

***GAZETTE EXTRAORDINARY***

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Report of the special Law Commission (No. 1D)**

LAW COMMISSION REPORT No. 19

**CONSTITUTION OF MALAWI**

**REPORT OF THE LAW COMMISSION ON THE DEVELOPMENT OF  
LEGISLATION ON DECLARATION OF ASSETS, LIABILITIES AND  
BUSINESS INTERESTS BY PUBLIC AND ELECTED OFFICERS**

The Report of the Law Commission on the development of legislation on Declaration of the Assets, Liabilities and Business Interests by Public and Elected Officers is hereby published and shall be laid in Parliament pursuant to section 135 (*d*) of the Constitution.

Dated this 25th day of August, 2008.

FILE NO. LC/01/60

H. D. PHOYA  
Minister of Justice and  
Constitutional Affairs

REPORT OF THE SPECIAL LAW COMMISSION ON DECLARATION OF  
ASSETS, LIABILITIES AND BUSINESS INTERESTS BY PUBLIC  
AND ELECTED OFFICERS

TO: THE HONOURABLE MINISTER OF JUSTICE

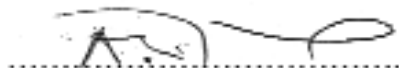
This is the Report of the Law Commission which was appointed under section 133 of the Constitution to develop legislation on the declaration of assets, liabilities and business interests by public and elected officers.

The Commission hereby submits the Report pursuant to Section 135 (d) of the Constitution and commends the recommendations contained in this Report to the Government, Parliament and people of Malawi.

MEMBERS

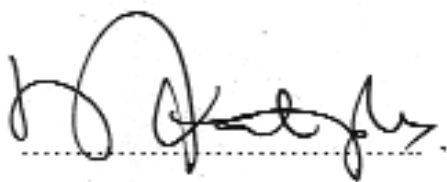
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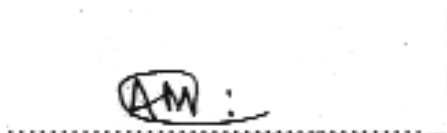
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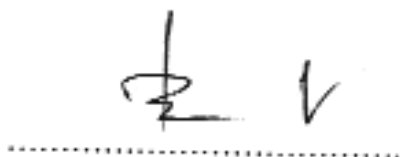
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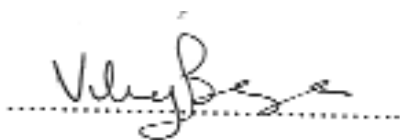
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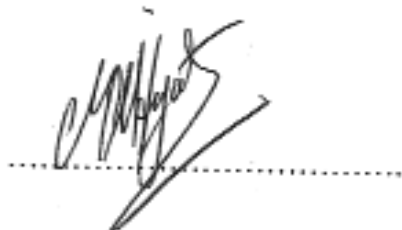
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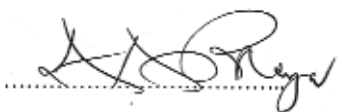
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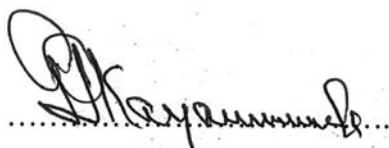
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Acknowledgements

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## INTRODUCTION

The special Law Commission on the development of legislation on declaration of assets, liabilities and business interests by public and elected officer was empanelled in September, 2006 but commenced its work on February 2007. Its broad mandate is to develop legislation governing the declaration of assets, liabilities and business interests by persons holding public office including elected officers, having regard to—

(a) Section 88A and 213 of the Constitution and any other written laws that have relevance to the preservation of ethics in public service, promotion and enforcement of public accountability and prevention of corruption; and

(b) Malawi's obligations under international and regional conventions, treaties and protocols against corruption in public service.

### 1.0 Specific Terms of Reference

To consider and make recommendations on—

- (a) creation of an institutional and legal framework for regulation and co-ordination of declaration of assets, liabilities and business interests by persons in designated positions of public offices;
- (b) extent of application of the legislation, the categories of civil servants or appointed officials and elected officials subject to the legislation;
- (c) method and frequency of filing the declarations, whether civil servants need to file the information upon initial entry into public service and thereafter at what frequency the declarations be filed and whether it will be permissible and possible to file the declarations electronically;
- (d) content of the declaration and the nature, kind/value of assets subject to the asset declaration and the parameters of relationship for whom inclusion in the asset declarations will be required; spouses, wards, and children;
- (e) powers of the receiving authority in cases of failure to declare or declaring inaccurate declarations;
- (f) means of verification of declaration's content and provide for the period within which the declaration record is to be maintained;
- (g) sanctions for failure or refusal to declare and consider the appropriate punishments for not filing the declaration and penalties for making inaccurate statements;
- (h) parameters of accessibility to declaration information by the general public and the processes for accessing this information by the public; and
- (i) changes to be made to the application of any laws affected by the new legislation.

In executing the Terms of Reference, the special Law Commission determined to—

- (a) consult widely amongst the Malawian community and with relevant bodies;
- (b) conduct comparative studies at national, regional and international levels, including, where necessary, study visits;
- (c) examine international instruments, such as:
  - (i) the United Nations Convention against Corruption,
  - (ii) the SADC Protocol against Corruption,
  - (iii) the African Union Convention on Prevention and Combating Corruption;
- (d) consider all relevant documents and reports, including the Constitution of the Republic of Malawi, the Corrupt Practices Act, Cap. 7:04 the Public Procurement Act, (No. 8 of 2007) etc.; and
- (e) make recommendations on any other matters relating to declaration of assets, liabilities and business interests.

At the end of the process, the special Law Commission on the Development of the declaration of assets, liabilities and business interests legislation is required to make a report on its findings and recommendations accompanied by draft legislation for submission to the Minister responsible for Justice for presentation to Cabinet and for laying in Parliament as well as directly to Parliament itself.

## **2.0 Work Methodology**

The special Law Commission adopted the following methodology in carrying out its functions—

- (a) the Commission issued a Press Release in two newspapers soliciting views from the general public;
- (b) a Discussion Paper was developed, which formed the working document for the Commission. The Discussion Paper highlighted issues relevant to matters of declaration of assets, liabilities and business interests by public officers and elected officers;
- (c) the Commission met for three days every month. During these meetings the Commission discussed issues as raised by the Discussion Paper and looked at other comparable foreign municipal statutes as well as relevant international conventions;
- (d) consultative workshops were organized in the three regions of the country.

## **3.0 Structure of the Report**

The first part of the Report is the narrative and it contains specific findings and recommendations. All provisions recommended to be brought into the legislation have been shown in **bold**. The second part of the Report is the draft legislation, which incorporates the recommendations of the Commission.

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#### 4.0 Synopsis of the Draft Legislation

The objective of the draft legislation is to promote public confidence in the public sector. Public confidence in the public service can be promoted if corrupt practices are stamped out. The draft legislation therefore seeks to assist in stamping out corrupt practices in the public service by requiring that public officers declare their assets, liabilities and business interests and by requiring public officers to adhere to some principles of ethical conduct. The draft legislation seeks to supplement sections 88A and 213 of the Constitution. In doing this the draft legislation has covered the following issues—

- (a) institutional framework for the declarations;
- (b) broad principles of ethical conduct;
- (c) public access to declarations;
- (d) contents of declarations;
- (e) procedures in filing declarations;
- (f) frequencies at which declarations must be filed;
- (g) retention period of the declarations;
- (h) monitoring mechanisms to ensure that public officers comply with the proposed law;
- (i) categories of public and elected officers required to make declarations;
- (j) enforcement mechanisms including whistleblower provisions.



## SPECIFIC FINDINGS AND RECOMMENDATIONS

### 1. CODE OF ETHICS AND CONDUCT

A code of ethics generally sets out in broad terms, those high-level values and principles that define roles of professionals and officers, such as impartiality, legality, integrity, fairness, accountability and responsibility. On their own, principles of a code of ethics are particularly difficult to enforce. They must be translated into a code of conduct for enforceability. Therefore, codes of conduct set basic enforceable standards that ultimately entrench the ethical principles of integrity, fairness and accountability among others broad principles. In other words, the enactment of a code of conduct helps to improve the integrity of an organization and thereby prevent corruption. For instance, the stipulation that public officers should declare their assets, liabilities and business interests, is a conduct that upholds public confidence in public officers.<sup>1</sup>

At the outset, the Commission observed that the discussion on what ought to go into the proposed legislation should start with a discussion on whether a code of ethics and conduct should form part of the scheme of declaration of assets, liabilities and business interest by public officers. The Commission noted that a decision on whether or not a code of ethics and conduct should be incorporated in the scheme of declaration of assets, liabilities and business interests will determine the framework of the legislation.

In discussing the matter, the Commission considered three options:

- (a) Whether the proposed legislation on declaration of assets, liabilities and business interests as required by sections 88A and 213 of the Constitution should include a code of ethics and conduct for public officers or whether it should be restricted to matters of declaration of assets, liabilities and business interests;
- (b) If the proposed law incorporates a code of ethics for public and elected officers, whether the law should primarily be on the code of ethics under which matters of assets, liabilities and business interests declaration should then be treated as conduct;
- (c) Whether it would be appropriate to leave matters of ethics to regulations at institutional level.

The Commission observed that, generally, international conventions on the fight against corruption encourage States parties to adopt and implement codes of ethics for public officers in their respective countries<sup>2</sup>.

The Commission further noted that in countries like Uganda, Kenya and Tanzania, their legislation cover matters of ethics in addition to matters of declaration of assets, liabilities and business interests.<sup>3</sup>

However, despite the fact that some international anti-graft conventions to which Malawi is a party encourage States Parties to develop codes of ethics for public and elected officers in their respective countries, and despite the fact that in the countries of

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<sup>1</sup>In this Report, reference to public officer includes elected officers as well as public officers.

<sup>2</sup>The Commission had occasion to look at the United Nations Convention on Preventing and Combating Corruption and the SADC Protocol Against Corruption.

<sup>3</sup>See the Leadership Act, Uganda, the Public Leadership Code of Ethics Act, Tanzania, the Public Ethics Act, Kenya.

Kenya, Uganda and Tanzania, their relevant legislations cover matters of ethics in addition to matters of declaration of assets, liabilities and business interests, the Commission resolved that in Malawi, the law on declaration of assets, liabilities and business interests should be restricted to the matters of declaration of assets, liabilities and business interests. The Commission observed that most international anti-graft Conventions to which Malawi is a party merely encourages the adoption of codes of ethics and conduct rather than the incorporation of such codes in legislation dealing with declaration of assets, liabilities and business interests.

Secondly, the Commission was mindful of its mandate, which is to develop legislation on declaration of assets, liabilities and business interests for public and elected officers to provide minute details for the proper implementation of Sections 88A and 213 of the Constitution.

Thirdly, the Commission observed that having the legislation restricted to matters of assets, liabilities and business interests shall not be totally unique to Malawi as several other countries have taken the same direction.<sup>4</sup>

The Commission however did not lose sight of the fact that there are some principles of ethics that are closely inter-linked with the objectives of legislation on assets, liabilities and business interests declarations. In view of this realization, the Commission resolved that although the legislation will primarily be on declaration of assets, liabilities and business interests by public and elected officers, principles of ethics that would reinforce proper implementation of the law and concrete actualization of objectives of the law should be incorporated. The following principles, among others, were therefore suggested: integrity, accountability, rule of law, transparency, honesty and professionalism.

In summation, the Commission recommends that although the adoption of a code of ethics and conduct would be necessary in the fight against corruption and in improving people's confidence in their public officers, the law on declaration of assets, liabilities and business interests in Malawi should be restricted to such matters and that only those ethical principles that are relevant to the implementation of the law on declaration of assets, liabilities and business interests and to the actualization of its objectives should be incorporated. The Commission further recommends that individual institutions should, either through a different legislation or edict, be encouraged to develop codes of ethics at the institutional level.

The Commission therefore recommends adoption of the following provision(s)—

#### **“PART . . .**

#### **OBJECTIVE AND GUIDING PRINCIPLES OF ETHICAL CONDUCT**

<b>Objective of the Act</b>	<b>. . . The objective of the Act is to promote public confidence in the public service.</b>
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<b>Principles of Ethical conduct</b>	<b>. . . (1) The guiding principles of the Act are integrity, honesty, accountability, responsibility, fairness, transparency, rule of law, professionalism and impartiality, of public officers.</b>
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<sup>4</sup>For example Ghana and Sri-Lanka have their legislations restricted to matters of assets, liabilities and business interest declarations.

**(2) In furtherance of the guiding principles of this Act, every public officer shall—**

**(a) not use his office for personal enrichment or to improperly enrich others;**

**(b) to the best of his ability, avoid being in a position in which his personal interests conflict with his public duties;**

**(c) avoid any activity that is inconsistent with his public functions;**

**(d) not misuse or misappropriate public property entrusted to his care;**

**(e) not be permitted to concurrently receive remuneration for the performance of his duties as a public officer and remuneration for the performance of private employment or of business or entrepreneurial activities unless he makes a full disclosure of all outside employment, business interests and entrepreneurial activities:**

***provided that no actual or potential conflict exists between the public officer's official duties and his outside employment, business interest and/or entrepreneurial activity.***

## 2. SCOPE OF THE LEGISLATION

The Malawi Constitution, in part, makes provision for the scope of the law on declaration of assets, liabilities and business interests in terms of categories of public officers that are required to declare assets, liabilities and business interests<sup>5</sup>. The requirement is applicable, in addition to the President, Vice President and Members of the Cabinet, to the following categories of public officers—

**(a) a member of the National Assembly;**

**(b) a public officer of such senior grade or position as shall be specified by the National Assembly through a resolution by the majority of members present;**

**(c) an officer of such senior grade or position as shall be specified by the National Assembly through a resolution by the majority of members present and voting, of—**

**(i) a corporation, board, commission, council, or similar body established by or under an Act of Parliament;**

**(ii) any other body, corporate or unincorporated which in accordance with any Act of Parliament is subject to the same statutory procedures for financial control and accountability as apply in common to a body referred to in subparagraph (i).**

In discussing the issue, the Commission had time to consider the challenges of leaving out some categories of public officers from the application of the law as currently provided by the Constitution<sup>6</sup>. First, the Commission observed that the current

<sup>5</sup>Section 88A and 213 of the Constitution.

<sup>6</sup>The Commission also looked at the recommendations sister Commission on the review of the Constitution and observed that the position has not been changed.

practice of determining relevant grades by resolution of the National Assembly creates room for manipulation in the sense that the prescribed categories can be changed for political convenience or otherwise. As such, the Commission noted that this would pose a bigger challenge than if the law were applicable to all public officers.

Secondly, the Commission observed that where certain categories of public officers are excluded from the application of the law, it is always possible for them to be used as agents of corrupt practices by the public officers who are required to declare their assets, liabilities and business interests. In that way, the objective of the law is defeated since there will always be conduits for corruption. The Commission further noted that the current practice would be considered discriminatory since it requires a certain category of public officers to be subjected to rigorous legal requirements while some public officers are not subjected to the same legal requirements.

Despite these challenges however, the Commission resolved to maintain the current practice of categorizing the public officers required to declare their assets, liabilities and business interests. The Commission came to this conclusion after observing that extending this requirement to all public officers would bring enforcement challenges. The Commission further noted that although some public officers are excluded from the realm of the law on declaration of assets, liabilities and business interests, the war against corruption is not undermined since there are other avenues of catching up with the excluded public officers, for instance, through the Corrupt Practices Act, which is general in its application.

To cement this position, the Commission took time to look at the United Nations Convention Against Corruption and noted that the Convention allows States Parties to apply anti-graft measures selectively in certain circumstances<sup>7</sup>.

The Commission further observed that the current position of categorizing public officers required to declare their assets, liabilities and business interests, is in line with what obtains in other jurisdictions, for instance, Ghana, Uganda and Kenya<sup>8</sup>.

The Commission however observed that the Constitution uses “seniority” as a basis for categorization of public officers required to declare their assets, liabilities and business interests.

In the opinion of the Commission, categorizing public officers on the basis of “seniority” for the purposes of the law on declaration of assets, liabilities and business interests is grossly erroneous since there are some junior officers in the public service who face constant loopholes for corrupt practices because of the nature of their work. The Commission gave examples of motor vehicle examiners, procurement officers, traffic officers, among others, who are relatively junior officers in the public service but capable of engaging themselves in corrupt practices. It was observed that in other jurisdictions, Kenya and Ghana for example, public officers who are required to declare assets, liabilities and business interests as stipulated in their respective Acts of Parliament include junior officers depending on the “nature and kind” of their work.

Therefore, while maintaining the current practice of categorizing public officers required to declare assets, liabilities and business interests, the Commission resolved that the categorization should not be based on seniority only but also on the “nature and kind”

<sup>7</sup>Article 1: “... However, for the purpose of some specific measures contained in Chapter II of this Convention, ‘public official, may mean any person who performs a public function or provides a public service as defined in the domestic law of the state party and as applied in the pertinent area of law of that state party.’”

of work. The Commission therefore recommended to its sister Commission on the review of the Constitution to consider amending section 213 of the Constitution by deleting the word “**senior**” wherever it appears in that section. Consequently, the Commission recommends that the Act on declaration of assets, liabilities and business interests should categorize the public officers required to declare their assets, liabilities and business interests on the basis of “nature and kind” of work, in addition to “seniority”. Having agreed on the categorization, the Commission recommends that the list of the affected public officers should be put in a schedule to the proposed legislation. The Commission further observed that the Constitution extends the declarations to assets owned and liabilities owed, by spouses of public officers. Internationally, it is an acceptable practice for public declarations to cover spouses, for the simple reason that the boundaries separating the assets and liabilities of family members are often very fluid. The Commission however noted that extending the declarations to spouses only cannot address the mischief sought to be addressed by this extension, which is to prevent public officers from defeating the objective of the requirement by hiding assets in the names of family members. It is the opinion of the Commission that if this mischief is to be totally addressed, public officers should be required to disclose assets and liabilities of other family members in addition to assets and liabilities of spouses as provided by the Constitution. The Commission was however mindful of the fact that as the declaration requirements extend farther beyond personal assets and liabilities, the problems of fairness, constitutionality, and enforceability grow increasingly difficult. While agreeing that the law should extend to other family members therefore, the Commission recommends that such an extension should only cover dependent children. The Commission noted that this position obtains in other jurisdictions like Kenya and Tanzania. The Commission has therefore recommended this extension at an appropriate place in the proposed legislation. In view of this recommendation, the Commission recommends that the Constitution should be amended to include assets of public officers’ dependent children.

The Commission therefore recommends adoption of the following provision(s)—

<p>“Duty to submit declarations under the Act</p>	<p><b>... A public officer listed in the First Schedule to the Act ( in this Act otherwise referred to as “listed public officer”) is required to submit declarations in accordance with this Act.<sup>8</sup>”</b></p>
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### 3. CONTENTS OF DECLARATIONS

The constitutional provisions on declaration of assets, liabilities and business interests do not stipulate the contents of the required declarations. The Constitution only states that certain categories of people are required to declare assets, liabilities and business interests without mentioning the “kind or value” of assets and liabilities required to be declared. The Commission observed that this glaring gap brings compliance and enforceability problems because both the enforcer and the enforced will not be sure of the kind and value of assets and liabilities to be included in the declaration.

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<sup>8</sup>The Commission has drafted the proposed Schedule at an appropriate place in this Report. The Proposed extension to dependent children is covered under the Part on Contents of declarations where assets of immediate family member are included. The term “immediate family member” has been defined as “spouse, biological or adoptive child who is below eighteen years of age and any dependent biological or adoptive child irrespective of age.”

The Commission therefore considered if it would be appropriate for the proposed legislation to fill this gap by stipulating the kind or value of assets and liabilities required to be declared. In its discussion, the Commission observed that, to some extent, listing down kinds and values of assets required to be declared in an Act of Parliament would be a challenge in the sense that some assets and liabilities could be omitted from the list inadvertently. The other challenge that was observed by the Commission was that the list would be prone to frequent amendments, either for convenience or to accommodate new kinds or types of assets and liabilities emerging in the market. In view of these challenges, the Commission considered whether, instead of coming up with a list of assets and liabilities in the proposed legislation, it would be appropriate for the law to define, in a broad sense, the term “assets, liabilities and business interests”. The Commission noted that in other jurisdictions, the law does not spell out the “kind and value” of assets to be declared. Instead, the law defines the term “assets and liabilities”.

For instance, the law in Sri-Lanka defines the term “assets and liabilities” as “assets and liabilities outside Sri-Lanka and includes movable and immovable property”.<sup>9</sup> It was however observed that the compliance and enforceability challenges could not be solved by a definition on assets and liabilities, which is still too broad. In its discussion, the Commission observed that in most jurisdictions, legislation on declaration of assets and liabilities lists down the kinds and/or values of the assets and liabilities. For example, the law in Ghana states that assets and liabilities to be declared should include land, bank deposits, houses, concessions, jewelry, vehicles, loans, mortgages and business interests.<sup>10</sup> Similarly the law in Kenya lists down the types of assets and liabilities required to be declared. The Commission therefore recommends that the proposed legislation should have a list of assets and liabilities required to be declared. The Commission further recommends that, in view of the concern that the list might inadvertently leave out some assets and liabilities and in view of the fact that new unforeseen types of assets and liabilities are still emerging from the markets, the list as proposed should be a descriptive one, which should be able to guide public officers as well as the enforcement agency in determining whether the law has been complied with. In addition to the list, and in order to achieve uniformity of declarations format, the Commission further recommends that the declarations should follow a prescribed Form. The Commission has drafted the proposed Form at an appropriate place in the Report.

#### 4. FILING FREQUENCY AND METHOD

The constitutional provisions on declaration of assets, liabilities and business interests do not specify the frequency at which declarations should be filed. The Constitution only states that declaration must be made within three months from the date of election, nomination or appointment, as the case may be.<sup>11</sup> Therefore, officers who are required to declare assets, liabilities and business interests are currently required to declare only once throughout the entire period of their term of office. The Commission observed that such a scheme of law is toothless in the fight against corruption. It was noted that it is possible for public officers to amass wealth corruptly knowing very well that they will not be required periodically to declare their assets, liabilities and business interests after the initial declaration.<sup>12</sup>

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<sup>9</sup>See Section of the Sri-Lanka’s Declaration of Assets and Liabilities Act

<sup>10</sup>Section 2

<sup>11</sup>Section 88A and 213

<sup>12</sup>The Commission took note of the recommendations of its sister Commission on the review of the Constitution which also made the same observation but left the matter to be stipulated in an Act of Parliament

The Commission further observed that the current scheme is not in line with schemes of law obtained in other jurisdictions, which determine the frequencies at which declarations should be filed. For instance, the Commission noted that the law in Uganda requires that declarations must be filled within three months after election, nomination or appointment and, thereafter, every two years during the month of March.<sup>13</sup> Similarly, the Public Leadership Code of Ethics Act of Tanzania requires declarations to be filed within thirty days after taking office and at the end of each year.<sup>14</sup> Again, the law in Kenya requires declarations to be filed annually every December.<sup>15</sup> The Commission further observed that periodic declarations of assets, liabilities and business interests by public officers is in line with some International Conventions on the Prevention of Corruption.<sup>16</sup>

In the final analysis, the Commission was convinced that declaration of assets, liabilities and business interests by public officers should be at determined frequencies. To that effect, the Commission recommends that the declarations should be filed every year in the first month of that financial year.

Related to the issue of frequency is the issue of requiring public officers to file declarations upon leaving the public office. There were two schools of thought. One school of thought observed that if declarations are to be filed annually as recommended then there would be no need for public officers to declare assets, liabilities and business interests upon the expiry of the term of office. It was further observed in favor of this line of thought that requiring public officers to declare their assets upon expiry of their term of office would mean extending the requirement to non-public officers.

The other school of thought however observed that declaration of assets, liabilities and business interests upon the expiry of term of office would still be necessary especially in cases where the expiry date of the term of office falls long after the previous annual declaration. It was observed that in such situations, the law should require declaration of assets, liabilities and business interests upon expiry of the term of office even if this means extending the requirement to non-public officers. It was further argued that if the proposal is taken on board, the declaration will be made, in most cases, immediately before the person leaves office, that is to say, while the person is still a public officer, as part of a contractual obligation, unless the officer is dismissed or the contract is otherwise abruptly terminated.

After a protracted debate, the Commission resolved that it is indeed necessary for declarations to be made upon, or immediately before, the expiry of term of office, unless the last declaration was made within the previous three months or unless the person is dismissed or the contract is otherwise abruptly terminated, in which case the receiving authority should be empowered to request for declarations or the general law on corrupt practices may take its course. The Commission observed that such a position is in line with the law in other jurisdictions and international anti-graft conventions to which Malawi is a party.<sup>17</sup>

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<sup>13</sup>As long as he or she remains in office, Section 3 of the leadership code Act.

<sup>14</sup>Section 9

<sup>15</sup>Section 25 as read with Section 26 of the Public Officers Ethics Act.

<sup>16</sup>For example, *see* the phrasing of Article 7 of the African Union Convention on Preventing and Combating Corruption.

<sup>17</sup>*See* the law on Uganda and Tanzania and also Article 7 of the African Union Convention on Preventing and Combating Corruption.

The Commission further observed with approval the recommendation made by its sister Commission on the review of the Constitution that public officers who are required to declare their assets, liabilities and business interests must do so before assuming their duties as public officers. It was noted that indeed if public officers are required to declare their assets, liabilities and business interest before assumption of their public offices, the law will be self enforcing. The Commission however noted that for elected officers, this requirement should entail submitting the declarations before their nominations as candidates to avoid unfortunate situations of re-running the election where the successful candidate fails to submit the declarations. The Commission further observed that in cases of presidential elections, requiring a presidential elect to declare his or her assets, liabilities and business interests before he or she is sworn in may bring enforceability problems. In view of this, the Commission recommends that for elected officers, nomination papers and supporting documents presented under section 38 and section 30 of the Parliamentary and Presidential Act<sup>18</sup> and the Local Government Elections Act<sup>19</sup> respectively should include evidence or a statutory declaration by the aspiring person made before a commissioner of oaths, indicating that he or she has submitted declarations of his or her assets liabilities and business interests. The Commission therefore recommends the amendment of the Parliamentary and Presidential Act and the Local Government Elections Act accordingly. The Commission has attached the proposed amendment Bills to this Report.

On the method of filing, the Commission considered whether it may be appropriate for the law to make room for electronic mode of filing. It was noted that although the Constitution is very explicit on method of filing, that it should be in writing, the phrasing of the relevant sections, sections 88A and 213, allows a different method of filing, if prescribed by an Act of Parliament. The Commission observed that allowing electronic filing of declarations may be logical in this era of technological advancement and also considering that the proposed legislation is intended to be wider in its coverage. The Commission however observed that electronic filing is within the meaning of filing in writing as envisaged by the Constitution. The Commission therefore did not see any reason for specifically providing for electronic filing. It was observed that the receiving authority will be at liberty to prescribe the method of filing so long as the prescribed method is allowed by law.

In summation, the Commission recommends adoption of the following provisions covering matters of declaration contents, frequency and method of filing declarations—

#### **“PART . . .**

#### **CONTENT OF DECLARATIONS AND PROCEDURE**

**Submission of . . . (1) Subject to subsection (2), a person shall, no later than seven  
Declaration days before assuming his duties as a listed public officer,  
submit his declaration to the Director.**

**(2) A person who aspires to be nominated as a candidate for  
election as President, Vice-President, Member of Parliament or  
Councilor of an assembly shall be required to submit declarations  
to the Director before his nomination.**

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<sup>18</sup>[Cap. 2:01, Laws of Malawi]

<sup>19</sup>[Cap. 22:02 Laws of Malawi]



(3) The declaration specified in subsections (1) and (2) shall be in the form set out in the Second Schedule.

(4) A listed public officer shall submit to the Director—

(a) an annual declaration update return within thirty days of each financial year;

(b) a declaration three months before expiry of period of service, unless the declaration specified in subsection (1), (2) and (4a) was filed within three months prior to the termination date.

(5) The declaration specified in subsection (4) shall be in the form set out in the Third Schedule.

(6) Where a contract of service is terminated without notice by either party, the Director may order that a declaration be submitted within thirty days from the date of termination, unless the declaration specified in subsections (1), (2) and (4a) was filed within three months prior to the termination date.

(7) A listed public officer shall submit his signed declaration forms directly to the Director and retain a copy for his personal records.

(8) A listed public officer who is in the employment of the Office of the Director of Public Officers Declarations shall, in accordance with the Act, submit his declarations to the office of the Speaker of Parliament.

information to  
be indicated in  
Declaration

... (1) In the declaration, a listed public officer shall specify—

(a) his name, surname, and place of residence, and details of members of his immediate family;

(b) his office or position as a public officer;

(c) the date of election, appointment or selection to the public office;

(d) information on previous public offices held before submission of the declaration;

(e) assets, including but not limited to information on—

(i) any asset in which he, or any member of his immediate family has a full or part ownership interest, and the description of the asset, its location, the date of acquisition, the amount paid for the asset, the current valuation of the asset, and where possible, contact details of the person or entity from whom the asset was acquired;

(ii) any asset which he, or any member of his immediate family has sold, relinquished or otherwise transferred within twenty-four months prior to the date of filing the declaration, and the description of the asset, the date the asset was sold, relinquished or transferred, the

value of the asset at the time of sale, relinquishment or transfer, and the consideration received in exchange;

(iii) any asset which he or any member of his immediate family has financed, or owns in any other name than his own or in any other person's name, and the description of the asset, its location, the date of acquisition, the amount paid for the asset, the current valuation of the asset, and the name or names in which the asset is held and or owned;

(iv) income which he or any member of his immediate family received within the past twelve months and the source(s), amount(s), date(s) and explanation of such income;

(v) any bank account, wherever located, held in his name or held jointly with any member of his immediate family, close associate, agent or business partner, and the name(s) of the account holder(s), the name(s) of the banking institution(s), the type of account, the account number and the balance of the account;

(vi) shares in any company, any government stocks, bonds, treasury bills, any life insurance policy or related schemes held in his name or held jointly with any member of his immediate family, agent or business partner, and a description of the location and value of such shares, stocks, bonds, treasury bills, life insurance policy or related assets;

(f) liabilities and debts which he owes or which any member of his immediate family owes, and the name and address of the individual or entity to which the debt or the liability is owed, the amount and nature of the debt or liability, and the date and circumstances under which it was incurred;

(g) business interests, including but not limited to, information on any commercial or entrepreneurial activity in which he or any member of his immediate family has engaged in the last twenty-four months, and the nature, location and dates of the commercial or entrepreneurial activity.

(h) the date on which the declaration is submitted and his signature."

## 5. ADMINISTRATIVE AND OTHER RELATED PROVISIONS

### (a) *Receiving Authority*

The term "receiving authority" is being used in this Report to refer to an institution that receives declarations of assets, liabilities and business interests from public and elected officers who are required by law to make such declaration. In most jurisdictions, such an institution performs other functions that are relevant to the declarations of assets

and liabilities, in addition to receiving the declarations. For instance, the institution is empowered to verify declarations, to determine their accuracy and to enforce the law, just to mention a few examples.

In Malawi the scheme provided in the Constitution requires that declarations should be delivered to the Speaker of Parliament who is in turn mandated to deposit them with a public office designated in the Standing Orders of Parliament<sup>20</sup> The Constitution further provides that a Committee of Parliament be established, appointed by the National Assembly, to monitor compliance and to “have all the powers necessary to perform its function.”<sup>21</sup> The Constitution does not specify periods of retention for asset declaration records and it is equally silent on verification of contents of the declarations and circumstances that should initiate an investigation into individuals’ asset declaration contents. Admittedly, these are matters of detail which can be covered in the proposed legislation.

In discussing the matter the Commission considered a number of issues—

- (a) whether it is appropriate to recommend a different receiving authority other than the scheme provided in the Constitution;
- (b) whether one receiving authority should be designated or whether different receiving authorities should be designated for each of the several categories of elected officials and public office holders;
- (c) whether the law should specify a minimum period of retention before declarations can lawfully be destroyed after they were filed or after the declarer leaves office;
- (d) circumstances that would trigger verification of contents by the receiving authority or whether the receiving authority should legally be obliged to verify declarations after they have been filed; and
- (e) functions and powers of the receiving authority.

The Commission noted with clarity that the scheme set out in the Constitution requires that declarations be delivered to the Speaker of Parliament who is in turn mandated to deposit them with a public office designated in the Standing Orders of Parliament, and again the Constitution further provides that a Committee of Parliament be established, appointed by the National Assembly, to monitor compliance and to “have all the powers necessary to perform its function.”<sup>22</sup> The Commission however observed that the current Standing Orders of Parliament do not contain any procedures on asset declarations, although the Commission was informed that the Committee of Parliament envisioned by Section 213 (4) has indeed been established.

In its debate, the Commission was concerned with the current scheme in that by designating the Speaker as receiving authority, the Constitution places the Speaker in a difficult position as Parliament may find it challenging to be the receiving authority and to carry out oversight functions at the same time. In addition, the Commission noted that the Speaker may be preoccupied with other matters of national significance to the extent that he or she may not be able to devote the time required to properly perform the functions of receiving declarations and enforcing compliance.

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<sup>20</sup>For the President, the Vice President and members of cabinet under section 88A (1) and other elected officials and public office holders under section 213 (1), of the Constitution

<sup>21</sup>Section 213 (4) of the Constitution

<sup>22</sup>*Ibid*

After a lengthy debate, the Commission resolved that a different scheme should be recommended once it became abundantly clear that Parliament is not the best institution to carry out the function of a receiving authority.

In justifying its recommendation to depart from the scheme as provided in the Constitution, the Commission drew support from the Constitution itself in that it expressly provides that an Act of Parliament may prescribe a different receiving authority.<sup>23</sup>

The Commission then considered schemes of arrangement in comparable foreign jurisdictions. In Kenya, several receiving authorities are charged with responsibility to receive declarations from different groups of public officers and elected officials. The Kenya Judicial Service Commission receives declarations from public officers over whom it exercises disciplinary control; the Electoral Commission receives declarations from Councilors of local authorities; and likewise for other public institutions and departments.<sup>24</sup> In Korea, each respective Ministry, Local Government Authority, Central Bank or public institution, etc, has its own committee appointed for the purpose of receiving declarations from public officers under its authority.<sup>25</sup> In other jurisdictions however, the law establishes only one receiving authority that is responsible for receiving declarations from all public and elected officers who are required to file declarations. In Uganda, the Inspector General of Government receives declarations;<sup>26</sup> in Ghana, the Auditor General receives declarations<sup>27</sup> while in Tanzania a special secretariat called the “Ethics Secretariat” is responsible for receiving declarations.<sup>28</sup> In its final analysis, the Commission rejected the practice obtaining in other jurisdictions like Kenya where several receiving authorities are charged with the responsibility of receiving declarations from different groups of public officers. The Commission observed that such a scheme may bring enforcement and other practical disparities.

The Commission therefore resolved that only one receiving authority should be responsible for receiving declarations from all public and elected officers required to declare their assets, liabilities and business interests under the Act.

Having agreed on having a new receiving authority, the Commission then agonized on whether it may be appropriate to establish an institution solely for the purposes of receiving declarations or whether an existing institution should be empowered to receive declarations. In its discussion, the Commission was quick to observe that establishing a new institution may not be cost effective, taking into consideration the economical resources of the country. The Commission considered the challenges and practical complexities that may arise in the context of fiscal obligations on the government seeing as it would be pointless to create an institution that would have perpetual funding problems. On this argument, the Commission referred to the funding challenges faced by the existing constitutional bodies such as the Malawi Law Commission, the Malawi Human Rights Commission, and the Anti-Corruption Bureau. In that context, the Commission considered several options including the option of making the Anti-Corruption Bureau the authority for receiving and verifying asset declarations. The

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<sup>23</sup>See section 88A and 213

<sup>24</sup>Section 3, Public Officers Ethics Bill

<sup>25</sup>[www.worldbank.org/publicsector/civilsector/asset](http://www.worldbank.org/publicsector/civilsector/asset) quoted in Discussion Paper, p. 24

<sup>26</sup>Section 3, Uganda Leadership Code Act. In Malawi it would be the Ombudsman

<sup>27</sup>Section 1, Public Office Holders (Declaration of Assets and Disqualification) Act

<sup>28</sup>Section 18, Public Leadership Code of Ethics Act

Commission was however of the opinion that giving the Anti-Corruption Bureau powers to receive and verify asset declarations would unnecessarily overburden and overload the Anti-Corruption Bureau with extra work; and it may be likely that elected officials and public officers may resist or resent filing declarations with that investigative agency. In a way, the Commission felt it would almost be like opening ones' own investigation docket. The Commission therefore resolved to keep the Anti-Corruption Bureau out of the asset declaration procedures, unless a case of a corrupt activity is suspected, in which case the Anti-Corruption Bureau will be responsible for investigating the case. The Commission did take special cognizance that although there are jurisdictions where institutions similar to the Anti-Corruption Bureau are entrusted with these powers, such jurisdictions were in a minority.

In conclusion, the Commission generally noted that empowering an existing institution to carry out the functions of receiving declarations may not be prudent in the sense that such an institution may regard the functions of receiving declarations peripheral to its core functions. Further, the function of receiving declarations from public officers is not as simple as it seems considering that the institution must be responsible for verification, enforcement and advisory roles, just to mention a few functions, and that this necessitates a specialized institution altogether. The Commission therefore resolved that a special institution should be established and that Parliament should only retain powers of supervision as an oversight institution to which the appropriate receiving authority would present periodic reports of its activities.

Such a receiving authority shall, for all intents and purposes, not be involved in investigating any case relating to potential corrupt activities because its credibility may in time be eroded due to public mistrust and skepticism. Instead, all investigations should be carried out by the Anti-Corruption Bureau. Further, such a receiving institution should be an independently functioning body, with complete integrity, that will effectively collect declarations and verify contents of the declarations. It should also have all powers necessary to enforce compliance, to retain, monitor, analyze and verify declarations as envisioned in Section 213 of the Constitution, but should not investigate any suspected criminal cases nor indeed prosecute such cases. The Commission then discussed on whether the person to be in charge of the receiving authority should be appointed by a panel comprising civil society representatives and other public officers. The Commission observed that indeed such a scheme may be necessary for transparency. It was however observed that such a procedure may not be in line with appointment procedures of other public officers of the similar nature. The Commission therefore agreed that the appointment should be done by the President but that it should be confirmed by the Public Affairs Committee of Parliament.

The Commission therefore recommends the establishment of a semi-autonomous public office in the same category of public office as the Auditor General with all powers to regulate declaration requirements and attendant obligations to report its activities periodically to the monitoring committee established pursuant to Section 213 of the Constitution or such other appropriate committee as Parliament may designate. The Commission recommends that the office to be established should be called the Office of the Director of Public Officers Declarations. The Commission further recommends that the monitoring committee designated by Parliament should have general monitoring functions.

In summation the Commission recommends the following provisions on receiving authority and parliamentary monitoring committee—

**“PART . . .**

**OFFICE OF THE DIRECTOR OF PUBLIC OFFICERS’ DECLARATIONS**

**Establishment of Office of public officers’ Declarations** . . . (1) There is hereby established the Office of the Director of Public Officers’ Declarations (in this Act otherwise referred to as “the Director”) which shall be a public office and whose director shall be responsible for the administration of this Act.

(2) The Director shall perform his functions independent of any person or authority, but shall otherwise be accountable to the National Assembly.

**Appointment of the Director and Deputy Director** . . . (1) The Director shall be appointed by the President, on such terms and conditions as the President shall determine.

(2) The appointment and the terms and conditions of service of the Director shall be subject to confirmation by the Public Appointments Committee.

(3) The Director shall, subject to Section . . ., hold office for a period of five years and shall be eligible for re-appointment for one additional term of five years.

(4) There shall be a Deputy Director of the Office of Public Officers’ Declarations (in this Act otherwise referred to as “the Deputy Director”) who shall—

(a) be appointed by the President on such terms and conditions as the President shall determine; and

(b) perform such functions and duties as may be assigned to him by the Director, from time to time;

(c) perform the functions and exercise all powers of the Director in the absence of the Director.

(5) The appointment and terms and conditions of service of the Deputy Director shall be subject to confirmation by Public Appointments Committee.

(6) The Deputy Director shall—

(a) subject to Section . . ., hold office for a period of five years, and shall be eligible for re-appointment for one additional term of five years; and

(b) qualify for appointment as the Director.

**Qualification and removal from office of the Director and the Deputy Director** . . . (1) No person shall qualify for appointment as the Director or the Deputy Director unless he has a record of high integrity and possesses suitable qualifications and training necessary for effective performance of the duties of that office.

(2) A person holding the office of the Director or the Deputy Director may be removed from office by the President, on recommendation of the Public Appointments Committee, for inability to perform the functions of his office or for gross misconduct in the performance of his duties.

(3) The President may, if he considers it desirable in the public interest so to do and with confirmation by the Public Appointments Committee, suspend the Director or the Deputy Director from exercising the duties of the office of the Director or the Deputy Director pending investigations to determine whether or not the Director or the Deputy Director may be removed from office under subsection (2).

Acting  
Director

. . . If the Director and the Deputy Director are absent from duty or unable for any other reason to perform the functions of their offices, the President shall appoint, subject to confirmation by the Public Appointments Committee, another duly qualified person to act as the Director during such temporary absence or vacancy—

*Provided* that where the period of such temporary absence has exceeded twenty-one days the President shall, within fourteen days thereafter, furnish to the Public Appointments Committee the reasons why the vacancy in both or either of the two offices cannot be substantively filled with immediate effect and an estimate of the time within which the vacancy shall be filled, being not longer than three months from the expiry of the period of twenty-one days herein referred to.

Appointment  
of other  
officers and  
staff

. . . In addition to the Director and the Deputy Director there shall be appointed in the public service, other officers subordinate to the Director as may be required for the proper performance of the functions of the Director, but the appointment of individual officers under this section shall not require the confirmation of the Public Appointments Committee.

Functions of  
the Director

. . . (1) The Director shall be responsible for the enforcement, regulation and monitoring of declarations and other related matters in accordance with this Act.

(2) Without limiting the generality of subsection (1), the functions of the Director shall be to—

(a) receive declarations from listed public officers;

(b) verify declarations submitted by listed public officers;

(c) recommend to the Minister the development of rules and regulations necessary for the proper implementation of this Act;

(d) ensure accessibility of this Act and its regulations by the general public;

(e) generally advise public officers concerning their obligations under this Act and its regulations;

(f) provide technical assistance to listed public officers on the correct method of filing declarations;

(g) publicize in the *Gazette*—

(i) names of listed public officers who have complied with this Act;

(ii) names of listed public officers who have not complied with this Act;

(iii) a summary of declarations filed by each listed public officer;

(h) provide, annually, an assessment report of compliance with the Act to the Minister who shall lay the report before the National Assembly;

(i) enforce public officers' compliance with this Act by referring violations of this Act and the regulations to relevant employment authorities with recommendations for appropriate sanctions;

(j) upon verification of declarations, report any evidence or reasonable suspicion, of a criminal activity to the Director of Public Prosecution or to the Director of the Anti-Corruption Bureau as the case may be; and

(k) report any elected public officer, Minister or any other listed public officer who, in the opinion of the Director, may properly be dealt with by the Monitoring Committee, to the Monitoring Committee, if such listed public officer fails to comply with the provisions of this Act .

Powers of the Director . . . For the performance of his functions under this Act the Director may—

(a) institute an inquiry into alleged or suspected violations of this Act;

(b) notwithstanding Section 6 of the Taxation Act, order the production of any information, documents, or the giving of testimony, from any public officer, government agency, private company or any person, relating to the declarations filed by a listed public officer;

(c) require a listed public officer to amend, within thirty days, any declaration that is procedurally or substantively defective;

(d) perform such other acts as are reasonably necessary or required for the exercise of his functions.



The provision on the Monitoring Committee of Parliament to read as follows—

**Monitoring Committee to monitor functions and powers of the Director . . . (1) The Monitoring Committee shall be responsible for monitoring the functions and powers of the Director.**  
**(2) In the exercise of its functions, the Monitoring Committee shall—**

**(a) receive annual declarations reports prepared by the Director; and**

**(b) confirm that all public officers are in full compliance with the requirements of this Act; and**

**(c) take any appropriate action to enforce the compliance of this Act by public officers.**

*(b) Period of Retaining Declarations*

Period of retention should be understood as the period of receiving authority is obliged by law to retain declaration records after the public officer leaves office. It is always an issue to be considered when developing legislation on disclosure of assets and liabilities because a public officer may conceal information while in office. While it is true that the concealed information can be surfaced with proper verification procedures, it is also equally possible for authorities to discover the concealment sometime after the officer has left public office. In such instances, the retained record becomes vital for investigations.

In its discussion, the Commission did not lose sight of the fact that declaration returns of public officers are, for all intents and purpose, public records.<sup>29</sup> Therefore these records may be deposited and conserved in the National Archives. The Commission however observed that such a deposition is not automatic for all public records. Public records are only deposited with the National Archives if examined by the Government Archivist and if in his opinion he or she thinks that the records ought to be deposited and conserved in the National Archives.<sup>30</sup> The Commission therefore opined that if there is need to preserve the records after the public officer vacates the office, reliance cannot be put on the provisions of the National Archives Act. The Commission therefore resolved that the proposed legislation should make provision for the period of retention.

At this point the Commission considered the schemes provided in other jurisdictions and found that most of them, including Uganda, Tanzania, and Ghana, do not expressly stipulate the period of retaining declaration records after the public officer vacates public office. However, in Kenya, declarations records are kept for thirty years after the public officer vacates office.<sup>31</sup> In the United States, declaration records are kept for a period of six years unless there is an ongoing investigation, in which case the records are kept for longer than six years.<sup>32</sup>

<sup>29</sup>See the definition of “public records” under Section 2 of the National Archives Act, which define “public records” as “any documents of the Government, or of any Ministry, Department or agency thereof (other than judicial records), which relates to the general or specific functions of the Government or of such Ministry, Department or agency of such functions, and which are in the custody of the said Ministry, Department or agency.”

<sup>30</sup>Section 11 (1) of the National Archives Act

<sup>31</sup>Section 30, Public Officers Ethics Act

<sup>32</sup>[www.worldbank/publicsector/assets](http://www.worldbank/publicsector/assets) quoted in Discussion Paper, p. 25

In the final analysis, the Commission observed that for the reasons advanced earlier on, it is appropriate for the proposed legislation to make provision for a retention period of declaration records after the public officer vacates office. What remained was for the Commission to decide on what would be the appropriate period of retention. While generally accepting that Kenya's provision of keeping the declaration records for a period of thirty years would be the best practice, the Commission took note of the fact that Government institutions in Malawi ordinarily keep records for a period of seven years. The Commission therefore recommends that the period of retention should be seven years after the public officer vacates office unless there is an ongoing investigation necessitating a longer period of retention. Thereafter the records may be deposited with the National Archives. The Commission recommends the following provisions—

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|-----------------------------|--|
| Retention of<br>declaration | <p><b>. . . (1) The Director shall keep declarations submitted under this Act for a period of seven years after the person ceases to be a public officer;</b></p> <p><b>(2) Notwithstanding subsection (1), the Director may, where there is an ongoing investigation, retain the declaration which is the subject matter of the investigation for a longer period than seven years;</b></p> <p><b>(3) This section shall not apply to a person who, having submitted his declarations under Section..... fails to be elected as a public officer.</b></p> |
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*(c) Public Access to Declarations*

It is generally accepted that public oversight of government actions is instrumental to the fight against corruption. Therefore, access to information is crucial for the public to exercise its oversight function. It enables citizens, the media and law enforcement agencies to uncover cases of corruption and maladministration. The Commission observed that in addition to uncovering corruption and maladministration, public access to declarations may also assist the receiving authority to authenticate the accuracy of the declarations through the information gathered from the public. In a nutshell, public access to declarations facilitates public scrutiny of the government and its officials, backs up enforcement of the declaration requirements and, more importantly, promotes public confidence in the declaration system and the government.<sup>33</sup>

In Malawi the scheme of declaration of assets, liabilities and business interests as provided by the Constitution is mute on whether the public can have access to the declaration contents. The practice therefore has been that once declarations are filed, they are kept away from the public. The Commission noted that one of the reasons why public confidence in the declaration system has been eroded is the practice of keeping declarations away from public scrutiny. The Commission further argued that it is imperative that the spirit of openness that emerged after the multi-party dispensation should be championed in order to promote accountability. In addition, the Commission observed that on the international scene, public access, to declarations of assets, liabilities and business interests by public officers is allowed and promoted. Examples were given of countries like Tanzania and Uganda that allow public access to declarations, albeit with different procedures. The Commission also noted that most international instruments

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<sup>33</sup>James Luh, Transparency International–Kenya

against corruption require States parties to adopt anti-corruption policies and legislation that promote, *inter alia*, participation of society, transparency and accountability.<sup>34</sup> In the end, the Commission was convinced that public access to declarations of assets, liabilities and business interests is necessary and should be allowed in the proposed legislation.

The Commission did not however lose sight of the fact that an argument may be put forward that allowing public access to declarations of public officers compromises the right to privacy and personal security. The Commission admitted that such an argument is plausible to some extent considering that the Constitution emphatically recognizes that “every person shall have the right to personal privacy...”<sup>35</sup> Indeed the Commission observed that, in other countries, public disclosure of declarations is only allowed where the public interest in requiring public disclosure of declarations outweighs the personal interest of the right to privacy. Applying the “public interest principle”, countries like the United States of America require only high-level officials to publicly declare their assets, liabilities and business interests. Lower level officials file confidential declarations.

After a protracted debate, the Commission determined that the scheme of declaration in Malawi should allow public access in the broader sense. The Commission observed that the right to privacy is derogable as long as the derogation is justifiable, done by an Act of Parliament and is internationally recognized.

In justifying its proposal to limit the right to privacy within the regime of declaration of assets, liabilities and business interests by public officers, the Commission observed that public officers execute their functions in trust for the people and therefore require rigorous scrutiny and accountability in order to uphold the trust. The Commission further noted that the same Constitution gives the public the right of access to all information held by the State or any of its organs at any level of government insofar as such information is required for the exercise of one’s rights.<sup>36</sup>

Further, the Commission drew its attention to the already mentioned international instruments and other foreign municipal legislations and was convinced that such a practice is internationally recognized. In addition, the Commission took solace in the fact that where public access to declarations is, or has been, abused, appropriate legal remedies exist that may address such abuses.

In conclusion, the Commission recommends that the proposed legislation should allow access by the public to declarations filed by public officers. In achieving this, the receiving authority should be under a duty to publish in the *Gazette* the names of public officers who have submitted declarations and the names of public officers who have failed to declare.

The Commission however recommends that access to the contents of the declarations should be upon application stating reasons for the request. The Commission further recommends that the application to access declarations as proposed should be treated with confidentiality. The Commission observed that such confidentiality will complement whistleblower provisions which the Commission is proposing elsewhere in the Report

The following provisions should therefore be adopted—

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<sup>34</sup>See Articles of the UN Convention Against Corruption and Articles 3, 9 and 12 of the African Union Convention on prevention and Combating Corruption.

<sup>35</sup>Section 21

<sup>36</sup>Section 50

Public access  
to  
declaration

**(1) The declarations made under this Act shall be treated as public information and may be accessible to members of the public upon application to the Director in the form set out in Fourth Schedule.**

**(2) The Director may, if there are reasonable grounds, taking into account the objective of this Act, refuse access to declarations.**

**(3) Where the Director refuses access to declarations, he shall, within fourteen days from receipt of the application, notify the requesting party in writing stating grounds for his refusal.**

**(4) The application to access declarations under this section shall be confidential unless the applicant—**

**(a) upon accessing the declarations, misuses or otherwise abuses the information; or**

**(b) upon being refused access to the declarations, applies for a judicial review of the Director's decision.**

*(d) Enforcement*

*(i) Offences for non-compliance*

It is common knowledge that any scheme of declaration of assets, liabilities and business interests must have applicable sanctions in case of a breach of the provisions to achieve the objectives of promoting public accountability and deterring corruption.

The scheme of asset declaration in Malawi has in the past, been criticized for lacking enforcement mechanisms for non-compliance. Because of this gap, public officers have in the past, ignored the constitutional requirement to declare their assets, liabilities and business interests with impunity. The problem is compounded with the requirement that the declaration should be made “within three months” from the date of appointment, election or nomination, as the case may be. If the law required public officers to declare their assets, liabilities and business interests before assuming office, the law would have been self-enforceable, as a person would have complied with the law before assuming the public office. The Commission therefore recalled its earlier recommendation of requiring public officers to file the declaration before assuming office and observed that if the proposal is adopted, the scheme will be self-enforceable to some extent.

The Commission however further observed that the proposal requiring declaration of assets, liabilities and business interests before assuming office may not be the end of the matter. This observation was made in view of the fact that in addition to the proposed requirement of filing declarations before assuming the public office, the Commission has further recommended annual filing of declarations. Consequently, if the proposal for annual filing is adopted, the law should devise enforcement mechanisms because the person would have already assumed the public office by the time he or she is required to file annual declarations.

Additionally, there might be situations whereby an officer has filed false or inaccurate declarations. In such situations, it is possible for a person to assume duties as

a public officer even where the law requires him or her to declare assets, liabilities and business interests before assuming duties of the public office because, in most cases, the discovery of false declarations is made after the fact.

In discussing the matter, the Commission unanimously agreed that the proposed scheme on declaration of assets, liabilities and business interests by public officers should indeed have clear enforcement measures to encourage public officers to comply with the law. The Commission however observed that there are two ways of achieving this. First, it is possible to have legislation on declaration of assets, liabilities and business interests with sanctions contained in other relevant legislations. The Commission observed that this position obtains in other countries like South Africa, the United States of America and India.<sup>37</sup> In those countries, once a public officer is in breach of the law on declaration of assets, liabilities and business interests, the duty of the receiving authority is to refer that public officer to relevant authorities for appropriate action.<sup>38</sup>

Secondly, the Commission observed that it is also possible to have legislation on declaration of assets, liabilities and business interests with inbuilt sanctions. It was observed that in the countries of Kenya, Uganda and Tanzania, their respective relevant legislations impose sanctions on public officers who fail to comply with the provisions of the law.<sup>39</sup>

After a protracted discussion, the Commission resolved that it would be appropriate for the law in Malawi to contain inbuilt sanctions. The Commission noted that sometimes referring matters from one institution to another creates unnecessary bureaucratic delays in resolving matters. It was however noted that having legislation on declaration of assets, liabilities and business interests that contains inbuilt sanctions might pose some implementation challenges when applied to elected public officers. For instance, if one of the sanctions is dismissal, a receiving authority might not be able to apply this to Members of Parliament or Cabinet Ministers without the involvement of the Speaker of Parliament or the President, as the case may be. Indeed a receiving authority cannot dismiss an employee who is not employed by the receiving authority. The Commission therefore conceded that despite the possible bureaucratic bottlenecks, and despite the law having inbuilt sanctions the receiving authority will, as a matter of necessity, be required to refer non-compliance matters to other relevant institutions.

In summation, the Commission resolved that the proposed legislation on declaration of assets, liabilities and business interests should generally contain sanctions for non-compliance. Where the matter relates to a Member of Parliament, an elected officer of a local authority or a member of Cabinet however, the receiving authority will be required to advise the designated committee of Parliament of the recommendations of the receiving authority for appropriate action. Where the matter relates to any other public officer, the employment authority will be informed by the receiving authority with recommendations for an appropriate sanction.

Having resolved that the proposed legislation should generally contain sanctions for non-compliance, the Commission then turned to discuss the nature of the sanctions. The question that was before the Commission was whether the law should contain administrative sanctions only, or administrative sanctions as well as criminal sanctions in

<sup>37</sup>See Briefing Paper, Vol. 7 page 3, Centre for Democratic Development-Ghana

<sup>38</sup>For example, if Malawi adopts that position, the receiving authority may refer the culprit to either the Director of Public Prosecutions or to the Anti-Corruption Bureau for appropriate action

<sup>39</sup>See for example Section 34 of the Leadership statute, Uganda

certain instances. In discussing the issue, the Commission was mindful of the primary functions of the law on declaration of assets, liabilities and business interests, which is, among other things, the promotion of public integrity, accountability and trust as well as governmental legitimacy. The Commission therefore took the view that in a legislation of this nature, criminal sanctions should be rarely employed, more so given the fact that there may be other existing pieces of legislations that impose criminal sanctions where necessary.

However, the Commission observed that despite this general view, there might be situations where criminal sanctions would be necessary. For example, filing of false declarations might call for criminal sanctions because it is tantamount to “giving false information to a person employed in the public service”, which is an offence under the Penal Code.<sup>40</sup> Therefore, while conceding that the primary objective of the legislation is not to prosecute public officers but rather to promote public trust, accountability and integrity, the Commission observed that criminal sanctions in certain instances cannot be totally ignored or avoided. The Commission noted that having criminal sanctions in the legislation will not be totally unique as countries like Kenya and Tanzania have similar sanctions in their relevant legislations. The Commission therefore recommends that the proposed legislation on declaration of assets, liabilities and business interests should have administrative as well as criminal sanctions. However, the Commission was quick to observe that having criminal sanctions in the legislation does not necessarily mandate the receiving authority have powers to prosecute. The Commission took the view that it might not be appropriate for the country to establish another institution with prosecutory functions in addition to the Anti-Corruption Bureau and the Director of Public Prosecution. The Commission therefore recommends that where possibilities of criminal sanctions are concerned, the receiving authority’s duty should be referring the matter to the Anti-Corruption Bureau or the Director of Public Prosecution for appropriate action, even where an administrative sanction has already been imposed on the public officer.

The other question that the Commission took time to discuss was whether the legislation should have forfeiture provisions as one way of ensuring compliance. The Commission observed that in other jurisdictions, Uganda for example, if a public officer fails to declare certain assets, the excess or the undeclared property is confiscated. The Commission was however mindful of the dangers that forfeiture provisions might pose especially considering that Malawi is still under the shadow of history where forfeiture provisions used to be abused by politicians. The Commission observed that it may be folly of the nation to develop laws that might take the country back to the same condemned practices. Therefore, while admitting that forfeiture provisions are a necessary weapon in the fight against corruption and crime in general, their application must follow due process of law. To that effect, the Commission was reminded of the existence of other legislations, for instance the Money Laundering and Proceeds of Crime Act, which can be used to achieve the same objective. In view of this, the Commission did not see any good reason for having forfeiture provisions in the declaration of assets, liabilities and business interests legislation.

The Commission further considered whether it might be appropriate for the legislation to have a provision barring public officers who fail to declare their assets, liabilities and business interests or who file false declarations, from future public duties. The Commission observed that, in all respects, a public officer who fails to declare his assets, liabilities and business interests undermines the integrity of the public office and

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<sup>40</sup>Section 122 of the Penal Code

cannot be trusted with future public duties. The Commission noted that in other jurisdictions, Uganda for example, the Constitution provides that Parliament may, by law, provide that a person who has been dismissed or removed from office by reason of breach of the Code of Conduct shall be disqualified from holding any other public office whether appointive or elective and either generally or for a prescribed period.<sup>41</sup> Although so provided by the Uganda Constitution, the Commission observed that the Leadership Code Act, which is the Act envisaged by the Uganda Constitution, does not disqualify a person from holding future public offices on account of breach of the Code. It was however observed by the Commission that a scheme similar to the one envisaged by the Uganda Constitution obtains in Thailand. There, the law states that when a person vacates office for failing to declare assets and liabilities, such a person shall not take a position as a state official for a period of five years as from the date of the vacation of office.<sup>42</sup> The Commission noted that the framers of the Malawi Constitution also saw some wisdom in disqualifying citizens from holding certain public offices if they had been convicted of an offence involving dishonesty or moral turpitude within the previous seven years. The reason behind this disqualification is that public offices require people of high moral integrity. The Commission noted that this is precisely the objective that the law on declaration of assets and liabilities is intended to achieve. The Commission was therefore convinced that a person who fails to file declarations should be disqualified from holding future public offices for a prescribed period of time. It was however noted that the disqualification of public officers from holding future public offices if in violation of the law on declaration of assets and liabilities, as proposed, cannot be achieved through the current constitutional provision for several reasons. First, the constitutional provision is limited in its scope of application as it only applies to the offices of the President, Member of Parliament and Cabinet Minister. Secondly, the person must first have been convicted of an offence of dishonesty by a competent court. The Commission observed that the provision of the Constitution is different from what obtains in Thailand, where a person is disqualified just on account of failure to declare assets and liabilities without necessarily requiring a conviction by a court of law. For this reason, the Commission resolved that the proposed legislation should have a provision disqualifying public officers who fail to declare their assets, liabilities and business interests without necessarily requiring a conviction by a court of law, in addition to any other sanction that may be imposed on such public officers.

In summation, the Commission recommends that—

- (a) the proposed legislation should have inbuilt sanctions to complement sanctions that may be found in other relevant pieces of legislation;
- (b) the sanctions should be both administrative and criminal;
- (c) the receiving authority shall refer matters of violation to relevant authorities with recommendations for an appropriate action;
- (d) if the matter requires criminal sanctions or further investigation for corrupt practices, it should be referred to the Director of Public Prosecutions or the Anti-Corruption Bureau for appropriate action;
- (e) the public officer who fails to declare assets, liabilities and business interests should be disqualified from holding future public offices for a prescribed period, in addition to any sanction that may be imposed.

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<sup>41</sup>Section 235

<sup>42</sup>Section 41, Organic Act on Counter Corruption, 1999

The Commission therefore recommends adoption of the following provisions—

**“PART ...**

**GENERAL**

**Offences** . . . (1) A listed public officer who, without reasonable cause, fails to submit declarations as required by this Act, shall be dismissed from the public office:

Provided that the Director shall remind the listed public officer, in writing, and require him to file the declarations within fourteen days from the date of the reminder.

(2) A listed public officer who files a declaration which he knows or believes to be inaccurate or misleading, or does not believe to be true, commits an offence and is liable to a fine of five hundred- thousand Kwacha and imprisonment for two years and shall be dismissed from the public office.

(3) The Director may, notwithstanding any penalty imposed under this Section, order the person to submit the required declarations.

(4) Any person who upon accessing declarations submitted by a listed public officer under Section . . . , misuses or otherwise abuses the information commits an offence and is liable to a fine of five hundred thousand-Kwacha and imprisonment for two years without prejudice to any other legal remedy available to the injured person.

**Disqualifica-  
tion from  
Public Office  
and reference  
for  
investigation** . . . (1) In addition to the penalties prescribed under Section ..., a listed public officer who without reasonable cause, fails to submit declarations or who knowingly submits inaccurate or misleading declarations, shall—

(a) in the case of failure to submit declarations, be disqualified from holding a public office for a period of three years;

(b) in the case of submitting inaccurate or misleading declarations and upon conviction, be disqualified from holding any public office for a period of seven years—

(c) be referred to the Director of Public Prosecutions and the Director of the Anti-Corruption Bureau for further investigation.

(2) If, after further investigation and prosecution, a listed public officer who is disqualified from holding a public office under subsection (1) (a), is convicted of a crime, the three year disqualification period shall be substituted for a seven year disqualification period.



(ii) *Whistleblower Provisions*

A whistleblower is a person who, or an organization that, reports misconduct to people or entities that have the power and presumed willingness to take corrective action. Generally, the misconduct is a violation of law, rule, regulation and a direct threat to public interest, for instance fraud or corruption. In relation to the scheme of declaration of assets, liabilities and business interests, a whistleblower may report to relevant authorities about the violations on declaration of assets, liabilities and business interests by public officers. The violation, as discussed already, may be in the form of failure to declare or filing inaccurate or false declarations.

The Commission considered whether it would be appropriate for the proposed law on declaration of assets, liabilities and business interests by public officers to have provisions on whistleblowers, in terms of protection of whistleblowers from reprisals; incentives of any nature paid out to whistleblowers; penalties for malicious reporting, among other relevant matters. In its discussion, the Commission observed that the subject of whistle-blowing is comprehensive to the extent that some jurisdictions have promulgated legislation specifically for the regulation of whistle-blowing and the protection of whistleblowers. In the United Kingdom, for example, the Public Interest Disclosure Act of 1998 provides a framework of legal protection for individuals who disclose information so as to expose malpractice and matters of similar concern. In other jurisdictions, the practice is that legal provisions on whistle-blowing vary according to the subject matter of the whistle-blowing.<sup>43</sup>

The Commission observed that while it may be necessary to have comprehensive legislation specifically for the regulation of whistle-blowing and the protection of whistleblowers, its mandate did not extend to the development of such legislation.

The Commission was also convinced that indeed, to some extent, legal provisions on whistle-blowing should depend on the subject matter of whistle-blowing. In that vein, the Commission learnt that in Malawi, this has, in large measure, been the practice. For instance, the Corrupt Practices Act makes provision for the protection of whistleblowers.<sup>44</sup> Similarly, the Malawi Revenue Authority has a scheme relating to whistle-blowing which is different in some respects to the one found in the Corrupt Practices Act. The Commission further noted that within the region, whistleblower provisions largely depend on the subject matter. For example, the Leadership Code Act of Uganda makes provision for whistle-blowing specifically for matters provided in that Act.

In the final analysis, the Commission was convinced that whistleblower provisions are necessary for the proper implementation of the proposed law on declaration of assets, liabilities and business interests, and that such provisions should be built into the proposed legislation. The Commission observed that whistleblower provisions will complement the Commission's earlier recommendation on public access to declaration contents.

Having agreed in principle that whistleblower provisions should be part of the legislation, the Commission then took time to consider specific issues to be addressed by the provisions. The Commission observed that in most cases, whistleblower provisions put emphasis on the protection of whistleblowers. The objective is to encourage

<sup>43</sup>For example in United States of America, there are whistleblower provisions in the Safe Drinking Water Act 1994; Pollution Control Act, 1972; Toxic substances Act, 1976 etc.

<sup>44</sup>Section 51A

members of the public to come forward with information to authorities without fearing consequential reprisals. The law should be able to protect informants from injuries of any nature and from court actions where an informant in good faith gives out information that later turns out not to be accurate.<sup>45</sup> In that context of protecting informants from possible court actions, the Commission was quick to observe that the law should however differentiate genuine mistakes from deliberate or reckless conduct aimed at character assassination.

The Commission further observed that, in some systems, whistleblower provisions give some incentives to encourage informants to come forward with information. Such incentives can be monetary or otherwise. The Commission learnt that since the adoption of the United Nation Convention Against Corruption, several jurisdictions have enacted laws that provide protection as well as incentives to whistleblowers.<sup>46</sup> The Commission therefore considered whether the proposed legislation on declaration of assets, liabilities and business interests by public officers should provide for instances where pecuniary incentives may be paid out to whistleblowers. After a lengthy debate, the Commission resolved that such provisions should not be included in the proposed legislation observing that whistle-blowing is a national duty and should be treated as such. The Commission further argued that although pecuniary incentives are paid out to whistleblowers in other schemes like the one practiced by the Malawi Revenue Authority, it may be difficult to quantify incentives under the proposed legislation because of the nature of the law itself. The Commission was also wary that payment of pecuniary incentives to whistleblowers may fuel malicious conducts although it was admitted that such malicious conducts may be remedied in law. To cement its resolve, the Commission looked at various international conventions, for example, the United Nations Convention against Corruption and other regional legislations and it was observed that the payment of pecuniary incentives to whistleblowers is not specifically addressed.

The Commission therefore recommends that whistleblower provisions should be included in the legislation as follows—

“Whistle-  
blowers

**. . . (1) Any person who reasonably believes or suspects that a listed public officer has submitted false or inaccurate declarations or has otherwise violated this Act, (in this part otherwise referred to as “whistleblower”) may report the violation to the Director.**

**(2) No information relating to a whistleblower shall be admitted in evidence in any administrative, civil or criminal proceeding, and no person shall be obliged or permitted to disclose the name or address of such whistleblower, or state any matter which might lead to his discovery.**

**(3) If any documents, records or files which are in evidence or liable to inspection in any administrative, civil or criminal proceeding contain any entry in which the whistleblower is named or described or which might lead to his discovery, the Director or the court before which the proceeding is heard shall cause all such passages to be deleted so far as is necessary to protect the whistleblower from discovery.**

<sup>45</sup>See Section 23 of the Leadership Code Act of Uganda

<sup>46</sup>For example Moldova, Albania and Argentina. Thailand and the people’s Republic of China, among other countries, are considering establishing a system for rewarding whistleblowers

(4) If the Director or any court, after full inquiry into the case, determines that the whistleblower provided information to the Director which he knew or believed to be false, or did not believe to be true, the Director or court may permit inquiry and may require full disclosure concerning the whistleblower.

(5) Any person who, having knowledge that a whistleblower has informed the Director of an alleged or suspected violation of this Act or other offence connected therewith, does any action to punish or victimize the whistleblower in any way commits an offence and is liable to a fine of five-hundred thousand Kwacha and to imprisonment for two years.

Penalties for disclosing identity of whistleblowers

. . . Any person who discloses the identity of a whistleblower commits an offence and is liable to a fine of five hundred thousand Kwacha and to imprisonment for two years.

False Information by whistleblowers

. . . Any whistleblower who provides the Director with information which he knows or believes to be false, or does not believe to be true, commits an offence and is liable to a fine of five hundred thousand Kwacha and to imprisonment for two years.”

#### 6. CONSEQUENTIAL PROVISIONS

Having agreed on the scheme of the legislation, the Commission recommends the following consequential provisions—

##### (a) Long title

The Commission recommends the following long title to the legislation—

**“An Act to make provision for the declaration of assets, liabilities and business interests by certain public officers and for connected matters.”**

##### (b) Short title

The Commission recommends that the short title should read—

**“Public Officers (Declaration of Assets, Liabilities and Business Interests) Act of 20...”**

The Commission further recommends that the Act should come into operation on a date to be appointed by the Minister. The following provision is therefore proposed—

“Short title and commencement

. . . This Act may be cited as the Public Officers (Declaration of Assets, Liabilities and Business Interests) Act of 20... and shall come into operation on such date as the Minister shall appoint by notice in the *Gazette*.

##### (c) Power to make regulations

The Commission recommends that as a matter of practice, the Minister should have power to make regulations. However, to avoid abuse of power and pursuant to Section 58 (1) of the Constitution, this power should only be exercised after the proposed regulations and amendments have been laid before Parliament. In addition to this safeguard, regulations should only be developed or amended after the Minister has consulted the

Director of the Office of Public Officers Declarations. The Commission therefore recommends the following provisions—

**“Regulations . . . The Minister may, in consultation with the Director, and by notice in the *Gazette*, make regulations for better carrying out the provisions of this Act.**

**Amendment . . . The Minister may, in consultation with the Director, amend any  
to Schedules Schedule to this Act.”**

*(d) Transitional provisions*

The Commission recommends the following transitional provision—

**“Transitional . . . At the commencement of this Act, any person serving as a  
Provision listed public officer, shall be required to submit declarations in the prescribed form within the time set by the Director.”**

*(e) Interpretation*

The Commission recommends that the following terms and words that have been used in the legislation should be defined as follows—

**“Definitions . . . In this Act, unless the context otherwise requires—**

**“agent” means any person who acts for or on behalf, or in the name of, a public officer and includes a trustee, an administrator or an executor;**

**“assets” means holdings of value, whether tangible or intangible, movable or immovable, including but not limited to cash, property, goods, savings, investments, equipment, as well as other quantities possibly having no market value, including but not limited to pre-paid expenses, goodwill;**

**“business interests” means participation with any individual in a commercial enterprise or venture, or participation in any association, institution, organization or entity whether of a commercial nature or otherwise, regardless of whether a pecuniary benefit or other assets are derived from such participation.;**

**“close associate” means any person, whether related or unrelated by blood or marriage, who holds any financial interest, for or on behalf of a public officer;**

**“declaration” means declaration of assets, liabilities and business interests;**

**“liabilities” means a present obligation of a public officer, his spouse or member of his immediate family arising from past events the settlement of which is expected to result in an outflow from the public officer, his spouse or member of his immediate family of resources embodying tangible or intangible benefits;**

**“member of immediate family,” means spouse, any biological or adoptive child who is below the age of eighteen, or any adoptive or biological child whose means of support is partially or wholly from a public officer irrespective of age;**

**“Monitoring Committee” means the Monitoring Committee of Parliament established under Section 213 (4) of the Constitution;**

**“Public Appointments Committee” means the Public Appointments Committee of Parliament established under Section 56 (7) of the Constitution.**

**“public officer” means any person who is a member of, or an employee of, Government, a statutory body or any other body appointed by the Government, whether his membership or his employment is temporary, whole or part-time, paid or unpaid.’**

*(f) Schedules*

The Commission recommends the following Schedules—

- (i) First Schedule which covers categories of public officers required to declare assets, liability and business interests under the Act.
- (ii) Second Schedule which is an initial declaration form which will be filed by public officers before assuming their public duties.
- (iii) Third Schedule which is a form to be filed by public officers annually.
- (iv) Fourth Schedule which is the application form to be used by members of the public when making applications to access declarations.

*(g) Consequential Amendment Bills*

The Commission recommends the following consequential amendment Bills—

- (i) PARLIAMENTARY AND PRESIDENTIAL ELECTIONS (AMENDMENT) BILL, 2008
- (ii) LOCAL GOVERNMENT ELECTIONS (AMENDMENT) BILL, 2008

## FIRST SCHEDULE

## PUBLIC OFFICERS REQUIRED TO MAKE DECLARATIONS

*Section . . .*

## PART A

## POLITICAL ELECTED OFFICIALS

1. President
2. Vice President
3. Speaker and Deputy Speaker of the National Assembly
4. Cabinet Minister
5. Member of Parliament
6. Member of the Senate
7. Leader and Treasurer of a political party represented in Parliament
8. Mayor and Councillors of City Assemblies
9. Councillors of District and Town Assemblies

## PART B

## SENIOR PUBLIC OFFICERS

10. Attorney General
11. Chief Secretary for the President and Cabinet
12. Deputy Chief Secretary for the President and Cabinet
13. Judges of the High Court of Malawi and Supreme Court of Appeal
14. Law Commissioner
15. Solicitor General
16. High Court and Supreme Court Registrar
17. Director of Public Prosecutions
18. Director and Deputy of the Anti-Corruption Bureau
19. Director of the Office of Public Officers Declarations
20. Inspector General of Police and senior officers of the rank of Sub-Inspector and above
21. Chancellor and Vice Chancellor of a public University
22. Registrar of a public University
23. Commissioner and Deputy Commissioner of Prisons
24. Commissioner of Immigration
25. Auditor General
26. Director of the Office of Department of Public Procurement
27. Commissioner General and Deputy Commissioner General of the Malawi Revenue Authority
28. Presidential Aide
29. Army Commander, Deputy Army Commander and Senior Officer of the rank of Lieutenant and above
30. Administrator General
31. Registrar General
32. Principal Secretaries and their Deputies
33. Chairperson, Board Members, Chief Executive and Deputy Chief Executive of a public body, parastatal, constitutional bodies and all other statutory bodies set up by an Act of Parliament
34. Governor, Deputy Governor, Director and Manager of the Reserve Bank of Malawi

- 35. Chief Executive, Deputy Chief Executive of City, District and Town Assemblies
- 36. Senior public officers of the Grade equivalent to Director and Head of Department

PART C

OTHER OFFICERS

- 37. Judicial officers
- 38. Procurement officers
- 39. Officers in the Road Traffic Department
- 40. Officers of the Malawi Revenue Authority
- 41. Immigration officers
- 42. State Advocate, Legal Aid Advocates and all public prosecutors
- 43. Police Traffic Officers
- 44. Advisor to the President and Vice President
- 45. Advisor to a Cabinet Minister

## SECOND SCHEDULE

## Section . . .

## DECLARATION OF ASSETS, LIABILITIES AND BUSINESS INTERESTS

## INITIAL DECLARATION FORM

## 1. Personal Particulars

- (a) Surname.....
- (b) Other Names.....
- (c) Date of Birth.....
- (d) Place of work.....
- (e) Present Grade/position.....
- (f) Date of Appointment/Election.....

## 2. HOUSES IN THE OFFICERS NAME

	<i>Location</i>	<i>Plot No. Address/ Town</i>	<i>Year Built or Purchased</i>	<i>Actual/ Estimated Cost</i>	<i>Source of Finance</i>

## 3. HOUSES IN THE NAME OF MEMBERS OF IMMEDIATE FAMILY

	<i>Location</i>	<i>Plot No. Address/ Town</i>	<i>Year Built or Purchased</i>	<i>Source of Finance</i>	<i>Registered Owner</i>



## 4. PLOTS IN THE OFFICERS NAME

<i>Plot No. Address and Town</i>	<i>Source and Date Acquired</i>	<i>Cost of Purchase</i>	<i>Stage of Development</i>	<i>Cost of Development</i>	<i>Source of Finance</i>

## 5. PLOTS OWNED BY MEMBERS OF IMMEDIATE FAMILY

<i>Plot No. Address and Town</i>	<i>Source and Date Acquired</i>	<i>Cost of Purchase</i>	<i>Stage of Development</i>	<i>Cost of Development</i>	<i>Source of Finance</i>	<i>Registered Owner</i>

## 6. PLANT AND MOTOR VEHICLES IN THE OFFICERS NAME

*State the number of vehicles owned within the last twenty-four months*

<i>Type and Make</i>	<i>Reg. No.</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>

## 7. PLANT AND MOTOR VEHICLES IN THE OFFICERS NAME OF MEMBER OF IMMEDIATE FAMILY

*State vehicles owned within the last twenty-four months.*

<i>Type and Make</i>	<i>Reg. No.</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Registered Owner</i>

8. JOINTLY ASSETS (WITH MEMBER OF THE IMMEDIATE FAMILY, AGENT, CLOSE ASSOCIATE)  
*State vehicles owned within last twenty-four months*

<i>Type and Make</i>	<i>Reg. No.</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Partner</i>

9. OTHER ASSETS/PROPERTY

<i>Description</i>	<i>Cost</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Registered Owner</i>

## 10. OTHER INCOME

## (a) COMPANY SHARES OWNED BY THE OFFICER

<i>Number and Details of Shares</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Current Value</i>

## (b) COMPANY SHARES OWNED BY MEMBERS OF IMMEDIATE FAMILY

<i>Number and Details of Shares</i>	<i>Registered Owner</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Estimated Current Value</i>

## (c) STOCKS, BONDS AND TREASURY BILLS OWNED BY OFFICER

<i>Number and Details of Shares</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Estimated Current Value</i>

## (d) STOCKS, BONDS AND TREASURY BILLS OWNED BY MEMBERS OF IMMEDIATE FAMILY

<i>Number and Details of Shares</i>	<i>Registered Owner</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Estimated Current Value</i>

## (e) INSURANCE POLICIES OWNED BY OFFICER

<i>Number and Details of Insurance</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Estimated Current Value</i>

## (f) INSURANCE POLICIES OWNED BY MEMBERS OF IMMEDIATE FAMILY

<i>Number and Details of Insurance Policies</i>	<i>Registered Owner</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Estimated Current Value</i>

## 11. OTHER SOURCES OF INCOME

- (a) Have you in the last twelve months received income from other sources, e.g. dividends, share bonuses, etc?

YES or NO (delete whichever does not apply)

- (b) If YES, how many..... please give details below:

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

Total Value:.....

- (c) Any other disclosure that you believe that are material and should be made known?

YES or NO (delete whichever does not apply)

- (d) If YES, please give details below:

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

## 12.—(a) BANK ACCOUNT OWNED BY OFFICER

<i>Bank/Savings Bank/Sacco</i>	<i>Type of Account</i>	<i>Account Number</i>	<i>Balance if over K50,000</i>

## (b) BANK ACCOUNTS OWNED BY MEMBERS OF IMMEDIATE FAMILY

<i>Bank/Savings Bank/Sacco</i>	<i>Type of Account</i>	<i>Account Number</i>	<i>Registered Owner</i>	<i>Balance if over K50,000</i>

## (c) JOINT BANK ACCOUNT (WITH A MEMBER OF IMMEDIATE FAMILY, CLOSE ASSOCIATE OR AGENT)

<i>Bank/Savings Bank/Sacco</i>	<i>Type of Account</i>	<i>Account Number</i>	<i>Registered Owner</i>	<i>Balance if over K50,000</i>

## 13. ASSETS IN OTHER NAMES

- (a) Do you or any member of your immediate family have any assets in other name other than in your own or in the name of a member of immediate family e.g close associate, agent?

YES or NO (delete whichever does not apply)

If YES, how many..... Please give details below:

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



- (b) Do you or any member of your immediate family have any assets jointly owned with another person other than a member of immediate family, e.g., close associate, relative or agent?

YES or NO (delete whichever does not apply)

If YES, how many ..... please five details below:

.....

.....

.....

.....

- (c) Have you or any member of your immediate family financed assets but which are in the name of other people other than a member of immediate family, e.g., close associates, agents or relatives?

YES or NO (delete whichever does not apply)

If YES, how many: ..... please give details below:

.....

.....

.....

.....

- (d) Have you or any member of your immediate family sold or transferred any asset(s) previously owned by you or the member of immediate family in the last twenty four months?

YES or NO (delete whichever does not apply)

If YES, how many: ..... please give details below:

.....

.....

.....

.....

## 14. LIABILITIES

- (a) Do you or a member of your immediate family have any liabilities?

YES or NO (delete whichever does not apply)

If YES, please give details as follows—

- (i) Liabilities against the Officer

Short Term

.....

.....

.....

.....

Long Term

.....

.....

.....

.....

- (ii) Liabilities against a member of immediate family.

Short Term

.....

.....

.....

.....

Long Term

.....

.....

.....

.....

- (b) Are you or a member of your immediate family owed any debt(s)?

YES or NO (delete whichever does not apply)

If YES, please give details as follows—

- (i) Debts in favour of the officer

Short Term

.....

.....

.....

.....

Long Term

.....

.....

.....

.....

(ii) Debts in favour of immediate family

Short Term

.....

.....

.....

.....

Long Term

.....

.....

.....

.....

15. BUSINESS INTEREST

(a) Do you have any business interest?

YES or NO (delete whichever does not apply)

If YES, please give details as follows—

(i) Those owned by the Officer?

<i>Nature of Business</i>	<i>Source of Funding</i>	<i>Partners</i>	<i>Estimated Income/Year</i>

(ii) Those owned by members of immediate family.

<i>Nature of Business</i>	<i>Source of Funding</i>	<i>Partners</i>	<i>Estimated Income/Year</i>

(iii) Those owned by close associates or agents

<i>Nature of Business</i>	<i>Source of Funding</i>	<i>Partners</i>	<i>Estimated Income/Year</i>

(b) Are you affiliated in any way with any other institution, organization or entity, whether or not you derive income or assets from such affiliation?

YES or NO (delete whichever does not apply)

If YES, please give details as follows—

<i>Name of Institution, Organization or Entity</i>	<i>Nature of Affiliation</i>	<i>Estimated Income/Year (if any)</i>	<i>Period of Affiliation</i>

#### DECLARATION

- (a) I declare that the information I have provided above is a correct account of my situation with regard to assets, liabilities and business interest that could be attributed to my name.
- (b) I have no objection to the Director verifying the above information.
- (c) I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declaration Act.

Declared at .....  
this .....  
day of ..... } .....  
*Signature of the Public Officer*

Before me .....  
*Commissioner for Oaths*

-----  
FOR THE DIRECTOR'S USE ONLY

Received by:.....

Signature:.....

Title:.....

Date:.....

## THIRD SCHEDULE

*Section . . .*

## DECLARATION OF ASSETS, LIABILITIES AND BUSINESS INTERESTS

## ANNUAL DECLARATION FORM

## 1. PERSONAL PARTICULARS

- (a) Surname.....
- (b) Other Names.....
- (c) Date of Birth.....
- (d) Place of work.....
- (e) Present Grade/Position.....
- (f) Date of Appointment/Election.....

## 2. PERIOD OF DECLARATION.....

## 3. Describe any additional assets acquired or sold over stated period

.....

.....

.....

## 4. Describe any additional liabilities incurred over the stated period

.....

.....

.....

## 5. Describe any additional business interests acquired over the stated period

.....

.....

.....

## 6. Any other material information.

.....

.....

.....

## DECLARATION

- (a) I declare that the information I have provided above is a correct account of my situation with regard to assets, liabilities and business interest that could be attributed to my name.
- (b) I have no objection to the Director verifying the above information.
- (c) I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declaration Act.

Declared at .....  
this .....  
day of ..... } .....  
Signature of the Public Officer

Before me .....  
Commissioner of Oaths

-----  
FOR THE DIRECTOR'S USE ONLY

Received by:.....

Signature:.....

Title:.....

Date:.....

## FOURTH SCHEDULE

*Section ...*DECLARATION OF ASSETS, LIABILITY AND BUSINESS INTEREST BY PUBLIC ELECTED  
OFFICERS

## APPLICATION FORM

## Particulars of Applicant

- (a) SURNAME .....
- (b) OTHER NAMES .....
- (c) IDENTITY NUMBER .....
- (d) DATE OF BIRTH.....
- (e) OCCUPATION.....
- (f) CONTACT DETAILS .....
- (i) PHYSICAL ADDRESS.....
- .....
- (ii) POSTAL ADDRESS.....
- .....
- (iii) TELEPHONE NUMBER.....
- (iv) CELLPHONE NUMBER.....
- (v) FAX NUMBER.....
- (vi) EMAIL ADDRESS.....

I, the bearer of the above particulars DO HEREBY apply for access to the details of  
the declaration made by.....

.....  
(state particulars of the Public Officer) submitted to the office of the Director of Public  
Officer Declarations pursuant to Section 15 (2). I would like to have access to the  
following information.....

.....(specify  
the details being sought) for the following reasons:.....



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

I DECLARE that the personal details provided above are correct and that I shall use the information sought for the furtherance of the objectives of this Act only.

I make this solemn declaration conscientiously believing the contents hereof to be to the best of my knowledge and information and by virtue of the Oaths, Affirmations and Declaration Act.

Declared by the said

..... at .....  
 this ..... day of .....

}

.....  
*Signature of the applicant*

Before me.....  
*Commissioner of Oaths*

-----  
 FOR THE DIRERCTOR'S USE ONLY

Received by.....

Signature.....

Title.....

Date.....

# **APPENDICES**

# **APPENDIX A**

## **PUBLIC OFFICERS [DECLARATION OF ASSETS, LIABILITIES AND BUSINESS INTERESTS] BILL**

**PUBLIC OFFICERS (DECLARATION OF ASSETS, LIABILITIES  
AND BUSINESS INTERESTS) BILL, 2008**

**ARRANGEMENT OF SECTIONS**

**PART I—PRELIMINARY**

**SECTION**

1. Short title and commencement
2. Interpretation
3. Definitions
4. Duty to submit declarations under the Act

**PART II—OBJECTIVE AND GUIDING PRINCIPLES OF ETHICAL CONDUCT**

5. Objective of the Act
6. Principles of ethical conduct

**PART III—OFFICE OF THE DIRECTOR OF PUBLIC OFFICERS' DECLARATION**

7. Establishment of the Office of the Director of Public Officers' Declarations.
8. Appointment of the Director and the Deputy Director
9. Qualification and Removal from Office of the Director and the Deputy Director
10. Acting Director
11. Appointment of other officers and staff
12. Functions of the Director
13. Powers of the Director
14. Monitoring Committee to monitor functions and powers of the Director

**PART IV—CONTENTS OF DECLARATION, PROCEDURE AND PUBLIC ACCESS**

15. Submission of Declarations
16. Information to be indicated in Declarations
17. Retention of Declarations
18. Public access to Declarations

**PART V—GENERAL**

19. Offences
20. Disqualification from public office and reference for investigation
21. Whistleblowers
22. Penalties for disclosing identity of whistleblowers
23. False information by whistleblowers
24. Regulations
25. Amendment of Schedules
26. Transitional provisions

**A B I L L**

*entitled*

**An Act to make provision for the declaration of assets, liabilities and business interests by certain public officers and for connected matters.**

## PART I—PRELIMINARY

Short title and commencement	1. This Act may be cited as the Public Officers (Declaration of Assets, Liabilities and Business Interests) Act of 2008 and shall come into operation on such date as the Minister shall appoint by notice in the <i>Gazette</i> .
Interpretation	2. The provisions of this Act shall be interpreted to complement the Corrupt Practices Act and any other relevant law.
Definitions	<p>3. In this Act, unless the context otherwise requires—</p> <p>“agent” means any person who acts for or on behalf, or in the name of, a public officer and includes a trustee, an administrator or an executor;</p> <p>“assets” means holdings of value, whether tangible or intangible, movable or immovable, including but not limited to cash, property, goods, savings, investments, equipment, as well as other quantities possibly having no market value, including but not limited to pre-paid expenses, goodwill;</p> <p>“business interests” means participation with any individual in a commercial enterprise or venture, or participation in any association, institution, organization or entity whether of a commercial nature or otherwise, regardless of whether a pecuniary benefit or other assets are derived from such participation;</p> <p>“close associate” means any person, whether related or unrelated by blood or marriage, who holds or will hold any financial interest, or any power, for or on behalf of a public officer;</p> <p>“declaration” means a declaration of assets, liabilities and business interests in accordance with this Act;</p> <p>“liabilities” means a present obligation of the public officer, his spouse or member of his immediate family arising from past events the settlement of which is expected to result in an outflow from the public officer, his spouse or member of his immediate family of resources embodying tangible or intangible benefits;</p> <p>“member of immediate family,” in relation to a public officer, includes the public officer’s spouse, any biological or adoptive child who is below the age of eighteen or any biological or adoptive child whose means of support is wholly or partially from a public officer, irrespective of age;</p> <p>“Monitoring Committee” means the Monitoring Committee of Parliament established under Section 213 (4) of the Constitution;</p> <p>“Public Appointments Committee” means the Public Appointments Committee of Parliaments established under Section 56 (7) of the Constitution;</p> <p>“public officer” means any person who is a member of, or an employee of, Government, a statutory body or any other body appointed by the Government, whether his membership or his employment is temporary, whole or part-time, paid or unpaid.</p>

4. A public officer listed in the First Schedule to the Act (in this Act otherwise referred to as “listed public officer”) is required to submit declarations in accordance with this Act.

Duty to submit declarations under the Act

#### PART II—OBJECTIVE AND GUIDING PRINCIPLES OF ETHICAL CONDUCT

5. The objective of the Act is to promote public confidence in the public service.

Objective of the Act

6.—(1) The guiding principles of the Act are integrity, honesty, accountability, responsibility, fairness, transparency, rule of law, professionalism and impartiality of public officers.

Principles of ethical conduct

(2) In furtherance of the guiding principles of this Act, every public officer shall—

(a) not use his office for personal enrichment or to improperly enrich others;

(b) to the best of his ability, avoid being in a position in which his personal interests conflict with his public duties;

(c) avoid any activity that is inconsistent with his public functions;

(d) not misuse or misappropriate public property entrusted to his care;

(e) not be permitted to concurrently receive remuneration for the performance of his duties as a public officer and remuneration for the performance of private employment or of business or entrepreneurial activities unless he makes a full disclosure of all outside employment, business interests or entrepreneurial activities:

Provided that no actual or potential conflict exists between the public officer’s official duties and his outside employment, business interest and/or entrepreneurial activity.

#### PART III—OFFICE OF THE DIRECTOR OF PUBLIC OFFICERS’ DECLARATIONS

7.—(1) There is hereby established the Office of the Director of Public Officers’ Declarations (in this Act otherwise referred to as “the Director”) which shall be a public office and whose director shall be responsible for the administration of this Act.

Establishment of office of the Director of Public Officers’ Declarations

(2) The Director shall perform his functions independent of any person or authority, but shall otherwise be accountable to Parliament.

8.—(1) The Director shall be appointed by the President, on such terms and conditions as the President shall determine.

Appointment of the Director and Deputy Director

(2) The appointment and the terms and conditions of service of the Director shall be subject to confirmation by the Public Appointments Committee.

(3) The Director shall, subject to Section 9, hold office for a period of five years and shall be eligible for re-appointment for one additional term of five years.

(4) There shall be a Deputy Director of Public Officers' Declarations (in this Act otherwise referred to as "the Deputy Director") who shall—

(a) be appointed by the President on such terms and conditions as the President shall determine; and

(b) perform such functions and duties as may be assigned to him by the Director, from time to time.

(5) The appointment and terms and conditions of service of the Deputy Director shall be subject to confirmation by the Public Appointments Committee.

(6) The Deputy Director shall—

(a) subject to Section 9, hold office for a period of five years, and shall be eligible for re-appointment for one additional term of five years; and

(b) qualify for appointment as the Director.

Qualification  
and removal  
from office of  
the Director  
and the Deputy  
Director

**9.—(1)** No person shall qualify for appointment as the Director or the Deputy Director unless he has a record of high integrity and possesses suitable qualifications and training necessary for effective performance of the duties of that office.

(2) A person holding the office of the Director or the Deputy Director may be removed from office by the President, on recommendation of the Public Appointments Committee, for inability to perform the functions of his office or for gross misconduct in the performance of his duties.

(3) The President may, if he considers it desirable in the public interest so to do and with confirmation by the Parliament, suspend the Director or Deputy Director from exercising the duties of the office of Director or Deputy Director pending investigations to determine whether or not the Director or Deputy Director may be removed from office under subsection (2).

Acting Director

**10.** If the office of the Director and the Deputy Director are absent from duty or unable for any other reason to perform the functions of their office, the President shall appoint, subject to confirmation by the Public Appointments Committee, another duly qualified person to act as Director during such temporary absence or vacancy—

Provided that where the period of such temporary absence has exceeded twenty-one days the President shall, within fourteen days thereafter, furnish to the Public Appointments Committee the reasons why the vacancy in both or either of the two offices cannot be substantively filled with immediate effect and an estimate of the time within which the vacancy shall be filled, being not longer than three months from the expiry of the period of twenty-one days herein referred to.

Appointment  
of other  
officers and  
staff

**11.** In addition to the Director and the Deputy Director there shall be appointed in the public service, other officers subordinate to the Director as may be required for the proper performance of the functions of the Director, but the appointment of individual officers under this section shall not require the confirmation of the Parliament.

12.—(1) The Director shall be responsible for the enforcement, regulation and monitoring of declarations and other related matters in accordance with this Act. Functions of the Director

(2) Without limiting the generality of subsection (1), the functions of the Director shall be to—

- (a) receive declarations from listed public officers;
- (b) verify declarations submitted by listed public officers;
- (c) recommend to the Minister the development of rules and regulations necessary for the proper implementation of this Act;
- (d) ensure accessibility of this Act and its regulations by the general public;
- (e) generally advise public officers concerning their obligations under this Act and its regulations;
- (f) provide technical assistance to listed public officers on the correct method of filing declarations;
- (g) annually publicize in the *Gazette*—
  - (i) the names of listed public officers who have complied with this Act;
  - (ii) the names of listed public officers who have not complied with this Act;
  - (iii) summary of declarations filed by each listed public officer;
- (h) provide, annually, an assessment report of compliance by public officers with the provisions of this Act to the Minister who shall lay the report before the National Assembly;
- (i) enforce compliance with this Act by referring violations of this Act and regulations to relevant employment authorities with recommendations for appropriate sanctions;
- (j) upon verification of declarations, report any evidence or reasonable suspicion of criminal activity by a listed public officer to the Director of Public Prosecution, the Police or to the Director of the Anti-Corruption Bureau as the case may be;
- (k) report any elected public officer, Minister or any other listed public officer who in the opinion of the Director may properly be dealt with by the Monitoring Committee, to the Monitoring Committee, if such listed public officer fails to comply with the provisions of this Act .

13. For the performance of his functions under this Act, the Director may— Powers of the Director

- (a) institute an inquiry into alleged or suspected violations of this Act;
- (b) notwithstanding Section 6 of the Taxation Act; order the production of any information, documents, or the giving of testimony, from any



public officer, government agency, private company or any person, relating to the declarations filed by a listed public officer;

(c) require a listed public officer to amend, within thirty days, any declaration that is procedurally or substantively defective;

(d) perform such other acts as are reasonably necessary or required for the exercise of his functions.

Monitoring  
Committee to  
monitor  
functions and  
powers of the  
Director

**14.—**(1) The Monitoring Committee shall be responsible for monitoring functions and powers of the Director.

(2) In the exercise of its functions, the Monitoring Committee shall—

(a) receive annual declarations reports prepared by the Director; and

(b) confirm full compliance with the requirements of this Act.

(c) take any appropriate action to enforce the compliance of this Act.

#### PART IV—CONTENT OF DECLARATIONS, PROCEDURE AND PUBLIC ACCESS TO DECLARATION

Submission of  
Declarations

**15.—**(1) Subject to subsection (2), a person shall, no later than seven days before assuming his duties as a listed public officer, submit his declarations to the Director.

(2) A person who aspires to be nominated as a candidate for election as President, Vice-President, Member of Parliament or Councilor of an assembly shall be required to submit declarations to the Director before his nomination.

(3) The declarations specified in subsections (1) and (2) shall be in the form set out in the Second Schedule.

(4) A listed public officer shall submit to the Director—

(a) an annual declaration update return within thirty days of each fiscal year;

(b) a declaration to be submitted three months before expiry of period of service, unless a declaration specified in subsections (1), (2) and (4a) was filed within three months prior to the termination date.

(5) The declarations specified in subsection (4) shall be in the form set out in the Third Schedule.

(6) Where a contract of service is terminated without notice by either party, the Director may order that a declaration be submitted within thirty days from the date of termination, unless the declaration specified in subsections (1), (2) and (4a) was filed within three months prior to the termination date.

(7) A listed public officer shall submit his signed declaration forms directly to the Director and retain a copy for his personal records.

(8) A listed public officer who is in the employment of the Office of the Director of Public Officers Declarations shall, in accordance with the Act, submit his declarations to the office of the Speaker of Parliament

**16.—(1)** In the declaration, a listed public officer shall specify—

Information  
to be  
indicated in  
Declaration

(a) his name, surname, and place of residence, and details of members of his immediate family;

(b) his office or position as a public officer;

(c) the date of election, appointment or selection to the public office;

(d) information on previous public offices held before submission of the declaration;

(e) assets, including but not limited to information on—

(i) any asset in which he or any member of his immediate family has a full or part ownership interest, and the description of the asset, its location, the date of acquisition, the amount paid for the asset, the current valuation of the asset, and where possible, the contact details of the person or entity where the asset was acquired;

(ii) any asset which he or any member of his immediate family has sold, relinquished or otherwise transferred within twenty-four months prior to the date of filing the declaration, and the description of the asset, the date the asset was sold, relinquished or transferred, the value of the asset at the time of sale, relinquishment or transfer, and the consideration received in exchange;

(iii) any other asset which he or any member of his immediate family has financed, or owns in any other name than his own name and the description of the asset, its location, the date of acquisition, the amount paid for the asset, the current valuation of the asset, and the name or names in which the asset is held and or owned;

(iv) income which he or any member of his immediate family received within the past twelve months, and the source(s), amount(s), date(s) and explanation of such income;

(v) any bank account, wherever located, held in his name or held jointly with any member of his immediate family, close associate, agent or business partner, and the name(s) of the account holder(s), the name(s) of the banking institution(s), the type of account, the account number, and the balance of the account ;

(vi) shares in any company, any government stocks, bonds, treasury bills, any life insurance policy or related schemes held in his name or held jointly with any member of his immediate family, agent or business partner, and a description of the location and value of such shares, stocks, bonds, treasury bills, life insurance policy or related assets;

(f) liabilities and debts which he owes or which any member of his immediate family owes, and the name and address of the individual or entity to which the debt or the liability is owed, the amount and nature of the debt or liability, and the date and circumstances under which it was incurred;

(g) business interests, including but not limited to, information on any commercial or entrepreneurial activity in which he or any member of his immediate family has engaged in the last twenty four months, and the nature, location and dates of the commercial or entrepreneurial activity;

(h) the date on which the declaration is submitted and his signature.

Retention of  
Declarations

**17.—**(1) The Director shall keep declarations submitted under this Act for a period of seven years after the person ceases to be a public officer;

(2) Notwithstanding subsection (1), the Director may, where there is an investigation, keep the declaration which is the subject matter of the investigation for a longer period than seven years.

(3) This section shall not apply to a person who, having submitted his declarations to the Director under subsection 15 (2) fails to be elected as a public officer.

Public access to  
Declarations

**18.—**(1) The declarations made under this Act shall be treated as public information and may be accessible to members of the public upon application to the Director in the form set out in Fourth Schedule.

(2) The Director may, if there are reasonable grounds taking into account the objectives of this Act, refuse access to declarations.

(3) Where the Director refuses access to declarations, he shall, within fourteen days from receipt of the application notify the requesting party in writing stating grounds for his refusal.

(4) The application to access declarations under this section shall be confidential unless the applicant—

(c) upon accessing the declarations, misuses or otherwise abuses the information; or

(d) upon being refused access to the declarations, applies for a judicial review of the Director's decision.

#### PART VI—GENERAL

Offences

**19.—**(1) A listed public officer who, without reasonable cause, fails to submit the required declaration within the time determined by this Act shall be dismissed from the public office.

(2) A listed public officer who files a declaration which the public officer knows or believes to be inaccurate or misleading, or does not believe to be true, commits an offence and is liable to a fine of five hundred thousand Kwacha and imprisonment for two years and shall be dismissed from the public office.

(3) The Director may, notwithstanding any penalty imposed under this section, order the listed public officer to submit the required declarations.

(4) Any person who upon accessing declarations submitted by a listed public officer under Section 18, misuses or otherwise abuses the information commits an offence and is liable to a fine of five hundred thousand Kwacha and imprisonment for two years without prejudice to any other legal remedy available to the injured person.

**20.—**(1) In addition to the penalties prescribed under Section 18, every public officer without reasonable cause, fails to submit declarations or who knowingly submits inaccurate or misleading declarations shall—

Disqualifica-  
tion from  
public office  
and reference  
for  
investigation

(a) in the case of failure to submit declarations, be disqualified from holding a public office for a period of three years;

(b) in the case of submitting inaccurate or misleading declarations and upon conviction, be disqualified from holding any public office for a period of seven years—

(c) be referred to the Director of Public Prosecutions and the Director of the Anti-Corruption Bureau for further investigation.

(2) If, after further investigation and prosecution, a listed public officer who is disqualified from holding a public office under subsection 20 (1) (a), is convicted of a crime, the three-year disqualification period shall be substituted for a seven-year disqualification period.

**21.—**(1) Any person who reasonably believes or suspects that a listed public officer has submitted false or inaccurate declarations or has otherwise violated this Act, (in this part otherwise referred to as “whistleblower”) may report the violation to the Director.

Whistle  
blowers

(2) No information relating to a whistleblower shall be admitted in evidence in any administrative, civil or criminal proceeding, and no person shall be obliged or permitted to disclose the name or address of such whistleblower, or state any matter which might lead to his discovery.

(3) If any documents, records or files which are in evidence or liable to inspection in any administrative, civil or criminal proceeding contain any entry in which the whistleblower is named or described or which might lead to his discovery, the Director or the court before which the proceeding is heard shall cause all such passages to be deleted so far as is necessary to protect the whistleblower from discovery.

(4) If the Director or any court, after full inquiry into the case, determines that the whistleblower provided information to the Director which he knew or believed to be false, or did not believe to be true, the Director or court may permit inquiry and may require full disclosure concerning the whistleblower.

(5) Any person who, having knowledge that a whistleblower has informed the Director of an alleged or suspected violation of this Act or other offence connected therewith, does any action to punish or victimize the whistleblower in any way commits an offence and is liable to a fine of Five hundred thousand Kwacha and to imprisonment for two years.

- 
- |  |   |
|--|---|
| Penalties for disclosing identity of whistle blowers | <b>22.</b> Any person who discloses the identity of a whistleblower commits an offence and is liable to a fine of five hundred thousand Kwacha and to imprisonment for two years.   |
| False information by whistle blowers                 | <b>23.</b> Any whistleblower who provides the Director with information which he knows or believes to be false, or does not believe to be true, commits an offence and is liable to a fine of five hundred thousand Kwacha and to imprisonment for two years. |
| Regulations  | <b>24.</b> The Minister may, in consultation with the Director and by notice in the <i>Gazette</i> , make regulations for the better carrying out the provisions of this Act.   |
| Amendment of schedules                               | <b>25.</b> The Minister may, in consultation with the Director, amend any Schedule to this Act.   |
| Transitional Provision                               | <b>26.</b> At the commencement of this Act, any person serving as a listed public officer shall be required to submit declarations in the prescribed form within the time set by the Director.  |

## FIRST SCHEDULE

## PUBLIC OFFICERS REQUIRED TO MAKE DECLARATIONS

*Section 4*

## PART A

## POLITICAL AND ELECTED OFFICIALS

1. President
2. Vice President
3. Speaker and Deputy Speaker of the National Assembly
4. Cabinet Minister
5. Member of Parliament
6. Member of the Senate
7. Leader and Treasurer of a political party represented in Parliament
8. Mayor and Councillors of City Assemblies
9. Councillors of District and Town Assemblies

## PART B

## SENIOR PUBLIC OFFICER

10. Attorney General
11. Chief Secretary for the President and Cabinet
12. Deputy Chief Secretary for the President and Cabinet
13. Judges of the High Court of Malawi and Supreme Court of Appeal
14. Law Commissioner
15. Solicitor General
16. High Court and Supreme Court Registrar
17. Director of Public Prosecutions
18. Director and Deputy Director of the Anti-Corruption Bureau
19. Director of the Office of Public Officers Declarations
20. Inspector General of Police and senior officers of the rank of Sub-Inspector and above
21. Chancellor and Vice Chancellor of a public University
22. Registrar of a public University
23. Commissioner and Deputy Commissioner of Prisons
24. Commissioner of Immigration
25. Auditor General
26. Director of the Office of Department of Public Procurement
27. Commissioner General and Deputy Commissioner General of the Malawi Revenue Authority
28. Presidential Aides
29. Army Commander, Deputy Army Commander and senior officer of the rank of Lieutenant and above
30. Administrator General
31. Registrar General
32. Principal Secretaries and their Deputies
33. Chairperson, Board Members, Chief Executive and Deputy Chief Executive of a public body, parastatal, constitutional bodies and all other statutory bodies set up by an Act of Parliament
34. Governor, Deputy Governor, Director and Manager of the Reserve Bank of Malawi

- 35. Chief Executive, Deputy Chief Executive of City, District and Town Assemblies
- 36. Senior public officers of the Grade equivalent to Director and Head of Department

PART C

OTHER OFFICERS

- 37. Judicial officers
- 38. Procurement officers
- 39. Officers in the Road Traffic Department
- 40. Officers of the Malawi Revenue Authority
- 41. Immigration officers
- 42. State Advocate, Legal Aid Advocates and all public prosecutors
- 43. Police Traffic Officers
- 44. Advisor to the President and Vice President
- 45. Advisor to a Cabinet Minister

## SECOND SCHEDULE

## Section 15 (2)

## DECLARATION OF ASSETS, LIABILITIES AND BUSINESS INTEREST

## INITIAL DECLARATION FORM

## 1. PERSONAL PARTICULARS

- (g) Surname.....
- (h) Other Names.....
- (i) Date of Birth.....
- (j) Place of Work.....
- (k) Present Grade / Position.....
- (l) Date of Appointment/Election.....

## 2. HOUSES IN THE OFFICERS NAME

	<i>Location</i>	<i>Plot. No. Address/ Town</i>	<i>Year Built or Purchased Town</i>	<i>Actual/ Estimated Cost</i>	<i>Source of Finance</i>

## 3. HOUSES IN THE NAME OF MEMBERS OF IMMEDIATE FAMILY

	<i>Location</i>	<i>Plot. No. Address/ Town</i>	<i>Year Built or Purchased Town</i>	<i>Actual/ Estimated Cost</i>	<i>Source of Finance</i>	<i>Registered Owner</i>



## 4. PLOTS IN THE OFFICERS NAME

<i>Plot No. Address and Town</i>	<i>Source and Date Aquired</i>	<i>Cost of Purchase</i>	<i>Stage of Development</i>	<i>Cost of Development</i>	<i>Source of Finance</i>

## 5. PLOTS OWNED BY MEMBERS OF IMMEDIATE FAMILY

<i>Plot. No. Address/ Town</i>	<i>Source and Date Aquired</i>	<i>Cost of Purchase</i>	<i>Stage of Development</i>	<i>Cost of Development</i>	<i>Source of Finance</i>	<i>Registered Owner</i>

## 6. PLANT AND MOTOR VEHICLE IN THE OFFICERS NAME

*State the number of vehicles owned within the last twenty-four months*

<i>Type and Make</i>	<i>Reg. No.</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>

## 7. PLANT AND MOTOR VEHICLE IN THE NAME OF MEMBERS OF IMMEDIATE FAMILY

*State vehicles owned within the last twenty-four months*

<i>Type and Make</i>	<i>Reg. No.</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Registered owner</i>

8. JOINTLY OWNED ASSETS (WITH MEMBERS OF IMMEDIATE FAMILY, AGENT, CLOSE ASSOCIATE)

*State vehicles owned within last twenty-four months.*

<i>Type and Make</i>	<i>Reg. No.</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Partner</i>

9. OTHER ASSETS/PROPERTY

<i>Description</i>	<i>Cost</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Registered Owner</i>

## 10. OTHER INCOME

## (a) COMPANY SHARES OWNED BY THE OFFICER

<i>No. and Details of Shares</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Estimated Current Value</i>

## (b) COMPANY SHARES OWNED BY MEMBERS OF IMMEDIATE FAMILY

<i>No. and Details of Shares</i>	<i>Registered Owner</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Estimated Current Value</i>

## (c) STOCKS, BONDS AND TREASURY BILLS OWNED BY OFFICER

<i>No. and Details of Shares</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Estimated Current Value</i>

## (d) STOCKS, BONDS AND TREASURY BILLS OWNED BY MEMBER OF IMMEDIATE FAMILY

<i>No. and Details of Shares</i>	<i>Registered Owner</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Estimated Current Value</i>

## (e) INSURANCE POLICIES OWNED BY OFFICER

<i>No. of Details of Insurance Policies</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Estimated Current Value</i>

## (f) INSURANCE POLICIES OWNED BY MEMBERS OF IMMEDIATE FAMILY

<i>No. and Details of Policies</i>	<i>Registered Owner</i>	<i>Price Paid</i>	<i>Date Acquired</i>	<i>Current Status (i.e sold or being used)</i>	<i>Source of Finance</i>	<i>Estimated Current Value</i>

## 11. OTHER SOURCES OF INCOME

- (a) Have you in the last twelve months received income from other sources, e.g. dividends, share bonuses, etc?

YES or NO (delete whichever does not apply)

- (b) If YES, how many..... please give details below:

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

Total Value:.....

- (c) Any other disclosure that you believe that are material and should be made known?

YES or NO (delete whichever does not apply)

- (d) If YES, please give details below:

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

## 12 (a) BANK ACCOUNT OWNED BY OFFICER

<i>Bank/Savings Bank/Sacco</i>	<i>Type of Account</i>	<i>Account Number</i>	<i>Balance if over K50,000</i>

## 12. (b) BANK ACCOUNT OWNED BY MEMBERS OF IMMEDIATE FAMILY

<i>Bank/Savings Bank/Sacco</i>	<i>Type of Account</i>	<i>Account Number</i>	<i>Registered Owner</i>	<i>Balance if over K50,000</i>

## 12. (c) JOINT BANK ACCOUNTS (WITH A MEMBER OF IMMEDIATE FAMILY, CLOSE ASSOCIATE OR AGENT)

<i>Bank/Savings Bank/Sacco</i>	<i>Type of Account</i>	<i>Account Number</i>	<i>Registered Owner</i>	<i>Balance if over K50,000</i>

## 13. ASSETS IN OTHER NAMES

- (a) Do you or any member of your immediate family have any assets in other name other than in your own or in the name of a member of immediate family e.g close associate, or agent?

YES or NO (delete whichever does not apply)

If YES, how many..... Please give details below:

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



- (b) Do you or any member of your immediate family have any assets jointly owned with another person other than a member of immediate family, e.g., close associate, relative or agent?

YES or NO (delete whichever does not apply)

If YES, how many ..... please five details below:

.....

.....

.....

.....

.....

- (c) Have you or any member of your immediate family financed assets but which are in the name of other people other than a member of immediate family, e.g., close associates, agents or relatives?

YES or NO (delete whichever does not apply)

If YES, how many: ..... please give details below:

.....

.....

.....

.....

- (d) Have you or any member of your immediate family sold or transferred any asset(s) previously owned by you or the member of immediate family in the last twenty four months?

YES or NO (delete whichever does not apply)

If YES, how many: ..... please give details below:

.....

.....

.....

.....

#### 14. LIABILITIES

- (a) Do you or a member of your immediate family have any liabilities?

YES or NO (delete whichever does not apply)

If YES, please give details as follows—

## (i) Liabilities against the Officer

## Short Term

.....

.....

.....

## Long Term

.....

.....

.....

## (ii) Liabilities against a member of immediate family.

## Short Term

.....

.....

.....

## Long Term

.....

.....

.....

## (b) Are you or a member of your immediate family owed any debt(s)?

YES or NO (delete whichever does not apply)

If YES, please give details as follows—

## (i) Debts in favour of the officer

## Short Term

.....

.....

.....

Long Term

.....

.....

.....

.....

(ii) Debts in favour of immediate family

Short Term

.....

.....

.....

.....

Long Term

.....

.....

.....

.....

#### 15. BUSINESS INTEREST

(a) Do you have any business interest?

YES or NO (delete whichever does not apply)

If YES, please give details as follows—

(i) Those owned by the Officer

<i>Nature of Business</i>	<i>Source of Funding</i>	<i>Partners</i>	<i>Estimated Income/Year</i>

(ii) Those owned by members of immediate family

<i>Nature of Business</i>	<i>Source of Funding</i>	<i>Partners</i>	<i>Estimated Income/Year</i>

(iii) Those owned by close associates or agents

<i>Nature of Business</i>	<i>Source of Funding</i>	<i>Partners</i>	<i>Estimated Income/Year</i>

(b) Are you affiliated in any way with any other institution, organization or entity, whether or not you derive income or assets from such affiliation?

YES or NO (delete whichever does not apply)

If YES, please give details as follows—

<i>Name of Institution, Organization or Entity</i>	<i>Nature of Affiliation</i>	<i>Estimated Income/Year (if any)</i>	<i>Period of Affiliation</i>

#### DECLARATION

- (a) I declare that the information I have provided above is a correct account of my situation with regard to assets, liabilities and business interest that could be attributed to my name.
- (b) I have no objection to the Director verifying the above information.
- (c) I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declaration Act.

Declared at .....  
 this .....  
 day of ..... } *Signature of the Public Officer*

Before me .....  
*Commissioner for Oaths*

-----  
 FOR THE DIRECTOR'S USE ONLY

Received by:.....

Signature:.....

Title:.....

Date:.....

## THIRD SCHEDULE

*Section 15 (4)*DECLARATION OF ASSETS, LIABILITIES AND BUSINESS INTERESTS ANNUAL DECLARATION  
FORM

## 1. PERSONAL PARTICULARS

- (a) Surname.....
- (b) Other Names.....
- (c) Date of Birth.....
- (d) Place of Work.....
- (e) Present Grade/Position.....
- (f) Date of Appointment/Election.....

## 2. PERIOD OF DECLARATION.....

## 3. Describe any additional assets acquired or sold over stated period.

.....

.....

.....

## 4. Describe any additional liabilities incurred over the stated period.

.....

.....

.....

## 5. Describe any additional business interests acquired over the stated period.

.....

.....

.....

## 6. Any other material information.

.....

.....

.....

## DECLARATION

- (a) I declare that the information I have provided above is a correct account of my situation with regard to assets, liabilities and business interest that could be attributed to my name.

- (b) I have no objection to the Director verifying the above information.
- (c) I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declaration Act.

Declared at .....  
this .....  
day of ..... } .....  
Signature of the Public Officer

Before me .....  
Commissioner for Oaths

-----  
FOR THE DIRECTOR'S USE ONLY

Received by:.....

Signature:.....

Title:.....

Date:.....

## FOURTH SCHEDULE

## Section 18 (1)

DECLARATION OF ASSETS, LIABILITIES AND BUSINESS INTERESTS BY  
PUBLIC AND ELECTED OFFICERS

## APPLICATION FORM

## PARTICULARS OF APPLICANTS

- (a) SURNAME .....
- (b) OTHER NAMES .....
- (c) IDENTITY NUMBER .....
- (d) DATE OF BIRTH .....
- (e) OCCUPATION .....
- (f) CONTACT DETAILS .....
- (i) Physical Address .....
- .....
- (ii) Postal Address .....
- .....
- (iii) Telephone Number .....
- (iv) Cellphone Number .....
- (v) Fax Number .....
- (vi) Email Address .....

I, the bearer of the above particulars DO HEREBY apply for access to the details of  
the declaration made by.....

.....  
(state particulars of the Public Officer) submitted to the office of the Director of Public  
Officer Declarations pursuant to Section 15 (2). I would like to have access to the  
following information .....

.....  
.....  
.....  
.....  
..... (specify

the details being sought) for the following reasons:.....  
 .....  
 .....  
 .....  
 .....

I DECLARE that the personal details provided above are correct and that I shall use the information sought for the furtherance of the objectives of this Act only.

I make this solemn declaration conscientiously believing the contents hereof to be to the best of my knowledge and information and by virtue of the Oaths, Affirmations and Declaration Act.

Declared at .....  
 this .....  
 day of ..... } .....  
*Signature of the Public Officer*

Before me .....  
*Commissioner for Oaths*

-----  
 FOR THE DIRECTOR'S USE ONLY

Received by.....

Signature.....

Title.....

Date.....



APPENDIX B

CONSEQUENTIAL AMENDMENT BILLS  
PARLIAMENTARY AND PRESIDENTIAL  
ELECTIONS (AMENDMENT) BILL, 2008  
LOCAL GOVERNMENT ELECTIONS  
(AMENDMENT) BILL, 2008

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**PARLIAMENTARY AND PRESIDENTIAL ELECTIONS (AMENDMENT) BILL, 2008****A B I L L***entitled***An Act to amend the Parliamentary and Presidential Elections Act****ENACTED by the Parliament of Malawi as follows—**

**1.** This Act may be cited as the Parliamentary and Presidential Elections (Amendment) Act, 2008. Short title

**2.** The Parliamentary and Presidential Elections Act is amended, in Section 38 (1), by— Amendment  
of s. 38 of  
Cap. 2:01

(a) adding at the end of paragraph (b) the following subparagraph as subparagraph (iii)—

“(iii) has disclosed his assets, liabilities and business interests in accordance with the Public Officers (Declaration of Assets, Liabilities and Business Interests) Act, 2008;”;

(b) in subparagraph (i), by deleting the word “and” at the end of the paragraph;

(c) in subparagraph (ii), by inserting the word “and” at the end of the subparagraph.

## LOCAL GOVERNMENT ELECTIONS (AMENDMENT) BILL, 2008

## A BILL

*entitled***An Act to amend the Local Government Elections Act.****ENACTED by the Parliament of Malawi as follows—**

Short title       **1.** This Act may be cited as the Local Government Elections (Amendment) Act, 2008.

Amendment of  
s. 30 of Cap.  
22:02       **2.** The Local Government Elections Act is amended, in section 30 (1), by—

    (a) adding at the end of paragraph (b), the following subparagraph as subparagraph (iii)—

    “(iii) has disclosed his assets, liabilities and business, interests in accordance with the Public Officers (Declaration of Assets, Liabilities and Business Interests) Act, 2008;”;

    (b) in subparagraph (i), by deleting the word “and” at the end of the subparagraph;

    (c) in subparagraph (ii), by inserting the word “and” at the end of the subparagraph.

MALAWI LAW COMMISSION

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