i) Production of the imported sound recordings, audio-visual or audio works has been done under authorization of the owner or his authorized representative in the country of production.

(ii) A royalty of 10 per cent at an ordinary selling price has been paid subject to a minimum set by the Society.

(iii) An adhesive label has been affixed on each copy imported before the same is offered for sale.

PART VII reg. 16

COPYRIGHT ACT

(CAP. 49:03)

FORM G

APPLICATION FOR A PRODUCTION LICENCE

1. Name of Applicant:.....

2. Postal Address:

3. Physical Address:

4. Telephone Number: Fax:

5. Music Production Format: Tape CD DAT

(Tick where applicable)

6. Capacity of equipment:

Cassettes and CDs (Tick where applicable)

0-10,000

10,000-20,000

Above 20,000

7. Declaration:

I/We declare that the information given above is true to the best of my/our knowledge and that any misinformation provided by me/us renders my/our application null and void.

Declared at: on..... 20.....

.....

Signature of Applicant

For Official Use Only

Checked by:

Date:

Payment received by:.....

Approved by:

PART VIII reg. 17

COPYRIGHT ACT

(CAP. 49:03)

FORM H

PRODUCTION LICENCE

Name: of is hereby licensed to undertake sound recordings, audio-visual recordings or audio works production and manufacturing subject to the conditions contained at the back of the licence.

This licence is valid from: to

Amount: K

Amount in words:

.....

Copyright Administrator

CONDITIONS FOR THE GRANT OF THE LICENCE

(i) Each instance of production and manufacturing has been subjected to specific authorization agreement.

(ii) A mechanical royalty has been paid at 10 per cent of the ordinary retail selling price but subject to a minimum set by the Society from time to time.

(iii) An adhesive label acquired from the Society has been affixed on each copy produced before the same is offered for sale.

This licence may be revoked if any one of the above three conditions are not adhered to. Copies produced in contravention of the above-conditions shall be considered infringing copies and subject to seizure as provided for in the Act.

PART IX reg. 18

COPYRIGHT ACT

(CAP. 49:03)

FORM I

APPLICATION FOR A DISTRIBUTION LICENCE

- 1. Name of Distributor:
- 2. Postal Address:.....
- 3. Physical Address:
- 4. Telephone Number:..... Fax:

5. Type of Distribution Wholesale

Retail

(Tick where applicable)

6. (Indicate quantity) Sales volume in units: CD/DVD

Sales volume in units: Tapes

7. Declaration:

I/We declare that the information given above is true to the best of my/our knowledge and that any misinformation provided by me/us renders my/our application null and avoid.

Declared at: on..... 20.....

.....

Signature of Applicant

For Official Use Only

Checked by:

Date:

Approved by:

PART X reg. 19

COPYRIGHT ACT

(CAP. 49:03)

FORM J

DISTRIBUTION LICENCE

Name: of is hereby licensed to undertake the business of sound recordings, audio-visual recordings or audio works distribution for the periodto subject to the following condition:

All copies being distributed have an adhesive label acquired from the Society affixed to them.

This licence may be revoked if the above-condition is not adhered to and the infringing copies shall be subject to seizure as provided for in the Act.

Amount: Retail K

Wholesale K

.....

Amount in words:

.....

Copyright Administrator

SECOND SCHEDULE reg. 20

COPYRIGHT ACT

(CAP. 49:03)

COST OF HOLOGRAM

One Hologram K5.00

MERCHANDISE MARKS

ARRANGEMENT OF SECTIONS

SECTION

PRELIMINARY

1. Short title
2. Interpretation

PART I

APPLICATION OF TRADE MARKS AND TRADE DESCRIPTIONS

3. Application of trade-marks and trade descriptions

PART II

MARKING OF GOODS AND PROHIBITIONS IN RELATION TO TRADE MARKS AND TRADE DESCRIPTIONS

4. Certain acts deemed to be a forgery of a trade mark
5. Forgery of trade marks and other acts prohibited
6. Prohibition of sale of goods bearing forged trade mark or false trade description
7. Prohibition of sale of imported goods unless accompanied by indication of origin
8. Prohibition of sale of goods, whether made in Malawi or elsewhere, unless accompanied by indication of origin
9. Importation of certain goods prohibited
10. Manner of application of mark
11. Marking of goods on importation
12. Removal of indication of origin from imported goods prohibited
13. Indication of origin and compliance with specified standards in the case of certain classes of goods
14. Indication of origin of certain goods may be prescribed
15. Use of certain marks may be prohibited

16. Submission of representations by interested persons

PART III

MISCELLANEOUS

17. Implied warranty on sale of marked goods
18. Sale of goods in bottles marked with owner's name
19. Appointment of inspectors and powers of police officers and inspectors
20. Evidence
21. Aiding and abetting offences
22. Limitation of prosecution
23. Offences and penalties
24. Forfeiture

17 of 1957(F)

17 of 1959(F)

G.N. 5/1964(M)

137/1966

An Act to provide for the marking of goods for the prohibition, of the use of certain emblems and for matters incidental thereto

[7TH MARCH 1958]

PRELIMINARY

[Ch4904s1]1. Short title

This Act may be cited as the Merchandise Marks Act.

[Ch4904s2]2. Interpretation

In this Act, unless inconsistent with the context—

“apply to” means to emboss, impress, engrave, etch or print upon, weave or otherwise work into or annex or affix to, and cognate expressions shall be construed accordingly;

“bottle” means a bottle made of glass, earthenware or plastic material;

“covering” includes any stopper, cask, bottle, vessel, box, cover, wrapper, capsule, case, frame or container;

“customs officer” means any officer of the Department of Customs and Excise and any other person appointed by the Controller of Customs and Excise for the discharge of any duties in connexion with the administration of the Customs and Excise Act; Cap. 42:01

“false trade description” means a trade description which is false in a material respect as regards the goods to which it is applied and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description false or misleading in a material respect and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act;

“goods” means anything which is the subject of trade, manufacture or merchandise;

“goods assembled externally” means goods assembled in any country outside Malawi;

“goods manufactured externally” means goods manufactured, made or produced in any country outside Malawi;

“goods mixed externally” means goods the ingredients of which have been mixed in any country outside Malawi and were manufactured, made or produced in—

- (a) a country other than the country in which they were mixed; or
- (b) more than one country;

“inspector” means an inspector appointed under section 19;

“label” includes any band or ticket;

“mix” includes blend and cognate expressions shall be construed accordingly;

“name” includes any abbreviation of or addition to a name; “offending mark” means—

(a) in relation to goods manufactured externally, goods assembled externally or goods mixed externally—

(i) a mark applied to those goods containing any name being or purporting to be the name of any manufacturer, producer, trader, assembler or mixer in Malawi or the name of any town, place or District in Malawi; or

(ii) a trade mark or trade description applied to those goods containing—

(A) a direct or indirect reference to any town, place or district outside Malawi; or

(B) a direct or indirect reference (other than the name of a country applied to those goods so as to indicate that they were manufactured, produced, assembled or mixed in that country) to a country outside Malawi;

(b) in relation to goods manufactured, made, produced, assembled or mixed in Malawi a trade mark or trade description applied to those goods containing a direct or indirect reference to any town, place, district or country outside Malawi;

“police officer” means a member of the Malawi Police Force of or above the rank of Inspector;

“sell” includes to expose for sale or have in possession for the purpose of sale or for any purpose of trade or commerce, and cognate expressions shall be construed accordingly;

“trade description” means any description, statement or other indication, direct or indirect, as to—

- (a) the number, quantity, measure, gauge or weight of any goods; or
- (b) the standard of quality of any goods, according to a classification commonly used or recognized in the trade; or
- (c) the name of the manufacturer, producer, assembler or mixer of any goods; or
- (d) the place or country in which any goods were manufactured, made, produced, assembled or mixed; or
- (e) the fitness for purpose, strength, performance or behaviour of any goods; or
- (f) the mode of manufacturing, producing, assembling or mixing of any goods; or
- (g) the material of which any goods are composed; or
- (h) the fact of any goods being the subject of an existing patent, privilege or copyright;

and the use of any figure, word or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act;

“trade mark” means a mark which is used upon or in connexion with goods for the purpose of indicating that they are, by virtue of manufacture, production, selection, certification, dealing with or offering for sale, the goods of the proprietor or of a person who is, in terms of any enactment in force within Malawi, the registered user thereof.

PART I

APPLICATION OF TRADE MARKS AND TRADE DESCRIPTIONS

[Ch4904s3]3. Application of trade marks and trade descriptions

- (1) A person shall be deemed to apply a trade mark or trade description to goods if he—
- (a) applies it to the goods themselves; or
 - (b) applies it to any covering, label, reel or other thing in or attached to which the goods are sold; or

(c) places, encloses or annexes the goods which are sold in, with or to any covering, label, reel or other thing to which a trade mark or trade description has been applied; or

(d) uses a trade mark or trade description in any manner so as to be likely to lead to the belief that the goods in connexion with which it is used are designated or described by that trade mark or trade description.

(2) Goods delivered in pursuance of an offer or request made by reference to a trade mark or trade description appearing in any sign, advertisement, invoice, wine list, business letter, business paper or other commercial communication shall, for the purposes of subsection (1) (d), be deemed to be goods in connexion with which the trade mark or trade description is used.

(3) A person shall be deemed falsely to apply to goods a trade mark who, without the consent of the proprietor or of any person who is, in terms of any enactment in force within Malawi, the registered user thereof, applies to the goods that trade mark or a mark so nearly resembling it as to be likely to deceive.

(4) Any person who applies to goods any word, name, letter, figure or mark, or arrangement or combination thereof, whether consisting of or including a trade mark or part of a trade mark or not, which is likely to lead to the belief that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, shall be deemed to apply a false trade description to the goods.

PART II

MARKING OF GOODS AND PROHIBITIONS IN RELATION TO TRADE MARKS AND TRADE DESCRIPTIONS

[Ch4904s4]4. Certain acts deemed to be a forgery of a trade mark

A person shall be deemed to forge a trade mark if he—

(a) without the consent of the proprietor of the trade mark, makes that trade mark or a mark so nearly resembling that trade mark as to be likely to deceive; or

(b) falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise;

and any trade mark so made or falsified is in this Act referred to as a forged trade mark.

[Ch4904s5]5. Forgery of trade marks and other acts prohibited

(1) No person shall—

(a) forge any trade mark; or

(b) make any die, block, machine or other instrument for the purpose of forging or of being used for forging a trade mark; or

(c) dispose of or have in his possession any die, block, machine or other instrument for the purpose of forging a trade mark; or

(d) falsely apply to goods any trade mark or a mark so nearly resembling a trade mark as to be likely to deceive; or

(e) without the consent of the proprietor of a trade mark, make, import or have in his possession any device for applying that trade mark to goods or make any reproductions, replicas or representations of that trade mark or import them otherwise than on goods to which they have been applied for the purpose of applying them contrary to this Act; or

(f) make, import or have in his possession any device for applying to any goods a mark so nearly resembling a trade mark as to be likely to deceive; or

(g) make, import or have in his possession any coverings, labels, reels or any reproductions, replicas or representations of a trade mark or a mark so nearly resembling a trade mark as to be likely to deceive for the purpose of applying them to goods contrary to this Act; or

(h) apply any false trade description to goods.

(2) It shall be a sufficient defence to any charge under subsection (1) if the accused satisfies the court that he acted without intent to defraud.

(3) In any prosecution for a contravention of subsection (1) (b), (d) or (h), it shall be a sufficient defence if the accused satisfies the court that—

(a) in the ordinary course of his business he was employed, on behalf of other persons, either to make dies, blocks, machines or other instruments for making or being used in making trade marks, or, as the case may be, to apply trade marks or trade descriptions to goods and that in the case which is the subject of the charge he was so employed by some other person and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

(b) he took reasonable precautions against committing the offence charged; and

(c) he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark or trade description; and

(d) on request made by an inspector, police officer or customs officer, he gave to such inspector or such officer all the information in his power with respect to the persons on whose behalf the trade mark or trade description was applied.

[Ch4904s6]6. Prohibition of sale of goods bearing forged trade mark or false trade description

(1) No person shall sell any goods—

(a) to which any forged trade mark or false trade description is applied; or

(b) to which any trade mark or a mark so nearly resembling a trade mark as to be likely to deceive is falsely applied.

(2) It shall be a sufficient defence to any charge under subsection (1) if the accused satisfies the court that—

(a) having taken all reasonable precautions against committing an offence against this Act, he had at the time of the sale no reason to suspect the genuineness of the trade mark or trade description and, on request made by an inspector, police officer or customs officer, he gave to such inspector or such officer all the information in his power with respect to the persons from whom he obtained such goods; or

(b) otherwise he had acted innocently.

[Ch4904s7]7. Prohibition of sale of imported goods unless accompanied by indication of origin

(1) Subject to subsection (2), no person shall sell or for the purpose of advertising goods distribute any goods manufactured externally, any goods assembled externally or any goods mixed externally or samples of such goods to which there is applied an offending mark unless there is also applied to those goods in the manner specified in section 10 the name of the country in which those goods were manufactured, assembled or mixed so as to indicate that those goods were manufactured, assembled or mixed, as the case may be, in that country.

(2) This section shall not have effect in respect of the application of a name or trade mark to—

(a) parts or materials of a type suitable only for consumption in a process of manufacture; or

(b) articles to be used as coverings, labels or reels or to articles in or with which goods manufactured, made, produced, assembled or mixed in Malawi are to be sold,

if the name or trade mark so applied is the name or trade mark of a manufacturer, producer, assembler, mixer or trader in those goods in Malawi and the name or trade mark is applied with his consent.

(3) The Minister may, by notice published in the Gazette, suspend, in relation to any goods or class of goods, the operation of subsection (1).

[Ch4904s8]8. Prohibition of sale of goods, whether made in Malawi or elsewhere, unless accompanied by indication of origin

(1) No person shall sell or for the purpose of advertising goods distribute in Malawi any goods manufactured, made, produced, assembled or mixed in Malawi or samples of such goods to which there is applied an offending mark unless there is also applied to those goods in the manner specified in section 10 the name of Malawi so as to indicate that those goods were manufactured, made, produced, assembled or mixed, as the case may be, in Malawi.

(2) The Minister may, by notice published in the Gazette, suspend, in relation to any goods or class of goods the operation of subsection (1).

[Ch4904s9]9. Importation of certain goods prohibited

No person shall import into Malawi any goods—

(a) to which any forged trade mark or false trade description is applied or to which any trade mark or a mark so nearly resembling a trade mark as to be likely to deceive is falsely applied; or

(b) which it would be an offence to sell or distribute in terms of section 7 or 8.

[Ch4904s10]10. Manner of application of mark

(1) Whenever the name of the country in which goods were manufactured, made, produced, assembled or mixed is applied to goods for the purposes of section 7 or 8 that name shall be applied in a conspicuous manner—

(a) (i) in the case where an offending mark is applied to the goods themselves, to the goods themselves; or

(ii) in the case where an offending mark is applied to any covering, label or other attachment, either by means of such covering, label or other attachment or to the goods themselves;

(b) so as to render unlikely the obliteration, erasure or detachment of such name in the ordinary course of handling prior to sale to the consumer; and

(c) in a prominent position and so placed that it can be easily read without detaching or unwrapping any part of the covering in which the goods may be offered for sale, or wherever an offending mark is applied.

(2) Notwithstanding subsection (1), the Minister may by notice published in the Gazette and for the purposes of sections 7 and 8 prescribe in respect of goods specified in such notice the manner in which the name of the country shall be applied and in that event subsection (1) shall not apply in relation to those goods.

[Ch4904s11]11. Marking of goods on importation

(1) If the import of any goods into Malawi is prohibited in terms of section 9 (b), the Controller of Customs, after—

(a) being furnished by the importer thereof with proof of the country in which the goods were manufactured, made, produced, assembled or mixed; and

(b) being satisfied that the goods are capable of being marked so as to comply with the requirements of section 7 or 8 as the case may be,

may, within such time as he may specify, permit the importer of the goods to mark them so as to comply with such requirements.

(2) If the goods are marked within the time specified in terms of subsection (1) to the satisfaction of the Controller of Customs and Excise, such goods may, notwithstanding section 21 of the Customs and Excise Act, be imported into Malawi.

[Ch4904s12]12. Removal of indication of origin from imported goods prohibited

(1) No person shall remove, alter or obliterate an indication of origin applied to goods in accordance with section 7, 8 or 11.

(2) It shall be a sufficient defence to any charge under subsection (1) if the accused satisfies the court that the removal, alteration or obliteration was not made for the purpose of concealing the origin of the goods at the time of sale.

[Ch4904s13]13. Indication of origin and compliance with specified standards in the case of certain classes of goods

The Minister may, after such investigation as he thinks fit, by notice published in the Gazette, prohibit the importation for sale or the sale of goods of any class or description, unless all or any of the following requirements, as specified in such notice, have been complied with—

(a) there are applied to the goods words stating clearly the country in which they were manufactured, made, produced, assembled or mixed and such words are applied in such manner as may be specified in the notice or, if no manner is specified, in a conspicuous manner;

(b) the goods bear such mark as may be specified in the notice and conform to such standard as may be prescribed in the notice;

(c) there are applied to the goods in a conspicuous manner and as specified in the notice words or letters stating clearly the materials of which they are composed and, if so specified in the notice, the percentages of such materials calculated either by weight or by volume;

(d) there are applied to second-hand goods which have been reconditioned, rebuilt or remade, whether in Malawi or elsewhere, in the manner specified in the notice, words stating clearly that they have been reconditioned, rebuilt or remade, as the case may be;

(e) in the case of goods to which there is applied any number which, in the opinion of the Minister, is likely to lead to the belief that such number refers to a unit of quantity, measure, gauge, or weight, there are added words stating clearly to what such number refers.

[Ch4904s14]14. Indication of origin of certain goods may be prescribed

If the Minister, after such investigation as he thinks fit, is satisfied, in the case of goods of any class or description which are made or produced in one country, that—

(a) such goods—

(i) have undergone in another country any treatment or process resulting in a substantial change in the goods;

(ii) have had a considerable part of the labour expended in the manufacture or production of such goods expended in another country; or

(iii) are largely composed of materials made or produced in another country;

and

(b) it is desirable that disclosure be made with respect to such goods of the facts referred to in paragraph (a) (i), (ii) or (iii),

he may by notice published in the Gazette prohibit the importation for sale or the sale of such goods, unless there are applied to them in a conspicuous manner words specified in the notice making disclosure of the facts referred to concerning such goods.

[Ch4904s15]15. Use of certain marks may be prohibited

The Minister may, after such investigation as he thinks fit, by notice published in the Gazette prohibit, either absolutely or conditionally, the application to goods of any mark, word, letter or figure or of any arrangement or combination thereof.

[Ch4904s16]16. Submission of representations by interested persons

Before the Minister issues any notice under section 13, 14 or 15, he shall, by notice published in the Gazette, invite representations on the matter within a period stated and take into consideration all representations so submitted.

PART III

MISCELLANEOUS

[Ch4904s17]17. Implied warranty on sale of marked goods

Every person who sells any goods to which a trade mark or trade description has been applied shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied or that the trade description is not a false trade description, as the case may be, unless the contrary is expressed in writing signed by the seller or on his behalf and delivered at the time of the sale to and accepted by the purchaser.

[Ch4904s18]18. Sale of goods in bottles marked with owner's name

No person shall sell in any bottle, to which or to the stopper of which have been indelibly applied words indicating that the bottle is the property of a named person, goods resembling or so nearly resembling goods manufactured or produced for sale in any such bottle by such named person as to be likely to deceive.

[Ch4904s19]19. Appointment of inspectors and powers of police officers and inspectors

(1) The Minister may appoint any person to be an inspector for the purposes of this Act.

(2) Any inspector who produces a certificate of his appointment under subsection (1) or any police officer may, at any time during the hours when the premises are open for business, enter any premises on which he has reason to believe there are kept for sale any goods, whether imported into or manufactured in Malawi, and, on giving a receipt therefor, may, without payment, take and remove samples of any such goods for examination or inspection or for any other purpose relating to this Act.

(3) A police officer or inspector taking a sample in terms of subsection (2) shall forthwith notify the person on whose premises the sample is taken, or his agent, that the sample is taken in pursuance of this Act and shall, if required so to do at the time of giving such notification, select a second like sample or, if practicable, divide the sample into two parts and mark and seal and leave with that person or agent either the second sample or one part of the divided sample.

(4) Any sample taken by a police officer or inspector under the powers conferred upon him by subsection (3) shall, whenever possible, be returned by him to the person from whose premises it was removed or to his agent.

(5) No person shall obstruct a police officer or inspector in the execution of the powers conferred upon such officer or such inspector by this section.

[Ch4904s20]20. Evidence

(1) Any invoice or other document submitted or used by an importer or any other person in connexion with the importation of goods in respect of which a prosecution is brought under this Act may be produced as evidence in any criminal proceedings without calling the person who prepared or signed it.

(2) In any prosecution for an offence under the provisions of this Act, evidence that any imported goods were shipped at any port of call shall be prima facie evidence that those goods were made or produced in the country within which that port is situated.

(3) Where, in any prosecution for a contravention of this Act, the consent of the proprietor of a trade mark is a relevant issue, the onus of proving the consent of such proprietor shall lie on the accused.

[Ch4904s21]21. Aiding and abetting offences

No person shall within Malawi procure, counsel, aid, abet or be accessory to the commission outside Malawi of any act which, if committed in Malawi, would be an offence under this Act.

[Ch4904s22]22. Limitation of prosecution

No prosecution for any offence under this Act shall be commenced after the expiration of a period of three years reckoned from the date on which the offence was alleged to have been committed or one year next after the first discovery thereof by an inspector, police officer, or customs officer, whichever expiration first happens.

[Ch4904s23]23. Offences and penalties

Subject to this Act, any person who contravenes or fails to comply with any provision of this Act shall be liable—

- (a) on first conviction, to a fine of £100 and to imprisonment for one year;
- (b) on the second or any subsequent conviction, to a fine of £200 and to imprisonment for two years.

[Ch4904s24]24. Forfeiture

(1) Upon conviction of an offender under this Act, the judge or magistrate presiding at the trial may, in addition to passing sentence, declare any goods in respect or by means of which the offence was committed to be forfeited, unless the owner of the goods or any person acting on his behalf or other person interested in the goods shows cause to the contrary.

(2) If any goods in respect or by means of which it is suspected that an offence under this Act has been committed are seized by a police officer under any law and taken before a magistrate, and, if no prosecution is instituted following that seizure, the magistrate shall, on application by a police officer, cause a notice to be published in the Gazette and in a newspaper circulating in his District stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods shall be declared forfeited.

(3) At such time and place, the magistrate may, unless the owner of the goods or any person acting on his behalf or other person interested in the goods shows cause to the contrary, declare such goods to be forfeited.

(4) Any goods declared to be forfeited under this section shall, without compensation, vest in the Government and may, by direction of the Minister of Finance, be sold or destroyed or appropriated to the Government.

SUBSIDIARY LEGISLATION

NOTE

The Merchandise Marks (Section 7 Suspension) Notice, 1960 (G.N. 74/1960)(F), made under section 7, is not published here as it is to be replaced shortly.

MERCHANDISE MARKS (SECTION 8 SUSPENSION) NOTICE

under s. 8 (2)

G.N. 190/1960(F)

200/1962(F)

1. Citation

This notice may be cited as the Merchandise Marks (Section 8 Suspension) Notice.

2. Goods

The operation of section 8 (1) of the Act is suspended in relation to the following goods—

Milk which—

(a) is produced by dairy herds in which each and every animal clearly shows the characteristics of the Jersey or Guernsey breed of dairy cattle with a complete absence of any other breed characteristic; and

(b) contains a minimum of 13 per centum total milk solids and a minimum of 4.25 per centum milk fat,

to which there is applied the following offending mark—

Channel Island

3. Classes of goods

The operation of section 8 (1) of the Act is suspended in relation to the following classes of goods—

(a) “Innoxia” toilet preparations, including liquid perfumery, powders, washes, pomatums, cosmetics, pastes, dyes and hair oils, but not including tooth powders, tooth pastes and tooth washes;

(b) “Innoxia” perfumes containing more than 2 per centum of alcohol by volume at a temperature of 51 degrees Fahrenheit,

to which there is applied a trade mark or trade description containing a direct or indirect reference to any of the following places—

London

Paris

Sydney

[Chap4905]CHAPTER 49:05

REGISTERED DESIGNS

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12 of 1958(F)

9 of 1985

G.N. 5/1964(M)

166/1967

An Act to make Provision Relating to the Registration of Designs and for other purposes Incidental thereto.

[1ST DECEMBER 1958]

PRELIMINARY

[Ch4905s1]1. Short title

This Act may be cited as the Registered Designs Act.

[Ch4905s2]2. Interpretation

(1) In this Act, unless inconsistent with the context—

“article” means any article of manufacture and includes any part of an article if that part is made and sold separately;

“artistic work” means a work of any of the following descriptions, that is to say—

(a) the following, irrespective of artistic quality, namely, paintings, sculptures, drawings, engravings and photographs;

(b) works of architecture, being either buildings or models for buildings;

(c) works of artistic craftsmanship, not falling within paragraph (a) or (b);

“assignee” means—

(a) the person who has derived his title to the design for Malawi directly or indirectly from the proprietor thereof or from the latter’s assignee; or

(b) the legal representative of such person;

“Convention” means the Union Convention of Paris, dated the 20th March, 1883, for the Protection of Industrial Property, revised at Brussels on the 14th December, 1900, at Washington on the 2nd June, 1911, at The Hague on the 6th November, 1925, and at London on the 2nd June, 1934,

and any revision thereof to which Malawi may accede in terms of section 7 of the Patents Act; Cap. 49:02

“convention country” means a country (including any colony, protectorate or territory subject to the authority or under the suzerainty of that country, or any territory over which a mandate or trusteeship is exercised) which has been declared to be a convention country in terms of the Patents Act;

“copyright”, in relation to a registered design, has the meaning assigned to it by section 14 (1);

“corresponding design”, in relation to an artistic work, means a design which, when applied to an article, results in a reproduction of that work;

“Court” means the High Court;

“design” means features of shape, configuration, pattern or ornament applied to an article by any industrial process or means, being features which in the finished article appeal to and are judged solely by the eye, but does not include a method or principle of construction or features of shape or configuration which are dictated solely by the function which the article to be made in that shape or configuration has to perform;

“Designs Office” means the Designs Office established under section 3;

“legal representative means—

- (a) the liquidator or receiver of a company;
- (b) the representative recognized by law of any person who has died, become insolvent or bankrupt, assigned his estate, is an infant or a minor, or of unsound mind, or is otherwise under a disability;

“Patent Journal” means the journal for which provision is made in section 95 of the Patents Act;

“proprietor” has the meaning assigned to it by section 8;

“register” means the register of designs kept under this Act;

“registered proprietor” means the person or persons for the time being entered in the register as the proprietor of the design;

“Registrar” means the Registrar of Designs appointed under section 4;

“set of articles” means a number of articles of the same general character ordinarily on sale or intended to be used together, to each of which the same design, or the same design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, is applied;

“Tribunal” means the Patents Tribunal established under the Patents Act. Cap. 49:02

(2) Any reference in this Act to an article in respect of which a design is registered shall, in the case of a design registered in respect of a set of articles, be construed as a reference to any article of that set.

(3) Any question arising under this Act whether a number of articles constitutes a set of articles shall be determined by the Registrar; and notwithstanding anything in this Act any determination of the Registrar under this subsection shall be final.

PART I

ADMINISTRATION

[Ch4905s3]3. Establishment of Designs Office

There shall be established under the direction of the Minister an office to be called the Designs Office.

[Ch4905s4]4. Appointment of officers

There shall be appointed—

(a) a Registrar of Designs who shall exercise the powers and perform the duties assigned to the Registrar by this Act and shall be responsible for its administration; and

(b) one or more Deputy Registrars of Designs who shall, subject to the control of the Registrar, have all the powers conferred by this Act upon the Registrar; and

(c) such examiners and other officers as the Minister may consider necessary for carrying out this Act.

[Ch4905s5]5. Seal

The seal of the Patent Office kept in terms of the Patents Act shall also be the seal of the Designs Office, and impressions thereof made for the purposes of this Act shall be judicially noticed.

Cap. 49:02

[Ch4905s6]6. Register of Designs

(1) There shall be kept at the Designs Office for the purposes of this Act a register of designs wherein shall be entered all registered designs with the names and addresses of their proprietors, notifications of assignments and transmissions, and such other matters relating to registered designs as may be prescribed or as the Registrar may think fit.

(2) Subject to this Act, the register of designs shall, at all convenient times, be open to inspection by the public, and certified copies, sealed with the seal of the Patent Office, of any entry in the register shall be given to any person requiring them on payment of the prescribed fee.

(3) The register of designs shall be prima facie evidence of any matters required or authorized by or under this Act to be entered therein.

(4) No notice of any trust, whether expressed, implied or constructive, shall be entered in the register, and the Registrar shall not be affected by any such notice.

PART II

REGISTRABLE DESIGNS AND PROCEEDINGS FOR REGISTRATION

[Ch4905s7]7. Designs registrable under Act

(1) Subject to the following provisions of this section, a design may, upon application made by the person claiming to be the proprietor, his assignee or legal representative, be registered under this Act in respect of any article or set of articles specified in the application.

(2) Subject to this Act, a design shall not be registered thereunder unless it is new or original and in particular shall not be so registered in respect of any article if it is the same as a design which before the date of the application for registration appears on the register or has been published in Malawi in respect of the same or any other article or differs from such a design only in immaterial details or in features which are variants commonly used in trade.

(3) Regulations made by the Minister under this Act may provide for excluding from registration thereunder designs for such articles, being articles which are primarily literary or artistic in character, as the Minister thinks fit.

[Ch4905s7A]7A. Designs registered under the Protocol

9 of 1985(1) A design registered under the Protocol shall, subject to the provisions of the Protocol, have effect in Malawi as if it were a design registered under this Act.

(2) In this section, "Protocol" means the Protocol on Patents and Designs within the Framework of the Industrial Property Organization for English-speaking Africa adopted on 10th December, 1982, at Harare in the Republic of Zimbabwe to which Malawi acceded on 3rd January, 1984, and any revision thereof to which Malawi has acceded.

[Ch4905s8]8. Proprietorship of designs

(1) Subject to this section, the author of a design shall be treated for the purposes of this Act as the proprietor of the design:

Provided that where the design is executed by the author for another person for valuable consideration, that other person shall be treated for the purposes of this Act as the proprietor.

(2) Where a design, or the right to apply a design to any article, becomes vested, whether by assignment, transmission or operation of law, in any person other than the original proprietor, either alone or jointly with the original proprietor, that other person, or, as the case may be, the original proprietor and that other person, shall be treated for the purposes of this Act as the proprietor of the design or as the proprietor of the design in relation to that article.

[Ch4905s9]9. Proceedings for registration

(1) An application for the registration of a design shall be made in the prescribed form and shall be lodged at the Designs Office in the prescribed manner.

(2) For the purpose of deciding whether a design is new or original, the Registrar may make such searches, if any, as he thinks fit.

(3) The Registrar may refuse any application for the registration of a design or may register the design in pursuance of the application subject to such modifications, if any, as he thinks fit.

(4) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within such time as may be prescribed shall be deemed to be abandoned.

(5) Except as otherwise expressly provided by this Act, a design when registered shall be registered as of the date on which the application for registration was made, or such other date (whether earlier or later than that date) as the Registrar may in any particular case direct:

Provided that no proceedings shall be taken in respect of any infringement of copyright in that design committed before the date on which the certificate of registration thereof under this Act is issued.

(6) An appeal shall lie from any decision of the Registrar under subsection (3).

[Ch4905s10]10. Registration of same design in respect of other articles, etc.

(1) Where the registered proprietor of a design registered in respect of any article makes an application—

(a) for registration in respect of one or more other articles, of the registered design; or

(b) for registration in respect of the same or one or more other articles, of a design consisting of the registered design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof,

the application shall not be refused and the registration made on that application shall not be invalidated by reason only of the previous registration or publication of the registered design:

Provided that the period of copyright in a design registered by virtue of this section shall not extend beyond the expiration of the original and any extended period of copyright in the original registered design.

(2) Where any person makes an application for the registration of a design in respect of any article and either—

(a) that design has been previously registered by another person in respect of some other article; or

(b) the design to which the application relates consists of a design previously registered by another person in respect of the same or some other article with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof,

then, if at any time while the application is pending the applicant becomes the registered proprietor of the design previously registered, subsection (1) shall apply as if at the time of making the application the applicant had been the registered proprietor of that design.

[Ch4905s11]11. Provisions for secrecy of certain designs

(1) Where an application for the registration of a design has been made, and it appears to the Registrar that the design is one of a class notified to him by the Minister as relevant for defence purposes, he may give directions for prohibiting or restricting the publication of information with respect to the design, or the communication of such information to any person or class of persons specified in the directions.

(2) Regulations shall be made by the Minister under this Act for securing that the representation or specimen of a design in the case of which directions are given under this section shall not be open to inspection at the Designs Office during the continuance in force of the directions.

(3) Where the Registrar gives any such directions as aforesaid, he shall give notice of the application and of the directions to the Minister, and thereupon the following provisions shall have effect, that is to say—

(a) the Minister shall, upon receipt of such notice, consider whether the publication of the design would be prejudicial to the defence of Malawi and unless a notice under paragraph (c) has previously been given by the Minister to the Registrar, shall reconsider that question before the expiration of nine months from the date of lodging of the application for registration of the design and at least once in every subsequent year;

(b) for the purpose aforesaid, the Minister may, at any time after the design has been registered or with the consent of the applicant, at any time before the design has been registered, inspect the representation or specimen of the design lodged in pursuance of the application;

(c) if upon consideration of the design at any time it appears to the Minister that the publication of the design would not, or would no longer, be prejudicial to the defence of Malawi, the Minister shall give notice to the Registrar to that effect;

(d) on the receipt of any such notice the Registrar shall revoke the directions and may, subject to such conditions, if any, as he thinks fit, extend the time for doing anything required or authorized to be done by or under this Act in connexion with the application or registration, whether or not that time has previously expired.

(4) No person ordinarily resident or domiciled in Malawi shall, while in Malawi, except under the authority of a written permit granted by or on behalf of the Registrar, make or cause to be made any application outside Malawi for the registration of a design of any class prescribed for the purposes of this section unless—

(a) an application for registration of the same design has been made in Malawi not less than six weeks before the application outside Malawi; and

(b) either no directions have been given under subsection (2) in relation to the application in Malawi or all such directions have been revoked.

(5) If any person fails to comply with any direction given under this section or makes or causes to be made an application for the registration of a design in contravention of this section, he shall be guilty of an offence.

(6) Where an offence under this section is committed by a body corporate, every person who at the time of the commission of the offence is a director, general manager, secretary or other similar officer of the body corporate, or is purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

[Ch4905s12]12. Provisions as to confidential disclosure, etc.

(1) An application for the registration of a design shall not be refused, and the registration of a design shall not be invalidated, by reason only of—

(a) the disclosure of the design by the proprietor to any other person in such circumstances as would make it contrary to good faith for that other person to use or publish the design;

(b) the disclosure of the design in breach of good faith by any person other than the proprietor of the design;

(c) in the case of a new or original textile design intended for registration, the acceptance of a first and confidential order for goods bearing the design; or

(d) the communication of the design by the proprietor thereof to a Government department or to any person authorized by the Minister to consider the merits of the design, or of anything done in consequence of such a communication.

(2) Where copyright under any written law relating to copyright subsists in an artistic work, and an application is made by, or with the consent of, the owner of that copyright for the registration of a corresponding design, that design shall not be treated for the purposes of this Act as being other than new or original by reason only of any use previously made of the artistic work, unless—

(a) the previous use consisted of or included the sale, letting for hire, or offer for sale or hire of articles to which the design in question (or a design differing from it only as mentioned in section 7 (2)) had been applied industrially, other than articles of a description specified in regulations made under section 7 (3); and

(b) that previous use was made by, or with the consent of, the owner of the copyright in the artistic work.

[Ch4905s13]13. Convention arrangements

(1) Any person who qualifies under Article 2 or 3 of the Convention and who has applied for protection for any design in a convention country, or his legal representative or assignee (if such assignee is also so qualified), may make an application for registration of that design in priority to other applicants; and the registration shall have the same date as the date of the application in the convention country or, where more than one such application for protection has been made, the date of the first such application:

Provided that—

(a) the application for registration is made within six months from the date of the application for protection in the convention country or, where more than one such application for protection has been made, from the date of the first application;

(b) no proceedings shall be taken in respect of any infringement of copyright in that design committed before the date on which the certificate of registration thereof under this Act is issued.

(2) An application for the registration of a design made by virtue of this section shall not be refused, and the registration of a design on such an application shall not be invalidated, by reason only of the registration or publication of the design in Malawi during the period specified in subsection (1) (a) as that within which the application for registration may be made.

(3) Where an applicant referred to in subsection (1) has applied for protection for any design by an application which, in accordance with the law of any convention country, is equivalent to an application duly made in that convention country, he shall be deemed for the purposes of this section to have applied in that convention country.

PART III

EFFECT OF REGISTRATION, ETC.

[Ch4905s14]14. Right given by registration

(1) The registration of a design under this Act shall give to the registered proprietor the copyright in the registered design, that is to say, the exclusive right in Malawi to make or import for sale or for use for the purposes of any trade or business, or to sell, hire or offer for sale or hire, any article in respect of which the design is registered, being an article to which the registered design or a design not substantially different from the registered design has been applied, and to make anything for enabling any such article to be made as aforesaid.

(2) Subject to this Act, the registration of a design shall have the same effect against the Government as it has against a subject.

[Ch4905s15]15. Period of copyright

(1) Copyright in a registered design shall, subject to this Act, subsist for a period of five years from the date of registration.

(2) The Registrar shall extend the period of copyright for a second period of five years from the expiration of the original period and for a third period of five years from the expiration of the second period if an application for extension of the period of copyright for the second or third period is made in the prescribed form before the expiration of the original period or the second period, as the case may be, and if the prescribed fee is paid before the expiration of the relevant period or within such further period (not exceeding three months) as may be specified in a request made to the Registrar and accompanied by the prescribed additional fee.

(3) Where in the case of a registered design it is shown—

(a) that the design, at the time when it was registered, was a corresponding design in relation to an artistic work in which copyright subsisted under any written law;

(b) that, by reason of a previous use of that artistic work, the design would not have been registrable under this Act but for section 12 (2); and

(c) that the copyright in that work under any written law relating to copyright expired before the date of expiry of the copyright in the design,

the copyright in the design shall, notwithstanding anything in this section, be deemed to have expired at the same time as the copyright in the artistic work, and shall not be renewable after that time.

[Ch4905s16]16. Exemption of innocent infringer from liability for damages

(1) In proceedings for the infringement of copyright in a registered design damages shall not be awarded against a defendant who proves that at the date of the infringement he was not aware, and had no reasonable ground for supposing, that the design was registered; and a person shall not be deemed to have been aware or to have had reasonable ground for supposing as aforesaid by reason only of the marking of an article with the word “registered” or any abbreviation thereof, or any word or words expressing or implying that the design applied to the article has been registered, unless the number of the design accompanied the word or words or the abbreviation in question.

(2) Nothing in this section shall affect the power of the Court to grant an injunction in any proceedings for infringement of copyright in a registered design.

[Ch4905s17]17. Compulsory licence in respect of registered design

(1) At any time after a design has been registered any person interested may apply to the Registrar for the grant of a compulsory licence in respect of the design on the ground that the design is not applied in Malawi by any industrial process or means to the article in respect of which it is registered to such an extent as is reasonable in the circumstances of the case; and the Registrar may make such order on the application as he thinks fit.

(2) An order for the grant of a licence shall, without prejudice to any other method of enforcement, have effect as if it were a deed executed by the registered proprietor and all other necessary parties, granting a licence in accordance with the order.

(3) No order shall be made under this section which would be at variance with any of the provisions of the Convention.

(4) An appeal shall lie from any order of the Registrar under this section.

PART IV

USE OF REGISTERED DESIGNS FOR SERVICES OF GOVERNMENT, ETC.

[Ch4905s18]18. Use of registered designs for services of the Government

(1) Notwithstanding anything in this Act, any Government department or any person authorized in writing by the Minister may use any registered design for the services of the Government in accordance with this section.

(2) If and so far as the design has before the date of registration thereof been duly recorded by or applied by or on behalf of a Government department otherwise than in consequence of the communication thereof directly or indirectly by the registered proprietor or any person from whom he derives title, any use of the design by virtue of this section may be made free of any royalty or other payment to the registered proprietor.

(3) If and so far as the design has not been so recorded or applied as aforesaid, any use of the design made by virtue of this section at any time after the date of registration thereof, or in consequence of any such communication as aforesaid, shall be made upon such terms as may be agreed upon, either before or after the use, between the Minister and the registered proprietor with the approval of the Minister of Finance, or as may in default of agreement be determined by the Tribunal on a reference under section 21 (1).

(4) The authority of the Minister in respect of a design may be given under this section either before or after the design is registered and either before or after the acts in respect of which the authority is given are done, and may be given to any person, whether or not he is authorized directly or indirectly by the registered proprietor to use the design.

(5) Where any use of a design is made by a Government department or any person authorized by the Minister under this section, then, unless it appears to the Minister that it would be contrary to the public interest so to do, the Minister shall notify the registered proprietor as soon as practicable after the use is begun, and furnish him with such information as to the extent of the use as he may from time to time require.

(6) For the purposes of this Part any use of a design for the supply to the government of any country outside Malawi in pursuance of any agreement or arrangement between the Government of Malawi and the government of that country, of articles required for the defence of that country shall be deemed to be a use of the design for the services of the Government, and the power of a Government department or a person authorized by the Minister under this section to use a design shall include power—

(a) to sell such articles to the government of any country in pursuance of any such agreement or arrangement as aforesaid; and

(b) to sell to any person any articles made in the exercise of the powers conferred by this section which are no longer required for the purpose for which they were made.

(7) The purchaser of any articles sold in the exercise of powers conferred by this section, and any person claiming through him, shall have power to deal with them in the same manner as if the rights in the registered design were held on behalf of the Government.

[Ch4905s19]19. Right of third parties in respect of Government use

(1) In this section “exclusive licence” means a licence from a registered proprietor which confers on the licensee or on the licensee and person authorized by him, to the exclusion of all other persons (including the registered proprietor), any right in respect of the registered design.

(2) In relation to any use of a registered design, or a design in respect of which an application for registration is pending, made for the services of the Government—

(a) by a Government department or a person authorized by the Minister under section 18; or

(b) by the registered proprietor or applicant for registration to the order of a Government department,

the provisions of any licence, assignment or agreement made, whether before or after the commencement of this Act, between the registered proprietor or applicant for registration or any person who derives title from him or from whom he derives title and any person other than a Government department shall be of no effect so far as those provisions restrict or regulate the use of the design, or any model, document or information relating thereto, or provide for the making of payments in respect of any such use, or calculated by reference thereto; and the reproduction or publication of any model or document in connexion with the said use shall not be deemed to be an infringement of any copyright subsisting in the model or document.

(3) Where an exclusive licence granted otherwise than for royalties or other benefits determined by reference to the use of the design is in force under the registered design then—

(a) in relation to any use of the design which, but for this section and section 18, would constitute an infringement of the rights of the licensee, section 18 (3) shall have effect as if for the reference to the registered proprietor there were substituted a reference to the licensee; and

(b) in relation to any use of the design by the licensee by virtue of an authority given under section 18, that section shall have effect as if subsection (3) thereof were omitted.

(4) Subject to subsection (3), where the registered design or the right to apply for or obtain registration of the design has been assigned to the registered proprietor in consideration of royalties or other benefits determined by reference to the use of the design, then—

(a) in relation to any use of the design by virtue of section 18, subsection (3) of that section shall have effect as if the reference to the registered proprietor included a reference to the assignor, and any sum payable by virtue of that subsection shall be divided between the registered

proprietor and the assignor in such proportion as may be agreed upon between them or as may in default of agreement be determined by the Tribunal or a reference under section 21; and

(b) in relation to any use of the design made for the services of the Government by the registered proprietor to the order of a Government department, section 18 (3) shall have effect as if that use were made by virtue of an authority given under that section.

(5) Where, under section 18 (3), payments are required to be made by a Government department to a registered proprietor in respect of any use of a design, any person being the holder of an exclusive licence under the registered design (not being such a licence as is mentioned in subsection (3) of this section) authorizing him to make that use of the design shall be entitled to recover from the registered proprietor such part, if any, of those payments as may be agreed upon between that person and the registered proprietor, or as may in default of agreement be determined by the Tribunal under section 21 to be just having regard to any expenditure incurred by that person—

(a) in developing the said design; or

(b) in making payments to the registered proprietor, other than royalties or other payments determined by reference to the use of the design, in consideration of the licence;

and if, at any time before the amount of any such payment has been agreed upon between the Government department and the registered proprietor that person gives notice in writing of his interest to the department, any agreement as to the amount of that payment shall be of no effect unless it is made with his consent.

[Ch4905s20]20. Special provisions as to Government use during emergency

(1) In this section “period of emergency” means any period beginning on such date as may be declared by the Minister by notice published in the Gazette to be the commencement, and ending on such date as may be so declared to be the termination, of a period of emergency.

(2) During any period of emergency the powers exercisable in relation to a design by a Government department or a person authorized by the Minister under section 18, shall include power to use the design for any purpose which appears to the Minister necessary or expedient—

(a) for the efficient prosecution of any war in which Malawi may be engaged;

(b) for the maintenance of supplies and services essential to the life of the community;

(c) for securing a sufficiency of supplies and services essential to the well-being of the community;

(d) for promoting the productivity of industry, commerce and agriculture;

(e) for fostering and directing exports and reducing imports or imports of any classes, from all or any countries and for redressing the balance of trade;

(f) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community; or

(g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of the Commonwealth or any foreign countries that are in grave distress as the result of war;

and any reference in this Part to the services of the Government shall be construed as including a reference to the purposes aforesaid.

[Ch4905s21]21. Reference of disputes as to Government use

(1) Any dispute as to—

(a) the exercise by a Government department or a person authorized by the Minister of the powers conferred by section 18;

(b) the terms for the use of a design for the services of the Government thereunder; or

(c) the right of any person to receive any part of a payment made in pursuance of section 18 (3),

may be referred to the Tribunal by any party to the dispute in such manner as may be prescribed.

(2) In any proceedings under this section to which a Government department is a party, the Government department may—

(a) if the registered proprietor is a party to the proceedings, apply for cancellation of the registration of the design upon any ground upon which the deletion of a design may be ordered by the Tribunal under section 24;

(b) in any case, put in issue the validity of the registration of the design without applying for its cancellation.

(3) If in such proceedings as aforesaid any question arises whether a design has been recorded or applied as mentioned in section 18 and the disclosure of any document recording the design, or of any evidence of the application thereof, would, in the opinion of the Government department, be prejudicial to the public interest, the disclosure may be made confidentially to counsel appearing for the other party or to an independent expert agreed upon by the parties.

(4) In determining under this section any dispute between a Government department and any person as to terms for the use of a design for the services of the Government, the Tribunal shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received, or may be entitled to receive, directly or indirectly from any Government department in respect of the design in question.

PART V

ASSIGNMENTS, CORRECTIONS AND CANCELLATION

[Ch4905s22]22. Registration of assignments etc.

(1) Where any person becomes entitled by assignment, transmission or operation of law to a registered design or to a share in a registered design, or becomes entitled as mortgagee, licensee or otherwise to any other interest in a registered design, he may apply to the Registrar in the prescribed manner for the registration of his title as proprietor or co-proprietor or, as the case may be, of notice of his interest, in the register.

(2) Without prejudice to subsection (1), an application for the registration of the title of any person becoming entitled by assignment to a registered design or a share in a registered design, or becoming entitled by virtue of a mortgage, licence or other instrument to any other interest in a registered design, may be made in the prescribed manner by the assignor, mortgagor, licensor or other party to that instrument, as the case may be.

(3) Where application is made under this section for the registration of title of any person, the Registrar shall, upon proof of title to his satisfaction—

(a) where that person is entitled to a registered design or a share in a registered design, register him in the register as proprietor or co-proprietor of the design, and enter in that register particulars of the instrument or event by which he derives title; or

(b) where that person is entitled to any other interest in the registered design, enter in that register notice of his interest, with particulars of the instrument, if any, creating it.

(4) Subject to any rights vested in any other person of which notice is entered in the register of designs, the person or persons registered as proprietor of a registered design shall have power to assign, grant licences under, or otherwise deal with the design, and to give effectual receipts for any consideration for any such assignment, licence or dealing.

(5) Except for the purposes of an application to rectify the register under this Act, a document in respect of which no entry has been made in the register under subsection (3) shall not be admitted in any proceedings as evidence of the title of any person to a registered design or share of or interest in a registered design unless the Tribunal or Court concerned otherwise directs.

[Ch4905s23]23. Power of Registrar to authorize corrections

(1) The Registrar may authorize the correction of any clerical error or omission or error in translation in any application for the registration or in the representation of a design, or any error in the register.

(2) A correction may be made in pursuance of this section, either upon a request in writing made by any person interested and accompanied by the prescribed fee, or without such a request.

(3) Where it is proposed to make a correction otherwise than upon such a request, the Registrar shall give notice of the proposal to the registered proprietor or the applicant for registration of the design, as the case may be, and to any other person who appears to him to be concerned, and shall give any such person an opportunity of being heard before the correction is made.

[Ch4905s24]24. Rectification of register

(1) The Tribunal may, on the application of any person aggrieved, order the register to be rectified by the making of any entry therein or the variation or deletion of any entry therein.

(2) The Tribunal may determine any question which it may be necessary or expedient to decide in connexion with the rectification of the register.

(3) Notice of any application to the Tribunal under this section shall be given in the prescribed manner to the Registrar and to any other person appearing from the register to be interested in the design and the Registrar and any such person shall be entitled to appear and be heard on the application.

(4) A notice of any order made by the Tribunal under this section shall be served on the Registrar in the prescribed manner, and the Registrar shall, on receipt of the notice, rectify the register accordingly.

[Ch4905s25]25. Cancellation of registration

(1) The Registrar may, upon a request made in the prescribed manner by the registered proprietor, cancel the registration of a design.

(2) At any time after a design has been registered any person interested may apply to the Registrar for the cancellation of the registration of the design on the ground that—

(a) the design was not, at the date of the registration thereof, new or original;

(b) the design, at the time when it was registered, was a corresponding design in relation to an artistic work in which copyright subsisted under any written law relating to copyright;

(c) by reason of a previous use of that artistic work, the design would not have been registrable under this Act but for section 12 (2), or

(d) the copyright in that work under any written law relating to copyright has expired;

or on any other ground on which the Registrar could have refused to register the design; and the Registrar may make such order on the application as he thinks fit.

(3) An appeal shall lie from any order of the Registrar under subsection (2).

PART VI

FUNCTIONS OF REGISTRAR IN RELATION TO CERTAIN EVIDENCE, DOCUMENTS AND POWERS

[Ch4905s26]26. Evidence of certain entries and documents

(1) A certificate purporting to be signed by the Registrar and certifying that any entry which he is authorized by or under this Act to make has or has not been made, or that any other thing which he is so authorized to do has or has not been done, shall be prima facie evidence of the matters so certified.

(2) A copy of any entry in the register or of any representation, specimen or document kept in the Designs Office or an extract from the register or any such document, purporting to be certified

by the Registrar and to be sealed with the seal of the Patent Office, shall be admitted in evidence without further proof and without production of the original.

[Ch4905s27]27. Inspection of registered designs

(1) Subject to this section and to any regulation made by the Minister in pursuance of section 11 (3), the representation or specimen of a design registered under this Act shall be open to inspection at the Designs Office on and after the day on which the certificate of registration is issued.

(2) In the case of a design registered in respect of an article of any class prescribed for the purposes of this subsection, no representation or specimen of the design lodged in pursuance of the application shall, until the expiration of such period after the day on which the certificate of registration is issued as may be prescribed in relation to articles of that class, be open to inspection at the Designs Office except by the registered proprietor, a person authorized in writing by the registered proprietor, or a person authorized by the Registrar, the Tribunal or by a court:

Provided that where the Registrar proposes to refuse an application for the registration of any other design on the ground that it is the same as the first-mentioned design or differs from that design only in immaterial details or in features which are variants commonly used in the trade, the applicant shall be entitled to inspect the representation or specimen of the first-mentioned design lodged in pursuance of the application for registration of that design.

(3) In the case of a design registered in respect of an article of any class prescribed for the purposes of subsection (2), the representation or specimen of the design shall not, during the period prescribed as aforesaid, be inspected by any person by virtue of this section except in the presence of the Registrar or of an officer acting under him; and except in the case of an inspection authorized by the proviso to that subsection, the person making the inspection shall not be entitled to take a copy of the representation or specimen of the design or any part thereof.

(4) Where an application for the registration of a design has been abandoned or refused, neither the application for registration nor any representation or specimen of the design lodged in pursuance thereof shall at any time be open to inspection at the Designs Office or be published by the Registrar.

[Ch4905s28]28. Information as to existence of copyright

On the request of any person furnishing such information as may enable the Registrar to identify the design, and on payment of the prescribed fee the Registrar shall inform him whether the design is registered, and, if so, in respect of what articles, and whether any extension of the period of copyright in relation to that design has been granted and shall state the date of registration and the name and address of the registered proprietor.

[Ch4905s29]29. Certificate of registration

The Registrar shall grant a certificate of registration in the prescribed form to the registered proprietor of a design when the design is registered.

[Ch4905s30]30. Copies of certificates of registration

The Registrar may, in a case where he is satisfied that the certificate of registration referred to in section 29 has been lost or destroyed, or in any other case in which he thinks it expedient, furnish one or more copies of the certificate.

[Ch4905s31]31. Exercise of discretionary powers of Registrar

Without prejudice to any provisions of this Act requiring the Registrar to hear any party to proceedings thereunder, or to give to any such party an opportunity to be heard, the Registrar shall give to any applicant for registration of a design an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Registrar by or under this Act.

[Ch4905s32]32. Proceedings before Registrar

(1) Subject to section 55, evidence in any proceedings before the Registrar under this Act shall be given by affidavit, so, however, that the Registrar may, if he thinks fit in any particular case, take oral evidence on oath in lieu of or in addition to such evidence as aforesaid and may allow any witness to be cross-examined on his affidavit or oral evidence.

(2) The powers, rights and privileges of the Registrar in proceedings before him under this Act shall be the same as those conferred upon commissioners by the Commissions of Inquiry Act and sections 9, 10 and 12 of that Act shall, *mutatis mutandis*, apply in relation to the hearing and determination of any matter before the Registrar under this Act and to any person summoned to give evidence or giving evidence before him. Cap. 18:01

[Ch4905s33]33. Power of Registrar to award costs

In all proceedings before the Registrar under this Act, the Registrar shall have power to award to any party such costs as he may consider reasonable and to direct how and by what parties they are to be paid. Any costs awarded by the Registrar shall be taxed by the registrar of the Tribunal and payment thereof may be enforced in the same manner as if they were costs allowed by the Tribunal.

[Ch4905s34]34. Power of Registrar to fix time and place of sitting, etc.

The Registrar may in any proceeding held before him decide the hours, times and places at which he will sit and he may adjourn any proceedings for such time and to such place as he may think fit.

PART VII

APPEALS AND LEGAL PROCEEDINGS

[Ch4905s35]35. Patents Tribunal to hear appeals

(1) Where this Act provides for an appeal from a decision of the Registrar, such appeal shall be made to the Tribunal.

(2) The Tribunal shall in connexion with any proceedings before it under this Act have all the powers of the High Court and without prejudice to the foregoing and to the other powers conferred upon it by this Act the Tribunal shall have power to make any order for the purpose of securing the

attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of court which the High Court has power to make.

(3) The procedure and practice of the Tribunal shall, save as otherwise provided for by rules made under this Part, be those prevailing in the High Court, in so far as the same are applicable, and if any matter should arise which is not contemplated by such procedure, practice or rules, the Tribunal may give instructions regarding the course to be pursued which instructions shall be binding on all parties.

(4) Upon appeal to the Tribunal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Registrar in proceedings in connexion with which the appeal is brought;
- (c) make such order as to costs as it may think fit.

(5) For the purpose of this Act, the Tribunal shall sit at such times and places as it may appoint.

(6) In any proceedings before it, the Tribunal may, subject to section 55, accept evidence by affidavit or take oral evidence on oath and allow any witness to be cross-examined on his affidavit or oral evidence.

[Ch4905s36]36. Right of audience

In any proceedings before the Tribunal under this Act, the parties to such proceedings may appear in person, or be represented and appear by a legal practitioner, and in any case where the Tribunal deems fit it may grant to the Registrar leave to intervene and he may thereafter appear or be so represented.

[Ch4905s37]37. Assessors

The Tribunal may appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to such Tribunal that such knowledge is required for the proper determination of the case.

[Ch4905s38]38. Rules

The Minister may make rules for regulating generally the practice and procedure of the Tribunal and with respect to appeals or references to such Tribunal as to the time within which any requirement of the rules is to be complied with, as to the costs and expenses of and incidental to any proceedings in such Tribunal, as to the fees to be charged in respect of proceedings therein, as to the fees to be paid to assessors, and in particular may make rules providing for the summary determination of any appeal which appears to the Tribunal to be frivolous or vexatious or to be brought for the purpose of delay.

[Ch4905s39]39. Time for appeals

Appeals under this Part, whether from decisions of the Registrar or orders or decisions of the Tribunal, shall be brought within three months after the date of the decision or order in question, or within such further time as the Tribunal or Court may allow upon application by the appellant concerned.

[Ch4905s40]40. References to Tribunal by Registrar

When any matter to be decided by the Registrar under this Act appears to him to involve a point of law or to be of unusual importance or complexity, he may, after giving notice to the parties, refer such matter to the Tribunal for a decision and shall thereafter, in relation to such matter, act in accordance with the decision of the Tribunal or any decision substituted therefor on appeal to any court.

[Ch4905s41]41. Certification of validity

In any legal proceeding in which the validity of the registration of a design is contested and is decided in favour of the registered proprietor of the design, the Tribunal or Court may certify to that effect and, if it so certifies, then, in any subsequent legal proceeding in which the validity of the registration comes into question, the registered proprietor of the design, on obtaining a final order or judgment in his favour, shall have his full costs, charges and expenses as between solicitor and client, unless in that subsequent proceeding the Tribunal or Court directs that he ought not to have them.

[Ch4905s42]42. Infringement action to be heard in High Court

Any action or legal proceeding relating to the infringement in Malawi of copyright in a registered design shall be brought in the High Court.

[Ch4905s43]43. Remedy for groundless threats of infringement proceedings

(1) Where any person (whether entitled to or interested in a registered design or an application for registration of a design or not) by circulars, advertisements or otherwise threatens any other person with proceedings for infringement of the copyright in a registered design, any person aggrieved thereby may bring an action against him in the High Court for any such relief as is mentioned in subsection (2).

(2) Unless in any action brought by virtue of this section the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute, an infringement of the copyright in a registered design, the registration of which is not shown by the plaintiff to be invalid, the plaintiff shall be entitled to the following relief, that is to say—

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an injunction against the continuance of the threats; and
- (c) such damages, if any, as he has sustained thereby.

(3) For the avoidance of doubt, it is hereby declared that a mere notification that a design is registered does not constitute a threat of proceedings within the meaning of this section.

(4) The defendant in any such action as aforesaid may apply, by way of counterclaim in the action, for any relief to which he would be entitled in a separate action in respect of any infringement by the plaintiff of the design to which the threats relate.

[Ch4905s44]44. Security for costs and taxation of costs

(1) When a party to proceedings before the Registrar or the Tribunal or an appellant is resident outside Malawi, the Registrar or the Tribunal may order such party or appellant to give security, within such time as may be directed, for the costs of the proceedings or appeal.

(2) If the party or appellant ordered to give security for costs fails to do so within the time directed, the Registrar or the Tribunal may treat the proceedings or appeal as abandoned.

(3) Where a bond is to be given as security for costs, it shall, unless the Registrar or the Tribunal otherwise directs, be given to the party requiring the security.

(4) Unless otherwise agreed between the parties, any costs awarded in terms of section 35 (4) shall be taxed by the Registrar of the Tribunal in accordance with rules made under this Part which taxation shall be subject to appeal to the Tribunal, and any such costs may be recovered by action in a court of competent jurisdiction.

[Ch4905s45]45. Costs of Registrar

In all proceedings before the Tribunal under this Act, the costs of the Registrar shall be in the discretion of the Tribunal, but the Registrar shall not be ordered to pay the costs of any of the other parties.

[Ch4905s46]46. Appeals to High Court

(1) Any party to any proceedings before the Tribunal may appeal in accordance with rules made under this Part from any order or decision of such Tribunal to the High Court.

(2) Upon the hearing of an appeal under this section, the High Court may, without prejudice to its other powers—

- (a) confirm, set aside or vary the order or decision in question;
- (b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the High Court may think fit to give;
- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connexion with which the appeal is brought;
- (d) make such order as it may think just as to the costs of the appeal or of earlier proceedings in the matter before the Tribunal.

PART VIII

OFFENCES AND PENALTIES

[Ch4905s47]47. Falsification of entries in register

Any person who makes or causes to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or who produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, shall be guilty of an offence.

[Ch4905s48]48. Penalty for falsely representing a design as registered

(1) Any person who—

(a) falsely represents that a design applied to any article sold by him is registered in respect of that article; or

(b) after the copyright in a registered design has expired, marks any article to which the design has been applied with the word “registered,” or any word or words implying that there is a subsisting copyright in the design, or causes any such article to be so marked,

shall be liable to a fine of £50 and to imprisonment for six months.

(2) For the purpose of this section a person who sells an article on which he has, or has caused to have, stamped, engraved or impressed or to which he has, or has caused to have, otherwise applied the word “registered”, or any other word expressing or implying that the design is registered, shall be deemed to represent that the design applied to the article is registered in respect of that article.

[Ch4905s49]49. Deceiving or influencing the Registrar or an officer

(1) Any person who—

(a) for the purpose of deceiving the Registrar or any other officer of the Designs Office in the execution of this Act; or

(b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any other matter thereunder,

makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, shall be guilty of an offence.

(2) Any person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder and who on becoming aware that such statement or representation was false fails to advise the Registrar forthwith of such falsity, shall be guilty of an offence.

[Ch4905s50]50. Witness giving false evidence

Any person who, after having been sworn or having in lieu thereof made an affirmation or declaration, wilfully gives false evidence before the Registrar or the Tribunal concerning the subject-matter of the proceeding in question, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence.

[Ch4905s51]51. Penalties

Save where otherwise provided in this Act, any person who is guilty of an offence under this Act shall be liable to a fine of £500 and to imprisonment for three years.

PART IX

MISCELLANEOUS

[Ch4905s52]52. Recognition of agents

Where by this Act any act has to be done by or to any person in connexion with a design or any procedure relating thereto, the act may under and in accordance with the regulations or, in particular cases, by special leave of the Registrar be done by or to an agent of that person duly authorized in the prescribed manner.

[Ch4905s53]53. Lodging and authentication of documents

(1) Any application, notice or document authorized or required under this Act to be lodged, made or given at the Designs Office or to the Registrar or to any other person may be delivered by hand or sent by registered post.

(2) No authentication shall be required in respect of any document lodged in the Designs Office under this Act or used in proceedings before the Tribunal.

[Ch4905s54]54. Provisions as to fees

(1) Where under this Act—

(a) a fee is payable in respect of the performance of any act by the Registrar, the Registrar shall not perform that act until the fee has been paid;

(b) a fee is payable in respect of the doing of any act by any person other than the Registrar, the act shall be deemed not to have been done until the fee has been paid; or

(c) a fee is payable in respect of the lodging of a document, the document shall be deemed not to have been lodged until the fee has been paid.

(2) All fees shall be paid at the Designs Office in such manner as the Registrar, with the approval of the Minister, may accept.

[Ch4905s55]55. Oaths and affirmations

Any person who is required under this Act to take any oath or swear to the truth of any affidavit may, in lieu thereof, make an affirmation or declaration in accordance with the law relating to affirmations or declarations.

[Ch4905s56]56. Journal

The Minister may direct the publication by the Registrar in the Patent Journal of any reports of cases on designs and other relevant matters as the Minister may deem fit.

[Ch4905s57]57. Savings

(1) Nothing in this Act shall be construed as authorizing or requiring the Registrar to register a design the use of which would, in his opinion, be contrary to law or morality.

(2) Nothing in this Act shall affect the right of the Government or of any person deriving title directly or indirectly from the Government to sell or use articles forfeited to the Government under any enactment in force in Malawi.

[Ch4905s58]58. Power to make regulations

(1) The Minister may make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

(2) Without derogation from the generality of subsection (1), regulations made by the Minister may provide for—

(a) the form of applications for registration of designs and of any representations or specimens of designs or other documents which may be lodged at the Designs Office, and for requiring copies to be furnished of any such representations, specimens or documents;

(b) the procedure to be followed in connexion with any application or request to the Registrar, or any proceeding before him, and the authorizing of the rectification of irregularities of procedure;

(c) the service of notices and other documents required to be served in connexion with proceedings under this Act;

(d) the conduct of the business of the Designs Office;

(e) authorizing the publication and the sale of copies or representations of designs and other documents in the Designs Office.

(3) The Minister may prescribe a tariff of the fees which shall be payable in respect of any application, registration or other matter under this Act and the fees shall be payable as so prescribed.

PART X

APPLICATION AND TRANSITIONAL PROVISIONS

[Ch4905s59]59. Application of Act and transitional proceedings

20 of 1936(1) Any design which immediately before the 1st January, 1964, was registered in the former Federation of Rhodesia and Nyasaland under any enactment relating to registered designs and was protected under the former Registered Designs legislation and any design which immediately before the date of commencement of the said legislation was registered in the United Kingdom under any enactment relating to registered designs and was protected in Malawi under the United Kingdom Designs (Protection) Ordinance (now repealed) shall be deemed to be registered

under this Act and the copyright in that design shall subsist in Malawi while copyright therein would have subsisted in the said Federation or subsists in the United Kingdom as the case may be.

(2) The Registrar may register a design referred to in subsection (1) upon application made before the 31st December, 1964, by a person appearing to the Registrar to be the registered proprietor of that design in terms of the former Registered Designs legislation or of an enactment relating to registered designs in the United Kingdom.

(3) The copyright in a design registered under subsection (2)—

(a) shall subsist in Malawi until the expiration of the current five-year period for which it would have subsisted at the date of such registration under the said Act or as the case may be for which it is at the date of such registration subsisting in the United Kingdom.

(b) may on application be extended in terms of section 15 (2). For the purposes of determining the period for which the copyright may be so extended the date of registration under subsection (2) shall be deemed to be the date of registration in the said Federation or in the United Kingdom as the case may be.

(4) Every application under this section shall be made in the prescribed form and shall be accompanied by the prescribed fee.

(5) In this section, the expression “the former Registered Designs legislation” means this Act as in force from time to time prior to the 1st January, 1964.

SUBSIDIARY LEGISLATION

APPOINTMENT NOTICE

under s. 4

G.N. 235/1965

The Minister has appointed—

- (a) the Registrar General to be Registrar of Designs;
- (b) the Assistant Registrar General to be Deputy Registrar of Designs.

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REGISTERED DESIGNS REGULATIONS

under ss. 7 and 58

PRELIMINARY

1. Citation

These Regulations may be cited as the Registered Designs Regulations.

2. Interpretation

In these Regulations, unless inconsistent with the context—

“agent” means an agent duly authorized to the satisfaction of the Registrar;

“Office” means the Designs Office;

“specimen” means an article with the design applied to it;

“textile article” means textile piece goods, handkerchiefs and shawls, and includes such other classes of articles of a similar character as the Registrar may from time to time decide.

PART I

APPLICATION FOR REGISTRATION OF DESIGNS

3. Form of application

(1) An application for the registration of a design shall be signed by the applicant or his agent. The application shall be in form No. 1 or No. 2 or, in the case of a design to be applied to a set of articles, in form No. 3 or No. 4, as the case may be.

(2) Where it is desired to register the same design in respect of more than one article, a separate application shall be made in respect of each article. In that case each application shall be numbered separately and shall be treated as a separate and distinct application.

(3) Every application shall state the article to which the design is to be applied and that the applicant claims to be the proprietor thereof.

(4) Except in the case of an application to register a design to be applied to a textile article, to wallpaper or to lace, the application shall further be accompanied by a statement of the features of the design for which novelty is claimed.

(5) For the purposes of section 59 (2) an application shall be made in form No. 1 or No. 3, as the case may be, subject to such modifications as the Registrar may approve.

4. Endorsement as to novelty

The applicant shall, if required by the Registrar in any case so to do, endorse on each of the representations or specimens a statement satisfactory to the Registrar of the novelty claimed for the design.

5. Application for registration under section 10

If the application is for the registration of a design which has already been registered in respect of one or more articles, or consists of a registered design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, and it is desired to

claim the protection of section 10 for such application, it shall contain the number or numbers of the registration or registrations already effected.

6. Representations or specimens to be furnished with application

(1) There shall be furnished in connexion with an application to register a design four identical representations of the design, in a form satisfactory to the Registrar, or four specimens. Where representations are supplied the Registrar may at any time before registration require specimens or additional representations.

(2) There shall be furnished in connexion with an application for the registration of a design to be applied to a set of articles four identical representations of the design, in a form satisfactory to the Registrar, or four specimens.

(3) The representations of the design to be applied to a set of articles shall show the design as applied to each different article included in the set.

7. Preparation of representations

(1) Each representation of the design, whether to be applied to a single article or to a set of articles, shall be upon paper of the size prescribed by regulation 35 and not on cardboard and shall appear on one side only of the paper. The figure or figures shall be placed in an upright position on the sheet. When more figures than one are shown, these shall where possible be on one and the same sheet, and each shall be designated perspective view, front view, side view, plan or otherwise, as the case may be.

(2) When the representations furnished are drawings or tracings, they shall be in ink, and if on tracing cloth or tracing paper shall be mounted on paper of the size prescribed by regulation 35.

(3) Where words, letters or numerals appear in the design but are not of the essence of the design, they shall be removed from the representations or specimens; where they are of the essence of the design the Registrar may require the insertion of a disclaimer of any right to their exclusive use.

(4) Each representation of a design which consists of a repeating surface pattern shall show the complete pattern and a sufficient portion of the repeat in length and width, and shall not be of less size than 7 inches by 5 inches.

8. In certain cases representations to be furnished in place of specimens

When specimens are furnished and are not, in the Registrar's opinion, of a kind which can be conveniently mounted in a flat position by means of an adhesive upon paper, or by stitching on linen-backed sheets of paper of the size prescribed by regulation 35 and stored without damage to other documents, representations shall be furnished in place of specimens.

9. Portraits of President, armorial bearings, etc.

(1) Where a portrait of the President, or a reproduction of the armorial bearings, insignia, orders of chivalry, decorations or flags of any country, city, borough, town, place, society, body

corporate, institution or person appears on a design, the Registrar, before proceeding to register the design, shall, if he so requires, be furnished with a consent to the registration and use of such portrait or reproduction from such official or other person as appears to the Registrar to be entitled to give consent, and in default of such consent he may refuse to register the design.

(2) Where the name or portrait of a living person appears on a design, the Registrar shall be furnished, if he so requires, with consent from such person before proceeding to register the design. In the case of a person recently dead the Registrar may call for consent from his legal representative before proceeding with the registration of a design on which the name or portrait of the deceased person appears.

10. Designs excluded from registration under section 7 (3)

There shall be excluded from registration under the Act designs to be applied to any of the following articles, namely—

- (a) works of sculpture other than casts or models used or intended to be used as models or patterns to be multiplied by any industrial process;
- (b) wall plaques and medals; and
- (c) printed matter primarily of a literary or artistic character, including bookjackets, calendars, certificates, coupons, dressmaking patterns, greeting cards, leaflets, maps, plans, postcards, stamps, trade advertisements, trade forms, and cards, transfers and the like.

11. Convention applications

(1) An application for registration under section 13 shall contain a declaration that the application in a convention country upon which the applicant relies is the first application made in a convention country in respect of the design, whether by the applicant or by any person of whom he claims to be the legal representative or assignee, and shall specify the convention country in which such foreign application was made, or is to be deemed under section 13 (3) to have been made, and the official date thereof.

(2) In addition to the representations or specimens lodged with every convention application there shall be lodged with the application or within three months thereafter a copy of the representation of the design filed or deposited in respect of the first application in a convention country, duly certified by the official chief or head of the Designs Office of the convention country, or otherwise verified to the satisfaction of the Registrar.

(3) If any certificate or other document relating to the application is in a foreign language, it shall be accompanied by a translation thereof in the English language verified to the satisfaction of the Registrar.

(4) Save as provided by this regulation, all proceedings in connexion with a convention application shall be taken within the times and in the manner prescribed by these Regulations.

PART II

PROCEDURE ON RECEIPT OF APPLICATION FOR REGISTRATION OF A DESIGN AND EXTENSION OF PERIOD OF COPYRIGHT

12. Registrar's objections

(1) If the Registrar objects to an application for the registration of a design, he shall inform the applicant of his objections in writing, and unless within two months the applicant applies for a hearing or makes a considered reply in writing to those objections he shall be deemed to have withdrawn his application.

13. Decision of Registrar

(1) If the applicant applies for a hearing, the decision of the Registrar at such hearing shall be communicated to the applicant in writing.

14. Procedure on appeal from decision of Registrar

If the applicant desires to appeal from the Registrar's decision, he shall within one month from the date of the decision apply to the Registrar in form No. 5, requesting him to state in writing the grounds of, and the materials used by him in arriving at, his decision, Upon receipt of such application the Registrar shall send to the applicant such statement as aforesaid in writing, and the date when such statement is sent shall be deemed to be the date of the Registrar's decision for the purpose of an appeal.

15. Certificate of registration

The certificate or registration of a design shall be in form No. 6, No. 7, No. 8 or No. 9, whichever is applicable, and may be modified as directed by the Registrar.

16. Non-completion

The time prescribed for the purposes of section 9 (4), which relates to non-completion of an application, shall be twelve months from the date of the application:

Provided that the application may be completed at any time after twelve months but within fifteen months of the date aforesaid, if a request for an extension of time is made in form No. 10 bearing the prescribed fee.

17. Death of applicant

In case of the death of any applicant for the registration of a design after the date of his application, and before registration of the design has been effected, the Registrar may, on being satisfied of the applicant's death, enter in the register, in place of the name, address and nationality of such deceased applicant, the name, address and nationality of the person owning the design on such ownership being proved to the satisfaction of the Registrar.

18. Extension of period of copyright

(1) An application for extension of the period of copyright for a second period of five years shall be made in form No. 11, and an application for extension of the period of copyright for a third period of five years shall be made in form No. 12.

(2) An application for extension of the period of copyright in a design registered by virtue of section 10 shall be made before the expiration of the period of copyright in the original registered design current at the date of lodging the application under section 10.

(3) Where an application is made for registration of a design by virtue of section 10 and the period of copyright in the original registered design, current at the date of lodging the said application, expires before the completion of that application, registration shall not be effected until the copyright in the original registered design has been extended for a further period and an application has been lodged for the extension of the period of copyright in the design to be registered.

(4) A request for an enlargement of time for payment of any fee payable for an extension of the period of copyright shall be made in form No. 13.

PART III

ASSIGNMENTS AND COMPULSORY LICENCES

19. Application for registration of title under section 22

(1) An application for the registration of the title of any person becoming entitled by assignment, transmission or operation of law to a registered design or to a share in a registered design, or becoming entitled as mortgagee, licensee or otherwise to any interest in a registered design, shall be made—

(a) in the case of an application under section 22 (1) by the person becoming so entitled in form No. 14; and

(b) in the case of an application under section 22 (2) by the assignor, mortgagor, licensor or other party conferring the interest in form No. 15.

(2) Application may be made in form No. 16 for entry in the register of notification of any other document purporting to affect the proprietorship of a registered design.

20. Copies of documents

(1) A copy of any document which is referred to in an application under regulation 19, duly certified to the satisfaction of the Registrar, shall be produced to the Registrar with the application.

(2) Unless the Registrar otherwise directs, the original of any other document so referred to shall be produced to him with the application, and a certified copy of any such document shall be lodged therewith, and such original document shall be returned to the person who produced it.

21. Particulars to be stated in application

(1) An application under regulation 19 (1) shall contain the name, address and nationality of the person claiming or stated to be entitled together with full particulars of the instrument, if any, under which title is claimed or given.

(2) Where the name of a person is entered in the register as mortgagee or licensee, such person may, on making an application for the purpose in form No. 17, have a note entered in the register that he no longer claims to be mortgagee or licensee, as the case may be.

22. Application for compulsory licence

An application for the grant of a compulsory licence under section 17 shall be made in form No. 18. Such application shall be in duplicate and accompanied by a statement in duplicate setting out fully the nature of the applicant's interest and the facts upon which he bases his case. Copies of the application and the statement of case shall be transmitted by the Registrar to the registered proprietor.

23. Opposition

(1) If the registered proprietor desires to oppose the application he shall, within such time as the Registrar may allow, file a statement fully setting out the grounds on which the application is to be opposed and shall deliver to the applicant a copy thereof.

(2) The applicant shall, within such time as the Registrar may allow, file evidence in support of his case and shall deliver to the registered proprietor a copy thereof.

(3) Within such time as the Registrar may allow, the proprietor may file evidence in answer and shall deliver to the applicant a copy thereof; and within such time as the Registrar may allow, the applicant may file evidence confined to matters strictly in reply and shall deliver to the proprietor a copy thereof.

(4) No further evidence shall be filed by either party except by leave or on direction of the Registrar.

(5) If any person fails to file in terms of this regulation any statement or evidence within the time allowed by the Registrar for the purpose, he shall be deemed to have abandoned his right to file such statement or evidence.

24. Hearing

(1) On completion of the evidence, or at such other time as he may see fit, the Registrar shall appoint a time for the hearing of the case and shall give the parties at least fourteen days' notice of the appointment.

(2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Registrar shall decide the matter and notify his decision to the parties.

PART IV

REGISTER OF DESIGNS

25. Alteration of entries in register

(1) A request by the registered proprietor of a design for the alteration of a name, nationality, address or address for service entered in the register in respect of his design shall be made in form No. 19 or No. 20, as the case may be.

(2) Before acting on a request to alter a name or nationality, the Registrar may require such proof of the alteration as he may think fit.

(3) If the Registrar is satisfied that the request may be allowed, he shall cause the register to be altered accordingly.

26. Correction of errors

Where an applicant for registration or the registered proprietor of a design desires, under section 23, to correct an error, he shall make the application in form No. 21.

27. Cancellation of registration

(1) Where the registered proprietor of a design desires to cancel his registration under section 25 (1) he shall make application in form No. 22.

(2) An application for the cancellation of the registration of a design under section 25 (2) shall be made in form No. 23, and shall be accompanied by a copy thereof and a statement in duplicate setting out fully the nature of the applicant's interest and the facts on which he relies. A copy of the application shall be sent by the Registrar to the registered proprietor and thereupon regulations 23 and 24 shall apply.

28. Costs

In the event of an application for the grant of a compulsory licence or for the cancellation of the registration of a design being uncontested by the proprietor, the Registrar in deciding whether costs should be awarded to the applicant shall consider whether proceedings might have been avoided if reasonable notice had been given by the applicant to the registered proprietor before the application was lodged.

29. Searches

(1) Where any person desires to obtain the information which he is entitled to obtain under section 28 and can furnish the registration number of the design, he shall apply in form No. 24 and the Registrar shall thereafter furnish him with the information aforesaid.

(2) Where the applicant is unable to furnish the registration number of a design, he shall apply in form No. 25 and furnish in duplicate to the Registrar a representation or specimen of the design applied to an article and the Registrar shall thereupon make such search among designs applied to such articles as may be possible, and shall furnish such information as can properly be given.

(3) The Registrar shall, upon application for the purpose made in form No. 26, accompanied in duplicate by a representation or specimen of a design applied to an article, cause a search to be

made among registered designs and state whether the design as applied to that article appears to be identical with, or closely to resemble, any registered design applied to such article of which the copyright is still existing.

30. Certified copies of entries, etc.

Copies of any entry in the register, or copies of, or extracts from, designs, representations, specimens and other public documents in the Office, or of or from registers and other records kept there, certified by the Registrar, may be furnished by the Registrar upon receipt of a request therefor in form No. 27 from any person who, if the Registrar thinks fit so to require, can show an interest in the entry, matter or thing to his satisfaction. The Registrar shall not be obliged to include in the certificate a copy of any representation or specimen, unless he is furnished by the applicant with a copy thereof suitable for the purpose.

31. Copy of certificate of registration

An application under section 30 for a copy of a certificate of registration shall be made in form No. 28 and shall be accompanied by evidence setting out fully and verifying the circumstances in which the original certificate of registration was lost or destroyed or cannot be produced.

32. Designs not open to public inspection

(1) Where the Registrar has given a direction under section 11 (2) prohibiting or restricting the publication of a design, the representation or specimen of the design shall not be open to public inspection while such direction remains in force.

(2) The period under section 27 (2) during which a design shall not be open to inspection, except as provided in that section, shall be, as regards designs to be applied to textile articles, three years and as regards designs to be applied to wallpaper and lace, two years from the date of the registration thereof.

PART V

MISCELLANEOUS

33. Fees

The fees to be paid in respect of the registration of designs and applications therefor, and in respect of other matters relating to designs arising under the Act, shall be those prescribed in the First Schedule.

34. Forms

The forms referred to in these Regulations are those set out in the Second Schedule and such forms shall be used in all cases to which they are applicable and may be modified as directed by the Registrar.

35. Size, etc., of documents

Subject to any directions that may be given by the Registrar, all applications, notices, statements, papers having representations affixed, or other documents authorized or required by the Act to be made, left or sent at or to the Office, shall be written, typewritten, lithographed or printed in the English language upon strong paper, in dark, indelible ink and, except where otherwise required, on one side only, of a size approximately 13 inches by 8 inches, and shall have on the left-hand part thereof a margin of not less than 1½ inches.

36. Address for service

Every person concerned in any proceedings to which these regulations relate, and every registered proprietor, shall furnish to the Registrar an address for service in Malawi and that address may be treated for all purposes connected with such proceedings or design as the address of the person concerned in the proceedings or the registered proprietor.

37. Method and proof of service

(1) Where any notice application or other document is required to be served on any person under the Act, such service may be effected by the delivery of a copy thereof—

- (a) at the address for service furnished to the Registrar in terms of these Regulations; or
- (b) to such person personally, or to his duly authorized agent; or
- (c) at his residence or place of business or employment, to some responsible person there residing or employed.

(2) Service effected by any person in accordance with this regulation shall be proved by a certificate made in form No. 29 and such certificate shall be filed with the Registrar.

38. Lodging of documents

Any notice, application or other document sent to the Office by post shall not be deemed to have been given, made or lodged until it is actually received in the Office.

39. Power of Registrar to fix time and place of proceedings

The Registrar may in any proceedings held before him decide the hours, times and places at which he will sit and he may adjourn any proceedings for such time and to such place as he may think fit.

40. Agency

(1) Any application, request or notice which is required or permitted by the Act or these Regulations to be made or given to the Registrar, and all other communications between an applicant or a person making such request or giving such notice and the Registrar, and between the registered proprietor of a design and the Registrar or any other person, may be signed, made or given by or through an agent.

(2) Any such applicant, person making request or giving notice, or proprietor may appoint an agent to act for him in any proceedings or matter before or affecting the Registrar under the Act and

these Regulations by signing and sending to the Registrar an authority to that effect in form No. 30 or in such other written form as the Registrar may deem sufficient. In case of such appointment, service upon the agent of any document relating to the proceedings or matter shall be deemed to be service upon the person so appointing him, all communications directed to be made to such person in respect of the proceedings or matter may be addressed to such agent, and all attendances upon the Registrar relating thereto may be made by or through such agent. In any particular case the Registrar may require the personal signature or presence of an applicant, opponent, proprietor or other person.

(3) The Registrar shall not be bound to recognize as such agent any person—

(a) who has been proved to him to have been guilty of conduct discreditable to an agent; or

(b) who has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine; or

(c) who has been suspended from practice as a legal practitioner or whose name has been struck off a roll of legal practitioners whether in Malawi or elsewhere; or

(d) who has been adjudged guilty of conduct discreditable to a patent agent; or

(e) who has been suspended from practice as a patent agent, or whose name has been erased from the register of patent agents kept under the Patents Act and not subsequently restored.

Cap. 49:02

41. Signature of documents

(1) A document purporting to be signed for or on behalf of a partnership shall contain the names of all the partners in full and may be signed by a partner or by any other person who satisfies the Registrar that he is authorized to sign the document.

(2) A document purporting to be signed for or on behalf of a body corporate shall be signed by a director or by the secretary or other principal officer of the body corporate, or by any other person who satisfies the Registrar that he is authorized to sign the document.

42. Amendment of documents

Any document lodged in any proceedings before the Registrar may, if the Registrar thinks fit, be amended, and any irregularity in procedure may be rectified on such terms as he may direct.

43. Power of Registrar to waive requirements

(1) Where, under these Regulations, any person is required to do any act or thing, or any document or evidence is required to be produced or lodged the Registrar may, upon the production of such evidence and subject to such terms and conditions as he may think fit, modify or dispense with the doing of the act or thing or the production or lodging of the document or evidence if he is satisfied that it is reasonable so to do.

(2) The Registrar may allow an application for a design, although not in accordance with these Regulations, to be left on such terms and conditions as he may think fit. In any such case the Registrar shall require the applicant to comply with these Regulations within the time specified by him. Until the prescribed requirements are complied with no further action shall be taken by the Registrar in respect of the application.

44. Extension of time

(1) If in any particular case the Registrar is satisfied that the circumstances are such as to justify an extension of the time for doing any act or taking any proceedings under these Regulations, not being a time expressly provided in the Act or prescribed by regulation 11 (2), he may extend the time upon such notice to other parties, and proceedings thereon, and upon such terms as he may direct, and the extension may be granted though the time has expired for doing the act or taking the proceeding.

(2) At any stage of any proceedings before the Registrar, he may direct that such documents, information or evidence as he may require shall be lodged, and may fix the period for the lodging thereof.

45. Excluded days

Whenever the last day fixed by these Regulations for doing any act or thing at the Office shall fall on a day when the Office is not open, such day shall be an excluded day for the purpose of these Regulations, and it shall be lawful to do the act or thing on the first day following such excluded day which is not an excluded day.

46. Days and hours of business

The Office shall be open to the public and the register shall be open to inspection on payment of the fee specified in the First Schedule every weekday, except Saturday, between the hours of nine and twelve, and half past one and half past three, and on Saturday between the hours of nine and twelve; except on public holidays.

47. Copy of application to Tribunal to be served on Registrar

A Copy of every application made to the Tribunal under the Act shall be served on the Registrar.

48. Order of Court or Tribunal

(1) Where an order relating to a design has been made by any Court or by the Tribunal, the person in whose favour such order has been made shall forthwith file at the Office a certified copy of such order together with an application in form No. 31.

(2) The specimen or representation of a design shall thereupon be amended or the register rectified or the purport of such order shall otherwise be duly entered in the register, as the case may be.

49. Publication of Order of Court or Tribunal

Whenever an order is made by any Court or by the Tribunal under the Act the Registrar may, if he thinks fit that the order should be made public, require the applicant or the appellant, as the case may be, to publish it in the Gazette.

FIRST SCHEDULE reg. 33, G.N. 78/1980, 47/1992, 43/1997, 35/2000, 5/2006

FEES PAYABLE TO THE OFFICE

The following fees shall be paid in respect of applications, registrations and other matters under the Act. Such fees must in all cases be paid before or at the time of doing the matter in respect of which they are to be paid—

Item	Matter	Amount		Form No.
		K	t	
1.	(a) on application to register one design to be applied to a single article, not being a textile article	1,000	00	1 or 2
	If made of lace	800	00	1 or 2
	(b) on application to register one design to be applied to a set of articles, not being textile article	800	00	3 or 4
	If made of lace	700	00	3 or 4
	(c) on application to register one design to be applied to a textile article	600	00	1 or 2
	(d) on application to register a design under section 59 (2) of the Act	600	00	1 or 3
2.	On application to register to state grounds of decision and materials used under regulation	1,000	00	5
14				
3.	On request for extension of time within which an application for registration of a design may be completed—			
	(a) not exceeding one month	600	00	10
	(b) exceeding one month but not exceeding two months	700	00	10
	(c) exceeding two months but not exceeding three months	800	00	10
4.	On application for extension of copyright under section 15 (2) of the Act	800	00	11
or 12				

5. On request for enlargement of time for payment of fee for extension of copyright—
- (a) not exceeding one month 600 00 13
 - (b) exceeding one month but not exceeding two months 700 00 13
 - (c) exceeding two months but not exceeding three months 8000 00 13
6. On request to enter subsequent proprietorship, etc., under regulation 19 made within six months from date of acquisition of proprietorship, etc.—
- (a) in respect of one design made after six but within twelve months from date of acquisition of proprietorship, etc. 600 00 14 or 15
 - (b) in respect of one design made after expiration of twelve months from the date of acquisition of proprietorship, etc. 700 00 14 or 15
 - (c) in respect of one design 800 00 14 or 15
 - (d) on application covering more than one design, for each additional design similarly acquired 200 00
7. On application for entry of notification of document in the register made within six months of date of document—
- (a) in respect of one design made after six but within twelve months from date of document 600 00 16
 - (b) in respect of one design made after expiration of twelve months from date of document 700 00 16
 - (c) in respect of one design 800 00 16
 - (d) on application covering more than one design for each additional design referred to in the same document as the first design 200 00 —
8. On application of mortgagee, licensee, or other person for entry that he no longer claims such interest—
- (a) in respect of one design 200 00 17
 - (b) for each additional design 200 00 17
9. On application for compulsory licence under section 17 1,000 00 18
10. On application to enter change of name or nationality of registered proprietor in the register—
- (a) in respect of one design 1,000 00 19
 - (b) for each additional design 200 00 19

11. On application for alteration of address for service in the register—
 - (a) in respect of one design 600 00 20
 - (b) for each additional design 200 00 20
12. On application under section 23 to correct error 300 00 21
13. On application by proprietor for cancellation under section 25 (1) of the Act 300 00
22
14. On application for cancellation of registration under section 25 (2) of the Act 300 00
23
15. On application for search under section 28 when registration number is supplied 250 00
24
16. On application for search under section 28 when registration number is not supplied 300
00 25
17. On application for search under regulation 29 (3) of the Act 300 00 26
18. On application for a certified copy of entries, etc., under regulation 30 of the Act 250 00
27
19. On application for a copy of certificate of registration under regulation 31 of the Act 300
00 28
20. On every authorization of an agent 200 00 30
21. On application for of entry of order of court or tribunal 300 00 31
22. For inspection of register 200 00
23. For certifying office copies, MSS or photographic or printed matter—
 - (a) under seal 500 00 —
 - (b) other 400 00 —
24. For inspecting documents in respect of each application or design 500 00 —
25. For making copies of documents in respect of each application or design 1,000 00 —
26. For typewritten copy of any document for every 100 words 200 00 —
27. For photographic copy of any document or drawing, per sheet Price as fixed by the
Registrar from time to time

SECOND SCHEDULE

FORMS

Form Matter Corresponding

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MALAWI

Designs Form No. 1 s. 9 or 59, reg. 3

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: 1 (a)

Application for Registration of Design (Non-Convention)

Application is hereby made for registration of the accompanying design in the name of (1)

.....

.....

of

who claim(s) to be the proprietor(s) thereof. (1) State full name and address of applicant(s)

The design is to be applied to (2)

.....

.....

(3) The design has been previously registered for one or more other articles under No.

.....

(4) The design consists of the design previously registered under No. with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof..

Dated this day of19

(5)

.....

My/Our address for service in Malawi—

.....

.....

.....

The Registrar

The Designs Office

P.O. Box 100

Blantyre

NOTE— Four identical representations or specimens of the design should accompany this form, and, except in the case of an application in respect of a design to be applied to a textile article, to wallpaper or to lace, it should further be accompanied by a statement of the features of the design for which novelty is claimed.

MALAWI

Designs Form No. 2 ss. 9 and 13, regs. 3 and 11

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: 1 (a) or (c)

Application under section 13 of the Act for Registration of Design

(Convention)

Application is hereby made for the registration of the accompanying design in the name of (1)

.....

.....

of

.....

being a national/nationals of

who claim(s) to be the proprietor(s) thereof (2)

.....

.....

.....

.....

.....

..... (1) State full name and address of applicant(s)

(2) If the applicant is not the person who made the application in the convention country, the words "by virtue of", followed by particulars of the instrument under which he claims, should be inserted here

The design is to be applied to a (3)

.....

..... (3) Here state the article to which the design is to be applied as shown in the representations

(4) The design has been previously registered for one or more other articles under No.(4) and (5) Delete one or both paragraphs, if inapplicable

(5) The design consists of the design previously registered under No. with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof.

Application for protection of the design has been made in the following country (6)

.....

on the following official date (7)

numbered (8) Such application was the first application made in a convention country in respect of the relevant design, whether by the applicant(s) or by any person of whom he/they claim(s) to be the legal representative(s) or assignee(s), and the applicant(s) in the abovementioned country qualify/qualifies under(9) Article 2/3 of the Convention by reason of being (9) a national(s) of/domiciled in/having a place of business in a member state, namely (6) Here insert the name of the convention country in which the first application was made.

(7) Here insert the official date of the first application in a convention country.

(8) Here insert official number of first application in convention country

(9) Delete whichever does not apply

This application is made on the ground that I/we qualify/qualifies under the said (9) Article 2/3 by reason of being (9) a national(s) of/ domiciled in/having a place of business in a member state, namely and that to the best of my/our knowledge and belief there is no lawful ground of objection to the registration of the design and that I/we request that the design may be registered as of the date (7)

Dated this day of 19.....

(10) (10) To be signed by the applicant(s) or his/their agent.

.....

My/Our address for service in Malawi:—

.....
.....
.....

The Registrar,
The Designs Office,
P.O. Box 100,
Blantyre.

NOTE.—Four identical representations or specimens of the design should accompany this form, and, except in the case of an application in respect of a design to be applied to a textile article, to wallpaper or to lace, it should further be accompanied by a statement of the features of the design for which novelty is claimed.

MALAWI

Designs Form No. 3 Section 9 or 59, Regulation 3.

REGISTERED DESIGNS ACT Cap. 49:05

Fee: 1 (b) or (d).

Application for Registration of Design to be Applied to a Set of Articles (Non-Convention)

Application is hereby made for registration of the accompanying design for a set of articles in the name of (1)

.....

of

.....

who claim(s) to be the proprietor(s) thereof. (1) State full names and addresses of applicant(s)

The design is to be applied to (2)

.....

.....

.....

.....

.....

..... (2) Here state the set of articles, and also the trade description of each of the articles comprised in the set to which the design is to be applied as shown in the representations

(3) The design has been previously registered for one or more other articles under No.

..... (3) and (4) Delete one or both paragraphs, if inapplicable

(4) The design consists of the design previously registered under No. with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof.

Dated this day of 19.....

(5) (5) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi:—

.....

.....

.....
The Registrar,

The Designs Office,

P.O. Box 100,

Blantyre.

NOTE.—Four identical representations or specimens of the design should accompany this form, and, except in the case of an application in respect of a design to be applied to a textile article, to wallpaper or to lace, it should further be accompanied by a statement of the features of the design for which novelty is claimed.

MALAWI

Designs Form No. 4 ss. 9 and 13, regs. 3 and 11

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: 1 (b)

Application under section 13 of the Act for Registration of Design to be Applied to a Set of Articles (Conventio)

Application is hereby made for the registration of the accompanying design in the name of (1)
.....

.....

of

.....

being a national/nationals of

who claim(s) to be the proprietor(s) thereof (2)

.....

.....

.....

.....

.....

..... (1) State full name and address of applicant(s)

(2) If the applicant is not the person who made the application in the convention country, the words "by virtue of", followed by particulars of the instrument under which he claims, should be inserted here

The design is to be applied to a (3)

.....

.....

.....

..... (3) Here state the set of articles, and also the trade description of each of the articles comprised in the set, to which the design is to be applied as shown in the representations

(4) The design has been previously registered for one or more other articles under No. (4) and (5) Delete one or both paragraphs, if inapplicable

(5) The design consists of the design previously registered under No. with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof.

Application for protection of the design has been made in the following country (6)

on the following official date (7)

numbered (8) Such application was the first application made in a convention country in respect of the relevant design, whether by the applicant(s) or by any person of whom he/they claims to be the legal representative(s) or assignee(s), and the applicant(s) in the abovementioned country qualify/qualifies under (9) Article 2/3 of the Convention by reason of being (9) a national(s) of/domiciled in/having a place of business in a member state namely

..... (6) Here insert the name of the convention country in which the first application was made

(7) Here insert the official date of the first application in a convention country

(8) Here insert official number of first application in convention country

(9) Delete whichever does not apply

This application is made on the ground that I/We qualify/qualifies under the said (9) Article 2/3 by reason of being (9) a national(s) of/domiciled in/having a place of business in a member state, namely and that to the best of my/our knowledge and belief there is no lawful ground of

objection to the registration of the design and that I/We request that the design may be registered as of the date (7)

Dated this day of 19.....

(10) (10) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi:—

.....
.....
.....

The Registrar,
The Designs Office,
P.O. Box 100,
Blantyre.

NOTE—Four identical representations or specimens of the design should accompany this form, and, except in the case of an application in respect of a design to be applied to a textile article, to wallpaper or to lace, it should further be accompanied by a statement of the features of the design for which novelty is claimed.

MALAWI

Designs Form No. 5 s. 9, reg. 14

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K100

Application for Statement of Grounds of Decision under regulation 14

Application for Design No.

Application is hereby made under regulation 14 of the Registered Designs Regulations for a statement in writing of the grounds of the decision dated the day of19.... after the hearing on the day of 19.... and the materials used in arriving at such decision.

Dated this day of, 19.....

(1) (1) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi:—

.....

.....

.....

The Registrar,

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 6.

REGISTERED DESIGNS ACT, Cap. 49:05

Certificate of Registration of Design

Number of Registration

This is to certify that, in pursuance of and subject to the provisions of the Registered Designs Act the design, of which a representation is annexed, has been registered in the name of

.....

..... as of the

day of19....., in respect of the application of such

design to

Sealed at my direction, thisday of 19.....

.....

Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

NOTE.—Subject to the Act, copyright in this design will subsist for five years from the first abovementioned date, and may be extended for two further periods, each of five years.

MALAWI

Designs Form No. 7.

REGISTERED DESIGNS ACT, Cap. 49:05

Certificate of Registration of Design

Number of Registration

This is to certify that, in pursuance of and subject to the Registered Designs Act the design, of which a representation is annexed, has been registered in the name of

.....

..... as of the

day of19....., in respect of the application of such design to

.....

The period of copyright conferred by the registration of this design does not extend beyond the expiration of the original and any extended period of copyright in registered design No.

Sealed at my direction, this day of 19.....

.....

Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

NOTE.—Copyright in this design will normally expire on the but may, on application made in the prescribed manner, be extended for two further periods, each of five years, provided that the period of copyright in design No. be similarly extended.

MALAWI

Designs Form No. 8.

REGISTERED DESIGNS ACT, Cap. 49:05

Certificate of Registration of Design

Number of Registration

This is to certify that, in pursuance of and subject to the Registered Designs Act the design, of which a representation is annexed, has been registered in the name of

.....

.....

as of the day of 19..... being the date on which application was made for protection of the design in a convention country, viz. in respect of the application of such design to

.....

Sealed at my direction, this day of 19.....

.....

Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

NOTE.—Subject to the Act, copyright in this design will subsist for five years from the first abovementioned date, and may be extended for two further periods, each of five years.

MALAWI

Designs Form No. 9.

REGISTERED DESIGNS ACT, Cap. 49:05

Certificate of Registration of Design

Number of Registration

This is to certify that, in pursuance of and subject to the Registered Designs Act the design, of which a representation is

annexed, has been registered in the name of

.....

as of the..... day of19....., being the date on which application was made for protection of the design in a convention country, viz.

..... in respect of the application of such design to

.....

The period of copyright conferred by the registration of this design does not extend beyond the expiration of the original and any extended period of copyright in registered design No.

.....

Sealed at my direction, this day of 19.....

.....

Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

NOTE.—Copyright in this design will normally expire on the,but may, on application made in the prescribed manner, be extended for two further periods, each of five years, provided that the period of copyright in design No. be similarly extended.

MALAWI

Designs Form No. 10 s. 9 (4), reg. 16

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K3

Request for Extension of Time within which an Application for the Registration of a Design may be completed

I/We hereby apply for month's extension of time within which the application No. for the registration of a design may be completed.

Dated this day of, 19.....

(1) (1) State name and full address to which receipt is to be sent

.....

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 11 s. 15 (2), reg. 18

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K80

Application for Extension of Copyright in Design for a Second Period of Five Years

I/We hereby apply for the extension of the period of copyright in design No. for a second period of five years.

Dated this day of, 19.....

(1) (1) State name and full address to which certificate is to be sent

.....

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

(This part of the form to be filled in at the Designs Office)

Certificate of Extension of Copyright in Design for the Second Period of Five Years

This is to certify that did on the day of,19....., make application and pay the prescribed fee for the extension of copyright in design No. and that the copyright is hereby extended for a second period of five years until the day of, 19.....

Sealed at my direction, this day of 19.....

.....

Registrar

The Designs Office,
P.O. Box 100,
Blantyre.

MALAWI

Designs Form No. 12 s. 15 (2), reg. 18

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K80

Application for Extension of Copyright in Design for a Third Period of Five Years

I/We hereby apply for the extension of the period of copyright in the design No. for a third period of five years.

Dated this day of, 19.....

(1)
sent

(1) State, name and full address to which certificate is to be

.....

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

(This part of the form to be filled in at the Designs Office)

Certificate of Extension of Copyright in Design for the Third Period of Five Years

This is to certify that did on the..... day of, 19....., make application and pay the prescribed fee for the extension of copyright in the design No..... and that the copyright is hereby extended for a third period of five years until the.....day of, 19..... design No. and that the copyright is hereby extended

Sealed at my direction, this day of 19.....

.....

Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 13. Section 15 (2), Regulation 18 (4).

REGISTERED DESIGNS ACT, Cap. 49:05

Fee: 5.

Request for Enlargement of Time for Payment of Fee for Extension of Copyright in Design

I/We hereby requestmonth's enlargement of time within which payment of the fee of £for the extension of the copyright in design No. may be made.

Dated this day of, 19.....

(1) (1) State name and full address to which receipt is to be sent

.....
.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 14. Section 22 (1), Regulation 19 (1) (a).

REGISTERED DESIGNS ACT, Cap. 49:05

Fee: 6.

Application under Regulation 19 by Assignee, Mortgagee or Licensee to enter subsequent Proprietorship or Interest in Design in the Register

I/We (1)

.....

..... (1) State full name and address

hereby request that you will enter my/our name(s) in the register as proprietor(s)/mortgagee(s)/licensee(s) of the

design No.

I am/We are entitled to the said design (or to a share or an interest in the said design) in pursuance of (2)..... (2) Insert full particulars of the instrument, if any

.....

.....

Dated this day of, 19.....

(3) (3) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi

.....

.....

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

NOTE.—The instrument under which the applicant claims should accompany this form.

MALAWI

Designs Form No. 15. Section 22 (2), Regulation 19 (1) (b).

REGISTERED DESIGNS ACT, Cap. 49:05

Fee: 6.

Application under Regulation 19 by Assignor, Mortgagor, Licensor etc., to enter subsequent Proprietorship or Interest in Design in the Register

I/We (1)

.....

..... (1) State full name and address

hereby request that you will enter the name(s) of (2)

.....

.....

.....

in the register as subsequent proprietor(s)/mortgagee(s)/licensee(s) of the design No.

..... (2) Here insert name, address and nationality of assignee, etc.

He is/They are entitled to the said design (or to a share or interest in the said design) by virtue of (3)

.....

.....

..... (3) Insert full particulars of the instrument if any.

The address for service in Malawi of the subsequent proprietor, mortgagee or licensee, etc., is (4)

.....

.....

.....

..... (4) Here insert the address for service in Malawi of the subsequent proprietor, mortgagee, licensee, etc.

Dated this day of, 19.....

(5) (5) To be signed by the applicant(s) or his/their agent.

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 16. Section 6 or 22, Regulation 19 (2).

REGISTERED DESIGNS ACT, Cap. 49:05

Fee: 7.

Application for Entry of Notification of Document in Register

I/We transmit herewith an attested copy of (1)

.....

.....
.....
.....
.....

..... (1) Here insert a description of the nature of the document, giving its date and the names and addresses of the parties thereto relative to design No. as well as the original document for verification, and I/we apply that a notification thereof may be entered in the register.

Dated this day of, 19.....

(2) (2) Signature

(3) (3) Here insert full address of the party benefiting under the document

.....
.....

The Registrar
The Designs Office,
P.O. Box 100,
Blantyre.

MALAWI

Designs Form No. 17. Section 22, Regulation 21 (2).

REGISTERED DESIGNS ACT, Cap. 49:05

Fee: 8.

Application by Mortgagee or Licensee under Regulation 21 (2) for Entry in Register of Note that he no longer claims such Interest

Design No.

Name of registered proprietor

Place of business

I/We, the undersigned,

of

apply for entry in the register that I/we no longer claim to be mortgagee(s) or licensee(s) in respect of design No.

Dated this day of, 19.....

(1) (1) To be signed by the applicant(s) or his/their agent

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 18 s. 17, reg. 22

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K100

Application for the Grant of a Compulsory Licence under section 17 of the Act

Design No.

I/We

.....

of hereby apply for the grant of a compulsory licence in respect of design No. on the ground that the design is not applied in Malawi by any industrial process or means to the article in respect of which it is registered to such an extent as is reasonable in the circumstances of the case.

Dated this day of, 19.....

(1) (1) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi—

.....
.....
.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

NOTE—The application must be accompanied by a copy thereof and a statement of case in duplicate.

MALAWI

Designs Form No. 19 s. 6, reg. 25

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K10

Application to enter Alteration of Name or Nationality of Registered Proprietor of Design in Register

I/We

.....

hereby apply, in respect of design No., that my/our name(s)

or nationality in the register may be altered to (1)

..... (1) Here insert particulars of alteration

There has been no change in the actual proprietorship of the said design.

.....

(2) (2) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi—

.....

.....

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 20 s. 6, reg. 25

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K11

Application for Alteration of Address or Address for Service in Register

Design No.

I/We

.....

of the registered proprietor(s) of the design
numbered as above apply that my/our address or my/our address for service in the register may be
altered

to

Dated this day of, 19.....

.....

(1)

(1) To be signed by the applicant(s) or his/their agent

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 21 s. 23, reg. 26

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K30

Request under section 23 of the Act for Correction of Error

I/We hereby request that the following error

.....

.....

in the (1)

.....

of design No. may be corrected as follows— (1) Here state whether in application, representation or entry in register

(2) (2) Here state what correction should be made

Dated this day of, 19.....

(3) (3) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi—

.....

.....

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 22 s. 25 (1), reg. 27 (1)

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K10

Application by Registered Proprietor of Design to Cancel Registration

Design No.

Name of registered proprietor

.....

Address

.....

I/We, the undersigned,

of

apply that the registration of design No. may be cancelled.

Dated this day of, 19.....

(1)

(1) To be signed by the applicant(s) or his/their agent

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 23 s. 25 (2), reg. 27 (2)

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K8

Application for Cancellation of Registration under section 25 (2) of the Act

Design No.

I/We

.....

of

hereby apply for cancellation of the registration of design No. on the ground

that (1)

.....

.....

..... (1) Here state ground(s) on which
cancellation is requested

Dated this day of, 19.....

(2) (2) To be signed by the applicant(s) or his/their agent

.....

My/Our address for service in Malawi—

.....

.....

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

NOTE—The application must be accompanied by a copy thereof and a statement of case in duplicate.

MALAWI

Designs Form No. 24 s. 28, reg. 29 (1)

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K20

Request for Information under section 28 of the Act when Registration Number is supplied

I/We hereby request that I/We may be given such information as I/We may be entitled to under section 28 with respect to the design registered under No.

Dated this day of, 19.....

(1) (1) To be signed by the applicant(s) or his/their agent

.....

Address—

.....

.....

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 25 s. 28, reg. 29(2)

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K30

Request for Search under section 28 of the Act when Registration Number is not supplied

I/We hereby request that a search may be made in respect of the design (a representation or specimen of which is annexed hereto in duplicate) applied to (1) and that I/we may be given such information as I/we may be entitled to under section 28. (1) Here insert name of article

Dated this day of, 19.....

(2) (2) To be signed by the applicant(s) or his/their agent

.....

Address—

.....

.....

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 26 s. 28, reg. 29 (3)

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K30

Request for Search under regulation 29 (3)

I/We hereby request that a search may be made and that I/we may be informed whether the design (a representation or specimen of which is annexed hereto in duplicate) to be applied to (1) appears to be identical with or closely to resemble any registered design applied to such article of which the copyright is still existing. (1) Here insert name of article

Dated this day of, 19.....

(2) (2) To be signed by the applicant(s) or his/their agent

.....

Address—

.....

.....

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 27 s. 6 (2), reg. 30

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K20

Request for General Certificate of the Register

Design No., registered in the name of

.....

I/We

.....

of

hereby request the Registrar to furnish me/us with (1) his certificate that (2)

(1) a certificate of registration of the design (1) for use in obtaining registration abroad. (1) Delete words that are not applicable

(2) Here set out the particulars which the Registrar is requested to certify

Dated this day of, 19.....

(3) (3) To be signed by the applicant(s) or his/their agent

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 28 s. 30, reg. 31

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K20

Application for Copy of Certificate of Registration of Design

I/We have to inform you that the Certificate of Registration of Design No. has been (1)

.....

.....

.....

.....

..... (1) Here state whether "lost or destroyed" or "cannot be produced", as the case may be, and state in full the circumstances of the case which must be verified by affidavit

I/We therefore apply for the issue of a copy of such certificate (2)

.....
.....
.....

..... (2) Here state interest possessed by applicant(s) in the design

Dated this day of, 19.....

(3) (3) To be signed by the applicant(s) or his/their agent

.....

Address—

.....
.....
.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 29 reg. 37 (2)

REGISTERED DESIGNS ACT

(CAP. 49:05)

Certificate of Service

I/We(1)

.....

.....

hereby certify that at (2)

.....

on the day of, 19....., at..... o'clock in the

noon, I/We served the following documents

.....

.....

upon

by (3)

..... (1) State name and address

(2) State precisely where service was effected

(3) Here describe the method of service

Dated this day of, 19.....

(4) (4) To be signed by the person effecting service

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 30 s. 52, reg. 40

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K10

Form of Authorization of Agent

I/We (1)

.....

.....

have appointed (2).....

of

.....

to act as my/our agent for (3)

.....

.....

.....

..... No.

and request that all notices, requisitions and communications relating thereto may be sent to such agent at the above address. (1) The full names of all the partners in a firm must be inserted, and the kind and country of incorporation of bodies corporate stated

(2) Here insert name and address of agent

(3) Here state the particular matter or proceeding for which the agent is appointed, giving the reference number, if known

I/We hereby revoke all previous authorizations, if any, in respect of the same matter or proceeding.

Dated this day of, 19.....

(4) (4) To be signed by person appointing the agent

(5) Here insert full trade or business address of the person appointing the agent

Address—

(5)

.....

(To be deleted if the person appointing the agent desires his own address to be treated as the address for service after registration).

I/We also authorized the said (2) to complete the entry of an address for service as part of any registration obtained under the above authorization.

Dated this day of, 19.....

(4)

Address—

(5)

.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

MALAWI

Designs Form No. 31 reg. 48

REGISTERED DESIGNS ACT

(CAP. 49:05)

Fee: K10

Application for Entry of Order of Court or Tribunal

I/We (1)

.....

.....

in respect of Registered Design/Design Application No. hereby transmit a certified copy of any order by the High Court of /by the Tribunal with reference to (2)

.....

.....

.....

Dated this day of, 19.....

(3)

.....
My/Our address for service in Malawi—

.....
.....
.....

The Registrar

The Designs Office,

P.O. Box 100,

Blantyre.

REGISTERED DESIGNS (TRIBUNAL) RULES

ARRANGEMENT OF RULES

RULE

PRELIMINARY

1. Title and commencement
2. Interpretation

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4. Application For an extension of time in which to appeal
5. Notice of hearing
6. Evidence
7. Attendance of witnesses
8. Security on appeal
9. Abandonment or failure to prosecute appeal

10. Frivolous or vexatious appeals

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APPLICATIONS

11. Dispute as to Government use
12. Rectification of register
13. Hearing of applications
14. Evidence by affidavit
15. Costs

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TAXATION OF COSTS

16. Registrar of Tribunal to be Taxing Officer
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18. Scale of fees to be followed
19. Witnesses' charges and allowances
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PART IV

GENERAL

23. Adjournment of proceedings
24. Place of hearing
25. Forms
26. Fees
27. Endorsement of fee on document chargeable

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First Schedule

Forms

Second Schedule

Fees

G.N. 274/1958(F)

5/1964(M)

166/1967

REGISTERED DESIGNS (TRIBUNAL) RULES

under s. 38

PRELIMINARY

1. Citation

These rules may be cited as the Registered Designs (Tribunal) Rules and shall come into operation on the 1st December, 1958.

2. Interpretation

In these rules, unless inconsistent with the context—

“Office” means the Designs Office;

“Chairman” means the Chairman of the Patents Tribunal;

“section” means a section of the Act.

PART I

APPEALS

3. Entry of appeal

(1) Any person who desires to appeal to the Tribunal from a decision of the Registrar of Designs in any matter in which a right of appeal is given under the Act shall, within three months after the date of the decision, file with the registrar of the Tribunal a notice in form D.T. No. 1.

(2) A notice of appeal shall state the nature of the decision appealed against and whether the appeal is from the whole or part only and, if so, what part of the decision, and shall be accompanied by a statement in writing of the appellant's grounds of appeal.

(3) The appellant shall send a copy of the notice of appeal to the Registrar of Designs and to any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(4) The appellant shall be responsible for the preparation of the record which shall be certified by the Registrar of Designs as correct in terms of subrule (7).

(5) The Registrar of Designs as well as the parties or their legal practitioners shall endeavour to exclude from the record all documents (more particularly such as are purely formal) that are not relevant to the subject matter of the appeal, and generally to reduce the bulk of the record as far as practicable, and to avoid the production of unnecessary exhibits, taking special care to avoid the duplication of documents and the unnecessary repetition of headings, and furnish merely the formal particulars of documents; but the documents omitted to be copied shall be enumerated in a list to be placed after the index or at the end of the record.

(6) The Registrar of Designs, after consultation with the registrar of the Tribunal, shall direct the number of copies of the record to be prepared, having regard to whether or not one or more assessors are likely to sit upon the hearing of the appeal.

(7) After the completion of the preparation of the record the Registrar of Designs shall certify the record to be correct and forward it to the registrar of the Tribunal together with such copies thereof as he has directed to be prepared in terms of subrule (6).

4. Application for an extension of time in which to appeal

(1) Any application for an extension of time in which to appeal shall be in form D.T. No. 2 and shall state briefly the grounds upon which the application is based and where facts are alleged such facts shall be verified by affidavit.

(2) The application accompanied by supporting documents shall be delivered to the registrar of the Tribunal and copies shall forthwith be served by the appellant on the Registrar of Designs and on any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(3) The respondent shall be entitled to file an affidavit in reply within fourteen days from the date of service or within such longer period as may be ordered by the Tribunal, and the Tribunal may permit further affidavits to be filed. Copies of such affidavits shall be served on the Registrar of Designs and on the appellant or the respondent, as the case may be, immediately after the affidavits are filed.

5. Notice of hearing

(1) The Registrar of the Tribunal shall, after obtaining directions from the Chairman, give to the Registrar of Designs, to the appellant and to any opposing party not less than fourteen days'

notice of the time and place appointed for the hearing of the appeal, unless the Chairman directs that shorter notice shall be given.

(2) In any case where the setting down of the hearing of an appeal has been delayed any party may apply to the registrar of the Tribunal to fix a date for the hearing, and thereupon the registrar of the Tribunal, after consulting any other party and the Chairman, shall set down the appeal for hearing after having given to the Registrar of Designs and to any other party not less than fourteen days' notice or such shorter notice of the time and place appointed for the hearing of the appeal as directed by the Chairman.

(3) If in the opinion of the registrar of the Tribunal an appeal is not being prosecuted timeously he may lay the matter before the Chairman for directions and, if the Chairman is satisfied that the parties do not intend or are unable to proceed with the appeal, he may direct that the parties attend before him to show cause why the appeal should not be dismissed.

6. Evidence

Subject to section 35 (6) the evidence used on appeal to the Tribunal shall be the same as that used before the Registrar of Designs, and no further evidence shall be given except with the leave of the Tribunal.

7. Attendance of witnesses

The Tribunal may, at the request of any party, order the attendance at the hearing for the purpose of cross-examination of any person who has given evidence in the matter to which the appeal relates.

8. Security on appeal

(1) Subject to section 44 any party may, at any time before the hearing of an appeal, apply to the Tribunal for an order that any opposing party shall, within such time, in such amount and in such manner as the Tribunal directs, give security for the payment of any costs which such opposing party may be ordered to pay.

(2) The party applying for an order for security for costs shall serve upon the opposing party a copy of the notice of the application for security at least seven days before the date of the hearing thereof.

(3) Any party ordered to give security for costs in terms of this rule may apply to the Tribunal for an order extending the time within which any security is to be given, and shall give not less than four days' notice of such application to the other party.

(4) In the event of the security not being given or being only partly given within the time directed by the Tribunal or any extension thereof, all proceedings in the appeal shall be deemed to be stayed, unless the Tribunal otherwise orders, and the appeal shall be set down for such order, whether of dismissal or otherwise, as the Tribunal may think fit.

9. Abandonment or failure to prosecute appeal

(1) An appellant may at any time abandon his appeal by giving notice of abandonment in form D.T. No. 3 to the registrar of the Tribunal and upon such notice being given the appeal shall be deemed to have been dismissed by the Tribunal.

(2) The appellant shall serve a copy of the notice of abandonment on the respondent and on the Registrar of Designs.

(3) The respondent may, upon receipt of such notice, apply to the Tribunal for an order in respect of any costs incurred by him.

10. Frivolous or vexatious appeals

If it appears to the Tribunal that any notice of appeal against a decision of the Registrar of Designs discloses grounds of appeal which are frivolous or vexatious and that the appeal can be determined without a hearing, the Tribunal may dismiss the appeal summarily without calling on any person to attend the hearing of such appeal.

PART II

APPLICATIONS

11. Dispute as to Government use

(1) Any reference to the Tribunal under section 21 by a party to a dispute (hereinafter referred to as the "the claimant") shall be made in form D.T. No. 4 and shall be filed with the Registrar of Designs.

(2) The claimant shall by affidavit verify the facts upon which he relies and shall state fully the nature of his interest in the matter in dispute and the relief which he seeks.

(3) The claimant shall serve a copy of his claim and of the relevant affidavit upon the other party to the dispute.

(4) The other party shall within two months from the date of receipt of such copy deliver to the Registrar of Designs a counter-statement, verified by affidavit, setting out fully the nature of his interest and the facts upon which he relies, and shall at the same time serve upon the claimant a copy of the counterstatement and of such affidavit.

(5) Proof of service shall be furnished to the satisfaction of the Registrar of Designs.

(6) When this rule has been complied with to the extent herein required, the Registrar of Designs shall hand all relevant papers to the registrar of the Tribunal.

(7) Any party to the dispute may at any time during the proceedings under this rule make application to the Tribunal for an order for the hearing of oral evidence, and the Tribunal shall make such order as it deems fit.

12. Rectification of register

An application for the rectification of the register under section 24 shall be made to the Tribunal in form D.T. No. 5 and a copy thereof shall be served on the Registrar of Designs and on any other person appearing from the register to be interested in the design.

13. Hearing of applications

(1) When the registrar of the Tribunal has received from the Registrar of Designs the papers or written proceedings in relation to any application or other matter made to the Tribunal under the Act, he shall, after taking directions from the Chairman, appoint a time and place for the hearing of the case, and shall give the parties at least fourteen days' notice of the appointment.

(2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the Tribunal shall decide the case and notify its decision to the parties.

14. Evidence by affidavit

(1) All evidence shall be by affidavit unless otherwise directed by the Tribunal.

(2) Whenever a time is specified in this Part within which any act or thing is to be done, the Registrar of Designs may, on application made to him in writing, extend the time either before or after its expiration or within any extended period.

15. Costs

If the applicant notifies the Tribunal that he does not desire to proceed with an application, the Tribunal in deciding whether costs should be awarded to the other party shall consider whether proceedings might have been avoided if such other party had given reasonable notice to the applicant before the application to the Tribunal was filed.

PART III

TAXATION OF COSTS

16. Registrar of Tribunal to be Taxing Officer

The registrar of the Tribunal shall be the Taxing Officer for the purpose of taxing a bill of costs of a legal practitioner, and in the taxation of costs shall comply with such instructions as may from time to time be given to him by the Tribunal for that purpose.

17. Necessary and proper costs to be allowed

(1) With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his application or opposition, and to ensure that all such costs shall be borne by the party against whom such order has been awarded by the Tribunal, the Taxing Officer shall on every taxation allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Officer to have been incurred or increased through over-caution,

negligence or mistake, or by payment of a special fee to counsel, unless the Tribunal otherwise orders, or special charges and expenses to witnesses or other persons or by other unusual expenses.

(2) Upon the taxation of costs the Taxing Officer may, in determining the remuneration to be allowed, have regard to the skill, labour and responsibility involved. If, on having regard to the said matters, the Taxing Officer considers that there are special reasons why costs in excess of those prescribed in the Second Schedule should be allowed, he may, in respect of any particular application made or business done, allow such costs as seem to him reasonable and shall certify his decision in writing.

(3) Any person aggrieved by the charges made by any legal practitioner in respect of work performed by him under the Act may refer such charges to the Taxing Officer for taxation.

18. Scale of fees to be followed

In the taxation of costs the Taxing Officer shall be guided, as far as the circumstances of each particular case will permit, by the scale of fees prescribed in Part IV of the Second Schedule. In addition to these charges all disbursements shall be separately charged and shall be allowed by the Taxing Officer when reasonable.

19. Witnesses' charges and allowances

(1) Witnesses requiring payment shall be paid for their attendance and travelling in accordance with the tariff prescribed in Part II of the Second Schedule.

(2) The charges for witnesses as fixed by tariff are to be considered as payable to the witness by the party who summoned or produced him, and in the event of any such party being awarded his costs against any other party the said charges shall be allowed against such other party in the taxation of costs.

(3) Any person applying to the registrar of the Tribunal for the issue of a subpoena to compel the attendance of any witness shall by endorsement of such subpoena give an undertaking that all expenses due to the witness shall be tendered to such witness upon service of the subpoena, failing which no subpoena shall issue. If upon service of the subpoena all expenses due to such witness have not been paid the subpoena shall have no force and effect.

(4) In the taxation of costs between party and party no amount shall be allowed for any witness whether for attendance or travelling expenses unless, there is produced to the Taxing Officer proof that such amount has already been paid or tendered to or claimed by such witness.

(5) In the taxation of costs between party and party nothing shall be allowed for any witness not examined unless upon proof that his evidence might reasonably have been believed to be material and necessary.

(6) If the number of witnesses summoned, or if the number of affidavits filed, is manifestly greater than is reasonably necessary, there shall only be allowed against the other party the charges for such witnesses or affidavits as were reasonably necessary.

(7) In the taxation of costs between party and party no amount shall be allowed for any witness in respect of personal attendance or travelling expenses if the fact or facts which such witness is subpoenaed to prove have, before the issue of such subpoena, been admitted to the party taking out the subpoena by the opposite party:

Provided that such admission shall be in writing, signed by the party making it or his legal practitioner acting on his behalf.

(8) When the same person is a witness in more cases than one heard on the same day, he shall be entitled to no more than one fee for personal attendance and one allowance for travelling expenses, which shall be equally divided between such cases.

20. Taxation of costs

(1) In all cases where a notice of taxation is necessary, seven days' notice together with a copy of the bill of costs shall be given by the legal practitioner on behalf of the party whose costs are to be taxed to the other party or to the legal practitioner of such other party.

(2) When the dwelling-house or place of business of the party against whom costs are to be taxed is more than thirty-six miles from the seat of the Tribunal, the time for the service of such notice shall be extended to fourteen days.

(3) In the taxation of costs, the notice of taxation with a copy of the bill of costs may be transmitted by registered post to the party appearing in person.

21. Review of decision of Taxing Officer

Any party aggrieved by the decision of the Taxing Officer may apply to the Tribunal within four weeks after the taxation to review such taxation. Copies of the application shall be served on the Taxing Officer and on the opposite party. The application shall specify the items forming the subject of the grievance but the grounds upon which such items are sought to be reviewed shall not require to be verified by affidavit.

22. Reference to Chairman in chambers

The Taxing Officer may, without filing any formal documents, submit any point arising at a taxation for decision by the Chairman in chambers, and it shall be competent for the Taxing Officer and for the legal practitioners who appeared at the taxation to appear before the Chairman respecting such point.

PART IV

GENERAL

23. Adjournment of proceedings

The hearing of any application or other matter before the Tribunal may from time to time be adjourned upon such terms as the Tribunal thinks fit.

24. Place of hearing

(1) Except as provided in subrule (2) every hearing before the Tribunal shall be in Blantyre.

(2) One or more of the parties may, not later than fourteen days before the date approved for the hearing, apply to the Tribunal to conduct the hearing at some other place in Malawi. The Tribunal may, in its discretion and subject to such conditions as to notice and costs as it thinks fit, conduct the hearing at the place named in the application.

(3) Where an application under subrule (2) is not made by all the parties to the proceedings, the Tribunal shall not decide the application without giving the parties an opportunity to be heard.

25. Forms

The forms referred to in these Rules are those set out in the First Schedule and such forms shall be used in all cases to which they are applicable and may be modified as directed by the Chairman.

26. Fees

The Tribunal fees prescribed in Part I of the Second Schedule shall be paid to the Registrar of Designs at the Office.

27. Endorsement of fee on document chargeable

(1) Upon receipt of any document chargeable with any fee payable in terms of these rules the Registrar of Designs shall endorse upon the original of such document the amount of the fee paid and the date of payment.

(2) The Registrar of Designs shall refuse to accept any document in respect of which a fee is payable under these rules, unless the appropriate fee accompanies such document.

28. Oath to be taken by assessors appointed under section 37

The form of oath to be taken by assessors shall be as follows—

I, hereby declare that I will to the best of my ability faithfully and diligently discharge any duties as assessor without favour, fear or prejudice.

29. Remuneration of assessors

The remuneration of any assessor appointed under section 37 shall be as prescribed in Part III of the Second Schedule.

FIRST SCHEDULE r. 25

FORMS

Form	Matter	Rule
------	--------	------

1.	Notice of appeal to Tribunal	3 (1)
----	------------------------------	-------

- 2. Application for an extension of time in which to appeal 4 (1)
- 3. Notice of abandonment of appeal 9 (1)
- 4. Reference to the Tribunal under section 21 11 (1)
- 5. Application for rectification of register of designs 12

Form D.T. No. 1.

REGISTERED DESIGNS ACT, Cap. 49:05 ss. 35 and 39 r. 3(1)

Fee: £2 10s.

Notice of Appeal to Tribunal

IN THE MATTER of an application (1)

.....

..... (1) State nature of application or proceedings, the name of the applicant(s) and the number of the application for registration of design

and

IN THE MATTER of an opposition by (2)

.....

..... (2) State the name of the opponent(s) if the application is opposed

I/We (3)

of

.....

hereby give notice of appeal to the Tribunal from (4)

.....

of the Registrar of Designs, dated the.....day of
....., 19....., whereby he (3) State full name and address of
appellant(s)

(4) Here insert "the decision" or "that part of the decision". as the case may be

(5) Here insert "refused application for registration of a design" or "refused (or granted) application
for compulsory licence" or otherwise, as the case may be

(5)

.....

.....

.....

.....

Dated this..... day of19...

(6) (6) To be signed by the appellant(s) or his/their legal
practitioner

.....

My/Our address for service in Malawi:—

.....

.....

.....

The Registrar of the Patents Tribunal,

P.O. Box 100,

Blantyre.

Form D.T. No. 2.

REGISTERED DESIGNS ACT, Cap. 49:05 s. 39, r. 4 (1)

Fee: Nil.

Application for an Extension of Time in which to Appeal

IN THE MATTER of an application (1)

.....

.....

.....

..... (1) State nature of application or proceedings, the name of the applicant(s) and the number of the application for registration of design

and

IN THE MATTER of an opposition by (2)

.....

.....

.....

..... (2) State the name of the opponent(s) if the application is opposed

I/We (3)

of

.....

hereby make application for an order of the Tribunal extending the time in which to appeal from (4)

.....

.....

.....

of the Registrar of Designs on the following grounds (5)

.....

.....

..... (3) State full name and address of appellant(s)

(4) Here insert "the decision" or "that part of the decision", as the case may be

(5) Here state briefly the grounds upon which the application is based, and where facts are alleged such facts shall be verified by affidavit

Dated this..... day of 19

(6) (6) To be signed by the appellant(s) or his /their legal practitioner

.....

The Registrar of the Patents Tribunal,
P.O. Box 100,
Blantyre.

Form D.T. No. 3.

REGISTERED DESIGNS ACT r. 9 (1)

(Cap. 49:05)

Fee: Nil.

Notice of Abandonment of Appeal

IN THE MATTER of an application (1)

.....

.....

.....

..... (1) State nature of application or proceedings, the name of the applicant(s) and the number of the application for registration of design

and

IN THE MATTER of an opposition by (2)

.....

.....

you are hereby notified that the abovenamed appellant(s) hereby abandon(s) all further proceedings in the above matter. (2) State the name of the opponent(s) if the application is opposed

Dated this..... day of 19

(3)
practitioner

(3) To be signed by the appellant(s) or his/their legal

.....

The Registrar of the Patents Tribunal,

P.O. Box 100,

Blantyre.

Form D.T. No. 4.

REGISTERED DESIGNS ACT s. 21, r. 11 (1)

(Cap. 49:05)

Fee: £2 10s.

Reference to the Tribunal under section 21 of the Act

IN THE MATTER of a reference by (1)

.....

.....

.....

..... (1) State name of claimant(s) and
nature of matter in dispute

against

(2)

..... (2) State name of other party to
dispute

I/We (3)

.....

hereby refer for the determination of the Tribunal my/our claim against (3) State full name and
address of claimant(s)

(4)

..... (4) State full name of respondent

The following are the grounds on which I/we base my/our claim:—

(5)

.....

.....

..... (5) Here state briefly the nature of the grounds

Dated this..... day of19...

(6) (6) To be signed by the claimant(s) or his/their legal practitioner

.....

My/Our address for service in Malawi:—

.....

.....

.....

The Registrar,

The Designs Office,

P.O. Box 100,

Blantyre.

NOTE.—The claim must be accompanied by an affidavit verifying the facts and stating fully the nature of the interest in the matter in dispute and the relief sought.

Form D.T. No. 5.

REGISTERED DESIGNS ACT s. 24, r. 12

(Cap. 49:05)

Fee: £1.

Application for Rectification of Register of Designs

I/We (1)

.....

hereby apply in respect of Design No. that the register may be rectified in the following manner (2)

..... (1) State name and address of applicant(s)

(2) State manner in which register is to be rectified

The grounds upon which I/we base this application are as follows:—

(3)

.....

..... (3) State briefly the grounds

Dated this..... day of19..

(4) (4) To be signed by the applicant(s) or his/their legal practitioner

.....

My/Our address for service in Malawi—

.....

.....

.....

The Registrar,

The Designs Office,

P.O. Box 100,

Blantyre.

SECOND SCHEDULE rr. 18, 19, 26 and 29

PART I

TRIBUNAL FEES

Item Matter Amount

£ s. d.

- | | | | | |
|----|--|----|----|---|
| 1. | On every appeal to the Tribunal from decision or order of the Registrar of Designs—inclusive fee | 2 | 10 | 0 |
| 2. | On a reference to the Tribunal under section 21 2 | 10 | 0 | |
| 3. | On application for rectification of register of designs | 1 | 0 | 0 |
| 4. | On every search | 0 | 2 | 6 |
| 5. | For typewritten copies of judgments or records, for additional copies of orders or for copies of documents or proceedings furnished upon direction of the registrar of the Tribunal: | | | |

The first copy for each folio of 100 words or part thereof	0	1	6
--	---	---	---

Additional copies for each folio of 100 words or part thereof	0	0	6
---	---	---	---

- | | | | | |
|----|--|--|---|---|
| 6. | On certifying any document as an office copy | 0 | 5 | 0 |
| 7. | Transcript of shorthand writer's notes | Such fee as may be determined by the Minister. | | |

PART II

SUBSISTENCE AND TRAVELLING ALLOWANCES PAYABLE TO WITNESSES

Witnesses attending the Tribunal shall be paid subsistence and travelling allowances at the rates prescribed.

PART III

REMUNERATION OF ASSESSORS

An assessor shall be remunerated at the rate of £1 1s. 0d. per hour or part thereof, but his remuneration shall not exceed £5 5s. 0d. per day, unless the Minister, with the approval of the Minister of Finance otherwise directs. An assessor shall in addition be paid a travelling allowance at the rates prescribed.

PART IV

LEGAL PRACTITIONERS' FEES

Legal practitioners' fees in any appeal, application, opposition or other matter heard before the Tribunal shall be in accordance with the tariff of fees prescribed, save as hereinafter provided—Perusal of any necessary documents—For the first 10 folios—per folio 2s. 6d. For each subsequent folio 1s. 0d.

[Chap4907]CHAPTER 49:07

ARTS AND CRAFTS

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II

PROMOTION OF ARTS AND CRAFTS

3. Appointment of Chief Arts and Crafts Officer and other staff
4. Duties of Chief Arts and Crafts Officer

PART III

ARTS AND CRAFTS ADVISORY COUNCIL

5. Establishment of the Council
6. Functions of the Council
7. Secretary to the Council
8. Constitution, proceedings and other matters of the Council

PART IV

MISCELLANEOUS

9. Regulations

Schedule

An Act to provide for the development, promotion, preservation, presentation and study of arts and crafts and folklore in Malawi; the establishment of the Arts and Crafts Advisory Council; and for matters incidental thereto or connected therewith

[1ST OCTOBER 1990]

PART I

PRELIMINARY

[Ch4907s1]1. Short title

This Act may be cited as the Arts and Crafts Act.

[Ch4907s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Chairman” means the Chairman of the Council designated in accordance with the provision of the Schedule;

“Council” means the Arts and Crafts Advisory Council established by section 5.

PART II

PROMOTION OF ARTS AND CRAFTS

[Ch4907s3]3. Appointment of Chief Arts and Crafts Officer and other staff

There shall be appointed in the public service an officer to be designated as the Chief Arts and Crafts Officer and such other staff subordinate to the Chief Arts and Crafts Officer as may be deemed necessary for the discharge of the duties specified in section 4.

[Ch4907s4]4. Duties of Chief Arts and Crafts Officer

The Chief Arts and Crafts Officer shall, subject to this Act and to the general or special direction of the Minister—

- (a) be responsible for the revival, promotion, development and presentation of arts and crafts;
- (b) carry out research in the development and production of arts and crafts;
- (c) provide advisory services, training facilities and technical assistance to organizations and persons engaged in the production of arts and crafts;
- (d) assist organizations and persons engaged in the sale or exportation of arts and crafts;

- (e) develop public interest in arts and crafts by organizing exhibitions, displays, performances, workshops and seminars regarding arts and crafts of Malawi;
- (f) promote, develop and preserve the folklore of Malawi; and
- (g) perform any other functions as the Minister may assign to him for the purposes of this Act.

PART III

ARTS AND CRAFTS ADVISORY COUNCIL

[Ch4907s5]5. Establishment of the Council

There is hereby established a council to be known as the Arts and Crafts Advisory Council.

[Ch4907s6]6. Functions of the Council

The function of the Council shall be—

- (a) to advise the Minister on all matters relating to the revival, promotion, presentation, development, preservation and study of arts and crafts in Malawi; and
- (b) to consider and deal with such matters as the Minister may refer to it or require of it.

[Ch4907s7]7. Secretary to the Council

The Chief Arts and Crafts Officer shall be the Secretary to the Council.

[Ch4907s8]8. Constitution, proceedings and other matters of the Council

(1) The constitution, proceedings and other matters of the Council shall be in accordance with the Schedule.

(2) The Minister may amend the Schedule by order published in the Gazette.

PART IV

MISCELLANEOUS

[Ch4907s9]9. Regulations

The Minister may make regulations for the better carrying out of this Act and, without prejudice to the generality of the foregoing, such regulations may provide for—

- (a) the granting of licences, certificates, permits and similar authorizations;
- (b) the establishment of places of public performances, exhibitions and other displays regarding arts and crafts; and
- (c) the entry upon premises by the Chief Arts and Crafts Officer and other public officers.

SCHEDULE s. 8 (1)

CONSTITUTION, PROCEEDINGS AND OTHER MATTERS OF THE COUNCIL

1. Composition of the Council

The Council shall consist of—

(a) the following ex officio members—

- (i) the Secretary for Education and Culture or his representative;
- (ii) the Secretary for Local Government or his representative;
- (iii) the Secretary for Youth and Malawi Young Pioneers or his representative;
- (iv) the Secretary for Trade and Industry or his representative;
- (v) the Vice-Chancellor of the University of Malawi or his representative;
- (vi) the General Manager of the Malawi Broadcasting Corporation or his representative;
- (vii) the Copyright Administrator or his representative; and

(b) four members appointed by the Minister on account of their knowledge of and interest in arts and crafts.

2. Chairman of the Council

The Minister shall designate one of the members of the Council as Chairman of the Council.

3. Member of the Council not deemed public officer

A member of the Council shall not, by virtue only of his appointment to the Council, be deemed to be an officer in the public service.

4. Publication of Council membership

The Minister shall cause to be published in the Gazette the membership of the Council as first appointed and every change in the membership of the Council.

5. Tenure of officer

A member of the Council, other than a member ex officio, shall hold office for a period of two years from the date of his appointment, unless the Minister terminates his appointment, and shall be eligible for re-appointment.

6. Co-opted members

The Chairman may, at his discretion, invite any person to attend any meeting of the Council and such person may take part in the proceedings of that meeting but shall have no right to vote at such meeting.

7. Meetings of the Council

(1) The Council shall meet at least twice a year at such places as the Chairman may determine.

(2) The Council shall further meet any time at the request, in writing, of at least any four of its members.

(3) In the absence of the Chairman from any meeting of the Council, the members present, if constituting a quorum shall elect one of their number to preside at that meeting.

(4) Any six members of the Council shall constitute a quorum.

(5) The Council shall determine its own procedure.

(6) At all meetings of the Council decisions shall be determined by the majority of members present and the Chairman or the person presiding shall have a deliberative vote and in the event of an equality of votes he shall also have a casting vote.

(7) The Chairman or the person presiding at the meeting shall report to the Council at each meeting thereof the action taken in respect of any matter on which the Council has advised the Minister.