

## Malawi

### Investment Promotion Act, 1991 (1992)

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# Contents

- Part I. Preliminary**
- Part II. Promotion of investment in Malawi**
- Part III. The Malawi investment promotion agency**
- Part VI. Objectives and functions of the agency**
- Part V. Organization and administration of the agency**
- Part VI. Financial provisions**
- Part VII. Miscellaneous**
- Schedule**

# Investment Promotion Act, 1991

Act No. 28 of 1991

An Act to accord paramount status to the investment policies and procedures contained in the Statement of Investment Policies and the Investors Guide issued by the Government and revised from time to time; to establish the Malawi Investment Promotion Agency and to provide for its powers, duties and general authority; and to provide for matters connected with or incidental to the foregoing.

## Part I. Preliminary

### Section 1. Short title

Act may be cited as the Investment Promotion Act, 1991.

### Section 2. Interpretation

In this Act, unless the context otherwise requires:

- "Agency" means the Malawi Investment Promotion Agency established by section 5; "Appropriate Minister" means the Minister responsible for the subject matter in question; "Board" means the board of directors of the Agency established by section 10; "Chairman" means the chairman of the Board;
- "Investment" means private investment, and other grammatical variations or cognate expressions thereof shall be construed accordingly;
- "Investor" means an existing or potential investor;
- "Investors Guide" or "Guide" means the publication as set out in the schedule to this Act as a supplement to the Statement of Investment Policies and as from time to time revised;
- "Minister" means the President in his ministerial responsibility for the Office of the President and Cabinet;
- "Statement of Investment Policies" or "Statement" means the statement of the Government as set out in the Schedule to this Act and as from time to time revised, being a statement containing the principles of the Government aimed at promoting and assisting investment in Malawi.

## Part II. Promotion of investment in Malawi

### Section 3. The Statement and the Investors Guide to rank paramount

Every public officer and any authority in Malawi exercising or Statement performing powers, duties or functions in conation with or concerning the commitment of the Government in promoting and Investors assisting investment in Malawi as declared in the Statement of Guide to Investment Policies (in this Act otherwise referred to as the "Statement") and in the investors Guide (in this Act otherwise referred to as the "Guide") shall, in the exercise of his powers or the performance of his duties or functions, consider and treat the Statement and the Guide as ranking paramount in the business of the Government and shall further consider it to be his or its paramount duty to act with all due diligence and dispatch in taking such action as is required or necessary to give effect to the Statement and the Guide.

#### **Section 4. Publication and revision of the Statement and the Investors Guide**

- 1) The Statement and the Investors Guide shall be published respectively by the Minister and the Agency for general distribution, copies of its publication and revision shall be made freely available and without charge in and outside of the State-Malawi to investors in Malawi.
- 2) Following any change in the Statement, or following any Guide legislative or statutory action or Other action having similar effect taken by the Government in pursuance or in the implementation of the Statement or the Investors Guide, the Minister shall, by order published in the Gazette, amend the Schedule to this Act so as to revise the Statement or the Investors Guide accordingly.

## **Part III. The Malawi investment promotion agency**

#### **Section 5. Establishment of the Agency**

There is hereby established a body to be known as the Malawi Investment Promotion Agency (in this Act otherwise referred to as the "Agency") which shall be a body corporate by that name, having perpetual succession and a common seal and which shall, by that of the name, be capable of suing and being sued and of acquiring, holding Agency and alienating moveable or immovable property and, subject to the provisions of this Act, of doing or performing all such acts, or things as bodies corporate may by law do or perform.

#### **Section 6. General authority of the Agency**

In addition to any other powers, duties and functions conferred on the Agency by or under this Act, it shall be the principal object of the Agency to ensure the giving of practical and prompt effect to the commitment of the Government on investment in Malawi as declared in the Statement of Investment Policies and the Investors Guide and, for that purpose, the Agency shall have power:

- a. to receive queries and complaints by, or on behalf of an investor of the against any public officer or any authority in dealing with any matter Agency submitted to the public officer or to the authority by, or on behalf of, the investor;

- b. to summon or call upon any public officer or any authority to promptly decide, in accordance with the relevant written law, on any matter submitted to the public officer or authority by, or on behalf of, an investor and to communicate the decision to the investor or to show cause, satisfactory to the Agency, why a decision on the matter cannot be promptly made or communicated to the investor, and further to request for an indication as to when a decision or the communication will be made;
- c. to inquire into the reasons for any negative decision by any public officer or any authority on any matter submitted by, or on behalf of, an investor to the public officer or authority and, where the Agency is not satisfied with the reasons given, to make representations to the public officer or authority or to the appropriate Minister on behalf of the affected investor;
- d. to report to the Minister cases of inefficiency, laxity and ineptitude by any public officer or any authority in the exercise of his or its powers or the performance of his or its duties and functions bearing upon the purposes and objects of this Act, the Statement of Investment Policies or the Investors Guide; and
- e. to do all such things as the Agency considers being necessary for its objectives and functions and conducive to the fulfillment of the purposes of this Act, the Statement and the Investors Guide.

#### **Section 7. Compliance with the requirement of written laws**

Nothing contained in this Act shall be construed as exempting any investor, any public officer, any authority or any person from complying with the requirements of any written law.

## **Part VI. Objectives and functions of the agency**

#### **Section 8. General objectives and functions of the Agency**

- 1) The general objective of the Agency shall be to promote, attract, encourage facilitate and support local and foreign investment in Malawi and, without prejudice to the generality of that objective, the Agency shall have the following functions:
- a. to facilitate and support all aspects of the investment process in Malawi including, but not limited to, the timely receipt of Government approvals, permits, licenses, registrations and the fulfillment of any other regulatory authorizations;
  - b. to provide courtesy services to investors;
  - c. to provide information relating to investment in Malawi;
  - d. to identify partners in or outside Malawi for joint venture business opportunities in Malawi;
  - e. to liaise and generally interact with local and international financial institutions for the benefit of investors;
  - f. encourage expansions and new investments by existing investors in Malawi;
  - g. to develop a favourable investment image of Malawi regionally and outside the region;
  - h. to undertake investment promotion missions within the region and outside the region;

i. to recommend to the Government changes in the statutory and administrative framework relevant to the investment climate of Malawi and to make representations against or regarding any changes to any such statutory or administrative framework; and

j. to consult with private sector entities with a view to enabling the Agency to make recommendations to the Government for the improvement of the investment climate of Malawi.

2) For purposes of this Act, the Agency shall accord priority to investment in:

k. Manufacturing;

l. Agriculture;

m. Mining;

n. Fisheries;

o. Tourism;

p. Forestry; and

q. Such other productive sectors as the Agency may, from time to time, determine with the approval of the Minister.

## Part V. Organization and administration of the agency

### Section 9. Board of Directors

There shall be a Board of Directors of the Agency (in this Act otherwise referred to as the "Board"), which shall be responsible for the administrative, and management policies of the Agency.

### Section 10. Composition of the Board

1) The Board shall consist of:

a. the following public officers as members ex officio:

i. the Secretary to the President and Cabinet;

ii. the Secretary for Economic Planning and Development; (ii) the Secretary for Commerce and Industry;

iii. the Secretary to the Treasury; and

iv. the Controller of Lands and Valuation;

b. three persons representing the private sector in Malawi; nominated by the Malawi Chamber of Commerce and Industry and appointed by the Minister;

c. two persons of prominent status appointed by the Minister from amongst persons in the private sector in Malawi who have had managerial experience and shown capacity in matters relating to business operations in the private sector; and

d. one person appointed by the Minister from amongst serving Chief Executives of statutory bodies undertaking commercial operations.

2) The Chairman and Vice Chairman of the Board shall be elected by members from amongst their number appointed from the private sector in Malawi.

### **Section 11. Tenure of office of members of the Board**

1) A member of the Board appointed under paragraphs (b), (c) or (d) of section 10:

a. shall hold office for two years from the effective date of his appointment and shall be eligible for re-appointment;

b. may resign his office by giving one month written notice to the Minister;

2) In making appointments to the Board under paragraphs (b), (c) and (d) of section 10 the Minister shall have regard to the need to ensure a reasonable degree of continuity in the membership of the Board and also expertise, knowledge and experience in matters relating to private sector development and private investment

### **Section 12. Members not to delegate attendance to the business of the Board**

No member of the Board shall attend to the business of his office as member of the Board by representation, and where a member is unable to attend any meeting of the Board he may request that his apologies for failure to attend be registered.

### **Section 13. Co-opted persons**

The Board may in its discretion at any time and for any length of time invite any person to attend any meeting of the Board and take part in the- deliberations of the-Board, but such person shall nor be entitled to vote at that meeting.

### **Section 14. Meetings of the Board**

1) The Board shall hold its ordinary meetings at least six times a year.

2) An extraordinary meeting of the Board:

a. may be convened by the Chairman at any time;

b. shall be convened by the Chairman within fourteen days of receipt by him of a request in writing signed by any two members of the Board and specifying the purpose for which an extraordinary meeting of the Board is to be convened.

3) At any meeting of the Board:

a. the quorum necessary for the dispatch of the meeting shall be formed by any six members at least two of whom shall be members appointed under paragraph (d) or (e) of section 10;

b. the Chairman or, in the absence of the Chairman the Vice-Chairman shall preside;

c. if both the Chairman and the Vice-Chairman are absent, the members present and forming the quorum shall elect one of their number to preside;

d. the decision on any subject shall be that of the majority of the members present and voting and in the event of a tie in the votes the person presiding shall have a casting vote in addition to his deliberative vote;

e. a member who is aware that he has a personal, proprietary or pecuniary interest in a matter which is to be or is being considered by the Board shall declare the interest to the Chairman or other person presiding and shall not be entitled to take part in the deliberations or to vote on the matter; and

f. a member who is unable to attend the meeting may submit to the Board, in writing, his views on any matter before the Board but shall not be entitled to have his vote registered on any matter considered at the meeting.

### **Section 15. Powers and functions of the Board**

The Board shall have power:

a. to determine policy and courses of action for giving effect to the objectives and purposes of the Agency and generally of this Act;

b. to appoint committees to assist the Board in the performance of its functions, and the membership of such committees may include persons who are not members of the Board;

c. to assign to committees of the Board any of its powers and functions but the Board shall not be divested of any powers or functions so assigned and may approve, vary or revoke any decision of a committee;

d. to require the General Manager or any officer of the Agency to make reports to the Board respecting the financial, administrative and other affairs of the Agency and to direct any action to be taken by the General Manager or other officers with regard thereto; and

e. to determine its own procedure to be followed at its meetings and in dispatching its other business.

### **Section 16. General Manager of the Agency**

1) There shall be an officer of the Agency to be designated as the General Manager of the Agency who shall be appointed by the Minister.

2) The Minister on the recommendations of the Board shall determine the terms and conditions of service of the General Manager.

3) In determining the terms and conditions of service of the General Manager the Board and the Minister shall have regard to:

a. the need to ensure the recruitment and retention of a person, from amongst nationals of Malawi, who has shown the highest qualities of institutional management or who is a person of recognized standing, educational or professional qualifications or experience necessary to achieve the ideals of business efficacy in private sector management and in either case is a person of proven integrity.

b. the need to provide for an appropriate method for assessing the performance of the office holder and, for that purpose, the Minister may prefer appointment on contract to appointment on permanent terms.

4) The Minister shall exercise disciplinary control over the General Manager and may act on the recommendations of the Board.

### **Section 17. Other staff of the Agency**

- 1) The Board shall appoint such other staff of the Agency subordinate to the General Manager as the Board considers necessary for the proper discharge of the functions of the Agency and the Board may delegate to the General Manager the appointment of certain categories of the staff of the Agency.
- 2) The General Manager may appoint temporary employees of the Agency at such daily rates of pay, not below the minimum rates prescribed by written law, as he considers to be required for the discharge of the functions of the Agency.
- 3) The General Manager shall report to the Board every appointment by him of any person under subsection (1) or (2).
- 4) The Board shall exercise disciplinary control over the staff appointed by the Board and by the General Manager under subsection (1) and the General Manager shall, at his sole discretion, exercise disciplinary control over the staff appointed by him under subsection (2).

### **Section 18. Duties of the General Manager**

The General Manager shall:

- a. be the chief executive officer of the Agency and as such he shall be responsible of the day-to-day administration of the Agency and in that regard he shall be answerable to the Board;
- b. serve as secretary to the Board and to any committee of the Board and shall, on the instructions of the Chairman or the chairman of any committee of the Board, as the case may be, convene meetings of the Board and meetings of the committees and in carrying out his duties as secretary, the General Manager and such other officers of the Agency as he may designate, shall be entitled to attend all meetings of the Board and of the committees;
- c. subject to the special or general directions of the Board, do or perform any thing or act which he considers to be expedient for the purposes of the Agency.

### **Section 19. Salaries**

The salaries, wages or other remuneration of the General Manager and other staff of the Agency shall be determined so as to be competitive with those in the private sector in Malawi.

### **Section 20. Honorarium for Board members**

Every member of the Board, whether or not serving in an ex officio capacity and including a member who is a public officer, shall be entitled to receive in his personal capacity an honorarium determined by the Minister and paid out of the funds of the Agency.

## **Part VI. Financial provisions**

### **Section 21. Funds of the Agency**

The funds of the Agency shall consist of:

- a. such sums as shall be appropriated annually by Parliament for the purposes of the Agency;

- b. the levy payable under section 22;
- c. such other sums and assets as may vest in or accrue to the Agency, whether in the course of discharging its functions or otherwise.

### **Section 22. Levy**

- 1) The Minister may, by order published in the Gazette, impose on any company, corporation, professional or business partnership or any business proprietor a levy to be paid to the Agency and the Minister may impose different amounts or rates of levy for different classes of business and may, in such order, prescribe the manner of collecting such levy.
- 2) The amount of levy payable by any person under this section shall be deductible in computing the taxable income of that person for purposes of payment of income tax under the Taxation Act.
- 3) An order made under this section may prescribe a penalty of sums of money to be paid to the Agency for non-payment or delayed payment of levy.
- 4) The amount of levy and the penalty payable to the Agency shall, if not paid, constitute a debt owing to the Agency by the company, corporation, partnership or business proprietor from whom it is due and shall be recoverable by the Agency by civil proceedings.

### **Section 23. Financial year**

The financial year of the Agency shall be a period of twelve months determined by the Board:

Provided that the first financial year of the Agency may be a period shorter or longer than twelve months, but in any event not longer than eighteen months.

### **Section 24. Books and other records of account**

The Agency shall:

- a. keep and maintain proper books and other records of account in respect of every financial year relating to the funds and other assets of the Agency;
- b. in every respect comply with the Finance and Audit Act as that Act applies to statutory bodies; and
- c. furnish to the Minister in every financial year or as often as the Minister may direct accounts in respect of its funds and other assets including an estimate of income and expenditure for the following financial year.

### **Section 25. Audit**

Auditors appointed annually by the Board and approved by the Minister shall audit the accounts of the Agency in respect of every financial year.

### **Section 26. Pensions and other funds**

- 1) The Agency may, out of its revenues, establish and maintain pension, superannuation, provident or other funds as it may consider desirable for the provision of payment of benefits or other allowance on death, sickness, injury, superannuation, resignation, retirement or discharge of its staff and may make rules providing for payment of money out of its revenues to such funds and providing for contributions to such funds by its staff.
- 2) The Agency may contract with insurance companies or other bodies for the maintenance and administration of the funds authorized under subsection (1).

## Part VII. Miscellaneous

### Section 27. Regulations, rules or orders

The Minister may make regulations, rules or orders for the purposes of this Act and to give effect to its provisions.

## Schedule

### Statement of investment policies

This policy statement sets forth the Malawi Government's principal policies of encouraging and assisting private investment. The Government is fully committed to enacting these policies and will take whatever measures may be necessary to ensure their prompt implementation. The Investors Guide containing detailed information of importance to investors supplements this statement.

The Government seeks to encourage the private sector to assume the leading role in developing the national economy. The thrust of the Government's efforts will be to facilitate, rather than to regulate private investment. This is consistent with the Statement of Development Policies issued by the Government in 1987.

To create a more conducive investment climate, the Government will continue to pursue stable macro-economic policies by exercising fiscal and monetary discipline and maintaining a realistic exchange rate of Malawi Kwacha (MK), the country's currency. Specific measures to deregulate the private sector and create new investment opportunities have already been enacted, including elimination of price controls; termination of import restrictions and of the accompanying need import licenses, divestiture of state-owned companies and steps to rectify the external transport situation.

To further encourage and assist private investment, the Government announces the following new initiatives:

#### Freedom to invest

Investors, both domestic and foreign, may invest in any sector of the economy, with no restriction on ownership. Further there are no restrictions on the size of investment, the source of funds or whether products are destined for export or for the domestic market. Domestic investors are encouraged to join with foreign investors to pursue investment opportunities in Malawi.

#### Industrial licensing and company formation

The industrial license is to be eliminated, except for investments in such industries as the Government may place on a short negative list. Procedures for company formation and business registration will be simplified to permit prompt establishment. Investors will only be required to provide the Registrar of Companies with basic information on proposed business activities.

### **Transfer of land**

The Government is committed to ensure that land for industrial and commercial uses is readily available to investors. Accordingly, the Government will accelerate land transfer procedures to expedite granting approvals and consents. To better provide serviced land to investors, the Government will develop new industrial sites. In addition, the Government will provide the necessary framework to enable private investors to develop industrial sites, including sub-leasing to other investors.

### **Taxes and duties**

To further enhance Malawi's investment climate and international competitiveness, the Government is committed to continue the process of reducing rates of taxes and duties. This is to be achieved through the ongoing tax and trade reform programmes.

### **External transport routes**

The government is aware that access to efficient and secure transport routes, both within the country and to foreign markets, is of vital importance. To ensure such access, the Government is undertaking a number of initiatives, including the expansion of the domestic transportation network, the development of the Northern Corridor route to the port of Dar-Es-Salaam in Tanzania and the rehabilitation of the Nacala Railway Line to the port of Nacala in Mozambique.

### **Availability of foreign exchange**

The Government recognizes that the availability of foreign exchange is critical to investors. The Government will, therefore, ensure that foreign exchange is available for business transactions and remittances. The Reserve Bank of Malawi has granted, and will continue to grant, commercial banks the authority, as foreign exchange dealers, to approve such transactions and remittances according to set procedures.

### **Access to local financing**

The Government has embarked on a reform programme to modernize and liberalize the financial sector. With the enactment of the Capital Market Development Act, 1990, both foreign and domestic investors will have greater access to sources of local financing. The Government is committed to foster competition in the banking sector, including the establishment of new banking institutions.

### **Labour practices**

The Government will not interfere in employers' choice of workforce. Further, the Government recognizes that investments may require expertise not available in Malawi. Accordingly, it will continue to make Temporary Employment Permits for expatriate personnel readily available for key positions in investments.

### **Encouragement have small-scale and medium-scale enterprises**

Malawi's small-scale and medium-scale enterprises hold great potential for rapid economic growth and employment creation. The Government is, therefore, dedicated to continuing with various programmes to assist these enterprises, including Entrepreneurship training and technical and financial assistance.

### **Encouragement of export-oriented investments**

To encourage export-oriented investments, the Government will offer incentives competitive to those found in other countries. At present, these incentives include:

- a. an income tax allowance based on export sales of non-traditional products (i.e. products other than tobacco, tea, sugar and coffee);
- b. rebates of import duties, surtaxes, and local taxes on most inputs used in production of export.

In addition, the Government is considering establishing other incentives, including export financing and guarantee schemes, further developing a manufacturing-in-bond programme, creating export processing zones, and introducing measures to eliminate the payment of duties at the time of importation.

### **Investment assistance of promotion**

In order to increase awareness of the investment opportunities in Malawi, as well as to provide greater assistance to existing and potential investors, the Government has established an investment promotion agency. This agency has been given sufficient authority and operational autonomy to fulfill its mandate of promoting investment and assisting investors.

### **Investment protection**

The Government recognizes that the security of assets is of primary importance to investors. The Malawi Constitution and existing laws and regulations provide further assurance that investors' assets are protected. In addition, the Government will actively pursue the process of concluding bilateral investment treaties with other Governments. Malawi is also a member of the Multilateral Investment Guarantee Agency (MIGA), and is an eligible country under a number of other investment insurance programmes.

### **Access to international arbitration**

The Government acknowledges that investors must have an acceptable forum to resolve disputes that cannot be settled amicably. Parties to disputes may agree to pursue arbitration and to choose an appropriate forum, including international arbitration. The Government is a member of the International Centre for the Settlement of Investment Disputes (ICSID).

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