MALAWI GOVERNMENT

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Act

No. 3 of 2019

I assent

PROF. ARTHUR PETER MUTHARIKA
PRESIDENT
25th January, 2019

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An Act for the establishment of the Reserve Bank of Malawi to formulate and implement price and financial stability policies; to confer and impose on the Reserve Bank of Malawi certain functions and powers; to provide for matters related to banking, currency and coinage; and for matters connected therewith and incidental thereto.

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Reserve Bank of Malawi Act, 2018 and shall come into force on a date the Minister may appoint, by notice published in the *Gazette.*

Interpretation

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

"agency" means any institution, other than a bank, established or appointed under section 49;

"Bank" means the Reserve Bank of Malawi established under section 3;

"bank" means a company licensed as a bank under the Banking Act;

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"Board" means the Board of Directors of the Bank established under section 7;

"close relative" means mother, father, sister or brother;

"Code of Conduct" means the code of conduct provided for under section 24 and set out in the First Schedule;

"controlling party" has the meaning assigned thereto in the Financial Services Act";

Cap. 44:05

"convertible currency" means any currency which is freely negotiable and transferable in international exchange markets at exchange rates consistent with the Articles of agreement of the International Monetary Fund in force from time to time;

"deposit liabilities" means liabilities arising from demand, time and savings deposits;

"Deputy Governor" means a Deputy Governor of the Bank appointed under section 16;

"director" in relation to the Bank means a member of the Board and includes the Governor and the Deputy Governors;

"external currency" means any currency, other than the currency issued by the Bank under this Act;

"fiscal agent" means the Bank as a party acting on behalf of the Government in performing various financial duties, including redemption of Government bonds and managing Government's securities register;

"financial institution" has the meaning assigned thereto in the Financial Services Act;

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"Governor" means the Governor of the Bank appointed under section 16;

"Malawi currency" means the legal tender currency of Malawi issued by the Bank under this Act;

"monetary liabilities" denote the currency in circulation and financial claims to the Bank, except the Bank's liabilities to the Government and international financial organizations;

"non-executive directors" means directors other than the Governor, Deputy Governors, and the Secretary to the Treasury;

"statutory body" has the meaning assigned thereto in the Public Finance Management Act. Cap. 37:02

PART II— THE RESERVE BANK OF MALAWI

Establishment of the Bank

3.—(1) The Reserve Bank of Malawi shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name, and which, subject to this Act, may acquire, hold and dispose of movable and immovable property.

(2) The Bank shall have its head office in Lilongwe and may open branches in Malawi and appoint agents and correspondents, in accordance with the decisions of the Board.

(3) The common seal shall be affixed under such conditions as the Board may, from time to time, determine.

Objectives of the Bank

4.—(1) The primary objectives of the Bank shall be to maintain price and financial stability.

(2) In case of conflict between price and financial stability, the price stability objective shall take precedence.

Independence of the Bank

5.—(1) Except as provided by this Act, the Bank, the members of the Board and the staff of the Bank shall be independent, and shall not be subject to direction by any person or authority.

(2) Any person who improperly and unduly seeks to influence the Bank, a director or staff of the Bank, in the performance of its or his functions, commits an offence and shall, on conviction, be liable to a fine of twenty-five million Kwacha (K25,000,000) and to imprisonment for ten (10) years.

Capital and reserves

6.—(1) The capital of the Bank shall be nineteen billion Kwacha (K19,000,000,000).

(2) The capital shall, from time to time, be increased by incorporation of reserves, contribution of cash or Government securities as the Board may resolve, with the consent of the Minister, and the Government shall subscribe and pay up, at par, the amount of such increase.

(3) The Government shall ensure that the Bank is kept solvent at all times:

Provided that where the total equity of the Bank falls below the amount of paid-in capital, the Board shall request the Minister for a capital contribution to be made by Government to remedy the deficit with a view to restoring the paid-in capital to its statutory level.

(4) Upon receipt of the request specified in subsection (3), the Minister shall, within a period of no more than thirty calendar days, transfer to the Bank, the necessary amount in currency or in negotiable debt instruments with a specified maturity issued at prevailing market-related interest rates.

(4) The capital of the Bank shall be exclusively held by the Government.

(5) The Bank shall create and maintain reserves in accordance with section 64 of this Act.

PART III —ORGANIZATION AND ADMINISTRATION

Board of directors

7.—(1) There shall be a Board of directors of the Bank.

(2) The Board shall consist of—

(*a*) the Governor;

(*b*) Deputy Governors;

(*c*) the Secretary to the Treasury; and

(*d*) five other members:

Provided that, at all times, the majority of the directors shall be non-executive directors.

(3) The directors shall be appointed by the President for a term of five (5) years and shall be eligible for reappointment for one more term of five (5) years:

Provided that, with a view to ensuring continuity, appointments and reappointments to the Board shall, wherever practicable, be made in such a way that at least one half of the number of directors shall continue to serve on the Board.

(4) A person shall not be appointed a director unless the President is satisfied that the person is a fit and proper person to hold the office of a director and qualified for appointment by virtue of his knowledge of, or experience in, one or more of the following fields—

(*a*) economics;

(*b*) finance;

(*c*) finance or banking law;

(*d*) accounting; or

(*e*) other discipline relevant to central banking.

(5) Appointments and reappointments to the Board shall be made with a view to ensuring that at all times, the Board has an appropriate range of relevant skills and experience.

(6) The Board shall be responsible for the formulation of the policies of the Bank other than monetary policy, and shall oversee the operations, administration and management of the Bank and the exercise of the powers and functions of the Bank.

(7) Every director shall be entitled to such fees and allowances as determined by the Board and approved by the Minister.

Persons not eligible for appointment as directors

8. The following persons shall not be eligible to be appointed a director—

(*a*) a Minister;

(*b*) member of Parliament;

(*c*) a director, salaried officer or staff of a financial institution;

(*d*) a controlling party in a financial institution;

(*e*) a person who provides or is engaged to provide, whether as a member of a firm or not, professional services to the Bank;

(*f*) a public officer, other than a public officer mentioned in section 7 (2);

(*g*) a person who is disqualified, whether in any country, from acting as a director or official of a body corporate under a law relating to corporations or to the provision of financial service;

(*h*) any person who at any time bas been adjudged bankrupt by a competent court, in any country, or who, in any country, has made an arrangement or composition with, or has suspended payment to, his creditors;

(*i*) any person who has been convicted, in any country, of—

(i) theft;

(ii) any offence involving an element of dishonesty, fraud, forgery;

(iii) issuing of a forged document, or perjury or any similar offence; and

(j) any person removed by a court of or competent jurisdiction, in any country, from an office of trust on account of misconduct in the exercise of his duties in that office.

Resignation of directors

9.—(1) A director may resign from office by giving a written notice of three months, to the President.

(2) The President may waive the period of notice required and accept the resignation of the director with immediate effect.

Termination of appointment of director

10.—(1) The appointment of director shall immediately terminate, if the director—

(*a*) becomes a Minister;

(*b*) becomes a member of Parliament;

(*c*) becomes a director, salaried officer or staff of a financial institution;

(*d*) provides or is engaged to provide, whether as a member of a firm or not, professional services to the Bank or a financial institution;

(*e*) is disqualified in any country from acting as a director or official of a body corporate under a law relating to corporations or to the provision of financial services;

(*f*) becomes a public officer;

(*g*) is adjudged bankrupt by a competent court in any country;

(*h*) in Malawi, makes an arrangement or composition with, or suspends payment to, his creditors; or

(*i*) is convicted, in any country, of an offence of a kind referred to in section 8 (*h*).

(2) The President may terminate an appointment of a director on the ground that the director—

(*a*) has ceased to be a fit and proper person to be a director,

(*b*) is suffering from a mental or physical condition, as determined by a qualified medical practitioner, such that he cannot properly carry out the duties of the office;

(*c*) has failed, without leave of the Board, to attend more than three consecutive meetings of the Board of which he has had notice,

(*d*) is a controlling party of a financial institution;

(e) has been disqualified, outside Malawi, from acting as a director or official of a body corporate under a law relating to corporations or to the provision of financial services;

(*f*) has been adjudged bankrupt by a competent court in any country;

(*g*) in any country, has made an arrangement or composition with, or has suspended payment to his creditors;

(*h*) has been removed from office in any country as mentioned in section 8 (j);

(*i*) has failed to comply with the code of conduct in a material particular;

(*j*) is in breach of this Act or any other financial services law.

Procedure for removal of a director

11.—(1) Where the President has information that a director should be removed from office on any of the grounds listed in section 10 (2), the President shall appoint a committee to inquire into the information and furnish its findings to the President.

(2) The committee appointed under subsection (1) shall consist of—

(*a*) a judge of the High Court, who shall be the chairperson of the Committee; and

(*b*) two (2) other persons of good character, high integrity and with at least ten years' experience in the field of economics, finance or accounting.

(3) The director subject to the procedure described in this section shall be suspended during the inquiry until the decision is made by the President.

(4) Where the committee, on the basis of its findings, advises the President that the director concerned ought to be removed from office, the President shall terminate the appointment.

(5) Where the director concerned is the Governor, President shall inform the Public Appointments Committee of the termination and grounds for the termination.

Filling of vacancy of a director

12. Where an office of a director falls vacant, the President shall appoint another person in his place for the remainder of the term in accordance with section 7 (3):

Provided that where the remainder of the term is less than twelve (12) months, the President may not make an appointment under this section.

Meetings of the Board

13.—(1) The Governor shall be chairperson of the Board and, in his absence, a Deputy Governor nominated by the Governor shall be chairperson.

(2) Meetings of the Board shall be called by the chairperson and shall be conducted in such manner as the Board may, from time to time, determine.

(3) The chairperson and three other directors shall form a quorum at any meeting of the Board and, unless otherwise provided or determined by the Board, the decisions of the majority of the directors present at any meeting shall constitute the decision of the Board.

(4) The chairperson shall have a deliberative vote and, in addition, in the event of an equality of votes, a casting vote.

(5) An act or proceeding of the Board shall not be invalidated merely by reason of the existence of a vacancy or vacancies among the directors.

(6) All acts of a director made in good faith shall be valid notwithstanding any defect in his appointment or qualifications that may afterwards be discovered.

Disclosure of interest

14.—(1) Each director shall make full and frank disclosure, in writing, to the Bank, all interests that the director has that may conflict with the proper performance of the functions of his office, whether the interest was acquired before or after appointment.

(2) A disclosure under subsection (1) shall be made as soon as practicable after the director becomes aware of the interest.

(3) The Bank shall record all disclosures under this section.

(4) A director who has an interest that may conflict with the proper performance of the functions of his office in relation to a particular matter shall not perform or participate in undertaking functions in relation to the matter.

(5) The Bank shall take reasonable steps to ensure that its staff and other persons performing or exercising functions or powers of the Bank under financial services laws make proper and adequate disclosure of their interest.

(6) For the purposes of subsections (1) and (4), it shall not matter whether the interest is direct, indirect, pecuniary or non-pecuniary, nor when the interest was acquired.

(7) For the purposes of this section—

(*a*) if an associate of a director has an interest; and

(*b*) if that interest that could conflict with the proper performance of the functions of the director's office,

the director shall be deemed to have the interest, and this section shall apply accordingly.

(8) For purposes of this section, "associate" of a director means—

(*a*) a spouse, partner, child, sibling, parent or other close relative of the director; and

(*b*) a partner, a spouse, child or relative of a partner of the director.

Committees of the Board

15.—(1) The Board shall ensure that there are, at all times, the following committees of the Board—

(*a*) the Audit Committee;

(*b*) the Appointments and Remuneration Committee;

(*c*) the Regulation and Supervision Committee; and

(*d*) the Risk Oversight Committee.

(2) A committee mentioned in subsection (1) shall consist of such directors as the Board appoints to the committee and the Board may, by resolution, remove a director from a committee.

(3) The Audit Committee shall consist of a minimum of three non-executive Directors.

(4) Subject to any direction of the Board,—

(*a*) any committee mentioned in subsection (1) may obtain assistance from staff of the Bank and other persons; and

(*b*) the procedure of a committee shall be as determined by the committee.

(5) The functions of the Committees shall be as prescribed, and such other functions as the Board may confer on them.

(6) The Board may establish other committees, and confer functions on the committees, as it thinks fit.

Governor and Deputy Governors

16.—(1)There shall be a Governor of the Bank who shall be appointed by the President and confirmed by the Public Appointments Committee of the National Assembly.

(2) There shall be up to two Deputy Governors of the Bank who shall be appointed by the President from within members of staff of the Bank.

(3) The Governor and the Deputy Governors shall be appointed on such terms and conditions as may be set out in the instrument of appointment, which terms and conditions shall not be altered to his disadvantage during the term of which he is appointed, except with the consent of the Governor or Deputy Governor.

(4) The Governor and the Deputy Governors shall devote the whole of their professional services to the Bank and while holding office shall not receive any salary or supplementation thereto from any source other than the Bank nor occupy any other office or have any other employment whether paid or otherwise.

(6) Notwithstanding subsection (4), the Governor and the Deputy Governors may, with the prior approval of the Board—

(*a*) act as a member or director of any board, committee or commission established by Government under a written law or otherwise; or

(*b*) become a Governor, director or member of a board, by whatever name called, of any international financial institution of which Malawi is a member:

Provided that the holding of such office is part of the role of Governor or Deputy Governors as representatives of the Bank and that do not prejudice the provisions of this Act.

(7) The Governor and the Deputy Governors shall be entitled to such remuneration as shall be determined by the appointing authority in line with the Bank's remuneration policy.

Qualifications for appointment

17.—(1) A person shall not be appointed Governor or Deputy Governor unless the President is satisfied that the person—

(*a*) is of high integrity;

(*b*) is a fit and proper person to hold the office;

(*c*) is qualified for the appointment by virtue of his knowledge or experience in central banking;

(*d*) holds a minimum qualification equivalent to master's degree or its equivalent obtained subsequent to a bachelor's degree from an accredited or recognized educational institution under the National Council for Higher Education Act and has experience of not less than ten years in a senior position in one or more of the following fields—

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(i) economics;

(ii) finance;

(iii) finance or banking law; and

(iv) accounting.

(2) A person shall not be appointed or remain Governor who, upon appointment, is or remains—

(*a*) a Minister;

(*b*) a Member of Parliament;

(*c*) a Minister or Deputy Minister;

(*d*) a serving member of the Judiciary;

(*e*) a holder of office in a political party or its affiliate;

(*f*) a minor or a person under legal disability;

(*g*) a person who has been responsible for a loss suffered by a licensed financial institution in Malawi or elsewhere;

(*h*) a person who has been removed by a court of competent jurisdiction or otherwise, whether in Malawi or elsewhere, from office on account of abuse or misuse of office or misconduct in the exercise of his duties in that office;

(*i*) in terms of any law in force in any country, adjudged or otherwise declared bankrupt or insolvent and has not been rehabilitated or discharged, made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside;

(*j*) convicted of an offence, the punishment of which has no option of a fine;

(*k*) in a position where there is a conflict of interest between the office of the Governor and his business interest; or

(*l*) not a citizen of Malawi.

Executive duties of Governor and Deputy Governors

18.—(1) The Governor shall—

(*a*) be responsible for the day-to-day management and administration of the Bank;

(*b*) represent the Bank; and

(*c*) be answerable to the Board for his actions and decisions.

(2) The Governor shall pursue the objectives and functions of the Bank as stipulated under this Act.

(3) The Deputy Governors shall perform such duties as the Governor may direct and, in the event of the absence or a vacancy in the office of the Governor, a Deputy Governor designated by the Governor shall perform the duties of the Governor and may exercise the powers and perform the functions of the Governor.

(4) In the event of temporary absence of both the Governor and Deputy Governors, the Governor shall designate in writing a senior official of the Bank to perform the duties of Governor.

Replacement of the Governor or Deputy Governor

19.—(1)) Where the Governor or Deputy Governor ceases to hold office before the expiry of the term for which he was appointed, the President shall immediately appoint another person who is eligible to be appointed a Governor or Deputy Governor, to

act as Governor or Deputy Governor, as the case may be, in his place until a substantive Governor or Deputy Governor is appointed to complete the term of the Governor, or Deputy Governor who has ceased to hold office.

(2) An appointment under subsection (1) shall not be considered a term of office.

Appointments of officers and staff of the Bank

20.—(1) The Board shall appoint officers and other staff of the Bank as it considers necessary for the proper carrying out of the powers and functions of the Bank:

Provided that the Boardmay delegate to the Governor, the appointment of junior officers.

(2) Officers and staff of the Bank shall be employed for such period or periods, receive such salaries and allowances and be subject to such other terms and conditions of service as may be determined by the Board.

(3) The Board may, out of the funds of the Bank, establish and maintain a pension fund for the Governor, Deputy Governors, the officers and staff of the Bank and their dependents

Computation of remuneration

21. A salary, fee, wage, allowance or other remuneration paid by the Bank shall not be computed by reference to the financial results of the Bank.

Protection of officers

22. The following shall not be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted to be done by it or him in good faith in the exercise or purported exercise of its or his powers, functions and duties—.

(*a*) the Bank;

(*b*) a director or staff of the Bank;

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(*c*) an examiner or investigator appointed by the Registrar under the Financial Services Act.

Code of Conduct

23.—(1) There shall be a Code of Conduct as set out in the First Schedule, which shall apply to the directors and staff of the Bank.

(2) The Code of Conduct shall be consistent with this Act, and other financial services laws, and shall make provision for at least the following matters—

(*a*) use and disclosure of information by directors and staff of the Bank;

(*b*) reducing or eliminating improper influence on the Bank and on, directors and staff of the Bank, in carrying out their functions under any written laws;

(*c*) trading in and ownership of securities or other financial instruments by, directors and staff of the Bank;

(*d*) conflicts of interest; and

(*e*) receiving, keeping, holding and reporting gifts of any description by, directors and staff of the Bank.

(3) A director or staff of the Bank who contravenes the Code of Conduct commits a breach of his contract of service with the Bank:

Provided that where the contravention discloses a criminal offence, the director or staff shall be subject to criminal process under the relevant law.

(4) A breach of the contract referred to under subsection (3) may lead to termination of contract of the director or staff.

PART IV—POWERS AND FUNCTIONS OF THE BANK

Division I – Primary Powers and Functions

Primary functions of the Bank

24. With a view to achieving the objectives prescribed under section 4 and with due regard to the interest of the national economy and to the economic policies of the Government, the Bank shall—

(*a*) determine and implement monetary policy;

(*b*) determine and implement the exchange rate policy;

(*c*) hold and manage all official external reserves of Malawi,

(*d*) issue and manage the legal tender in Malawi;

(*e*) act as fiscal agent, banker and adviser to the Government;

(*f*) promote and ensure the establishment and oversight of a safe, sound and efficient national payment system in accordance with the Payment Systems Act; Act No. 15 of 2016

(*g*) promote money and capital markets in Malawi;

(*h*) complement general economic development in Malawi;

(*i*) assist and co-operate with domestic and foreign regulatory authorities, and participate in public international organizations, concerning matters related to its objectives and functions;

(*j*) manage foreign exchange transactions in accordance with foreign exchange legislation;

(*k*) formulate and implement macro prudential policy; and

(*l*) carry out ancillary activities incidental to the exercise of its functions under this Act.

Primary powers of the Bank

25.—(1) The Bank shall have powers to—

(*a*) lend to the banking system as lender of last resort;

(*b*) regulate, license, register and supervise financial institutions in accordance with the Financial Services Act;

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(*c*) collect economic data of the financial and other services for research and policy purposes;

(*d*) for monetary policy and research purposes, require financial institutions and companies to submit within a defined period, any information, in a particular format as may be prescribed by the Bank; and

(*e*) exercise oversight as outlined in the Second Schedule.

(2) Powers of the Bank which are not specifically reserved for the Board or the Monetary Policy Committee shall vest in the Governor.

Division II - General Powers and Functions

General powers and functions of the Bank

26. In the pursuance of its objectives and performance of its functions, the Bank may carry out the following operations—

(*a*) issue demand drafts and effect other kinds of remittances payable at its own offices or at the offices of agencies or correspondents;

(*b*) open accounts for and accept deposits and collect money for or on account of funds, corporations and institutions controlled by the Government, banks and other financial institutions in Malawi and act as banker to staff of the Bank or any banks or other financial institutions on commercial terms;

(*c*) operate systems to facilitate funds transfer;

(*d*) maintain accounts with central banks and other banks abroad and act as correspondent bank or agent for any central or other banks or other monetary authority and for any international bank or international monetary authority established under governmental auspices;

(*e*) purchase, hold, sell, discount and rediscount domestic bills of exchange, promissory notes, other credit instruments and treasury bills arising out of *bona fide* commercial transactions;

(*f*) purchase and sell outright, or on spot and forward and under repurchase agreements, hold, lend and borrow securities;

(*g*) purchase, sell and hold gold and other precious metals;

(*h*) make to any commercial bank, on such terms and conditions as may be determined by the Bank, loans or advances on the basis of adequate collateral of bills of

exchange, promissory notes, foreign currency, other credit instruments, Treasury Bills and securities;

(*i*) invest in securities for any amount, and to mature at any time, on behalf of staff funds and superannuation funds and other internal funds of the Bank;

(*j*) without prejudice to the objects as provided in section 4, and with the approval of the Minister, subscribe to, hold and sell shares of any corporation set up with the approval of or under the authority of the Government for the purpose of facilitating economic development:

Provided that the total value, held by the Bank, of such shares shall not at any time exceed twenty-five per cent of the aggregate amount of the capital and General Reserve Fund of the Bank;

(*k*) purchase, sell and discount securities of any corporation or company primarily for the purpose of promoting capital market development;

(*l*) act as intermediary or agent between foreign lending institutions, organizations or governments and borrowing entities in Malawi;

(*m*) purchase and sell foreign currencies and purchase, sell, discount foreign bills of exchange and foreign treasury bills maturing within one hundred and eighty days;

(*n*) purchase and sell Government and Government guaranteed securities denominated in convertible currency of any country and securities denominated in convertible currencies issued by international financial institutions of which Malawi is a member;

(*o*) on behalf of Malawi, make payments to, and receive moneys from, the International Monetary Fund and issue, purchase and sell any securities, expressed in Malawi currency or external currency and whether or not maturing at a fixed date, occasioned by, or arising from, the membership of Malawi in the International Monetary Fund and the participation of Malawi in the Special Drawing Rights Account thereof;

(*p*) accept from customers for custody securities and other articles of value;

(*q*) undertake on behalf of customers and correspondents, the purchase, sale, collection and payment of securities;

(*r*) make arrangements or enter into agreements, subject to the consent of the Minister, with any financial institution in a

country outside Malawi, to borrow, on such terms and conditions as it may deem fit, any convertible currency; and

(*s*) issue promissory notes and other securities as it deems fit for open market operations; and

(*t*) purchase and sell on the secondary market Government securities maturing in no more than twenty-five years which have been publicly offered for sale or form part of an issue.

Prohibited activities

27. The Bank shall not—

(*a*) pay interim dividends to Government;

(*b*) engage in trade activities or otherwise have a direct interest in any commercial, agricultural, industrial or any other undertaking, except such interests as the Bank may in any way acquire in the course of the satisfaction of debts due to it, and provided that all such interests so acquired shall be disposed of at the earliest suitable moment;

(*c*) save as provided for in section 26 (*h*), purchase the shares of any corporation or company, including the shares of any bank, or grant loans upon the security of any such shares;

(*d*) subject to sections 39 and 45, grant unsecured advances or advances secured otherwise than as laid down under those sections:

Provided that in the event of any debts due to the Bank becoming, in the opinion of the Bank, endangered, the Bank may secure such debts on any real or other property of the debtor and may acquire such property, which shall be sold at the earliest suitable moment;

(*e*) purchase, acquire or lease real property except in accordance with the proviso to paragraph (*c*) and except so far as the Bank shall consider necessary or expedient for the provision, or future provision, of premises for the conduct of its business, the residence or amenities of staff or other similar requirements incidental to the performance of its functions under the terms to this Act;

(*f*) draw or accept bills payable otherwise than on demand;

(*g*) allow the renewal or substitution of maturing bills of exchange purchased, discounted or rediscounted by or pledged with the Bank, save in exceptional circumstances with the explicit approval of the Board;

(*h*) pay interest on customers balances except as may be determined by the Board;

(*i*) accept for discount, or as security for an advance made by

the Bank, bills or notes signed by members of the Board or by the Bank's officials or other staff, except such bills and notes as are signed by a member in his official capacity;

(*j*) purchase, directly or indirectly, Government debt securities on the primary market including the exchange of Government securities the Bank holds for other Government securities; and

(*k*) sell Government securities to the Government at below market prices.

Division III – Monetary Functions

Monetary Policy Committe

28.—(1) There shall be a Monetary Policy Committee, consisting of the Governor, the Deputy Governors and such other members, not being Government representatives, as the Governor may appoint.

(2) The Monetary Policy Committee shall serve as an advisory body to the Governor and Deputy Governors who shall take the decision.

Monetary functions

29. In pursuance of its monetary policy, the Bank shall influence the flow of money and credit and may make regulations with respect to the level of interest rates and foreign exchange rates.

Credit operations

30. For the purpose of influencing the flow of money and credit, the Bank may, in accordance with such operational procedure, if any, as the Bank may lay down, from time to time, engage in the following credit operations—

(*a*) rediscount of domestic trade bills and bank drafts resulting from *bona fide* commercial transactions;

(*b*) rediscount of domestic trade bills and bank drafts drawn for financing the transportation, marketing or processing of agricultural produce and minerals;

(*c*) rediscount of treasury bills, forming part of a public Government issue and maturing in ninety-one (91) days.

Rediscount rate

31. The Bank shall determine its rediscount and other rates which shall be made public by displaying such rates at its premises.

Credit ceilings

32. The Bank may prescribe credit ceiling for banks and financial institutions aimed at limiting the availability of credit in the economy.

Open market operations

33. The Bank may undertake open market operations, guaranteed by adequate collateral, in order to regulate the liquidity in the economy and as part of its monetary policy implementation through

the use of—

(*a*) bills of exchange;

(*b*) promissory notes;

(*c*) foreign currency;

(*d*) Treasury Bills and Government securities;

(*e*) securities issued by the Bank;

(*f*) any other securities as may be approved by the Board, from time to time.

Use of instruments

34. The Bank may conduct its open market operations through outright sale, collateralized lending and purchase or repurchase agreements or other methods.

Reserve requirements

35.—(1) The Bank may require banks to hold a specific portion expressed as a percentage of the liabilities arising from demand and savings deposits, as well as from short and medium-term borrowings, except borrowings from other banks, subject to reserve requirements, as deposits with the Bank.

(2) The percentage for the purposes of subsection (l), shall be set, from time to time, by the Bank.

(3) The Bank may also require financial institutions to maintain deposits as reserves with it.

Cash rserves

36.—(1) The Bank may require banks to maintain a prudential cash reserve as a deposit with it and such deposit may not exceed five per cent of demand liabilities.

(2) The Bank may also require financial institutions to maintain minimum cash reserves.

Interest to financial institutions

37. Deposits under sections 35 and 36 of this Act shall not carry any interest except as the Bank shall, in consultation with the Minister, otherwise decide, and banks and such decisions shall be an integral part of the Bank's monetary Policy.

Division IV – Relations with Government

Banker, fiscal agent and advisor to Government

38. The Bank shall act as a banker, fiscal agent and adviser to the Government:

Provided that the Government may maintain accounts in Malawi with other Banks, and use their services in such cases and on such conditions as may be agreed upon between the Minister and the Bank.

Short-term advances to Government

39.—(1) The Bank may only make short-term advances to Government in respect of temporary shortfalls in budget revenues where the following conditions are strictly complied with—

(*a*) the total amount of advances, including any overdrafts, outstanding at any time made by the Bank under this section may not exceed ten per cent of the average inflation adjusted annual domestic revenue of the Government for the past three financial years;

(*b*) such advances will mature and will have to be reimbursed in cash at the latest by the end of the financial year in which they have been made;

(*c*) where any such advance remains unpaid after the due date, the Bank shall not make further advances in any subsequent financial year unless the amounts due in respect of outstanding advances have been repaid; and

(*d*) the interest rates on such loans shall be based on the Bank's key lending rate.

(2) For purposes of this section, the annual domestic revenue of the Government shall be the actual revenue derived from sources within Malawi as determined in the budget for the Government's relevant financial year.

Issue and management of Government securities

40. The Bank shall be entrusted with the issue and management of the Government securities issued in Malawi upon such terms and conditions as may be agreed between the Minister and the Bank.

Agent of Government

41. The Bank may generally act as agent of the Government—

(*a*) where it can do so appropriately and consistency with this Act and with its duties and functions as a central bank; and

(*b*) on such terms and conditions as may be agreed upon between the Minister and the Bank.

Government to consult the Bank on Government loans

42. The Minister shall, when contracting any external debt on behalf of the Government, consult the Bank on the terms and conditions of the debt relating to interest, fees and maturity.

Division V – Relations with other Financial Institutions

Banker to other banks

43. The Bank may act as banker to other financial institutions in Malawi.

Clearing systems

44. The Bank may promote money transfer and systems and provide facilities thereof.

Lender of last resort to financial institutions

45.—(1) The Bank may grant advances to financial institutions that have liquidity problems but are solvent, on a temporary basis:

Provided that such temporary financing shall be granted at least at market interest rates and the recipient financial institutions have provided sufficient collateral deemed by the Board to be adequate for periods not exceeding three months.

(2) Notwithstanding subsection (1), the Governor may, with the approval of the Minister and for the purpose of maintaining national financial stability, grant advances to financial institutions whose solvency is in doubt, on such terms and conditions to be determined by the Bank, and subject to the Government providing a prior legally binding guarantee to the Bank to limit any negative impact of such lending on the Bank's financial position.

Cooperation with financial institutions

46. The Bank shall promote close cooperation with financial institutions in Malawi aimed at—

(*a*) maintaining and furthering satisfactory banking services for the public;

(*b*) ensuring high standards of conduct and management throughout the financial system: and

(*c*) furthering such policies which are in the national interest and which are not inconsistent with this Act.

PART V—LEGAL TENDER

Unit of Malawi currency

47. The unit of currency of Malawi shall be the Kwacha which shall be divided into one hundred Tambala.

Sole right to issue legal tender

48. The Bank shall have the sole right of issuing bank notes and coins throughout Malawi and neither the Government, nor any other person shall issue any notes and coins which are likely to pass as legal tender.

Provisions for issue of Malawi currency

49. The Bank shall—

(*a*) arrange for the printing of notes and minting of coins;

(*b*) issue, reissue and exchange notes and coins at the Bank's offices and at such agencies and banks as the Bank may, from time to time, establish or appoint in Malawi and the establishment or appointment of an agency or a bank shall be on such terms and conditions as may be agreed upon between the Bank and such agency or bank; and

(*c*) arrange for the safe custody of unissued stocks of currency and for the preparation, safe custody and destruction of plates and paper for the printing of notes and dies for the minting of coins.

Denomination, description and form of notes and coins

50. Notes and coins issued by the Bank shall be—

(*a*) in denominations or fractions thereof;

(*b*) of forms and designs bearing such devices; and

(*c*) of standard weight and composition, and of an amount of remedy and variation,

as shall be approved by the Minister on the recommendation of the Bank.

Withdrawal

51. The Bank shall, in consultation with the Minister, have the power to call in any of its notes and coins on giving of a notice of not less than three months in the *Gazette* and notes and coins shall cease to be legal tender on the expiry of the period for exchange announced at the time of such recall.

Lost and damaged currency

52. The Bank shall not be required to replace destroyed and mutilated currency, but may do so at its absolute discretion:

Provided that the bank may grant powers to banks to replace destroyed or mutilated currency and to seize suspected counterfeit currency.

Exemption from stamp duty

53. The Bank shall not be liable to the payment of any stamp duties or other taxes in respect of its notes issued as currency.

Offences relating to bank notes and coins

54.—(1) For the purpose of this section, "note" or "coin" means a note or coin of the Bank, or any note or coin which has at any time been legal tender in Malawi including any other note or coin, by whatever name called, which is legal tender in the country in which it was issued.

(2) Any person who—

(a) without the authority of the Bank, engraves or makes upon any material whatsoever any words, figures, letters, marks, lines or devices, the print of which resembles in whole or in part any words, figures, marks, lines or devices peculiar to and used in or upon any note;

(*b*) without the authority of the Bank, uses prior, knowing that it is to be used, for an unlawful purpose, has in his possession any material whatsoever upon which has been engraved or made any such words, figures, letters, marks, lines or devices as are mentioned in paragraph (*a*); or

(*c*) willfully defaces, soils or damages any note or writes or places any drawing thereon or attaches thereto anything in the nature of an advertisement, or who uses such a note or part of such a note or any device resembling such a note or part of such a note as part of an advertisement without the authority of the Bank,

commits an offence and shall be liable, upon conviction, to—

(i) in the case of an offence referred to in paragraph (*a*) or (*b*), a fine of fifteen million Kwacha (K15,000,000) and to imprisonment for seven (7) years; and

(ii) in the case of an offence referred to in paragraph (*c*), a fine of five million Kwacha (K5,000,000).

(2) Any person who melts down, breaks up, defaces by stamping thereon any name, word or mark, or uses otherwise than as currency any coin current for the time being in Malawi commits an offence and shall be liable, upon conviction, to a fine of five million Kwacha (K5,000,000) and to imprisonment for three (3) years.

PART VI—FOREIGN ASSETS

International value of Malawi currency

55. The international value of the Malawi currency shall be determined in accordance with the system designed by the Bank in consultation with the Minister, considering Malawi's general economic situation and its competitive position, with a view to ensuring a viable balance of payments position and sustainable economic growth.

Foreign assets and reserves

56.—(1) The Bank shall hold and manage the official international assets of Malawi and maintain foreign exchange reserves at a level which is, in the opinion of the Bank, adequate for Malawi's international transactions.

(2) The foreign assets shall consist of any or all of the following—

(*a*) gold;

(*b*) foreign exchange in the form of—

(i) deposits with central, correspondent and other banks abroad;

(ii) documents and instruments customarily used for the making of payments or transfers in international transactions; and

(iii) notes and coins;

(*c*) treasury bills issued by the government of any country whose currency is convertible currency;

(*d*) securities issued by the government of any country whose currency is convertible currency;

(*e*) claims on public international financial institutions, including—

(i) Special Drawing Rights held in the account of Malawi in the International Monetary Fund; and

(ii) the reserve tranche position of Malawi in the International Monetary Fund;

(*f*) any readily available international drawing facility; and

(*g*) other freely convertible foreign assets.

(3) The Bank shall hold the official international reserves in any currency or instrument that is approved by the Board for purposes of giving effect to the objects of the Bank, carrying out its functions under this Act and maintaining public confidence.

(4) The Bank shall be the sole depository of official international reserves, and the Bank may designate agents with whom the reserves may be held.

(5) The Bank shall promulgate policies consistent with international best practices governing the vetting of agents.

Trade in foreign currency

57. Unless otherwise prohibited by any law relating to management of foreign exchange, the Bank may—

(*a*) buy and sell Malawi currency against any convertible currency; and

(*b*) at its discretion, buy and sell currency against any currencies eligible for inclusion in the foreign exchange reserves specified in section 57.

Foreign exchange management

58. The Bank shall excise such functions as are necessary in the administration of any law relating to the management of foreign exchange transactions in accordance with such law.

PART VII —ACCOUNTS AND STATEMENTS

Annual accounts

59. The financial year of the Bank shall begin on the 1st day of January and end on the 31st day of December.

Audit

60.—(1)The accounts of the Bank shall be kept in accordance with the international accounting practices relevant to central banking.

(2) The accounts of the Bank shall be audited in accordance with the International Standards on Auditing, or any internationally applicable auditing standards, by internationally recognized public auditors appointed annually by the Board.

(3) Without prejudice to subsections (1) and (2), the Minister may, at any time, request the Auditor General to make an examination and submit a report on, the accounts relating to the issue, reissue, exchange and withdrawal of notes and coins by the Bank or, in what the Minister may consider to be exceptional circumstance, the accounts of the Bank as a whole and the Auditor General shall do so accordingly and the Bank shall provide all necessary and proper facilities therefor.

(4) Any such examinations shall be limited to the operational efficiency of the management of the Bank.

Establishment of the internal audit department

61.—(1) There shall be a department of the Bank responsible for internal audit.

(2) The internal audit department shall have an independent management function, involving a continuous and critical appraisal of the functioning of the Bank with a view to strengthening the overall governance structure, risk management, and internal control systems and processes of the Bank.

(3) The internal audit department shall carry out its functions in compliance with International Standards for the Professional Practice of Internal Auditing or any other internationally recognized internal auditing standards.

Accounts, annual reports and publication thereof

62.—(1) The Bank shall, within four months from the close of each financial year of the Bank—

(*a*) submit to the Minister its annual report containing the annual accounts and information on the operations of the Bank, the state of the economy and the conduct of monetary policy; and

(*b*) publish its annual report.

(2) The Minister shall within four months after the close of each financial year of the Bank—

(*a*) cause a copy of the annual accounts and the report to be laid before the National Assembly; and

(*b*) cause a copy of the annual accounts to be published in the *Gazette* and in at least two newspapers of national circulation.

(3) The Bank shall, as soon as possible after the last working day of each month, prepare and publish a return of its assets and liabilities as at the close of business on that day and a copy of the return shall be submitted to the Minister, who shall cause it to be published in the *Gazette* and in such other publications of wide circulation as the Minister may decide.

Determination of net results of the Bank

63. The net financial results of the Bank for each financial year shall be determined by the Bank after meeting all current expenditure for that year and making such provision as it thinks fit for bad and doubtful debts, depreciation assets, pensions, gratuities or other benefits usually provided by bankers for their staff.

General Reserve Fund and appropriation of profits

64.— (1) The Bank shall establish a General Reserve Fund to which allocations shall be made in accordance with this section.

(2) The Bank shall ensure that its General Reserve Fund, has a minimum balance of not less than ten percent of the Bank's monetary liabilities.

(3) The profit of the Bank shall be credited to the General Reserve Fund until it reaches ten per cent of the amount of the Bank's monetary liabilities and thereafter any profit shall be distributed to the Government:

Provided that in the event of outstanding advances as provided for in section 439, or promissory notes issued by the Government to cover losses from currency revaluations and/or fluctuations, the net profit shall be used to repay such outstanding advances, or redeem the amounts of the promissory notes.

(4) In the event of a loss incurred by the Bank, the loss shall be deducted from the General Reserve Fund.

(5) With the approval of the Minister, further allocations may be made from time to time to the General Reserve Fund.

(6) Results from any currency revaluation or fluctuation of the Malawi currency shall, firstly be recognized in the Bank's profit and loss account and at the end of each financial year, be posted directly into a special account.

(7) Unrealized gains from currency fluctuation or revaluation shall not be distributed, whilst realized gains may only be distributed under special circumstances specifically approved by the Board.

(8) Any losses arising from currency fluctuation or revaluation shall be deducted from the special account, and if the special account balance is exhausted, shall be covered by promissory notes of the Government on such terms and conditions as shall be agreed upon between the Minister and the Bank.

(9) Special reserves will be created to cater for accounting valuations or estimates for financial reporting purposes and these reserves shall not in any way be distributed to Government.

(10) The Bank shall not pay interim dividends to Government under any circumstances.

PART VIII —MISCELLANEOUS

Rules, directives, etc

65.—(1) The Board may make rules, directives or guidelines for the administration and management of the Bank.

(2) Any rules, directives or guidelines issued by the Bank shall be authenticated by the Bank's seal and shall take effect on publication in the *Gazette*.

Cap. 1:01

(3) Notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, the Bank may, in the rules, directive or guidelines made under this Act, prescribe a fine of up to one hundred million Kwacha (K100,000,000) and imprisonment for twenty-five years, for an offence committed in contravention of the rules, directives or guidelines.

Regulations

66.—(1) The Minister may, by notice published in the *Gazette*, on the recommendation of the Bank,—

(*a*) make regulations for the better carrying out of the provisions of this Act; and

(*b*) amend any Schedule to this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may prescribe any matter which under this Act is required or permitted to be prescribed.

Cap. 1:01

(3) Notwithstanding the provisions of section 21 (*e*) of the General Interpretation Act, the Minister may, in regulations made under this Act, prescribe a fine of up to one hundred million Kwacha (K100,000,000) and imprisonment for fifty (50) years, for an offence committed in contravention of the regulations.

No taxation of profits

67. The profits of the Bank shall not be liable to income or other taxes in Malawi.

Protection of Bank assets

68. Assets of the Bank shall be protected and preserved at all times and shall not be a subject of attachment, freezing, garnishment or execution of any kind.

Prohibited banking names

69. Save with the written consent of the Minister and on the recommendation of the Bank, a bank shall not be registered under the provisions of any legislation by a name which includes any of the following words—

(*a*) Central;

(*b*) Malawi;

(*c*) National;

(*d*) Reserve;

(*e*) State; or

(*f*) an equivalent of the above words in any other language or their derivatives.

Confidentiality

70.—(1) In this section—

"individual information" means information relating to the affairs of the Bank or another person, including a financial institution;

"officer" means a person who is or has been—

(*a*) a director or staff of the Bank;

(*b*) person engaged by the Bank to provide services to it; or

(*c*) an examiner or investigator appointed under the Financial Services Act; and Cap. 44:05

"protected information" means each of the following—

(*a*) individual information; or

(*b*) information that would have a commercial value if disclosed otherwise than in accordance with this Act or any other financial services law.

(2) An officer shall not disclose to any person in any form, any protected information that the officer has acquired in the performance of his duties, functions or powers as an officer.

(3) Subsection (2) shall not prevent—

(*a*) disclosure of a summary or collection of information of a kind referred to in subsection (1) (*b*) of the definition of the words "protected information" that is prepared so that information relating to any particular person cannot be found out from it;

(*b*) disclosure of the name of a licensed financial institution;

(*c*) disclosure of the addresses at which licensed financial institutions carry on business;

(*d*) disclosure of any other information reasonably necessary to enable members of the public to contact financial institution; or

(*e*) disclosure of information to the commissioner of taxes.

(4) It shall be a defence to prosecution for an offence under subsection (2) that—

(*a*) the disclosure was for the purposes and in the course of

the exercise of the officer's duties or the performance of the officer's functions under a written law;

(*b*) the disclosure was made to or with the consent of the person concerned;

(*c*) the disclosure was made in accordance with a lawful requirement of a court of competent jurisdiction; or

(*d*) the disclosure was authorized or required by a written law or its subsidiary legislation.

(5) An officer who discloses information specified in subsection (2) may, at the time of the disclosure, impose conditions to be complied with in relation to the information.

(6) In addition to any disciplinary action that may be taken, any person who contravenes this section or fails to comply with a condition imposed under subsection (5) shall be guilty of an offence and shall, on conviction, be liable to a fine of fifteen million Kwacha (K15,000,000) and to imprisonment for seven (7) years.

Role in development

71. Without prejudice to its objects set out in this Act, the Bank shall promote the development of the financial sector, facilitate foreign and domestic payments and payment systems in Malawi.

Discharge of duties and powers

72. Subject to the express provision of this Act, the Bank may do all such things as are incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act.

Transition

73. Notwithstanding the term of office of the Governor or Deputy Governor prescribed in this Act, a person serving as Governor or Deputy Governor at the commencement of this Act shall continue to serve in accordance with the instrument of his appointment then subsisting and shall be eligible for reappointment under this Act.

Repeal and savings Cap. 44:02

74.—(1) The Reserve Bank of Malawi Act is hereby repeapled.

(2) Any subsidiary legislation made under the Reserve Bank of Malawi Act repealed by subsection (1) in force immediately before the commencement of this Act–

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

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

FIRST SCHEDULE (s.24)

CODE OF CONDUCT FOR THE DIRECTORS AND STAFF OF THE BANK

1. *Principal Standards of Conduct*

(1) The directors and staff of the Bank shall—

(*a*) be honest;

(*b*) be objective;

(*c*) be independent and impartial in the execution of their responsibilities;

(*d*) subscribe to the highest standards of professional ethics, diligence, good faith and integrity.

(2) The directors and staff of the Bank do or omit to do any act, which, in any way, may impair the Bank's capacity to carry out its duties, or compromise its public standing and reputation.

2. *Conflict of Interest*

(1) In the performance of their duties, the directors and staff shall avoid any situation that may give rise to a conflict of interest.

(2) A discrepancy shall not be allowed to exist between official responsibilities of a director or staff and any kind of personal or external interests which could jeopardize his impartiality and integrity in the performance of responsibilities.

(3) The directors and staff shall not accept any gifts or favours that may have the appearance of influencing the performance of any of their functions or duties.

3. *Declaration of Interests*

In order to assist in the fulfilment of obligations in relation to conflicts of interests, directors and staff shall declare any situations where they have private or personal interest which may influence or appear to influence the impartial and objective performance of their duties.

4. *Immunity from Personal Liability*

Directors or staff shall not be personally liable for any civil or criminal proceedings, arrest, imprisonment or damages for anything done in good faith in the course of the discharge of their duties and powers.

5. *Compliance*

(1) The directors and staff shall strictly comply with this Code.

(2) Deviation from the standards of this Code shall be deemed to be misconduct and shall be dealt with as misconduct, and the director or staff shall be disciplined in accordance with the provisions of the Act.

(3) Any investigation into a suspected or possible contravention of this Code shall be kept confidential.

6. *Independence*

Directors and staff shall be independent from any political influence in the performance of their duties and functions under this Act, and shall not act as delegates or representatives of any interest groups or industry in the discharge of their duties.

7. *Confidentiality*

(1) Directors and staff are required to maintain strict confidentiality of the information acquired from the Bank in the performance of their duties and shall not divulge any such confidential information.

(2) Directors or staff shall not use such confidential information for purposes of carrying out direct or indirect private financial transactions.

8. *Survival of confidentiality obligation*

In order to avoid any situations of conflict of interest, the obligation to maintain confidentiality shall survive the appointment to an office or employment with the Bank and continues after they cease to be directors or staff of the Bank.

SECOND SCHEDULE (s.26)

ADDITIONAL POWERS AND DUTIES OF THE BOARD

The Board shall—

(*a*) monitor implementation of monetary policy in order to ensure compliancewith this Act;

(*b*) approve all determinations, guidelines and instructions of general application that are to be issued by the Bank;

(*c*) approve all annual reports and recommendations that the Bank is required to make to the Minister or to Parliament;

(*d*) establish and monitor the implementation of financial sector development policy;

(*e*) establish appropriate supervisory and regulatory structures and regimes for all sectors of the financial services industry in order to meet the objectives of the financial services law;

(*f*) establish and monitor the implementation of financial sector stability and soundness policies;

(*g*) approve policies and directives relating to the supervision and regulation of the financial sector;

(*h*) determine the policies applicable to the administration and operations of the Bank;

(*i*) determine the organization structure of the Bank;

(*j*) establish and close subsidiaries, branch offices and agencies of the Bank;

(*k*) determine the terms and conditions of service of directors;

(*l*) approve the terms and conditions of employment of the Bank's agents and correspondents;

(*m*) propose increases in the authorized capital of the Bank, to establish special reserve on the books of the Bank, to determine the net income of the Bank and to determine what amount of such net income shall be transferred to any reserve;

(*n*) approve the Bank's budget;

(*o*) determine the accounting policies of the Bank and to approve the annual reports and financial statements of the Bank;

(*p*) determine and ensure the establishment of an effective risk management structure; and

(*q*) ensure good corporate governance of the Bank.

Passed in Parliament this tenth day of December, two thousand and eighteen.

FIONA KALEMBA
Clerk of Parliament