

Malawi

Export Processing Zones Act

Chapter 39:06

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1995/11/eng@2014-12-31

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PDF created on 17 March 2023 at 08:15.

Collection last checked for updates: 31 December 2014.

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Malawi

Export Processing Zones Act

Chapter 39:06

Commenced on 25 August 1995

[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 provide for the establishment, operation and administration of export processing zones, and for matters ancillary thereto or connected therewith

Part I – Preliminary

1. Short title

This Act may be cited as the Export Processing Zones Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**adequate security**” means security which has been accepted as adequate by the Controller pursuant to [section 16](#);

“**bonded factory**” means a factory situated in an export processing zone;

“**certificate**” means an export enterprise certificate issued under [section 10](#);

“**Commissioner-General**” means the Commissioner-General of the Malawi Revenue Authority appointed under section 17 (1) of the Malawi Revenue Authority Act;

[Cap. 39:07]

“**Committee**” means the Export Processing Zones Appraisal Committee established under [section 3](#);

“**Customs area**” has the same meaning as ascribed to that term in the Customs and Excise Act;

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[Cap. 42:01]

“**duty**” has the same meaning as in section 2 of the Customs and Excise Act;

“**enforcement officer**” means a customs and excise officer, or an officer designated in writing by the Minister as an enforcement officer for the purposes of this Act pursuant to [section 19](#);

“**export**” has the same meaning as in section 2 of the Customs and Excise Act;

“**export enterprise**” means a company in respect of which a certificate is in force;

“**export processing zone**” means any area or building declared to be an export processing zone under [section 8](#);

“**export product**” means a product or produce declared to be an export product under [section 9](#);

“**import**” has the same meaning as in section 2 of the Customs and Excise Act;

“**manufacture**” has the same meaning as in section 2 of the Customs and Excise Act;

“**production day**” means the day on which an export enterprise commences, or is deemed to commence, its operations;

“**scheduled equipment**” means the capital equipment, machinery and spare parts required by an export enterprise for equipping and operating a bonded factory;

“**scheduled materials**” means the materials, components, substances, matters or other things required by an export enterprise for the manufacture of export products.

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Part II – Establishment of Export Processing Zones Appraisal Committee

3. Establishment of the Export Processing Zones Appraisal Committee

- (1) There is hereby established a committee to be known as the Export Processing Zones Appraisal Committee (in this Act otherwise known as the “Committee”) consisting of—
 - (a) the Secretary for Industry and Trade who shall be designated by the Minister as Chairperson;
 - (b) the following ex-official members—
 - (i) the Secretary to the Treasury, or his designated representative;
 - (ii) the Secretary for Economic Planning and Development, or his designated representative;
 - (iii) the Secretary for Agriculture and Food Security, or his designated representative;
 - (iv) the Secretary for Labour, or his designated representative;
 - (v) the Commissioner-General, or his designated representative; and
 - (vi) the Chief Immigration Officer, or his designated representative;
 - (c) the Chief Executive Officer of the Malawi Investment and Trade Centre;
 - (d) one member representing the private sector in Malawi nominated by Malawi Confederation of Chambers of Commerce and Industry and appointed by the Minister; and
 - (e) one member representing the Reserve Bank of Malawi, nominated by the Governor and appointed by the Minister.
- (2) A representative of an *ex officio* member referred to in subsection 1 (b) shall be designated by, or on behalf of the *ex officio* member, by a notice in writing to the Chairman of the Committee, and when so designated such representative shall not attend to the business of the Committee by representation.
- (3) The Committee may, in its discretion, at any time and for any period invite any person, and the Minister may in like manner nominate any person in the public service, to attend any meeting of the Committee and to participate in the deliberations of the Committee, but such person or officer shall not be entitled to vote at that meeting.

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4. Tenure of office of members of the Committee

A member of the Committee, other than an *ex officio* member—

- (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's notice in writing to the Minister.

5. Allowances of members of the Committee

A member of the Committee, other than an *ex officio* member, shall be paid such allowances as the Minister may determine.

6. Meetings of the Committee

- (1) The Committee shall hold its ordinary meetings at least six times a year.
- (2) An extraordinary meeting of the Committee—
 - (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 Committee, and specifying the purpose for which an extraordinary meeting of the Committee is to be convened.
- (3) At any meeting of the Committee—
 - (a) the quorum necessary for the dispatch of business shall be formed by any six members;
 - (b) the Chairman, or in his absence the member elected by members present and forming the quorum, shall preside;
 - (c) the decision on any subject shall be that of the majority of 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;
 - (d) a member who is aware that he has a personal, proprietary or pecuniary interest in any matter which is to be or is being considered by the Committee shall declare the interest to the Chairman or other person presiding, and shall not be entitled to participate in the deliberations of the Committee or to vote on that matter; and
 - (e) a member who is unable to attend the meeting may submit to the Committee, in writing, his views on any matter before the Committee but shall not be entitled to have his vote registered on any matter considered at that meeting.

7. Functions of the Committee

- (1) The Committee shall be responsible for appraising and reviewing applications for the establishment and operation of export processing zones and the production or manufacture of export products, and making appropriate recommendations to the Minister.
- (2) In making recommendations to the Minister regarding any application, the Committee shall have regard to the following considerations—
 - (a) labour intensive activities of the project and its propensity to contribute to employment;
 - (b) use of advanced technology;

- (c) utilization of local raw materials;
- (d) export-oriented activities other than the production for export of tobacco, tea, coffee, and sugar;
- (e) the availability of sufficient warehouses for storage of raw materials and export products;
- (f) documentary evidence of export markets for the export products.

Part III – Declaration of export processing zones export products

8. Declarations of export processing zones

The Minister may, on the recommendation of the Committee, for the purpose of attracting, promoting or increasing the manufacture of export products or with the object of promoting economic development generally, by notice published in the *Gazette*, declare—

- (a) any area of land on which a factory has been or is being or is likely to be built;
- (b) any factory;
- (c) any area of land which immediately surrounds a factory or the plot on which a factory is being or is likely to be built,
to be an export processing zone.

9. Declaration of export products

Where, upon application by a company in the prescribed form, the Minister considers it expedient in the economic interest of Malawi so to do, he may, on the recommendation of the Committee, by notice published in the *Gazette*, declare—

- (a) any manufactured article, substance or other item intended for export, other than tobacco, tea, coffee or sugar; or
- (b) any service,
to be an export product.

10. Issuance of certificates

- (1) Where, upon application by a company which manufactures or provides, or proposes to manufacture or provide, an export product, the Minister, on the recommendation of the Committee, considers it expedient in light of such rules and regulations relating to exports as may be prescribed—
 - (a) upon payment of the prescribed fees, issue to that company an export enterprise certificate, subject to such terms and conditions as he thinks fit to impose; and
 - (b) by notice published in the *Gazette*, declare the company to be an export enterprise for so long as the certificate remains in force.
- (2) Every application made pursuant to subsection (1) shall be in the prescribed form and be accompanied by the prescribed fee.
- (3) Where an application has been made pursuant to subsection (1), the Minister shall communicate his decision within forty-five days from the date of receipt of the application.
- (4) A certificate shall be in the prescribed form and shall specify—

- (a) the production day of the export enterprise;
 - (b) the export product which the export enterprise is or will be manufacturing;
 - (c) the scheduled equipment required by the export enterprise for equipping and operating the enterprise;
 - (d) the scheduled materials required by the export enterprise for the manufacture of export products;
 - (e) that company export enterprise shall be domiciled in Malawi;
 - (f) such other term or condition as the Minister may deem appropriate.
- (5) A certificate shall be valid for a period of five years and may thereafter be renewed for successive periods of two years.

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11. Amendment of certificate

- (1) Subject to subsection (2), the Minister may, by notice in writing addressed to the export enterprise, at any time amend any certificate or any condition attached to a certificate.
- (2) No amendment shall be made to a certificate so as to place an export enterprise in a less favourable position than it was prior to the amendment of the certificate.
- (3) Where the Minister amends a certificate by substituting for the production day specified another earlier or later production day, this Act shall have effect in relation to that certificate as if the production day so specified had been originally specified.

12. Revocation of certificate

- (1) Where the Minister, on the recommendation of the Committee is satisfied that an export enterprise has contravened this Act or any condition attached to a certificate, he may, by notice in writing, require the export enterprise, within thirty days from the date of the service of the notice, to show cause why the certificate should not be revoked, and where the Minister, on the recommendation of the Committee is satisfied that having regard to all the circumstances the certificate should be revoked, he shall do so.
- (2) Where a certificate is revoked under subsection (1), the Minister shall specify the date from which the revocation shall become operative and this Act shall from that date cease to have effect in relation to the certificate so revoked.

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13. Register of certificates

Every certificate issued under this Act shall be recorded in a Register in the prescribed form.

Part IV – Restrictions on carrying on business in export processing zones

14. Restrictions on carrying on business in export processing zones

No person shall carry on, in an export processing zone, any trade, business or manufacturing, unless there is in relation to such trade, business or manufacturing, a certificate authorizing the carrying on of such trade, business or manufacturing.

15. Restriction on trading

No export enterprise shall carry on any trade or business other than that specified in its certificate.

Part IVA – Goods within export processing zones

15A. Goods deemed to be exported and imported into Malawi

Unless otherwise provided under this Act or under any other written law—

- (a) raw materials which are taken out from any part of the customs area and brought into the export processing zone shall be deemed to have been exported from Malawi and shall be paid for in freely convertible currency; and
- (b) goods which are brought out of an export processing zone and taken into any part of the customs area for use therein shall be deemed to be imported but shall be paid for in Malawi Kwacha.

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Part IVB – Benefits to export enterprises

15B. Benefits accruing to export enterprises

- (1) An export enterprise shall be entitled to such benefits as may be specified under —

- (a) the Taxation Act;
[Cap. 41:01]
- (b) the Customs and Excise Act;
[Cap. 42:01]
- (c) the Value Added Tax Act;
[Cap. 42:02]
- (d) the Exchange Control Act; or
[Cap. 45:01]
- (e) any other written law.

- (2) The following goods shall not be imported free of import duty and value added tax by an export enterprise—

- (a) a vehicle not used solely within an export processing zone and, in any case, a passenger car or a mini bus;
- (b) fuel for use in generators and boilers, in quantities and subject to such conditions as the Commissioner-General may, from time to time, determine; and
- (c) spare parts for motor vehicles, including tyres.

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15C. Restriction on quantities of export products to be sold locally

- (1) An export enterprise may sell an export product in Malawi, but the quantities of the products to be sold shall not exceed percentages prescribed under this Act or on a certificate issued under this Act.
- (2) Any sale effected pursuant to subsection (1) shall be subject to payment of the appropriate duty excise and tax.

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Part V – Duty**16. Duty relief**

- (1) Where an export enterprise imports or purchases any dutiable goods to be used in a bonded factory or export processing zone, no duty shall be paid on the goods if the goods are transported directly and forthwith to a bonded factory or export processing zone and placed there under such conditions as the Commissioner-General may impose.
- (2) The Commissioner-General may require an export enterprise to enter into a bond in the prescribed form, in such amount as he may determine, whereby the export enterprise undertakes to obtain, receive, keep, use or dispose of scheduled equipment or scheduled materials only in accordance with conditions specified in its certificate or this Act, or the Customs and Excise Act.

[Cap. 42:01]

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17. Removal of goods from a bonded factory

- (1) No scheduled equipment shall be removed from a bonded factory or an export processing zone, except with the written authorization of the Commissioner-General.
- (2) No scheduled materials or export product shall be removed from a bonded factory or an export processing zone except—
 - (a) for the purpose of being exported;
 - (b) for transfer to another bonded factory or export processing zone; with the permission and according to the directions of the Commissioner-General;
 - (c) for consumption in Malawi with the approval of the Minister and subject to the payment of the appropriate duty;
 - (d) for destruction in such manner as the Commissioner-General may direct.
- (3) Any person who, without lawful authority or reasonable excuse—
 - (a) removes any scheduled equipment, scheduled materials or export product from a bonded factory;
 - (b) is found in possession of any scheduled equipment, scheduled materials or export product outside a bonded factory or export processing zone, shall be guilty of an offence.

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18. Payment of duty

- (1) Where there is in any bonded factory a deficiency in the quantity of dutiable scheduled equipment or scheduled materials which ought to be found there, the export enterprise shall, without prejudice to any other proceedings under this Act or any other written law, be liable to pay to the Commissioner-General the duty leviable on the goods not satisfactorily accounted for.
- (2) Where the Commissioner-General is satisfied that the deficiency has been caused by reasonable wastage or unavoidable breakage, leakage or other accident, he may remit the whole or any part of the duty leviable on the goods found deficient.
- (3) The Commissioner-General shall, by notice in writing, require an export enterprise to pay any duty under this section and the duty shall be paid within thirty days of the issue of the notice.

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Part VI – Miscellaneous

19. Enforcement officers

- (1) The Minister may, by notice published in the *Gazette*, designate any public officer or class of public officers to be enforcement officers for the purposes of this Act.
- (2) Any enforcement officer may, at all reasonable and, if so required, on showing proof of his identity, enter any export processing zone or bonded factory for the purpose of ensuring that the provisions of this Act are being complied with.
- (3) Any enforcement officer may require an export enterprise or any person who is director, secretary or other officer of an export enterprise to furnish him with any information concerning the business or activities of the export enterprise.
- (4) Any person who wilfully obstructs or hinders an enforcement officer acting in the exercise of his functions under this section or, without reasonable excuse, fails or refuses to give to an enforcement officer any information required of him under this section shall be guilty of an offence.

20. Offences and penalties

Any person who—

- (a) in any application, declaration or statement made for the purposes of this Act, makes a statement which is false or misleading in any material particular;
 - (b) keeps any record or account relating to an export enterprise which is false or misleading; or
 - (c) otherwise contravenes any provision of this Act,
- shall be guilty of an offence and shall on conviction be liable to a fine or administrative penalty of the equivalent of ten per cent of the annual turnover of the business and to imprisonment for five years.

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21. Regulations

- (1) The Minister may after consultation with the Committee make rules for the proper establishment and administration of the export processing zones including—

- (a) the procedure for application, issuance, revocation or cancellation of an export processing zones certificate;
 - (b) prescribing the fees to be paid in respect of any matter or thing done under this Act or the Regulations;
 - (c) prescribing the forms to be used under this Act and the conditions to be complied with in applying for an export processing zones certificate;
 - (d) providing for the time frame within which specific obligation shall be carried out;
 - (e) the procedure for the imposition of a penalty by the Committee for breaches of the Act or any subsidiary legislation; and
 - (f) providing anything which, under this Act, may be prescribed.
- (2) Notwithstanding the provision of section 21 (e) of the General Interpretation Act, a person who commits an offence against any provision of subsidiary legislation made under subsection (1), shall be liable to a fine or penalty not exceeding K20,000,000 and to imprisonment not exceeding one year.

[Cap. 1:01]

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