

Malawi

Bretton Woods Agreement Act Chapter 40:02

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Bretton Woods Agreement Act
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Malawi

Bretton Woods Agreement Act

Chapter 40:02

Commenced on 19 February 1965

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

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for acceptance by Malawi of the Agreements for the International Monetary Fund and the International Bank for Reconstruction and Development and to provide for matters related thereto

1. Short title

This Act may be cited as the Bretton Woods Agreement Act.

2. Interpretation

(1) In this Act unless the context otherwise requires—

“**Bank**” means the International Bank for Reconstruction and Development;

“**Bank Agreement**” means the agreement for the establishment and operation of the Bank;

“**Fund**” means the International Monetary Fund;

“**Fund Agreement**” means the agreement for the establishment and operation of the Fund.

(2) For the purposes of sections 4, 5, 6 and the Schedule—

(a) “**Fund Agreement**” shall mean the Fund Agreement as read and construed with the amendments approved by the Board of Governors of the Fund in Resolution 23-5 of 31st May, 1968, and with the further amendments approved by the said Board of Governors in Resolution 29-10 of 30th April, 1976;

(b) The Special Drawing Rights Department established to implement the special drawing rights facility in accordance with the Fund Agreement shall be and be deemed to be part of the Fund.

[40 of 1968]

3. Acceptance of Agreement

The Minister, or such person as may be authorized by him in that behalf in writing, shall be empowered on behalf of the Government of Malawi—

(a) to sign the Articles of the Fund Agreement and the Articles of the Bank Agreement, respectively;

(b) to deposit with the Government of the United States of America instruments of acceptance of the Fund Agreement and of the Bank Agreement stating that the Government of Malawi accepts in accordance with its law the respective Agreements and the terms and conditions prescribed under the Resolution of the Board of Governors of the Fund relating to membership of Malawi in the Fund and under the Resolution of the Board of Governors of the Bank relating to membership of Malawi in the Bank as the terms upon which the Government of Malawi shall be admitted to membership of the Fund and of the Bank;

- (c) to accept the amendments to the Fund Agreement approved by the Board of Governors of the Fund in Resolution 23-5 of 31st May, 1968, and to execute and deposit with the Fund an instrument in which the Government of Malawi undertakes all of the obligations of a participant in the Special Drawing Account in accordance with its laws, and confirm that it has taken all steps necessary to enable Malawi to carry out all such obligations and to give effect to such amendments;
- (d) to accept the amendments to the Fund Agreement approved by the Governors of the Fund in Resolution 29-10 of 30th April, 1976, and to execute and deposit with the Fund an instrument in which the Government of Malawi undertakes all of the obligations of a participant in the Special Drawing Rights Department in accordance with its laws, and confirm that it has taken all steps necessary to enable Malawi to carry out all such obligations and to give effect to such amendments:
[8 of 1977]
- (e) to accept the Third Amendment to the Fund Agreement approved by the Board of Governors of the Fund in Resolution 45-3 of 28th June, 1990, and to execute and deposit with the Fund an instrument in which the Government of Malawi accepts the Third Amendment;
[12 of 1991]
- (f) to accept the Fourth Amendment to the Fund Agreement approved by the Board of Directors of the Fund in Resolution No. 52-4 on 23rd September, 1997, and to execute and deposit with the Fund an instrument in which the Government of Malawi accepts the Fourth Amendment;
[10 of 2002]
- (g) to accept the Voice and Participation Amendment to the Fund Agreement approved by the Board of Governors of the Fund in Resolution No. 63 (2) of 28th March, 2008, and to execute and deposit with the Fund an instrument in which the Government of Malawi accepts the Voice and Participation Amendment; and
[3 of 2010]
- (h) to accept the Investment Authority Amendment to the Fund Agreement approved by the Board of Governors of the Fund in Resolution No. 63 (3) of 5th May, 2008, and to execute and deposit with the Fund an instrument in which the Government of Malawi accepts the Investment Authority Amendment.
[3 of 2010]
- (i) to accept the amendment to the Fund Agreement contained in resolution No. 66-2 of 15th December 2010—Proposed Amendment on Reform of the Executive Board, and to execute and deposit with the Fund an instrument in which the Government of Malawi accepts the Proposed Amendment on Reform of the Executive Board.
[19 of 2012]
- [8 of 1977]*
- [10 of 2003]*

4. Financial and other provisions

- (1) Subject to [section 5](#), there shall be charged on and paid out of the Consolidated Fund without further appropriation than this Act—
- (a) all payments required to be made from time to time to the Fund under the Fund Agreement and the Resolution of the Board of Governors of the Fund relating to membership of Malawi in the Fund; and

- (b) all payments required to be made from time to time to the Bank under the Bank Agreement and the Resolution of the Board of Governors of the Bank relating to membership of Malawi in the Bank.
- (2) The Minister may, on behalf of the Government, create and issue to the Fund or the Bank such non-interest-bearing and non-negotiable notes or other obligations as are provided for by section 4 of Article III of the Fund Agreement and section 12 of Article V of the Bank Agreement, and, subject to [section 5](#), any payments in respect of any such notes or obligations so created and issued shall be charged on and paid out of the Consolidated Fund.
- (3) For the purpose of providing any sums required for making any payments under this section, the Minister may, on behalf of the Government, raise loans by the creation and issue of securities bearing such rates of interest and subject to such conditions as to repayment, redemption or otherwise as he may think fit and the principal and interest of such securities and the charges and expenses incurred in connexion with their issue shall be charged on and paid out of the Consolidated Fund:

Provided that in order to assure all payments resulting from the participation of Malawi in the Special Drawing Rights Department of the Fund the Minister may borrow from the public or from the Reserve Bank of Malawi an amount up to twice the net cumulative allocation of special drawing rights to Malawi, and the powers of the Minister to borrow and of the Reserve Bank of Malawi to lend for the purposes of this proviso shall not be subject to any general limitations which have been or may be imposed, whether by written law or by agreement, upon the powers of the Minister or the Government to borrow and of the Reserve Bank of Malawi to lend.

[40 of 1968]

[8 of 1977]

- (4) Subject to [section 5](#), any moneys received by the Government from the Fund or the Bank or raised under subsection (3) shall be paid into and form part of the Consolidated Fund and shall be available in any manner in which that Fund is available.
- (5) The provisions of the Fund Agreement and the Bank Agreement set out in the Schedule to this Act shall have the force of law in Malawi:

Provided that nothing in section 9 of Article IX of the Fund Agreement or in section 9 of Article VII of the Bank Agreement shall be construed as—

- (a) entitling the Fund or Bank to import goods free of customs duty without any restrictions on their subsequent sale in the country to which they were imported;
- (b) conferring on the Fund or the Bank any exemption from duties or taxes which form part of the price of goods sold; or
- (c) conferring on the Fund or the Bank any exemption from taxes or duties which are in fact no more than charges for services rendered.

[31 of 1974]

[8 of 1977]

5. Reserve Bank of Malawi authorized to act as depository

- (1) The Reserve Bank of Malawi shall become a depository of the Fund in application of section 2 of Article XIII of the Fund Agreement, and a depository of the Bank in application of section 11 of Article V of the Bank Agreement.
- (2) Special drawing rights and any proceeds from their use shall be kept in a special account in the Reserve Bank of Malawi, and that bank will be authorized, on behalf of Malawi, to acquire or dispose of special drawing rights and of any proceeds from their use and to make payments in or in respect of any acquisition of special drawing rights.

- (3) Any provisions of [section 4](#) to the contrary notwithstanding, the Reserve Bank of Malawi shall, on behalf of Malawi—
- (a) make all payments required to be made from time to time to the Fund under the Fund Agreement and the Resolution of the Board of Governors of the Fund relating to membership of Malawi in the Fund;
 - (b) make all payments due and payable to the Fund in respect of any non-interest-bearing and non-negotiable notes or other obligations created and issued, or hereafter created or issued, by the Minister under [section 4 \(2\)](#); and
 - (c) receive and account for any moneys receivable by Malawi from the Fund;
- and to such extent only as such payments are so made, or such moneys are so received, by the Reserve Bank of Malawi, they shall not be charged on and paid from, or received into, the Consolidated Fund, as the case may be.

[40 of 1968]

6. Regulations

The Minister shall make regulations to carry out the obligations of Malawi under the Fund Agreement, the Bank Agreement and the resolutions on Malawi's membership in the Fund and the Bank.

Schedule (Section 4(5))

Provisions of agreements which are to have the force of law

The Fund Agreement

Article VIII - General obligations of members

2. Avoidance of restrictions on current payments

Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member.

Article IX - Status, immunities and privileges

2. Status of the Fund

The Fund shall possess full juridical personality and, in particular, the capacity—

- (i) to contract;
- (ii) to acquire and dispose of immovable and moveable property;
- (iii) to institute legal proceedings.

3. Immunity from judicial process

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

4. Immunity from other action

Property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

5. Immunity of archives

The archives of the Fund shall be inviolable.

6. Freedom of assets from restrictions

To the extent necessary to carry out the operations provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

7. Privilege for communications

The official communications of the Fund shall be accorded by members the same treatment as the official communications of other members.

8. Immunities and privileges of officers and employees

All Governors, Executive Directors, Alternates, members of committees, representatives appointed under Article XII, section 3(j), advisors of the foregoing persons, officers and employees of the Fund—

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund waives this immunity;
- (ii) not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members;
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

9. Immunities from taxation

- (a) The Fund, its assets, property, income and its operations and transactions authorized by this Agreement shall be immune from all taxation and from all customs duties. The Fund shall also be immune from liability for the collection or payment of any tax or duty.
- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to Executive Directors, Alternates, officers or employees of the Fund who are not local citizens, local subjects or other local nationals.
- (c) No taxation of any kind shall be levied on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held—
 - (i) which discriminates against such obligation or security solely because of its origin; or
 - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

***Article XXI - Administration of the general
department and the special drawing rights department***

In addition to the privileges and immunities that are accorded under Article IX of this Agreement no tax of any kind shall be levied on special drawing rights or on operations or transactions in special drawing rights.

[8 of 1977]

The Bank Agreement

Article VII - Status, immunities and privileges

2. Status of the Bank

The Bank shall possess full juridical personality and, in particular, the capacity—

- (i) to contract;
- (ii) to acquire and dispose of immovable and moveable property;
- (iii) to institute legal proceedings.

3. Position of the Bank with regard to judicial process

Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process or has issued or guaranteed securities. No action shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

4. Immunity of assets from seizure

Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

5. Immunity of archives

The archives of the Bank shall be inviolable.

6. Freedom of assets from restrictions

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

7. Privilege for communications

The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

8. Immunities and privileges of officers and employees

All Governors, Executive Directors, Alternates, officers and employees of the Bank—

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity;
- (ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

9. Immunities from taxation

- (a) The Bank, its assets, property, income and its operations and transactions authorized by this Agreement shall be immune from all taxation and from all customs duties. The Bank shall also be immune from liability for the collection or payment of any tax or duty.
- (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Executive Directors, Alternates, officials or employees of the Bank who are not local citizens, local subjects or other local nationals.
- (c) No taxation of any kind shall be levied on any obligation or security issued by the Bank (including any dividend or interest thereon) by whomsoever held—
 - (i) which discriminates against such obligation or security solely because it is issued by the Bank; or
 - (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.
- (d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Bank (including any dividend or interest thereon) by whomsoever held—
 - (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
 - (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.