

Malawi

Property and Businesses (Presumptions of Ownership) Act Chapter 46:05

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Property and Businesses (Presumptions of Ownership) Act
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Property and Businesses (Presumptions of Ownership) Act Chapter 46:05

Assented to on 22 April 1974

Commenced on 26 April 1974

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Forth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to make provision for certain presumptions of ownership of property or businesses for the purpose of the prevention of the avoidance of the provisions of certain laws relating to forfeiture and to the licensing and registration of ownership and businesses and to make provision for matters arising therefrom and incidental thereto

1. Short title

This Act may be cited as the Property and Businesses (Presumptions of Ownership) Act.

2. Interpretation

In this Act save where the context otherwise requires—

“**appropriate Minister**” means the Minister responsible for the administration of the Act under which the relevant order, licence or registration is made, issued or effected;

“**citizen**” means any person who is a citizen of the Republic of Malawi;

“**non-citizen**” means any person who is not a citizen of the Republic of Malawi.

3. Presumptions of ownership of property and businesses by non-citizens

Where, during the life time of any non-citizen—

- (a) any real property or any interest therein is, by any deed or other instrument of title, or by any lease or tenancy agreement, expressed to be owned or held under the terms thereof by, or where any such ownership or interest is, under the provisions of any written law, registered in the name of, any citizen who is—
 - (i) the spouse or child of such non-citizen; or
 - (ii) under any arrangement or agreement written or unwritten, holding title or possession of such land or interest, as the case may be, solely for and on behalf of such non-citizen; or
 - (iii) part owner only of such land or interest, the other part being in the disclosed or undisclosed ownership of such non-citizen; or
- (b) any trade, business or occupation is being carried on in Malawi in the name of any citizen who is—
 - (i) the spouse or child of such non-citizen; or
 - (ii) under any arrangement or agreement, written or unwritten, carrying on such trade, business or occupation, as the case may be, solely for and on behalf of such non-citizen; or

- (iii) in partnership with such non-citizen whether disclosed or undisclosed, in any such trade, business or occupation; or
- (c) any bank account, thing in action, chattel or other personal property of any kind is credited in favour of, held, or possessed as owner by, or in the name of, any citizen who is—
- (i) the spouse or child of such non-citizen; or
 - (ii) under any arrangement or agreement, written or unwritten, controlling, holding, or possessing such bank account, thing in action, chattel or other personal property as the case may be solely for and on behalf of such non-citizen; or
 - (iii) part owner only of such bank account, thing in action, chattel, or other personal property, the other part being in the disclosed or undisclosed ownership of such non-citizen, such real property, or interest therein, or such trade, business or occupation, or such bank account, thing in action, chattel or other personal property shall, for the purposes of, and for the giving effect to any Order made under the Forfeiture Act declaring such non-citizen to be subject to forfeiture, be presumed to be in the sole ownership or possession of the said non-citizen; and where such, trade, business or occupation is, under any written law, required to be licensed or registered, and is so licensed or registered in the name of such citizen, and such non-citizen commits any act or omission which, if he were the person so licensed or registered, would, under such law, or any other written law, constitute lawful grounds for the cancellation of such licence or registration, or which would cause the appropriate Minister to exercise the powers of cancellation conferred by section 62 of the General Interpretation Act, it shall be presumed that the said trade, business or occupation, for the purposes of cancelling such licence or registration, was at all times, and is, in the sole ownership of the said non-citizen, and the licence or registration, as the case may be, issued or entered in respect of such trade, business or occupation may be cancelled as if the said non-citizen were the person in whose name such licence or registration were effected; and if such trade, business or occupation be subject to the Businesses Licensing Act and licensed thereunder in the name of the said citizen, the said business, trade or occupation shall be presumed to be in the sole ownership of the said non-citizen, and the said non-citizen shall be presumed to be the licensee under the said Act for the purposes of the application and implementation of the provisions of Part VI of the said Businesses Licensing Act:

Provided, however, that any presumption imposed and enacted by this section may be rebutted by the citizen proving to the satisfaction of the appropriate Minister that his title to or possession of such real property, or interest therein, or to such trade, business or occupation, or to any share or partnership therein, or to such bank account, thing in action, chattel or other personal property was acquired by him legitimately and in good faith or validly for sufficient and adequate valuable consideration, and such presumption shall stand rebutted solely to the extent proved by such evidence.

[Cap. 14:06]

[Cap. 1:01]

[Cap. 46:01]