

Malawi

Malawi Railway Holdings Company Act Chapter 69:04

Legislation as at 31 December 2014

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Malawi Railway Holdings Company Act
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Malawi

Malawi Railway Holdings Company Act Chapter 69:04

Assented to on 26 August 1966

Commenced on 29 August 1966

[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 the Incorporation of the Malawi Railway Holdings Company and for purposes connected therewith and incidental thereto

Part I – Preliminary

1. Short title

This Act may be cited as the Malawi Railway Holdings Company Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"**Agricultural Development and Marketing Corporation**" means the Agricultural Development and Marketing Corporation incorporated under the Agricultural Development and Marketing Act;

[Cap. 67:03]

"**Board**" means the Board of Directors referred to in [section 8](#);

"**Chairman**" includes any director acting as Chairman under [section 8](#);

"**the Company**" means the Malawi Railway Holdings Company incorporated by this Act;

"**Lonrho Limited**" means the company of that name incorporated under the United Kingdom Companies Acts;

"**Malawi Railways Limited**" means the company of that name incorporated under the United Kingdom Companies Acts;

"**securities**" in relation to a body corporate includes shares, stock, debentures, debentures stock, and any other security of a like nature, of the body corporate.

Part II – Incorporation and management of Company

3. Incorporation, limitation of liability, offices, agents and seal

- (1) There is hereby incorporated a company to be known as Malawi Railway Holdings Company which shall be a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name, and which, subject to this Act, may acquire, hold and dispose of movable and immovable property.
- (2) The liability of the members of the Company shall be limited to the amount, if any, unpaid or not credited as paid on the shares of which they are the holders.

- (3) The Company shall have its head office in Malawi and may open branches in or outside Malawi and appoint agents in accordance with the decisions of the Board.
- (4) The common seal of the Company may be affixed to any documents under such condition as may from time to time be determined by the Board, and shall not be affixed otherwise.

4. Objects and powers

- (1) The principal objects of the Company are—
 - (a) to purchase or otherwise acquire, hold, manage and dispose of securities of or any interest in any corporation or other enterprise carrying on railway or other transportation operations or business in Malawi or elsewhere including any such securities or other interest held by the Government;
 - (b) to exercise the rights attached to such securities or interest.
- (2) The Company may borrow moneys and do all such other lawful acts and things as may be incidental or conducive to or connected with the principal objects specified in subsection (1).
- (3) The Minister may, by order under his hand, which shall be published in the *Gazette*, extend or vary the objects and powers of the Company.

5. Transferor certain shares to the Company

Government shall cause to be transferred to the Company, for the consideration specified in [section 6](#), the beneficial interest in all the shares in Malawi Railways Limited which it has at the date of coming into operation of this Act and which it may thereafter acquire.

6. Capital

- (1) The authorized capital of the Company shall be three million two hundred thousand Kwacha (K3,200,000) divided into one million six hundred thousand (1,600,000) shares of two Kwacha (K2) each.
- (2) The capital of the Company may from time to time be increased by such amount as the Board, with the consent of the Minister, may resolve.
- (3) The Board shall issue shares in the Company as follows—
 - (a) to the Government, in consideration for the transfer to the Company of its beneficial interest in sixty-one thousand (61,000) Ordinary shares of two Kwacha (K2) each and one million and eighty-one thousand, six hundred and twenty-five (1,081,625) "A" Ordinary shares of ten tambala (10t) each in Malawi Railways Limited, one million, one hundred and forty-two thousand, six hundred and twenty-five (1,142,625) shares in the Company credited as fully paid;
 - (b) to the Agricultural Development and Marketing Corporation in consideration for services rendered in the financing of the Company one hundred (100) shares in the Company credited as fully paid up;
 - (c) to the Government, in the event of the Government acquiring two hundred and fifty-seven thousand, eight hundred and forty-six (257,846) Ordinary shares of two Kwacha (K2) each and ten (10) "A" Ordinary shares of ten tambala (10t) each in Malawi Railways Limited by arrangement with Lonrho Limited, in consideration for the transfer to the Company of such shares, two hundred and fifty-seven thousand, eight hundred and fifty-six (257,856) shares in the Company credited as fully paid-up.
- (4) The Board may issue the remaining shares in the Company in consideration of the payment in cash of the nominal value thereof, or in exchange for securities.

- (5) A certificate shall be issued by the Board to the holder of shares in the Company certifying the number of shares held by him.

[9 of 1985]

7. Profits

- (1) The profits of the Company for each financial year of the Company shall be determined by the Board after meeting all current expenditure for that year and making such provision as the Board may think fit for future development, depreciation of assets and other matters usually provided for by companies of a like character.
- (2) The net profits of the Company shall be available for payment of a dividend to shareholders.

8. Directors

- (1) The Company shall be managed by a Board of Directors.
- (2) There shall be not less than three nor more than five Directors of the Company who shall be appointed by the Minister as follows—
 - (a) one director shall be a person representing the Ministry of Finance of the Government;
 - (b) one director shall be a person representing the Malawi Development Corporation;
 - (c) one director shall be a person representing the Agricultural Development and Marketing Corporation.
 - (d) a director appointed in addition to those specified in paragraphs (a), (b) and (c) shall be appointed by the Minister from persons who appear to the Minister to have had experience of and to have shown capacity in transport, financial matters or administration.
- (3) The Minister shall appoint one of the Directors to be Chairman and may at any time appoint any other director to act as Chairman when the Chairman is unable to fulfil any of the functions of his office.
- (4) A director may be appointed by name or by office and shall hold office for two years and in accordance with the terms of his appointment and shall, on ceasing to be a director, be eligible for re-appointment:

Provided that the Minister may at any time terminate the period of office of a director and, subject to subsection (2), appoint another person to be a director in his place.
- (5) Subject to this Act, the Board shall in the performance of its functions, be subject to the special or general directions of the Minister.
- (6) The Board may act notwithstanding any vacancy among the Directors.

[8 of 1980]

9. Meetings of the Board

- (1) Meetings of the Board shall be called by the Chairman and shall be conducted in such manner as the Board may from time to time determine.
- (2) The Chairman and one other Director shall form a quorum at any meeting of the Board, and, unless otherwise provided or determined by the Board, the decision of the majority of the Directors present and voting at any meeting shall constitute a decision of the Board.
- (3) The Chairman shall have a deliberative vote, and, in addition, in the event of an equality of votes, a casting vote.

- (4) All *bona fide* acts of the Chairman or a Director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment.

10. Borrowing powers

The Board shall not exercise the borrowing powers of the Company without the prior consent in writing of the Minister.

11. Officers

- (1) The Board may appoint such officers and servants as it considers to be necessary for the efficient conduct of the business of the Company.
- (2) Officers and servants of the Company shall hold office for such period or periods, receive such salaries and allowances, if any, and be subject to such other terms and conditions of service as may be determined by the Board.

Part III – Accounts

12. Annual accounts and report

- (1) The Board shall cause proper records of the financial transactions of the Company to be maintained and shall, as soon as may be after the close of each year, transmit to the Minister—
 - (a) a copy of the annual accounts of the Company certified by the auditors; and
 - (b) a report on the operations of the Company during that year.
- (2) The Minister shall, as soon as may be, cause a copy of the annual accounts and the report to be laid before the National Assembly.

13. Audit

The accounts of the Company shall be audited by auditors appointed annually by the Board with the approval of the Minister.

Part IV – Miscellaneous

14. Share transfers and register

- (1) The Board shall cause to be maintained a register of all the shares in the Company which have been issued, and of all transfers of such shares.
- (2) An issued share in the Company shall be capable of being transferred by an instrument of transfer in the common form and by registration of the transfer in the register.
- (3) The instrument of transfer, together with the certificate issued pursuant to [section 6](#), shall be presented to the Board, who may refuse to register any transfer without assigning any reason for such refusal. The Board shall refuse to register a transfer of shares if the effect thereof would be to reduce the number of members of the Company to less than two.
- (4) If a transfer of shares in the Company is registered the Board shall cause a fresh share certificate to be issued to the transferee showing the number of shares of which he is the holder.

15. Taxation, etc.

Notwithstanding any other law—

- (a) the profits of the Company shall not be liable to income tax or other taxes in Malawi;
- (b) the Company shall not be liable in Malawi to pay stamp duty or any duty or fee of any other description which would, but for this section, be payable to the Government or any officer of the Government.

16. Authentication of documents and decisions

- (1) All documents made by the Company other than those required by law to be under seal and all decisions of the Board may be signified under the hand of the Chairman, the Vice-Chairman, the Secretary or any director authorized in that behalf.
- (2) Every document purporting to be made by the Company and to be sealed in accordance with [section 3](#) or to be signified in accordance with subsection (1) shall be received in evidence and be deemed such a document without proof unless the contrary is shown.

17. Regulations

The Minister, after consulting with the Board, may make Regulations for the better carrying out of the objects and purposes of this Act, or to give force or effect to its provisions, or for its better administration.