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PRO. ARTHUR PETER MUTHARIKA

PRESIDENT

20th October, 2016

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FIRST SCHEDULE

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THIRD SCHEDULE

An Act to provide for the regulation of the provision of services in the electronic communications sector, posts, information society; for the establishment of the Malawi Communications Regulatory Authority, the Malawi Broadcasting Corporation and the Malawi Posts Corporation; and for matters connected therewith or 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 Communications Act, 2016, and shall come into force on a date to be appointed by the Minister by notice published in the *Gazette*.

Objectives

2. The objectives of this Act are—

(a) to recognize the convergence of technologies and services for telecommunications, broadcasting, and information through the establishment of technology and service-neutral licensing regimes;

(b) to remove unnecessary barriers to entry, and attract investment, in the communications sector;

(c) to facilitate the deployment and use of communications services;

(d) to encourage the adoption of new services and technologies within the communications sector;

(e) to encourage the participation of indigenous Malawians in the communications sector;

(f) to facilitate the provision of affordable communication services;

(g) to facilitate technology neutrality; and

(h) to ensure consumer protection.

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

Interpretation

“access” means making available facilities or services of any licensee under defined conditions, on exclusive or non-exclusive basis, for the purpose of providing communications services, including access to—

(a) network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means, and includes access to the local loop, facilities and services necessary to provide services over the local loop;

(b) physical infrastructure, including buildings, cable engineering networks, ducts, masts and poles;

(c) relevant software systems, including operational support systems;

(d) number translation facilities, or to systems offering equivalent functionality;

(e) fixed and mobile networks, in particular for roaming;

(f) conditional access systems for digital television services;

or

(g) virtual network services;

“allocation” means the apportionment of a given scarce resource for the purpose of its use by one or more communications services under given conditions;

“apparatus” means equipment, an instrument, or any other object for use in the provision or the reception of communications services, and includes a fitting to, or accessory of, the equipment, instrument or object;

“Authority” means the Malawi Communications Regulatory Authority established under section 4;

“broadcasting” means any form of transmission of content intended for reception by the public whether conveyed by means of radio or electronic communications;

“broadcasting service” means any service that consists of broadcasting, but does not include—

(a) a service that provides only data or text, whether with or without associated still images;

(b) a service in which the provision of audio-visual material or audio material is incidental to the provision of that service; or

(c) a service or a class of service that the Authority may, by regulation, prescribe;

“broadcasting signal distribution” means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, and is conveyed to any broadcast target area by means of electronic communications, and includes multi-channel distribution;

“class assignment” means an assignment issued by the Authority pursuant to this Act, granting entities, subject to certain rules, the right to use frequencies or numbers, as specified by the Authority;

“class assignee” means the holder of a class assignment;

“class licence” means a licence issued by the Authority, as distinct from an individual licence, issued on the same terms to each applicant of a category of users in respect of the operation of a type of an electronic communications network or communications service that does not require the use of scarce resources;

“class licensee” means the holder of a class licence;

“commercial broadcasting” means a broadcasting service operating for profit or as part of a profit entity, but excludes any public broadcasting service;

“common carrier” means an entity licensed to provide electronic communications network services and is obliged to provide signal distribution for broadcasting services on a non-discriminatory and non-exclusive basis;

“communications service” refers to any electronic communications service, broadcasting service or postal service;

“communications technology” means the application of communications and computing technologies to the creation, management and use of information through the use of hardware, software, networks, as well as media for the collection, storage, processing, transmission and presentation of information and related services;

“community” includes a geographically founded community or a group of entities or sector of the public, having a specific and ascertainable common interest;

“community broadcasting service” means a content service that—

- (a) serves a particular community;
- (b) is carried on for non-profitable purposes; and
- (c) is fully controlled by a non-profit making entity;

“consumer” means a person who uses or seeks to obtain broadcasting, postal or electronic communications services for personal use;

“content” means information in the form of sound, data, text or images, whether still or moving, except where transmitted in private communications;

“content service licensee” means a holder of a content service licence;

“convey” includes transmit and transport, and “conveyance” shall be construed accordingly;

“courier service” means an individualized and time sensitive service for collection, acceptance, conveyance and delivery of postal articles on a door to door basis;

“coverage area” means an area in which a communication service is intended to be received;

“dominant market player” means an entity that holds, either on its own or in conjunction with other entities, a significant market power;

“electronic communications” means the emission, transmission or reception of signals, including content or intelligence of any nature, partially or fully transmitted by any radio, electro-magnetic, photo electronic or photo optical system, but does not include—

- (a) wire or direct oral communication;
- (b) communications made through a tone-only paging device;
- (c) communication from a tracking device;
- (d) electronic funds transfer information stored by a financial institution in a communications system used for electronic storage and the transfer of funds; or
- (e) postal or broadcasting service;

“electronic communications licence” means a network service licence and an application service licence;

“electronic communications market” means an area of activity identified by the Authority, as constituting a single market within the communications technology sector;

“electronic communications network” means transmission systems and, where applicable, switching or routing equipment and other resources that permit the conveyance of signals by wire, radio, optical or other electronic means;

“electronic communications numbering” means a number, sign or other mark that an electronic communications licensee, in the delivery of electronic communications services, uses to identify electronic communications facilities in order to connect between the place of transmission and the place of reception, or identify the type of content or transmission that the electronic communications facility is to deliver;

“electronic communications services” means a service provided by one or more electronic communications network;

“essential facilities” means facilities of an electronic communications network or service that—

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) are economically or technically difficult to substitute or duplicate in order to provide a service;

“exempted licensee” means a licensee who is exempted from certain conditions in order to operate its activities;

“exempted service” means a licensed service for which certain conditions and fees are not required by the Authority in order for the service provider to commence its operations;

“facility services” means any services comprising electronic communication infrastructure, including earth station, fixed links and cables, radio communication transmitters and links, satellite hubs, satellite control station, submarine cables, and cable landing station;

“frequency” means electromagnetic waves of radio communications frequencies propagated in space without artificial guide;

“frequency allocation” means the reservation of one or more radio frequency bands for a particular use or uses;

“frequency assignment” means the reservation of one or more radio frequencies for use by a particular entity in accordance with the national frequency plan;

“frequency spectrum licence” means a licence issued to grant the right to use the radio-frequency spectrum to operate a network facility or radio communication equipment of a specified kind at a specified frequency, or in any specified frequency band or bands, and which may include spectrum assignments and apparatus assignments;

“frequency spectrum service” means a service involving the transmission, emission or reception of radio waves for specific communications purposes;

“individual licence” means a licence issued by the Authority to a particular entity on terms specific to that entity;

“interconnection” means the physical and logical connection of two or more electronic communications networks;

“interconnection agreement” means an agreement between licensees in relation to the interconnection of their services;

“interconnection provider” means a person providing an interconnection service to other licensees in accordance with a licence issued by the Authority;

“licence area” means the geographical area specified in a licence;

“message” means any communication sent, received or made by communications systems or services, or given to any entity to be sent or delivered by electronic communications networks or services;

“multi-channel distribution service” means a broadcasting signal distribution service that provides broadcasting signal distribution for more than one channel at the same time on the same signal;

“postal service” means any system for the collection, dispatch, conveyance, handling and delivery of letters, postcards, printed papers, commercial papers, samples, parcels or other similar articles;

“post office” means any building, house, room, receptacle, vessel, vehicle or place where postal articles are received, sorted, dispatched or delivered;

“postage” means the amount chargeable for the transmission of an article by post, and includes any special charges or fees for supplementary services supplied in connection with the transmission of an article by post;

“postal article” means any article in the course of transmission by post, including any letter, postcard, newspaper, book, document, pamphlet, pattern, sample packet, small packet, parcel package, or any other article tendered for dispatch, or specified as a postal article by the Universal Postal Union or in a postal licence;

“postal services licensee” means any entity licensed to provide postal services;

“postal tariff” means any charges raised by the postal services licensee for the provision of postal services;

“public content service” means any content service provided by the Malawi Broadcasting Corporation, or any other public state-owned enterprise holding a broadcasting service licence to this purpose;

“public postal service” means any postal service provided by the Malawi Posts Corporation, or other state-owned enterprise holding a postal services licence;

“scarce resources” means finite resources required in the operation of electronic communication, including radio spectrum, numbers and rights of ways;

“subscriber” means a person having a contract with an authorized provider of a communications service in order to obtain any communications services;

“subscription content service” means a content service provided under a subscription contract;

“television content service” means a content service consisting of the transmission of visual images or other visible signals, with or without accompanying sounds, where the visual images are such that their sequences are seen as moving pictures;

“terminal equipment” means any electronic communications equipment connected at the terminal end of a public electronic communications network for the purpose of sending and receiving network services to and from end users;

“type approval” is a procedure where the Authority certifies the acceptability of an electronic equipment or product based on conformity of the equipment or the product to minimum regulatory technical and safety requirement before the equipment or the product is used;

“universal access” means access to publicly available communications services;

“universal service” means a defined set of products and communications services of a general public interest to which customers are entitled to use without discrimination in terms of accessibility, price and quality;

“Universal Service Fund” means the Fund established under section 157; and

“Universal Service Fund Committee” means the committee to be established by the Authority under section 159.

PART II—THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY

4.—(1) There is hereby established an authority to be known as the Malawi Communications Regulatory Authority.

Establishment of the Authority

(2) The Authority shall—

(a) be a body corporate with perpetual succession and shall have a common seal;

(b) be capable of suing and being sued in its corporate name;

(c) be capable of acquiring and disposing of any moveable or immoveable property and do such things and perform such acts as bodies corporate may, by law, do or perform; and

(d) perform such functions and exercise such powers as are conferred by this Act.

5.—(1) The Authority may, where necessary, seek the general direction of the Minister as to the manner in which it is to carry out its duties under this Act.

Ministerial policy directions

(2) The directions given by the Minister under subsection (1) shall be in writing and shall be published in the *Gazette*.

(3) Except as provided for under this Act or any other law, the Authority shall be independent in the performance of its functions.

6.—(1) The Authority shall regulate and monitor the provision of communications services and ensure that, as far as it is practicable, reliable and affordable communications services are provided throughout Malawi and are sufficient to meet the demand for such services in accordance with the principles of transparency, certainty, market orientation, efficiency, and consumer satisfaction.

Duties, functions and powers of the Authority

(2) Notwithstanding the generality of, and subject to the principles referred to in, subsection (1), the Authority shall—

(a) be vested with the legal ownership of spectrum on behalf of the Republic of Malawi;

(b) grant licences for the provision of communications services;

(c) protect the interests of consumers, purchasers and other users of communications services;

(d) promote access to information and the development of human resources in the communications sector;

(e) promote efficiency and competition among entities engaged in the provision of communications services or in the supply of communication equipment;

(f) encourage the introduction of new technology and communications services in accordance with recognized international standards and applicable international law;

(g) promote research and development in communications services;

(h) foster the development of communication service technologies in accordance with recognized international standards and applicable international law;

(i) advise the Government on policy issues relating to the communications sector;

(j) monitor the activities of licensees to ensure compliance with the Act and the terms and conditions of their licences;

(k) establish a type approval regime for terminal equipment or any other electronic equipment;

(l) collect and publish information with respect to communications services;

(m) develop and publish technical standards for regulated communications goods and services;

(n) receive and investigate complaints relating to communications services and to take the necessary action;

(o) carry out projects to promote the development of the communications sector;

(p) provide technical support and represent the Government at international communications fora;

(q) ensure compliance with national and international communications standards and obligations laid down by international communication agreements and treaties to which Malawi is a party and to issue certificates of compliance in relation thereto;

(r) ensure the safety and quality of service for communications services;

- (s) protect public health and safety;
- (t) negotiate with the relevant Ministries, local authorities and private land owners with respect to rights of way;
- (u) render technical assistance on communication matters to the Minister; and
- (v) generally implement the objectives of this Act and do all such things as are necessary, incidental or conducive to the better carrying out of the functions of the Authority.

7. The Authority shall consist of—

Membership of the Authority

(a) six members, appointed in accordance with section 8; and—

(b) the following *ex-officio* members—

- (i) the Secretary for Information or his representative ;
- (ii) the Secretary to the Treasury or his representative ; and
- (iii) the Solicitor General or his representative.

8.—(1) The President shall appoint members of the Authority, other than *ex-officio* members, and each appointment shall be subject to confirmation by the Public Appointments Committee of Parliament.

Appointment of members of the Authority

(2) A person to be appointed as a member of the Authority shall—

- (a) be a citizen of, and resident in, Malawi;
- (b) possess qualifications, expertise and experience in any of the fields of posts, telecommunications technology, electronic communications, broadcasting, frequency planning, law, information communication technology, economics or finance; and
- (c) not be a person who has, within the last three years, been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine.

(3) In appointing members of the Authority under subsection (1), the President shall have regard to gender equality and the need for continuity of service on the Authority and balance representation in terms of qualifications referred to in subsection(2).

(4) The names of all members of the Authority, and every change of membership, shall be published in the *Gazette*.

9. A person shall be disqualified from being appointed as a member Authority if the person—

Disqualification from membership

- (a) is a Member of Parliament;
- (b) is a Minister or Deputy Minister;
- (c) holds a position in a political party;

(d) is an undischarged bankrupt;

(e) has, within the last three years, been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(f) is a minor; or

(g) holds or has a direct or indirect interest of five per cent shareholding in an entity holding a licence or authorization issued under this Act, or has any other direct or indirect financial interest in any licensee.

Chairperson of
the Authority

10.—(1) The President shall appoint one of the members of the Authority as Chairperson.

(2) In the event of the office of the Chairperson becoming vacant, members of the Authority shall elect one amongst themselves to exercise the powers and perform the duties of the Chairperson, until a new Chairperson is appointed

Tenure and
vacation of
office of
members of
the Authority

11.—(1) A member of the Authority, other than an *ex-officio* member, shall hold office for a period of three years and shall be eligible for re-appointment for one more term.

(2) Subject to section 13, the office of a member of the Authority, other than an *ex-officio* member, shall become vacant—

(a) if he resigns;

(b) upon his death;

(c) if he knowingly fails to declare a conflict of interest relating to any matter under consideration by the Authority;

(d) if he has been absent from three consecutive meetings of the Authority, of which he has had prior notice, without a reasonable cause;

(e) if he becomes, by reason of mental or physical infirmity, incapable of efficiently performing his duties as a member of the Authority;

(f) if he becomes disqualified by reason of section 9; or

(g) if he is guilty of conduct that brings disrepute to the Authority.

Filling of
vacancies

12. A vacancy on the membership of the Authority shall be filled by the appointment of a new member in accordance with section 7 as read with section 8, and the member so appointed shall hold office for the unexpired period of his predecessor's term of office, but the vacancy may not be filled if the unexpired period is less than six months.

13. A member of the Authority shall not be removed from office on grounds set out in section 11(2) (c), (d), (e), (f), and (g), except after due inquiry, and only upon a decision of the appointing authority.

Removal from office of a member of the Authority

14.—(1) The Authority shall meet to conduct the business of the Board at least once every three months, at such places and times as the Chairperson may, in consultation with the Director General, determine.

Meetings of the Authority

(2) The Chairperson of the Authority shall convene meetings of the Authority by giving the members at least seven days written notice, unless the Chairperson notifies the members in writing that the urgency of the matter to be discussed requires a shorter period of notice.

(3) The quorum for any meeting of the Authority shall be two thirds of all members of the Authority.

15.—(1) The Authority may, for the purpose of performing its functions under this Act, establish committees of the Authority, and delegate to any such committees any of its functions as it considers necessary.

Committees of the Authority

(2) The Chairperson of every committee shall be a person who is a member of the Authority, but an *ex-officio* member shall not be a Chairperson.

(3) The Chairperson of the Authority shall not be a member of a committee.

(4) The Authority shall pay a member of a committee, from the funds of the Authority, an allowance that the Minister responsible for public service may, on recommendation of the Board, approve for attendance at meetings of the committee.

(5) Subject to the general or special directions of the Authority and to the provisions of this Act, every committee of the Authority shall have power to determine its own procedure.

16. The Authority may, at its discretion, invite any person with specific knowledge, information or expertise to attend any of its meetings and address it on a matter, but such person shall not be eligible to vote at the meeting on any decision of the Authority.

Co-opted persons

17. Without prejudice to the generality of section 6, the Authority shall have the power to—

Governance powers of the Authority

(a) issue guidance, and give directions to the Director General;

(b) approve strategic plans, action plans and budget support programmes submitted by the Director General;

(c) approve annual reports and financial reports submitted by the Director General;

(d) hire consultants to assist the Authority in the discharge of its functions, where necessary; and

(e) issue rules, directives, opinions and make recommendations on any recurrent question related to the regulated missions of the Authority as defined under this Act.

Honoraria of members of the Authority

18.—(1) A member of the Authority shall be paid such allowances or other benefits as the Minister responsible for public service may, on recommendation of the Authority, from time to time, approve.

(2) The allowances and other benefits referred to in subsection (1) shall be paid from the funds of the Authority.

The Director General of the Authority

19.—(1) The Authority shall, appoint the Director General who shall be the chief executive officer of the Authority and shall, subject to the general supervision of the Authority, be responsible for the day to day operations of the Authority.

(2) The Director General of the Authority shall be a person with sufficient experience and qualifications in any of the following areas—

- (i) communications industry;
- (ii) finance;
- (iii) economics;
- (iii) engineering;
- (iv) accountancy;
- (v) commerce;
- (vi) law; or
- (vii) administration,

and shall be required to demonstrate knowledge and excellence in one or more of the areas of electronic communications, postal and broadcasting services.

Tenure of office of the Director General of the Authority

20.—(1) The Director General of the Authority shall be appointed to a term of office of three years, and may be re-appointed for further two terms of three years each.

(2) The Director General of the Authority shall be removed from office on any of the following grounds—

- (a) incompetence;
- (b) misconduct that brings the Authority into disrepute;

- (c) undischarged bankruptcy;
- (d) non disclosure of interest;
- (e) if he has been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;
- (f) involvement in active politics; or
- (g) incapability to perform his duties as Director General by reason of mental or physical infirmity.

(3) The Director General of the Authority shall not be removed from office unless he has been given an opportunity to be heard.

21.—(1) The Director General of the Authority shall be in charge of the overall administration of the Authority and, in particular, shall have the following powers and functions—

Powers and functions of the Director General

- (a) implementing the decisions of the Authority;
- (b) keeping the Authority informed of the activities of the Authority;
- (c) submitting strategic plans, action plans and budget support programmes to the Authority for approval;
- (d) implementing the strategic plans, action plans and budget support programmes;
- (e) ensuring that activities of the Authority comply with the relevant laws, policies and regulations;
- (f) acting on behalf of the Authority; and
- (g) generally perform such functions and duties as may be assigned to him by the Authority.

(2) The Director General or, in his absence, such other employee of the Authority as he may designate, shall attend meetings of the Authority and of any committees of the Authority and may address such meetings, but shall not vote on any matter.

22.—(1) The Authority shall appoint other staff subordinate to the Director General after calling for nominations by way of public advertisement, and the appointment shall only be based on qualification, experience and capacity in matters relating to the operational requirements of the Authority.

Other staff of the Authority

(2) The staff appointed by the Authority under subsection (1) shall not be below the rank of director.

(3) The Director General shall have the power to appoint, subject to procedure for public service recruitment, employees below the rank of director.

(4) The Authority shall pay the employees of the Authority such remuneration, allowances, pension, gratuity and other benefits as the Authority may, after having obtained professional advice, consider as being competitive in the employment market in Malawi.

Disclosure
of conflicts
of interest

23.—(1) Any member of the Authority who is present at a meeting of the Authority at which any matter in which he has an interest or may have an interest is being considered, shall disclose such interest as soon as is practicable after the commencement of the meeting and the member shall not take part in any consideration or discussion of, or vote on, any question touching on such matter.

(2) The Director General shall disclose to the Chairperson of the Authority any interest he has in any matter that is under consideration by the Authority, and shall not attend any meeting of the Authority or of any committee of the Authority while any question touching the matter is being discussed.

(3) Any employee of the Authority or any consultant, adviser or sub-contractor of the Authority shall disclose to the Director General any interest that he has or that may arise in the course of duties related to the operations of the Authority, and the Director General or the Authority, shall make decisions considered appropriate in each case and submit a report thereon to the Authority.

Confidentiality

24.—(1) A person shall not publish or disclose to any entity, other than in the course of the entity's duties, the contents of any document, communication or information which has come to the person's knowledge in the course of his duties under this Act.

(2) Any member of the Authority, employee, consultant, adviser or sub-contractor of the Authority who holds confidential information, or any person who has, directly or indirectly, obtained any such information from a member of the Authority, employee, consultant, adviser or sub-contractor of the Authority, whom that person knows or has reasonable cause to believe held the information by virtue of his office, and who—

(a) deals in any contract or proposed contract to which the information relates and in which the Authority is involved;

(b) counsels or instigates anyone else to deal in any such contract or proposed contract, knowing or having reasonable cause to believe that the other entity would deal in such contract or proposed contract; or

(c) communicates to anyone else the information held or, as the case may be, obtained by him if he knows or has reasonable cause

to believe that such other entity or any other entity would make use of the information for the purpose of dealing in, or counselling or causing anyone else to deal in, any contract or proposed contract to which the information relates, and in which the Authority is involved,

commits an offence and is liable to a fine of K5,000,000 and imprisonment for five years.

(3) This section shall apply to any information that—

(a) a member of the Authority, employee, consultant, adviser or sub-contractor of the Authority holds by virtue of his office or dealings with the Authority;

(b) would not be expected, or would not be reasonable for it, to be disclosed by a member of the Authority, employee, consultant, adviser or sub-contractor of the Authority except in the proper performance of the functions of his office; or

(c) the member of the Authority, employee, consultant, adviser or sub-contractor of the Authority holding the information knows or ought to know that it is unpublished information in relation to any contract or proposed contract of the Authority.

(4) The provisions of this section shall continue to apply to any member of the Authority, employee, consultant, adviser or subcontractor of the Authority, notwithstanding the expiry or termination of the term of office of the member or the employment of the employee, consultant, adviser or subcontractor of the Authority, as the case may be.

25. A member of the Authority, an employee, a consultant, an adviser and a subcontractor of the Authority, shall sign an oath of secrecy upon being appointed on the Board or being engaged by the Authority, as the case may be.

Oath of secrecy

26.—(1) The Authority may delegate some of its functions under this Act to the Director General, any member of the Authority, or member of staff of the Authority.

Delegation of powers

(2) The Director General of the Authority may, with the approval of the Authority, delegate any power or function assigned to him under this Act, to any member of staff of the Authority.

27.—(1) The Authority may establish consultative or advisory fora in the communications sector to assist the Authority with the discharge of its functions under this Act.

Advisory fora

(2) The Authority may contribute out of its annual budget to the expenses of any forum established under subsection (1).

Funds of the
Authority

28.—(1) The operational and financial costs of the Authority shall be provided through—

(a) fees, levies and other moneys payable to the Authority under this Act;

(b) fines payable to the Authority in respect of breaches of licence terms, conditions and obligations;

(c) grants or donations received by the Authority;

(d) such moneys as are from time to time appropriated to the Authority by Parliament; and

(e) proceeds from the sale by the Authority of any of its assets or equipment to which it has title.

(2) The Authority may charge fees in respect of publications, seminars, documents, and other services provided by the Authority.

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(3) Subject to the Public Finance Management Act, the Authority may borrow such amounts as it may require for the performance of its functions under this Act.

(4) The Authority may invest, on short term deposit with any bank or financial institution in Malawi, any of its moneys that are not immediately required for the performance of its functions under this Act.

(5) All the moneys of the Authority which, at the end of each financial year, are in excess of the Authority's budgetary requirements for that year shall be paid into the Consolidated Fund, but the Authority may be entitled to retain such sums as it reasonably requires for its operations.

Accounts and
audit

29.—(1) The Authority shall maintain proper books of accounts and other records relating to its accounts.

(2) The Authority shall appoint independent auditors to audit the accounts of the Authority annually and a copy of the audited accounts shall be sent to the Auditor General for examination before final presentation to the Minister.

(3) The financial year of the Authority shall be the same as the financial year of Government.

Annual report

30.—(1) As soon as practicable, but not more than six months after the expiry of each financial year, the Authority shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in the form and contain information as required by the Minister.

(3) There shall be appended to the report referred to in subsection (1)—

- (a) an audited statement of financial position;
 - (b) an audited statement of income and expenditure;
 - (c) justification for retention of any sums, where applicable;
- and
- (d) such other information as the Minister may consider appropriate.

PART III—REGULATION OF ELECTRONIC COMMUNICATIONS SERVICES

31.—(1) Subject to subsection (2), a person shall not provide electronic communications services except in accordance with a licence issued by the Authority.

Requirement of licence for provision of electronic communications services

(2) Notwithstanding section 33, a frequency spectrum licence shall be required in addition to any electronic communications licence where the operation of an electronic communications network or the provision of an electronic communications service entails the use of radio frequency.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine of K5,000,000 and imprisonment for five years.

32. The Authority may make rules prescribing the types and categories of electronic communications licences.

Authority to prescribe types and categories of electronic communications licences

33.—(1) The Authority may, in consultation with the Minister, exempt an entity or class of entities, for a period of time, from some of the requirements and obligations relating to an individual licence or a class licence issued under this Act.

Exemptions

(2) The Authority shall make rules providing for the criteria of eligibility and application process, for exemptions.

(3) The Authority may, where necessary, reverse its decision made under subsection (1), and in the event of such reversal, the Authority shall provide reasonable notice to the affected entity.

34. The Authority shall not issue a licence under this Act unless the applicant for the licence is duly registered under the relevant written laws of Malawi.

Licence eligibility

Local
ownership
requirement

35. An electronic communications licensee shall maintain a local shareholding of at least twenty per cent.

Publication
of rules
relating to
type or
category of
licence

36.—(1) The Authority shall publish in the *Gazette* and any other media, rules relating to each type or category of licence that may be issued under this Act.

(2) Where a type or category of a licence is not provided for in the rules, the Authority shall, within a reasonable time, adopt provisional conditions allowing a person to start providing an electronic communications service, refuse the licence application, or exempt the person from the requirement of obtaining the licence.

Application
for a licence

37.—(1) A person who wishes to provide electronic communications services shall apply to the Authority for a licence in the prescribed manner.

(2) The Authority may, within thirty days of receiving the application, request further details or information in respect of the application.

(3) The Authority shall, within sixty days of receiving an application, grant or reject the application for a licence.

(4) The Authority shall, where an application for a licence is rejected, inform the applicant accordingly in writing, giving reasons why the application was rejected.

Grant of a
licence
through a
restricted
procedure

38.—(1) The Authority shall, where the operation of an electronic communications services requires the allocation of scarce resources, grant a licence through a restricted procedure in accordance with this Act.

(2) Where the Authority considers that the granting of a licence should be subject to a restricted procedure, the choice of the successful applicant shall be based, as far as reasonably possible, on objective criteria made known to all applicants in advance.

Issue of a
licence

39. The Authority shall issue a licence under this Act if—

(a) the application complies with the provision of this Act; and

(b) the applicant is financially and technically capable of meeting his obligations and the terms and conditions of the licence.

General licence
conditions

40.—(1) A licence issued by the Authority shall—

(a) be issued on payment by the applicant of the appropriate initial licence fees;

- (b) state the terms and conditions on which it is issued;
- (c) specify the services that may be provided; and
- (d) come into effect upon publication in the *Gazette*.

(2) The Authority shall ensure that all licences issued under this Act have standard terms and conditions in respect of the category or type of the licence.

41.—(1) The Authority may amend a licence—

Amendment of a licence

- (a) if it is necessary in the interest of the efficient management of the communications sector and provided that the amendment shall not cause substantial prejudice to the licensee;
- (b) if it is necessary to comply with any international agreement to which Malawi is a party;
- (c) if it is in the public interest; or
- (d) with the agreement of the licensee.

(2) Where the Authority intends to amend a licence, it shall publish the proposed amendment in the *Gazette* for public comments and allow not less than thirty days from the date of the publication to give an opportunity to any person with an interest in the matter to make representations.

(3) Upon receipt of the representations on amendment of the licence under this section, the Authority shall consider the representations and determine whether to effect the amendment or not.

(4) The amendment of the licence under this section shall come into effect upon final publication in the *Gazette*.

42.—(1) A licensee shall not transfer, assign, pledge or otherwise dispose of its licence or any rights thereunder within twelve months of being granted the licence.

Transfer, assignment, etc., of a licence or rights thereunder

(2) Subject to subsection (1), a licensee shall not transfer, assign, pledge or otherwise dispose of the licence or any rights unless the licensee has rolled out its services.

(3) A licensee shall not transfer, assign, pledge or otherwise dispose of its licence or any rights thereunder, without the prior written consent of the Authority, which consent may be given subject to such reasonable terms and conditions as the Authority may impose, provided that the Authority shall not unreasonably withhold the consent.

(4) A licensee may apply to the Authority in the prescribed manner for consent to transfer, assign, pledge or otherwise dispose of its licence or any rights thereunder.

(5) An application made under subsection (4) shall be accompanied by an application for grant of a licence by the person to whom the licensee intends to transfer the licence.

(6) The Authority shall, in considering an application for the transfer of a licence, have regard to the same terms and conditions as those that apply to the grant of a new licence, but the Authority may, in its discretion, refuse to grant the application.

(7) For purposes of this section—

(a) “transfer of licence” includes the acquisition of control of the licence holder; and

(b) “control” as used with respect to any person, means the possession, directly or indirectly, of the power to direct or affect the direction of the management of that person, whether through the ownership of shares, voting, securities, partnership or other ownership interests, agreement or otherwise.

(8) The Authority shall grant or refuse to grant its consent to transfer a licence or any rights thereunder, within thirty days from the date of application.

(9) Where consent is not granted, the Authority shall, within fourteen days from the date a decision not to grant the consent was made, provide a written explanation to the applicant, giving reasons for not granting the consent.

43.—(1) The Authority may suspend or revoke a licence granted under this Act if—

(a) the licensee has failed to comply with this Act or the terms and conditions of his licence;

(b) the licensee has contravened the provisions of any other written law relevant to the communications sector;

(c) the licensee has failed to comply with any rules or lawful orders given by the Authority;

(d) the licensee—

(i) enters into receivership or liquidation;

(ii) takes any action for its voluntary winding-up or dissolution;

(iii) enters into any scheme of arrangement, other than in any such case for the purpose of reconstruction or amalgamation, upon terms and within a period as may previously have been approved in writing by the Authority; or

(iv) is the subject of any order made by a competent court or tribunal for its compulsory winding-up or dissolution;

Suspension
or revocation
of a licence

- (e) the licensee has ceased, however briefly, to fulfil the eligibility requirements under this Act; or
- (f) the suspension or revocation is in the public interest.

(2) Before the suspension or revocation of a licence under this section, the Authority shall inform the licensee by written notice, as soon as practicable, of its intention to suspend or revoke the licence and the reasons thereof.

(3) The affected licensee shall be given a reasonable opportunity to make written submissions to the Authority within a period specified in the notice, which period shall not be less than fourteen days from the date of the notice.

(4) The affected licensee may, within the period specified in the notice, make written submissions to the Authority and the Authority shall consider such submissions before making a determination in relation to the suspension or revocation of the licence.

(5) Subject to subsections (3) and (4) of this section, the suspension or revocation of a licence shall take effect on the expiry of thirty days from the date on which the notice of the Authority's determination under subsection (4) of this section is served on the licensee.

(6) When the suspension or revocation of a licence has taken effect, the Authority shall, as soon as practicable, cause the suspension or revocation to be published in at least one national daily newspaper.

(7) A delay or failure to publish the notice of suspension or revocation shall not in any manner affect the validity of the suspension or revocation.

44.—(1) An application for renewal of a licence shall be made at least six months before the expiry of the licence.

Application
for renewal of
a licence

(2) An application for the renewal of the licence under subsection (1) shall be made in the prescribed manner upon payment of the prescribed fees.

(3) In considering an application for a renewal of a licence, the Authority shall have regard to whether—

- (a) the licensee performed in accordance with the obligations of his licence;
- (b) the licensee continues to meet the eligibility requirements under this Act;
- (c) the licensee continues to be financially and technically

capable of meeting his obligations under this Act and any other related laws; and

(d) the licensee has not, during the validity period of his licence, contravened the provisions of this Act, the terms and conditions of the licence, the rules issued by the Authority or any other relevant laws and regulations.

(4) The Authority shall not renew a licence where the licensee has committed a substantial breach of the licence.

Obligation to roll out

45.—(1) Subject to subsection (3), a licensee shall be required to roll out its network and provide services within the period prescribed by the Authority in the licence.

(2) Where a licensee fails to roll out within the prescribed period, the licence shall be deemed to be automatically revoked.

(3) The Authority may extend the roll out period referred to in subsection (1)—

(a) only once;

(b) for a period not longer than the initial roll out period; and

(c) only on grounds of a *force majeure* event as accepted by the Authority.

Individual licence

46.—(1) The Authority may grant individual licence for the operation of electronic communications network or the provision of electronic communications network.

(2) The Authority shall classify an individual licence under the categories set out in the First Schedule.

Scope of a class licence

47. The Authority shall issue a class licence authorizing the operation or provision of electronic communications services, save for licences connected with any of the following—

(a) use of frequency spectrum;

(b) use of numbers;

(c) operation of electronic communications networks or facilities; or

(d) any other activities that the Authority may determine from time to time.

Class licence to state terms and conditions of issuance

48. A class licence issued by the Authority shall state the terms and conditions upon which the licence is issued.

- 49.** The Authority may, from time to time, sub-classify communication services under this Act, and such sub-classification shall be published in the *Gazette*. Sub-classification
- 50.**—(1) An applicant for a class licence shall, prior to undertaking an activity applied for, complete the appropriate registration form for the class licence and file it with the Authority. Registration under a class licence
- (2) The Authority shall register an applicant under the appropriate class licence, within sixty days of receiving the application.
- (3) The Authority shall determine the format of class licence registration forms.
- 51.** The Authority may at any time establish a new licence category or, with reasonable notice, abolish an existing licence category. Establishment of new licence categories
- 52.**—(1) A licensee shall pay the Authority such fees as may be prescribed by the Authority in accordance with this Act, and such fees shall include— Licence fees
- (a) an initial licence fee payable before the licence is issued;
 - (b) an annual licence fee;
 - (c) licence renewal fees;
 - (d) where applicable, a fee in respect of any scarce resource; and
 - (e) any other fees or levies, including, but not limited to, the contribution to the Universal Service Fund.
- (2) The Authority may, from time to time, review the licence fees.
- 53.**—(1) The Authority may, by notice published in the *Gazette*, require any licensee to provide the following essential services- Provision of essential services
- (a) emergency services, with priority routing, enabling any member of the public to make contact with, in particular, the police, the fire brigade and the ambulance service;
 - (b) directory services, enabling any subscriber to obtain, through automated means, a telephone number listed in the telephone directory;
 - (c) customer care services, enabling any subscriber to obtain assistance regarding matters such as access to services, setting up calls and remedying faults; and
 - (d) such other services as may be determined by the Authority from time to time by notice published in the *Gazette*.

(2) The following essential services shall be provided free of charge—

(a) emergency service;

(b) customer care; and

(c) such other services as may be determined by the Authority by notice published in the *Gazette*.

Protection of
subscriber
information

54.—(1) Subject to any written law or an order issued by the High Court on an *inter partes* hearing, a communications service licensee shall not disclose subscriber information which is in its custody.

(2) A licensee who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K10,000,000.

PART IV—ECONOMIC REGULATION

Promotion of
fair competition

55.—(1) The Authority shall, in the performance of its functions under this Act, promote, develop and enforce fair competition and equality of treatment among operators in any business or service relating to the communications service sector.

(2) In the exercise of its powers under this Part, the Authority shall co-ordinate with the Competition and Fair Trading Commission established under the Competition and Fair Trading Act.

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Regulation of
interconnection,
access, etc

56. The Authority shall regulate the implementation of interconnection, access, co-location and infrastructure sharing, based on the catalogues, interconnection agreements and framed tariffs enforced by licensees.

Market
analyses and
dominant
market players

57.—(1) The Authority shall—

(a) conduct annual market analyses; and

(b) after conducting the market analyses, publish in the *Gazette*, for the following year but not later than 31st December of each year, a list of—

(i) all retail and wholesale communications services markets that, in the Authority's opinion, require *ex-ante* regulatory control; and

(ii) licensees deemed as holding a dominant position for each identified communications service market.

(2) The Authority shall, in consultation with the Competition and

Fair Trading Commission and within twelve months of the commencement of this Act, issue rules defining the criteria to be used when determining a dominant position in a relevant market.

(3) A licensee shall be deemed as holding a dominant position in a relevant market if the licensee—

- (a) holds a large market share;
- (b) has control of essential facilities;
- (c) is involved in a vertical relationship that could harm competition in the market applicable to the particular category of licence as determined by the Authority; or
- (d) any other factors as determined by the Authority.

(4) The Authority shall deem a licensee as holding a dominant position in a given relevant communications service market for a given calendar year where, in its opinion, the licensee may, acting alone, be able to profitably and materially restrain or reduce competition within the relevant communications service market and during the calendar year concerned.

(5) The Authority shall deem licensees as holding a joint dominant position in a given relevant communications service market for a given calendar year where, in its opinion, the licensees may, acting jointly, and in particular because of factors giving rise to a connection between the licensees, be able to adopt a common policy on the market and act, to a considerable extent, independently of their competitors and customers, within the relevant communications service market and during the calendar year concerned.

(6) The Authority may, by giving notice of not less than twenty eight days and published in the *Gazette*, amend, for the remainder of a calendar year concerned, any list published pursuant to subsection (1).

58. The Authority shall require any licensee found to be a dominant market player to—

Obligations
for dominant
market
players

- (a) publicly make available information regarding interconnection, access and infrastructure sharing;
- (b) submit to the Authority its technical and price offers with respect to interconnection, access and infrastructure sharing by such a date as the Authority may determine;
- (c) modify any offers submitted under paragraph (b) in order to make the offers compliant with this Act;
- (d) have a separate account for interconnection, access and infrastructure sharing costs and fees, and any other business

activities sufficiently detailed to allow the Authority identify all elements of revenue and costs, together with the basis for their calculation;

(e) for the purpose of enabling the provision of communications services to the public in relation to the communications services market concerned, offer access to a licensee requesting for the access; and

(f) comply with any other obligation as determined by the Authority from time to time.

Power to prevent anti-competitive practices

59. If it appears to the Authority that a licensee is taking or intends to take any action that—

(a) may constitute an abuse of a dominant position in relation to the provision of any electronic communications service; or

(b) has or is likely to have the effect of placing another licensee engaged in communications activities at a competitive disadvantage in relation to that licensee,

the Authority may, after giving the licensee concerned an opportunity to make representations, order the licensee to cease or refrain from taking such action.

PART V—INTERCONNECTION

Interconnection agreements

60.—(1) An application service or network service licensee may, with the approval of the Authority, enter into an agreement with any other application service or network service licensee for the purpose of connecting their application or network services on terms and conditions that the licensees may agree.

(2) The interconnection agreement shall be in writing and shall set out the contractual terms and conditions agreed by the parties, including—

- (i) the interconnection location between the two networks;
- (ii) the interconnection costs;
- (iii) the interconnection charges; and
- (iv) maintenance fees.

(3) The Authority may make rules prescribing any matter which it considers necessary for inclusion in interconnection agreements.

Rules for interconnection terminal rates

61. The Authority shall make rules prescribing interconnection terminal rates to be applied by all licensees when negotiating interconnection agreements.

Interconnection request

62.—(1) A licensee who is entitled to interconnection as determined by the Authority may request to another licensee for

the two licensees to interconnect for the purposes of enabling the provision of electronic communications services to the consumers.

(2) Subject to subsection (4), upon receipt of the application referred to in subsection (1), the licensee who has received the application shall be obliged to interconnect for the purposes of enabling the provision of electronic communications services to the consumer.

(3) An interconnection request made pursuant to subsection (1) shall include the following—

(a) the type of interconnection required;

(b) the technical requirements based on the technical standard of interconnection provision;

(c) the date when interconnection is required; and

(d) an estimate of the interconnection capacity required.

(4) An electronic communications services licensee may refuse an interconnection request on any of the following grounds—

(a) that the interconnection request is unreasonable;

(b) that the application service or network service licensee would be prejudiced; or

(c) that the interconnection would cause irreparable damage to the property of the licensee.

63.—(1) Parties to an interconnection agreement shall negotiate technical and commercial terms of the agreement in a fair and transparent manner.

Negotiations
in
intercon-
nection
agreements

(2) In order to ensure compliance with this Act or regulations made under it, the Authority may, on its own initiative, during the course of negotiations between the parties, set out matters that the interconnection agreement shall contain.

(3) Where parties fail to reach an agreement within two months, the Authority may order the interconnection of the parties' electronic communications networks on such terms and conditions as the Authority may determine.

(4) The Authority shall issue minimum guidelines in accordance with which application service or network service licensees shall negotiate interconnection agreements.

64.—(1) Licensees shall, after negotiating an interconnection agreement, submit to the Authority an application for approval of the interconnection.

Application
for approval
of intercon-
nection

(2) The application made under subsection (1) shall be accompanied by a copy of the proposed interconnection agreement.

(3) Upon receipt of the application and the proposed interconnection agreement, the Authority shall, within thirty days, consider and make a decision on the application.

(4) Where the Authority fails to make a decision on the application within the thirty days, the application shall be deemed to have been approved by the Authority.

Order to enter into an interconnection agreement

65.—(1) The Authority may, on its own motion or upon a request from any application service or network service licensee, order two or more licensees to enter into an interconnection agreement if—

(a) a negotiated agreement is not possible; or

(b) the Authority is of the view that such agreement shall promote fair competition.

(2) Before making an order under subsection (1), the Authority shall give each licensee a notice of thirty days, stating the reasons for the intended order and to give the licensees an opportunity to make representations.

Maximum interconnection rates

66.—(1) Notwithstanding any interconnection agreement, the Authority may fix maximum interconnection rates.

(2) For the purpose of determining interconnection rates under subsection (1), the Authority shall take into account—

(a) accessibility and affordability of electronic communication services; and

(b) fair treatment and competition among licensees.

Registration of interconnection agreements

67.—(1) The Authority shall maintain a register of all interconnection agreements entered into by application service and network service licensees, which shall, without revealing the terms and conditions of the agreement, contain the names of the parties, a general description of the matter governed by the agreement and the effective date and duration of the agreement.

(2) Any interconnection agreement reached pursuant to this Part shall be submitted to the Authority for registration within fourteen working days from the date the agreement was signed by all the parties, and such agreement shall be open to inspection by the public at the premises of the Authority.

(3) The Authority may request modification of the terms or conditions of an agreement submitted to it pursuant to subsection (2), and where an agreement has been modified, it shall be re-submitted to the Authority for registration.

(4) A licensee may, in agreement with another party, modify the terms or conditions of an agreement after complying with the approval requirements under section 64:

Provided that where the approval has been granted, the licensee shall resubmit the modified agreement to the Authority for registration.

(5) The Authority shall register an agreement reached pursuant to this Part within fourteen working days from the date the agreement was submitted to the Authority.

(6) Any information obtained by a network service licensee from another network service licensee and which, at the time it was obtained, was previously unknown and publicly unavailable, shall remain publicly unavailable and shall be used only for the purpose for which it was supplied.

PART VI—ACCESS TO ELECTRONIC COMMUNICATION NETWORKS

68.—(1) The Authority shall annually publish in the *Gazette* a list of electronic communications networks of licensees whose access may be shared with other licensees.

Access agreements, and access to electronic communication networks

(2) For purposes of providing communication services to the public, a licensee shall have the right to request and negotiate in good faith an agreement for access to an electronic communication network.

(3) A licensee who has received a request pursuant to subsection (2) shall, for purposes of providing communication services to the public, be obliged to negotiate such an agreement.

(4) A licensee who has received a request pursuant to subsection (2) may refuse the request on any of the following grounds—

(a) that the request for access is unreasonable;

(b) that the space available is insufficient to implement such access;

(c) that the licensee may be prejudiced; or

(d) that the access may cause irreparable damage to the property of the licensee.

(5) Where parties fail to reach an agreement within a period of forty two days from the date of receiving a written request, the matter may be referred to the Authority by either party for examination and determination, and the Authority may order the requested licensee to allow access to its electronic communication networks on such terms and conditions as the Authority may prescribe.

(6) Any network service licensee shall, for purposes of providing communication services to the public, offer access to a licensee who has requested access—

(a) on reasonable and non-discriminatory terms and conditions, particularly with respect to price; and

(b) of at least the same technical quality as the technical quality provided on the electronic communication network of the requesting licensee or, as the case may be, of the requesting licensee's own communications services.

(7) The Authority may, from time to time, make rules prescribing any matters that the Authority shall consider necessary for inclusion in access agreements.

Registration of access agreements

69.—(1) Parties to an access agreement shall not implement the agreement without first having it registered with the Authority.

(2) Any access agreement reached pursuant to this Part shall be submitted to the Authority for registration within fourteen working days from the date the agreement was signed by all the parties, and such agreement shall be open to inspection by the public at the premises of the Authority.

(3) The Authority shall maintain a register of all access agreements entered into which shall, without revealing the terms and conditions of the agreement, contain the names of the parties to the agreement, a general description of the matter governed by the agreement and the effective date and duration of the agreement.

(4) Any information obtained by either party to an access agreement as a result of a negotiation and which, at the time it was obtained, was previously unknown to the party obtaining it and publicly unavailable may, for as long as the information remains publicly unavailable, be used only for the purpose for which it was supplied.

PART VII—CO-LOCATION AND INFRASTRUCTURE SHARING

Co-location and infrastructure sharing agreements

70.—(1) Where an electronic communication service licensee intends to install any facility on, over or under a public or private land, or to use the land in any way, the licensee shall have the right to negotiate in good faith and enter into a co-location or infrastructure sharing agreement with the relevant infrastructure provider.

(2) A co-location and infrastructure sharing agreement shall be in writing and shall set out the contractual terms and conditions agreed by the parties, including—

- (a) the scope and specifications of the facilities to be provided;
 - (b) the service and maintenance of facilities;
 - (c) the charges for the facilities;
 - (d) the technical specifications;
 - (e) the financial conditions for payment;
 - (f) the provision of co-location for facilities;
 - (g) the duration, re-negotiation and review of the agreement;
- and
- (h) the dispute resolution procedures.

(3) An infrastructure provider shall—

- (a) co-locate and share communication facilities on a first-come-first-served basis; and
- (b) co-locate and share facilities with other providers in accordance with principles of impartiality and non-discrimination.

71.—(1) An infrastructure provider shall, upon request from a qualifying licensee for co-location or infrastructure sharing, provide the licensee with a co-location or infrastructure sharing offer, together with the relevant information to facilitate a feasibility study on the licensee's network.

Request for
co-location
and
infrastructure
sharing

(2) The infrastructure provider shall, within thirty days from the date the request was made, provide the requesting party with the relevant information as contemplated in subsection (1).

(3) An infrastructure provider who has received a request pursuant to subsection (1) may refuse the request on any of the following grounds—

- (a) that the request is unreasonable;
- (b) that the space available is not sufficient to implement a co-location;
- (c) that the infrastructure provider may be prejudiced;
- (d) that the infrastructure sharing may cause harmful interferences; or
- (e) that the infrastructure sharing may cause irreparable damage to the property of the infrastructure provider or the interoperability of his infrastructure.

(4) A refusal under subsection (3) shall be made in writing to the requesting party and shall state the reasons for the refusal.

Registration of co-location and infrastructure sharing agreements

72. A co-location and infrastructure sharing agreement reached pursuant to this Part shall be submitted to the Authority for registration within fourteen working days from the date the agreement was signed by all the parties, and such agreement shall be open to inspection by the public at the premises of the Authority.

Disputes relating to interconnection agreements, etc

73.—(1) The Authority may, at the request of any party to an interconnection agreement, an access to electronic communication networks agreement, or a co-location and infrastructure sharing agreement, intervene in order to resolve a dispute which—

(a) relates to the interconnection agreement, the access to electronic communication networks agreement, or the co-location and infrastructure sharing agreement; and

(b) has not, within two months of it arising, been resolved by the parties.

(2) The Authority shall issue rules providing for the procedures for resolving disputes relating to interconnection agreements, access to electronic communication networks agreements, and co-location and infrastructure sharing agreements.

PART VIII—REGULATION OF TARIFFS

Setting or revision of tariffs

74.—(1) Subject to this Act, a licensee may, with prior approval of the Authority, set or revise the tariffs for the services that it provides to the public.

(2) A licensee shall set or revise tariffs under this section, based on justifiable economic reasons.

(3) The setting or revision of tariffs by the licensee pursuant to subsection (1) shall—

(a) be transparent, based on objective criteria and non-discriminatory;

(b) guarantee equal treatment;

(c) not contain discounts that unreasonably prejudice the competitive opportunities of other licensees providing application services to the public; and

(d) be sufficiently clear to enable end-users to determine the description of the service, the details relating to the nature of the service and the applicable fees.

Justification for tariff setting or revision

75.—(1) A licensee shall—

(a) when seeking approval to set or revise tariffs under section 74, give a detailed justification of such tariffs; and

(b) not apply any tariffs without the prior approval of the Authority.

(2) The Authority may monitor and review the tariffs as approved under this Act to ensure that they comply with the principles set out in section 74.

76. A licensee shall, upon approval of the tariffs by the Authority—

Obligations of a licensee to publish approved tariffs

(a) publish the tariffs, at the licensee's own expense, in at least two daily newspapers that have the widest circulation in Malawi, seven days before the introduction of the tariffs; and

(b) provide its communications service in accordance with the published tariffs.

77. The Authority shall maintain a register of tariffs submitted by licensees, which register shall be open to the public for inspection on such terms and conditions as the Authority may determine.

Tariff register

78.—(1) The Authority may reframe tariffs in order to promote fair competition and the granting of new licences.

Tariff reframing

(2) The Authority shall reframe tariffs by fixing price caps for one or several communication services, and the price caps fixed shall be for over a period of years or on a progressive term.

(3) Before implementing any tariff reframing, the Authority shall conduct a market analysis in consultation with the Competition and Fair Trading Commission.

(4) The Authority shall reframe tariffs in order to make the tariffs cost efficient and to remove cross-subsidization between distinctive communication services.

(5) The Authority shall make rules on tariff reframing.

79. The Authority may, on its own motion or following a complaint made by any person, investigate tariffs set up by a licensee for purposes of ensuring compliance with this Act.

Investigations on tariffs

80. Any licensee who contravenes any provision of this Part commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and imprisonment for ten years.

Offences relating to tariffs

PART IX—MANAGEMENT OF FREQUENCY SPECTRUM

81.—(1) The Authority shall manage frequency spectrum through the allocation, assignment and use of frequencies.

Management of frequency spectrum

(2) The Authority shall make rules—

(a) governing the allocation, assignment and use of frequencies;

(b) defining the standard assignment conditions of a frequency spectrum licence;

(b) governing the prevention of harmful interference with other frequency spectrum users; and

(c) establishing minimum performance standards of electronic appliances with regard to manufacture, import, sale, shipment and use of such appliances.

National
frequency
allocation plan

82.—(1) The Authority shall develop and manage a national frequency allocation plan.

(2) The national frequency allocation plan shall—

(a) be divided into a number of frequency bands that the Authority shall deem appropriate for the purpose of regulating communications under this Act;

(b) designate one or more bands to be used primarily by the Government for national security matters;

(c) specify the general purpose for which any other band may be used; and

(d) include such other matters as the Authority shall deem necessary to give full effect to the national frequency allocation plan.

(3) The Authority may, in consultation with licensees, revise, vary, suspend or revoke the national frequency allocation plan, and shall issue a public notice to that effect.

Designation of
frequency
bands

83.—(1) The Authority may designate bands of frequency spectrum to be used under a frequency spectrum licence, as well as bands of frequency spectrum to be used without a frequency spectrum licence.

(2) A person shall not undertake any activity that requires a frequency spectrum licence without first obtaining the appropriate licence from the Authority.

(3) Where an activity does not require a frequency spectrum licence, the Authority shall assign a frequency to a person in accordance with the national frequency allocation plan and in a transparent and non-discriminatory manner.

(4) Where the Authority reasonably considers that a frequency band should be subject to a restricted granting procedure, the Authority shall not assign that frequency band except in accordance with a restricted granting procedure to be set out by the Authority.

(5) The Authority may, in respect of any frequency spectrum licence, determine and impose certain terms and conditions, including the area for which the frequency spectrum licence is valid.

(6) Where applicable, any frequency spectrum licence issued under this section shall be issued at the same time as any related communications licence.

(7) A person who contravenes subsection (2) commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

84. A licensee shall not transfer the right to use any frequency to a third party.

Prohibition
on transfer of
frequency
spectrum

85.—(1) Frequency spectrum licensees shall, in good faith, co-ordinate their respective frequency usage with other licensees in order to—

Frequency
co-ordination

(a) avoid harmful interference among frequency spectrum licensees;

(b) ensure efficient use of any applicable frequency band; and

(c) allow the provision of cost-efficient services.

(2) Where frequency spectrum licensees are unable or unwilling to co-ordinate in good faith in terms of subsection (1), the Authority shall intervene and make a decision as it deems appropriate.

(3) The Authority shall issue rules governing the co-ordination contemplated in subsection (1), which may include procedures for the expedited resolution of disputes among frequency spectrum licensees.

86.—(1) The Authority may require any person whom it has reasonable cause to believe is a person required to hold a frequency spectrum licence or other authorization under this Act to produce the licence or authorisation.

Power of
entry and
search

(2) The Authority may, where authorized by a warrant issued by a magistrate court, at any reasonable time, enter and search premises that are owned or occupied by any person that the Authority has reasonable cause to believe is—

(a) using frequencies in contravention of this Act; or

(b) causing harmful interference with other communications.

(3) The Authority may, having entered and searched the premises, and upon being satisfied that an offence under this Act has been committed or is about to be committed—

- (a) stop the operation of the illegal activity;
 - (b) seal the premises;
 - (c) seize any equipment that is being used for illegal purposes;
- or
- (d) take any other action that it deems necessary.

PART X—REGULATION OF ELECTRONIC COMMUNICATION NUMBERING

Regulation of electronic communication numbering

87. The Authority shall regulate all electronic communication numbering and ensure efficient use by—

- (a) monitoring compliance; and
- (b) maintaining a national electronic communication numbering register for all assigned numbers.

National numbering plan

88.—(1) The Authority shall develop a national numbering plan for the efficient use and allocation of numbers.

(2) The national numbering plan shall consist of a scheme of identification to ensure that electronic communications are correctly and efficiently directed to the point of reception for which they are intended.

(3) The Authority shall maintain and manage a record of the status of all number ranges, codes and blocks of numbers comprising the national numbering plan in a central numbering database system.

(4) The Authority may revise, vary or revoke the national numbering plan, and shall issue a public notice to that effect.

Assignment of numbers or blocks of numbers

89.—(1) The Authority shall assign electronic communication numbers to licensees—

- (a) in accordance with the national numbering plan; and
- (b) in a transparent and non-discriminatory manner.

(2) Any person intending to undertake activities covered by an assignment shall, prior to undertaking such activities, apply for such assignment.

(3) Where the Authority considers that a number or block of numbers should be subject to a restricted granting procedure, the Authority shall not assign that number or block of numbers, except in accordance with a restricted granting procedure to be set out by the Authority.

(4) The Authority shall include standard conditions as set out in rules for any assignment of numbers.

(5) The Authority may, in respect of any assignment of numbers, determine and impose certain terms and conditions, including the area for which the assignment is valid.

90. A person to whom a number has been assigned shall not transfer the rights to use that number to any third party.

Rights not to be transferred

91. The Authority shall issue rules relating to—

- (a) the introduction of number portability;
- (b) the creation of a national number portability database; and
- (c) cost allocation and cost recovery among electronic communications licensees.

Rules relating to number portability, etc.

PART XI—REGISTRATION OF GENERIC NUMBERS AND SIM CARDS

92.—(1) A person who uses a generic number or owns or intends to use a SIM card for voice telephony services shall register that generic number or SIM card with any electronic communications licensee or with the distributor, agent or dealer of the electronic communications licensee, authorized to provide or sell generic numbers or SIM cards.

Registration of generic numbers and SIM cards

(2) Any electronic communications licensee or the distributor, agent or dealer of the electronic communications licensee, shall—

(a) where a potential subscriber is a natural person, obtain and fill in a form the following information—

- (i) the full name of the subscriber;
- (ii) the identity card number, or any other document that proves the identity of the subscriber; and
- (iii) the residential and business or registered physical address of the subscriber,

(b) where the potential subscriber is a legal entity, obtain and fill in a form particulars of the subscriber, together with a certified copy of the subscriber's—

- (i) certificate of registration or incorporation;
- (ii) business licence; and
- (iii) where applicable, tax payer identification certificate number; and

(c) obtain from the potential subscriber any other information that the electronic communications licensee deems necessary.

(3) An electronic communications licensee, or the distributor, agent or dealer of the electronic communications licensee, shall, before filling in the particulars of a potential subscriber referred to in subsection (2)—

(a) verify the information; and

(b) retain, either in hard copy or electronically, all certified copies of the documents obtained.

Distributors, agents and dealers to submit information to licensees

93.—(1) A distributor, agent or dealer who sells or distributes generic numbers or SIM cards for telephony services shall, within seven days from the date of the sale or distribution, submit to its respective electronic communications licensee the information and documents obtained under section 94.

(2) Where there is a change to the information submitted under subsection (1), a distributor, agent or dealer shall, within seven days from the date of the change, notify the respective electronic communications licensee of the change.

(3) A distributor, agent or dealer who fails to comply with this section commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

Sale or distribution of generic numbers or SIM cards

94.—(1) A person shall not—

(a) sell or distribute a generic number or SIM card without authorization from an electronic communications licensee; or

(b) use an unregistered generic number or SIM card.

(2) A person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

PART XII—ELECTRONIC COMMUNICATIONS EQUIPMENT, APPLIANCES AND DEVICES

Technical and performance standards for equipment connected to a network

95.—(1) The Authority shall establish and publish technical and performance standards with regard to the manufacture, import, sale, shipment and use of all electronic communications equipment, appliances and devices to be used for connection to an electronic communications network in Malawi.

(2) In establishing such standards, the Authority shall—

(a) where appropriate, seek submissions from other interested parties, in particular, those parties that would most likely be affected by the standards; and

(b) take due account of any relevant standards prescribed by international organizations to which Malawi is a member.

(3) The Authority shall issue rules with respect to technical standards for equipment to be connected to an electronic communications network.

96.—(1) A licensee shall not use any equipment for connection to an electronic communications network without the prior approval by the Authority of the type of equipment to be used.

Approval of type of equipment to be connected to a network

(2) The Authority may, at the request of any licensee, manufacturer or supplier of equipment, conduct type approval tests and issue type approval certificates in respect of electronic communications equipment intended for use in Malawi.

PART XIII—REGULATION OF CONTENT SERVICES

97.—(1) The Authority shall regulate content services in accordance with this Act.

Authority to regulate content services

(2) The Authority shall facilitate the investment and development of the broadcasting sector in Malawi, and shall, in particular—

(a) issue licences to operators of content services;

(b) promote the development of content services;

(c) ensure fair competition between different content service licensees;

(d) promote universally accessible and affordable content services of reliable quality;

(e) promote broadcasting ethics applicable to content services; and

(f) resolve disputes involving content service licensees.

(3) The Authority may make rules of content service with regard to the type, nature, form, scope, standards and attributes of the service.

(4) The Authority may make rules describing the conditions pursuant to which content service licensees shall enter into agreements with signal distributors for transmission.

98. A person shall not provide content services without a content licence issued by the Authority under this Act.

Requirement of licence to provide content services

99. The Authority shall issue the following types of content licences—

Types of content licences

(a) public content licence;

(b) commercial content licence;

(c) community content licence;

(d) subscription content management; and

(e) any other type as the Authority may determine from time to time.

Public content
licences

100.—(1) The Authority may designate one or more public content licensees to perform any of the functions relating to the operation and provision of public content services in Malawi.

(2) The Authority shall, when considering the granting of a public content licence, have due regard to the objectives set out in section 2, and in particular, shall take into account the following—

(a) the demand for the proposed content service within the proposed licence area;

(b) the need for the proposed content service within that area, with regard to content services already existing in that area; and

(c) the technical quality of the proposed content service with regard to developments in content technology.

Commercial
content licences

101. The Authority shall, when considering the granting of a commercial content licence, have due regard to the objectives set out in section 2, and in particular, shall take into account the following—

(a) the expected technical quality of the proposed content service, with regard to developments in content technology;

(b) the capability, expertise and experience of the applicant;

(c) the financial means and business record of the applicant;

(d) the business record of entities that are in a position to control the operations of the licensee, either in an individual capacity or directly or indirectly in relation to the licensee's management or corporate structure; and

(e) whether the applicant or the entities referred to in paragraph (d) have been convicted of an offence under this Act.

Community
content licences

102. The Authority shall, when considering the granting of a community content licence, have due regard to the objectives set out in section 2, and in particular, shall take into account the following—

(a) whether the applicant is fully controlled by a non-profit making entity and operates for non-profit purposes;

(b) whether the applicant intends to serve the interests of the relevant community;

(c) in relation to the provision of the proposed content service, whether the applicant has the support of the relevant community or those associated with or promoting the interests of the community;

(d) whether the applicant intends to encourage members of the relevant community or those associated with or promoting the

interests of the community, to participate in the selection of the applicant's programmes;

(e) whether the applicant has never been convicted of an offence under this Act;

(f) the expected technical quality of the proposed content service, having regard to developments in broadcasting technology;

(g) the capability, expertise and experience of the applicant;

(h) the financial means and business record of the applicant; and

(i) any other condition that the Authority may deem necessary.

103. The Authority shall not grant a content licence to any political party, movement, organization, body, entity or alliance that is political in nature.

Content licence not to be granted to entities that are political in nature

104. A person who is not a citizen of Malawi shall not, directly or indirectly—

Limitations on foreign ownership

(a) exercise control over content service; or

(b) have a financial interest or an interest in voting shares or paid up capital in content service licence, exceeding 20 %.

105.—(1) The Authority shall include in the licence of a public content service licensee designated under section 100 a right of the licensee to collect appropriate fees from any person who has equipment that is capable of receiving television programmes, as approved by the Authority.

Public content service fees

(2) A designated public content service licensee shall—

(a) upon payment of the appropriate fees, issue a television licence; and

(b) use the fees exclusively for the purpose of financing public television services.

(3) A designated public content service licensee may enter into a commercial agreement with any other entity for the purpose of collecting fees under this section.

106. A subscription content services licensee shall not acquire exclusive rights that prevent or hinder the free-to-air broadcasting of Malawian sporting events of national importance, as may from time to time be determined by the Authority.

Restriction on subscription content services

Examination of programmes by the Authority

107.—(1) A content service licensee shall, at the request of the Authority, produce to the Authority a recording of every programme broadcast in the course of its broadcasting service for examination or reproduction, within sixty days from the date of the broadcast.

(2) Subsection (1) shall not be construed as requiring or authorizing the Authority, in the performance of its functions, to view programmes prior to their broadcast.

(3) The Authority shall, in addition to the provisions of this Part, regulate content services with respect to the matters set out in the Second Schedule.

PART XIV—THE MALAWI BROADCASTING CORPORATION

Establishment of the Malawi Broadcasting Corporation

108.—(1) There is hereby established a corporation to be known as the Malawi Broadcasting Corporation, which shall be a public broadcasting services licensee.

(2) The Malawi Broadcasting Corporation shall—

(a) be a body corporate with perpetual succession and a common seal;

(b) be capable of suing and being sued in its corporate name;

(c) be capable of acquiring and disposing of any moveable or immovable property; and

(d) subject to this Act, have the power to do or perform all such acts or things as bodies corporate may by law do or perform.

Public service obligations of the Malawi Broadcasting Corporation

109.—(1) The Malawi Broadcasting Corporation shall provide public broadcasting services in accordance with the following principles—

(a) the provision of programmes that educate, entertain and inform;

(b) the encouragement of free and informed opinion on all matters of public interest;

(c) the need to reflect the wide diversity of Malawi's cultural life; and

(d) respect for human rights, the rule of law, and the Constitution.

(2) The Malawi Broadcasting Corporation shall, in the provision of its broadcasting services—

(a) function without any political bias and independently of any person or entity;

(b) support the democratic process;

(c) refrain from broadcasting any matter expressing its opinion or the opinion of Corporation, on current affairs or on matters of public policy:

Provided that the Corporation shall not be restrained from making editorial comments;

(d) provide balanced coverage of any elections; and

(e) operate with regard to the public interest.

110.—(1) The duties and functions of the Malawi Broadcasting Corporation shall be—

Duties, functions and powers of the Malawi Broadcasting Corporation

(a) to provide public broadcasting services throughout Malawi; and

(b) to perform such undertakings and provide such other services as are conducive to the exercise of the functions and fulfilment of the service obligations specified in this Act, or as are ordinarily within the functions of a public broadcasting service.

(2) Subject to the provisions of this Act, the Malawi Broadcasting Corporation shall have the power to—

(a) enter into contracts that may be necessary for the Corporation to carry out its duties and functions;

(b) construct, acquire, maintain and repair buildings and premises and to carry out works required for the purposes of the Corporation;

(c) acquire, maintain and repair broadcasting equipment and other facilities required for the purposes of the Corporation, except where the Corporation becomes a content provider;

(d) solicit and broadcast paid advertisements and sponsored programmes;

(e) collect broadcasting fees payable under this Act; and

(f) receive and use the net proceeds from issuance of broadcasting fees under this Act.

111.—(1) There shall be a Board of the Malawi Broadcasting Corporation which shall be responsible for directing the affairs of the Corporation.

Board of the Malawi Broadcasting Corporation

(2) The Board of the Malawi Broadcasting Corporation shall consist of—

(a) five members appointed in accordance with section 112; and

(b) the following *ex-officio* members—

- (i) the Secretary for Information or his representative;
- (ii) the Secretary to the Treasury or his representative;
- (iii) the Solicitor General or his representative; and
- (iv) the Secretary for Education or his representative.

Appointment
of members of
Board of the
Malawi
Broadcasting
Corporation

112.—(1) The President shall appoint members of the Board of the Malawi Broadcasting Corporation, other than *ex-officio* members and each appointment shall be subject to confirmation by the Public Appointments Committee of Parliament.

(2) A person to be appointed as a member of the Board of the Malawi Broadcasting Corporation shall—

(a) be a citizen of, and resident in, Malawi;

(b) possess qualifications, expertise and experience in any of the fields of broadcasting, education, engineering, law, information communication technology, business, finance, or public administration; and

(c) not be a person who has, within the last three years, been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine.

(3) In appointing members of the Board of the Malawi Broadcasting Cooperation under subsection (1), the President shall have regard to gender equality and the need for continuity of service on the Board of the Malawi Broadcasting Cooperation.

(4) The names of all members of the Board of the Malawi Broadcasting Corporation, and every change of membership, shall be published in the *Gazette*.

(5) A person shall not qualify to be appointed as a member of the Board of the Malawi Broadcasting Corporation if that person—

(a) holds a position in a political party;

(b) has, within the last three years, been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(c) is an undischarged bankrupt;

(d) is a minor;

(e) is a Member of Parliament; or

(f) is a Minister or a Deputy Minister.

(6) The President shall appoint one of the members of the Board of the Malawi Broadcasting Corporation as Chairperson.

(7) In the event of the office of the Chairperson of the Board of the Malawi Broadcasting Corporation becoming vacant, members

of the Board shall elect one amongst themselves to exercise the powers and perform the duties of the Chairperson, until a new Chairperson is appointed.

113.—(1) A member of the Board of the Malawi Broadcasting Corporation, other than an *ex officio* member, shall hold office for a period of three years and shall be eligible for re-appointment to one more term.

Tenure of office and vacancies

(2) The office of a member of the Board of the Malawi Broadcasting Corporation shall become vacant, if the member—

(a) resigns;

(b) dies;

(c) is declared bankrupt;

(d) knowingly fails to declare a conflict of interest relating to any matter under consideration by the Board;

(e) is absent, without a good and justifiable reason, from three consecutive meetings of the Board of which he has had prior notice;

(f) becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member;

(g) is found guilty of conduct that brings the Corporation into disrepute; or

(h) is disqualified under section 112(5).

(3) A vacancy on the Board of the Malawi Broadcasting Corporation shall be filled by the appointment of a new member in accordance with the manner provided for in section 111 as read with section 112, and the member so appointed shall hold office for the unexpired period of his predecessor's term of office, but the vacancy may not be filled if the unexpired period is less than six months.

114. A member of the Board of the Malawi Broadcasting Corporation shall be paid, allowances and other benefits from the funds of the Corporation, as the Minister responsible for public service may, on recommendation of the Board, from time to time, approve.

Honoraria of members of the Board of the Malawi Broadcasting Corporation

115.—(1) The Board of the Malawi Broadcasting Corporation, in consultation with the Director General, shall meet to conduct the business of the Board at least once every three months, at such places and times as the Chairperson may determine.

Meetings of the Board of the Malawi Broadcasting Corporation

(2) The Chairperson of the Board of the Malawi Broadcasting Corporation shall convene meetings of the of the Board by giving the members at least seven days' written notice, unless the Chairperson notifies the members in writing that the urgency of the matter to be discussed requires a shorter period of notice.

(3) The quorum for any meeting of the Board of the Malawi Broadcasting Corporation shall be two thirds of all members of the Corporation.

(4) The Chairperson of the Malawi Broadcasting Corporation shall preside at any meeting of the Board, and in his absence, the members present shall elect one of the members to preside at the meeting.

(5) A decision of the Board of the Malawi Broadcasting Corporation at any meeting shall be that of half of the members present at the meeting, and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(6) Subject to this Act, the Board of the Malawi Broadcasting Corporation shall have the power to determine its own procedure.

(7) Meetings of the Board of the Malawi Broadcasting Corporation shall be held at a place and at a time that the Chairperson of the Board may direct, but the Director General may, in the absence of the Chairperson and before the election of an interim Chairperson under subsection (4), convene such meeting.

Committees
of the Board
of the Malawi
Broadcasting
Corporation

116.—(1) The Board of the Malawi Broadcasting Corporation may establish one or more committees, and delegate to any such committee or committees any of its functions as it considers necessary.

(2) The Board of the Malawi Broadcasting Corporation may invite any person to attend any of the meetings of its committees, and that person shall be entitled to participate in the deliberations of the meetings, but shall not have the right to vote.

(3) The chairperson of every committee of the Board of the Malawi Broadcasting Corporation shall be a person who is a member of the Board.

(4) A member of a committee of the Board of the Malawi Broadcasting Corporation shall be paid such allowances from the funds of the Corporation as the Minister responsible for public service may, on recommendation of the Board, approve.

(5) Subject to the general or special directions of the Board and to the provisions of this Act, every committee of the Board of the Malawi Broadcasting Corporation shall have the power to determine its own procedure.

(6) The Chairperson of the Board of the Malawi Broadcasting Corporation shall not be a member of any committee of the Board.

117.—(1) The Board of the Malawi Broadcasting Corporation shall, appoint the Director General, who shall be the chief executive officer of the Corporation and shall, subject to the general supervision of the Board, be responsible for the day to day operations of the Corporation.

Director
General and
other
employees of
the Malawi
Broadcasting
Corporation

(2) The Director General shall be appointed to a term of office of three years, and may be re-appointed for further two terms of three years each.

(3) The Director General shall be removed from office on any of the following grounds—

(a) incompetence;

(b) misconduct that brings the Corporation into disrepute;

(c) undischarged bankruptcy;

(d) non-disclosure of interest;

(e) if he has been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(f) involvement in active politics; or

(g) incapability to perform his duties as Director General by reason of mental or physical infirmity.

(4) The Director General shall not be removed from office unless he has been given an opportunity to be heard.

(5) The Director General or, in his absence, such other employee of the Malawi Broadcasting Corporation as he may designate, shall attend meetings of the Board of the Corporation and of any committees of the Board and may address such meetings, but shall not vote on any matter.

(6) The Board of the Malawi Broadcasting Corporation shall appoint other staff subordinate to the Director General after calling for nominations by way of public advertisement, and the appointment shall only be based on qualification, experience and capacity in matters relating to the operational requirements of the Corporation.

(7) The staff appointed by the Board of the Malawi Broadcasting Corporation under subsection (6) shall not be below the rank of director.

(8) The Director General shall have the power to appoint, subject to procedure for public service recruitment, employees below the rank of director.

(9) The Board of the Malawi Broadcasting Corporation shall pay the employees of the Corporation such remuneration, allowances, pension, gratuities and other employment benefits as the Board may, after having obtained professional advice, consider as being competitive in the employment market in Malawi.

(10) A member of the Board of the Malawi Broadcasting Corporation, an employee, a consultant, an adviser and a subcontractor of the Corporation shall sign an oath of secrecy upon being appointed on the Board or being engaged by the Corporation, as the case may be.

Funds of the
Malawi
Broadcasting
Corporation

118.—(1) The funds of the Malawi Broadcasting Corporation shall consist of—

(a) such sums as may, from time to time, be appropriated to the Corporation by Parliament;

(b) such moneys or other assets as may accrue to or vest in the Corporation by way of grants, subsidies, donations, bequests, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;

(c) such sums as are derived from the sale of any property by or on behalf of the Corporation;

(d) fees and charges payable under this Act; and

(e) any charges that the Corporation may raise in respect of commercial advertising, sponsored programmes and other services.

(2) The Malawi Broadcasting Corporation may, subject to any directions of a general nature which may be given to the Board by the Minister of Finance, invest on short term deposit with any bank or financial institution in Malawi such part of its funds that are not immediately required for the purposes of its operations.

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(3) Subject to the Public Finance Management Act, the Malawi Broadcasting Corporation may borrow money for the purposes of carrying out its duties and functions by—

(a) issuing loan stock on such terms as may be approved by the Minister of Finance; or

(b) way of an overdraft or credit in Malawi or outside Malawi, with the approval of, and subject to such limitations as may be imposed by, the Minister of Finance. Cap. 37:02

119.—(1) The Malawi Broadcasting Corporation shall keep proper books and other records relating to its accounts. Accounts and audit

(2) The accounts of the Malawi Broadcasting Corporation shall—

(a) be audited annually by independent auditors appointed by the Board of Corporation; and

(b) be examined by the Auditor General before final approval by the Board, and before being presented to the Minister in accordance with section 120.

(3) The financial year of the Malawi Broadcasting Corporation shall be the same as the financial year of the Government.

120.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Malawi Broadcasting Corporation shall publish in the *Gazette* and submit to the Minister a report concerning its activities during that financial year. Annual reports

(2) The report referred to in subsection (1) shall be in a form approved by the Minister, after consultation with the Board of the Malawi Broadcasting Corporation, and shall include information on the financial affairs of the Corporation, and the following shall be appended to the report—

(a) an audited statement of financial position;

(b) an audited statement of income and expenditure; and

(c) such other information that the Minister may require.

PART XV—REGULATION OF POSTAL SERVICES

121. The Authority may make rules describing types of postal services in terms of their nature, form, scope, mode of postage, technology used, service standards and attributes. Power to make postal services rules

122.—(1) A person shall not carry out any commercial postal services without a licence issued under this Act. Licensing of postal services

(2) The Authority shall issue postal licences for the following postal activities—

(a) conveyance of postal articles from one place to another;

(b) performance of all services incidental to receiving, collecting, sending, dispatching and delivering of postal articles,

except—

(i) trade announcements, circulars, printed extracts from newspapers or advertisements not addressed to any specific entity;

(ii) postal articles delivered by an employee of a sender;

(iii) postal articles delivered by a messenger employed by a sender specifically for the purpose, not being a person employed or engaged in the course of the sender's business or employment of delivering or procuring the delivery of postal articles; and

(iv) postal articles for delivery to another entity or entities to whom they are directed, without hire, reward or other profit or advantage for receiving, carrying or delivering them; and

(c) any other services that the Authority may determine from time to time.

Categories of postal licences

123. For the purposes of this Act, the Authority shall issue the following categories of postal licences—

(a) public postal licences to allow the holder thereof, being a public entity, to provide postal services;

(b) postal services licences to allow the holder thereof, being a private commercial entity, to provide postal services;

(c) courier services licences to allow the holder thereof to provide courier services: and

(d) any other category that the Authority may determine from time to time.

Allocation, management, etc., of addresses and postcodes

124. The Authority shall—

(a) allocate, manage and regulate addresses and postcodes;

(b) regulate the publication and sale of postcode lists and directories;

(c) require postal services licensees to make deliveries available for publication free of charge; and

(d) issue rules to regulate the publications.

Terms and conditions of a public postal service licence

125.—(1) A licence issued to a public postal service licensee designated under this Act shall include the following terms and conditions—

(a) that the licensee shall have exclusive rights to install personal letter boxes and collection boxes;

(b) that the licensee shall have exclusive rights to use the words

“Post Office” “letter box” or “postage stamps” for a period to be determined by the Authority; and

(c) any other terms and conditions considered appropriate by the Authority.

(2) The Authority may make rules governing the determination of the scope of exclusive rights to be enjoyed by the public postal licensee.

126.—(1) Subject to the Financial Services Act, the Authority may authorize a postal services licensee to provide such financial services as the Authority may approve.

Financial services
Cap. 44:05

(2) The financial services referred to in subsection (1) shall include—

(a) the issuance of—

- (i) money orders, including postal orders;
- (ii) postal checks; and
- (iii) postal travellers' checks;

(b) the collection and payment of bills;

(c) the provision of savings services; and

(d) such other financial services as approved by the Authority.

127.—(1) A postal services licensee shall protect the confidentiality of correspondence and the integrity of postal articles.

Confidentiality of correspondence and integrity of postal articles

(2) A postal services licensee, its employees or agents, shall protect a postal article and ensure that—

(a) the postal article is not opened;

(b) the contents of the postal article are not disclosed;

(c) the postal article is not delivered to an entity other than the addressee, without the consent of the addressee; and

(d) the postal article is not opened by or disclosed to, an entity other than the addressee, without the consent of the addressee.

(3) Notwithstanding subsections (1) and (2), the following acts shall not constitute a violation of the confidentiality of correspondence or the integrity of a postal article—

(a) opening of correspondence by an individual residing at the same address as the addressee;

(b) submission of correspondence for verification and inspection by any authority authorized by law to verify or inspect such correspondence;

(c) opening of a postal article for purposes of ascertaining details pertaining to the sender or addressee that are necessary in order to return or deliver the postal article; or

(d) opening of a postal article that is reasonably suspected to contain material or substances whose dispatch, use, importation, exportation or distribution is prohibited or regulated by law.

(4) An employee of the Malawi Posts Corporation may open any mail, if authorized to do so by express warrant of the Postmaster General.

(5) The Postmaster General may grant a warrant to open any mail in any individual circumstances if he has reason to believe that an offence may have been committed under this Act or any other written law.

(6) A person who fails to comply with this section commits an offence and shall, upon conviction, be liable to a fine of K500,000 and imprisonment for twelve months.

Postage
stamps and
postal charges

128.—(1) A public postal licensee shall have exclusive rights to issue postage stamps, but may enter into an arrangement with any entity to sell the postage stamps.

(2) A public postal licensee may, subject to such rules as the Authority may prescribe, issue postage stamps of such kinds and denoting such values as the licensee may deem necessary for the purposes of this Part.

(3) Any postage stamp issued under this section shall be used for the payment of any postage or other sum chargeable under this Act in respect of any postal service, except where the Authority determines that the payment may be made in some other manner.

Philatelic
materials

129. Philatelic materials produced by a public postal licensee shall—

(a) belong to the Government and shall be kept in such custody as the Authority may direct; and

(b) include—

(i) postage stamps;

(ii) artwork, proofs, progressive sheets, printed sheets and printed plates of postage stamps; and

(iii) date-stamps, slogan dyes, and other artefacts used in connection with the production of postage stamps.

Exemption
from postal
charges

130.—(1) The Authority may make rules governing the exemption of certain classes of entity from postal charges on postal articles, from commissions, fees or other charges payable for

services rendered.

(2) Without prejudice to the generality of subsection (1), such rules may exempt certain entities from payment of postal charges on postal articles for charitable purposes.

131. For the purposes of this Act, a postal article is deemed to have been delivered if it is—

Delivery of postal articles

(a) delivered into the personal letter box or personal bag of the addressee;

(b) left at the house or office of the addressee;

(c) left with the addressee, or with his employee or agent, or another entity authorised to receive it;

(d) left at a place where the addressee is a guest or is resident, whether the place is a hotel, hostel or any lodging of a similar nature; or

(e) left with the proprietor or manager of the addressee.

132.—(1) A postal services licensee shall, at the request of a sender of an unregistered postal article intended for transmission by letterbox, give the sender a certificate of posting of the postal article upon payment of an appropriate fee.

Certificate of posting

(2) The certificate of posting of a postal article referred to in subsection (1) shall not convey any entitlement to compensation or be acceptable as proof of the nature of the contents of the postal article to which it relates.

(3) A sender shall not return a postal article in respect of which a certificate of posting has been issued.

133.—(1) A postal services licensee may, where the licensee is not able to deliver a postal article to the addressee or return the postal article to the sender, open and examine the postal article for the purpose of determining from its contents the identity of the addressee or sender.

Undelivered and undeliverable postal articles

(2) A postal services licensee shall, if after an examination of the postal article—

(a) identifies the addressee or the sender, re-seal the postal article and enclose or append a written explanation of the reasons for the opening; or

(b) fails to identify the addressee or the sender, hold the postal article for a period of up to six months from the date of the examination and, if during that period any entity proves to be entitled to receive the postal article, deliver it to that entity.

(3) If no delivery of the postal article is made under subsection (2) (b), the postal services licensee may—

(a) destroy the postal article or any of its contents; or

(b) sell any of the contents of the postal article and credit the proceeds to the licensee's income.

(4) If the postal article is disposed of under subsection (3), the postal services licensee shall make a record of the disposal and store such record together with other such records in a manner prescribed, or as approved by the Authority, for a period of not less than twelve months from the date of the disposal, and make such record available for inspection by the Authority at its request.

(5) The postal services licensee shall not be held liable for any postal article disposed of under this section.

Contract for
the transport of
postal articles

134. A postal services licensee may enter into a contract with any entity providing a regular transport service within Malawi for the purpose of carrying postal articles.

Prohibited
postal articles

135. A person shall not send by post—

(a) explosive, inflammable, dangerous, filthy, noxious or deleterious substance, or any sharp instrument not properly protected, or any living creature that is either noxious or likely to injure any individual or damage any postal article in the course of transmission by post;

(b) indecent or obscene printing, painting, photograph, lithograph, engraving, book or card or any other indecent or obscene article;

(c) a postal article having thereon, or on the cover thereof, any words, marks or designs of any indecent, obscene, seditious, scurrilous, threatening or grossly offensive character;

(d) a postal article bearing any fake stamp or purporting to be prepaid with any postage stamp that has previously been used to prepay any other postal article, or which has previously been used in payment of any stamp duty; or

(e) other article that the Authority may prohibit by rules made under this Act and in line with Universal Postal Union Articles.

Obligation of
a licensee to
inform the
Authority of an
illicitly posted
article

136.—(1) A postal services licensee who receives a postal article which the licensee reasonably suspects to have been sent in contravention of this Act or any other written law, shall immediately inform and hand over the postal article to the Authority or any other law enforcement agency.

(2) The Authority or other law enforcement agency may forfeit,

detain, destroy or in any manner dispose of, the postal article found to have been posted in contravention of this Act.

(3) The forfeiture, detention, destruction or disposal of the postal article or its contents shall not relieve the sender from liability for any offence committed under this Act or any other written law.

137.—(1) A postal services licensee shall be liable to pay compensation for the destruction, damage, loss, misplacement, non-delivery, or failure to guarantee the confidentiality of correspondence or the integrity of postal articles.

Liability for lost, damaged, etc., postal articles

(2) A postal services licensee shall submit to the Authority its compensation policy in respect of the destruction, damage, loss, misplacement or non-delivery of postal articles three months after being issued with a postal services licence.

(3) A postal services licensee shall not be liable to pay compensation where—

- (a) the sending of the postal article is prohibited under this Act;
- (b) the postal article is insured for a value equal to or in excess of its value; or
- (c) the addressee of the postal article has signed for and retained the postal article without objection.

(4) A postal customer shall apply to a postal services licensee for compensation where his postal article has been destroyed, damaged, lost, misplaced, undelivered or delivered with delay.

(5) Where a postal services licensee fails to comply with a request or claim for compensation from a postal customer, the postal customer may complain to the Authority.

PART XVI—THE MALAWI POSTS CORPORATION

138.—(1) There is hereby established a corporation to be known as the Malawi Posts Corporation, which shall be a public postal services licensee.

Establishment of the Malawi Posts Corporation

(2) The Malawi Posts Corporation shall—

- (a) be a body corporate with perpetual succession and a common seal;
- (b) be capable of suing and being sued in its corporate name;
- (c) be capable of acquiring and disposing of any moveable or immovable property; and
- (d) subject to this Act, have the power to do or perform all such acts or things as bodies corporate may by law do or perform.

Duties,
functions and
powers of the
Malawi Posts
Corporation

139.—(1) The Malawi Posts Corporation shall have the following duties and functions—

(a) to provide postal services and to perform other services incidental to transmission of postal articles;

(b) to establish and operate post offices; and

(c) subject to the Financial Services Act, to provide financial services.

Cap. 44:05

(2) In the exercise of its duties and functions conferred under this Act, the Malawi Posts Corporation shall have power to—

(a) enter into contracts;

(b) construct, acquire, maintain and repair buildings and premises and carry out works;

(c) acquire, manufacture, maintain and repair equipment and facilities;

(d) levy rates and charges for any service performed by the Corporation or for the use by any entity of the premises, equipment or facilities provided by the Corporation; and

(e) represent Malawi in matters relating to the Universal Postal Union, the Pan-African Postal Union and such other international organizations as the Minister may decide.

Board of the
Malawi Posts
Corporation

140.—(1) The Board of the Malawi Posts Corporation shall consist of —

(a) four members, appointed by the President and confirmed by the Public Appointment Committee of Parliament;

(b) the following *ex-officio* members—

(i) the Principal Secretary responsible for postal service, or his representative;

(ii) the Secretary to the Treasury or his representative; and

(iii) the Comptroller of Statutory Corporations, or his representative.

(2) In appointing members of the Board of the Malawi Posts Corporation under subsection (1), the President shall have regard to gender equality and the need for continuity of service on the Board of Malawi Posts Corporation.

(3) A person to be appointed as a member of the Board of the Malawi Posts Corporation shall—

(a) be a citizen of, and resident in, Malawi;

(b) possess qualifications, expertise and experience in any of

the fields of postal services, education, engineering, law, information communication technology, business, finance, or public administration; and

(c) be a person who is committed to principles of fairness, openness and accountability.

(4) The names of all members of the Board of the Malawi Posts Corporation, and every change of membership, shall be published in the *Gazette*.

(5) A person shall not qualify to be appointed as a member of the Board of the Malawi Posts Corporation if that person—

(a) holds a position in a political party;

(b) has, within the last three years, been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(c) is an undischarged bankrupt;

(d) is a minor;

(e) is a Member of Parliament; or

(f) is a Minister or Deputy Minister.

(6) The President shall appoint one of the members of the Board of the Malawi Posts Corporation as Chairperson.

(7) In the event of the office of the Chairperson of the Board of the Malawi Posts Corporation becoming vacant, members of the Board shall elect one amongst themselves to exercise the powers and perform the duties of the Chairperson, until a new Chairperson is appointed.

141.—(1) A member of the Board of the Malawi Posts Corporation, other than an *ex officio* member, shall hold office for a period of three years and shall be eligible for re-appointment to one more term.

Tenure of
office and
vacancies

(2) The office of a member shall become vacant if the member—

(a) resigns;

(b) dies;

(c) is declared bankrupt;

(d) knowingly fails to declare a conflict of interest relating to any matter under consideration by the Board;

(e) is absent, without a good and justifiable reason, from three consecutive meetings of the Board of which he has had prior notice;

(f) becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member;

(g) is found guilty of conduct that brings the Corporation into disrepute; or

(h) is disqualified under section 140 (5).

(3) A vacancy on the Board of the Malawi Posts Corporation shall be filled by the appointment of another member in the same manner as provided in section 140, and the member so appointed shall hold office for the unexpired period of his predecessor's term of office, but the vacancy may not be filled if the unexpired period is less than six months.

Honoraria of
members of
the Board of
the Malawi
Posts
Corporation

142. A member of the Board of the Malawi Posts Corporation shall be paid, allowances and other benefits from the funds of the Corporation, as the Minister responsible for public service may, on recommendation of the Board, approve.

Meetings of
the Board of
the Malawi
Posts
Corporation

143.—(1) The Board of the Malawi Posts Corporation shall meet to conduct the business of the Board at least once every three months, at such places and times as the Chairperson may, in consultation with the Postmaster General, determine.

(2) The Chairperson of the Board of Malawi Posts Corporation shall convene meetings of the Board by giving the members at least seven days' written notice, unless the Chairperson notifies the members in writing that the urgency of the matter to be discussed requires a shorter period of notice.

(3) The quorum for any meeting of the Board of the Malawi Posts Corporation shall be two thirds of all the members of the Corporation.

(4) The Chairperson of the Board of the Malawi Posts Corporation shall preside at any meeting of the Board, and in his absence, the members present shall elect one of the members to preside at the meeting.

(5) A decision of the Board of the Malawi Posts Corporation at any meeting shall be that of half of the members present at the meeting, and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(6) Subject to this Act, the Board of the Corporation shall have the power to determine its own rules of procedure.

(7) Meetings of the Board of the Corporation shall be held at a place and at a time that the Chairperson may direct, but the Postmaster General may, in the absence of the Chairperson and before the election of an interim Chairperson under subsection (4), convene such meeting.

144.—(1) The Board of the Malawi Posts Corporation may establish one or more committees, and may delegate to any such committee or committees any of its functions as it considers necessary.

Committees
of the Board
of the Malawi
Posts
Corporation

(2) The Board of the Malawi Posts Corporation may invite any person to attend any of the meetings of its committees, and that person shall be entitled to participate in the deliberations of the meetings, but shall not have the right to vote.

(3) The Chairperson of every committee of the Board of the Malawi Posts Corporation shall be a person who is a member of the Board.

(4) A member of a committee of the Board of the Malawi Posts Corporation shall be paid such allowances from the funds of the Corporation as the Minister responsible for public service may, on recommendation of the Board, approve.

(5) Subject to the general or special directions of the Board of the Malawi Posts Corporation and to the provisions of this Act, every committee of the Board shall have the power to determine its own procedure.

(6) The Chairperson of the Board of the Malawi Posts Corporation shall not be a member of any committee of the Board.

145.—(1) The Board of the Malawi Posts Corporation shall appoint the Postmaster General who shall be the chief executive officer of the Corporation and shall, subject to the general supervision of the Board, be responsible for the day to day operations of the Corporation.

Postmaster
General of
the Malawi
Posts
Corporation

(2) A person to be appointed Postmaster General shall—

(a) have experience and capacity in matters relating to the postal industry, finance, economics, accountancy, commerce, law or postal administration; and

(b) be required to demonstrate knowledge and excellence in one or more of the areas of postal services.

(3) The Postmaster General shall be appointed to a term of office of three years, and may be re-appointed for further two terms of three years each.

(4) The Postmaster General shall be removed from office on any of the following grounds—

- (a) incompetence;
- (b) misconduct that brings the Corporation into disrepute;
- (c) undischarged bankruptcy;
- (d) non disclosure of interest;
- (e) has been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;
- (f) involvement in active politics; or
- (g) incapability to perform his duties as Director General by reason of mental or physical infirmity.

(5) The Postmaster General shall not be removed from office unless he has been given an opportunity to be heard.

(6) The Postmaster General shall attend meetings of the Board of the Malawi Posts Corporation and of any committees of the Board, and may address such meetings, but shall not vote on any matter, provided that the person presiding at any meeting may, for good cause, require the Postmaster General to withdraw from the meeting.

Other
employees of
the Malawi
Posts
Corporation

146.—(1) The Board of the Malawi Posts Corporation shall appoint other staff subordinate to the Postmaster General after calling for nominations by way of public advertisement, and the appointment shall only be based on qualification, experience and capacity in matters relating to the operational requirements of the Corporation.

(2) The staff appointed by the Board under subsection (1) shall not be below the rank of director.

(3) The Postmaster General shall have the power to appoint employees below the rank of director.

(4) The Board of the Malawi Posts Corporation shall pay the employees of the Corporation such remuneration, allowances, pension, gratuities and other employment benefits as the Board may, after having obtained professional advice, consider as being competitive in the employment market in Malawi.

(5) Members of the Board of the Malawi Posts Corporation, consultants, advisers and subcontractors of the Corporation shall sign an oath of secrecy upon being appointed on the Board or being engaged by the Corporation, as the case may be.

147.—(1) The funds of the Malawi Posts Corporation shall consist of—

Funds of the
Malawi Posts
Corporation

(a) such sums as may, from time to time, be allocated to the Corporation by Parliament and the Universal Service Fund Committee;

(b) such moneys or other assets as may accrue to or vest in the Corporation by way of grants, subsidies, donations, bequests, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;

(c) such sums as are derived from the sale of any property by or on behalf of the Corporation; and

(d) such sums as the Corporation may charge in respect of its services.

(2) The Malawi Posts Corporation may, subject to any directions of a general nature which may be given to its Board by the Minister of Finance, invest such part of its funds that are not immediately required for the purposes of its operations.

(3) Subject to the Public Finance Management Act, the Corporation may borrow money for the purposes of carrying out its duties and functions by—

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(a) issuing loan stock on such terms as may be approved by the Minister of Finance; or

(b) way of an overdraft or credit in Malawi or outside Malawi, with the approval of, and subject to such limitations as may be imposed by, the Minister of Finance.

148.—(1) The Malawi Posts Corporation shall keep proper books of accounts and other records relating to its accounts.

Accounts and
audit

(2) The accounts of the Corporation shall—

(a) be audited annually by independent auditors appointed by the Board; and

(b) be examined by the Auditor General before final approval by the Board, and before being presented to the Minister in accordance with section 149.

(3) The financial year of the Malawi Posts Corporation shall be the same as the financial year of the Government.

149.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Malawi Posts Corporation shall publish in the *Gazette* and submit to the Minister a report relating to its activities during that financial year.

Annual report

(2) The report referred to in subsection (1) shall be in a form approved by the Minister, after consultation with the Malawi Posts Corporation, and shall include information on the financial affairs of the Corporation, and the following shall be appended to the report—

- (a) an audited statement of financial position;
- (b) an audited statement of income and expenditure;
- (c) audited statement of cash flows; and
- (d) such other information that the Minister may require.

Exemption
from liability
of the Malawi
Posts
Corporation

150.—(1) Unless otherwise provided in its licence or in regulations made under this Act, the Malawi Posts Corporation shall not incur any liability—

(a) by reason of loss, non-delivery or delayed delivery of, or damage to, any postal article in the course of transmission by other postal licensees or foreign postal services providers; or

(b) by reason of detention or disposal of any postal article in accordance with the provisions of this Act.

(2) Nothing in this Part shall be construed as exempting the Malawi Posts Corporation, the Postmaster General or any employee of the Corporation from liability for damage or loss caused to any entity by reason of negligence or fraud in relation to the activities of the Corporation.

PART XVII—CONSUMER PROTECTION

General
principle

151.—(1) The Authority shall protect the interests of consumers, purchasers and other users of communication services.

(2) In the exercise of its functions under subsection (1), the Authority shall—

(a) monitor and regulate—

- (i) price charges;
- (ii) the quality of service;
- (iii) supply of terminal equipment to consumers; and
- (iv) complaints handling among licensees;

(b) promote awareness among consumers of communication services; and

(c) deal with any other matters connected with or incidental to consumer protection.

152.—(1) Every licensee shall, in respect of its specific services and in accordance with the rules made by the Authority under this Act—

Obligations
of licensees

(a) enter into a customer service contract with consumers which shall be made available to the public;

(b) meet such minimum standards of quality of service as the Authority may specify and publish;

(c) establish and publish corresponding service level agreements applicable to each service it offers to the public with the agreements to be submitted to the Authority for prior approval;

(d) comply with all the terms and conditions specified in its service level agreements;

(e) deal reasonably with consumers; and

(f) address consumer complaints.

(2) The customer service contract entered into under subsection (1) (a) shall include—

(a) the services to be provided by the licensee;

(b) the rights and obligations of the parties;

(c) remedies available to consumers;

(d) service level agreements; and

(e) any other term or condition as specified by the Authority.

(3) A licensee shall not publish a customer service contract unless the contract has been approved by the Authority.

(4) A licensee that contravenes this section shall be liable to a fine to be determined by the Authority from time to time in a Schedule of penalties.

153.—(1) The Authority shall, in consultation with licensees, prepare and publish a code of conduct for licensees, which shall be published in the *Gazette*.

Code of
conduct

(2) The code of conduct referred to in subsection (1) shall include rules relating to the following—

(i) the provision of information to consumers regarding services, rates and performance;

(ii) fault repair of services;

(iii) advertisement or promotion of services;

(iv) the provision of, and access to, network services by

persons with disabilities;

(v) consumer charging, billing, collection and credit practices; and

(vi) any other matter relating to the provision of services under this Act.

Compliance with relevant laws
Cap. 48:10
Cap. 48:09

154. Every licensee shall, in the provision of its services under this Act, adhere to the provisions of the Consumer Protection Act, the Competition and Fair Trading Act, and information and communication technology consumer rights and obligations.

PART XVIII—UNIVERSAL SERVICE AND ACCESS

Scope of universal service

155.—(1) Universal service shall be composed of—

(a) access to the public fixed line and mobile telephone network;

(b) access to the internet;

(c) public payphone;

(d) directory services;

(e) free emergency services;

(f) access to basic postal services and basic financial services;

(g) access to broadcasting services; and

(h) any other services that the Authority may determine, subject to the prior written approval of the Minister.

Duties and functions of the Authority in relation to universal services and access

156.—(1) The duties and functions of the Authority in relation to universal services and universal access shall be—

(a) to define the expected components of universal services and the remote areas that are un-served or under-served areas and communities;

(b) to set out the operations to be undertaken to ensure universal services;

(c) to propose annual and multi-annual universal access programmes and budgets, as well as activity plans to be submitted to the Universal Service Fund Committee;

(d) to define, plan and co-ordinate the implementation and monitoring of the universal access and universal service;

(e) to designate one or more licensees to be in charge of the universal service or components of the universal service; and

(f) to ensure that the provision of universal services is made on affordable tariffs that are accessible to all.

(2) In defining the components and areas under subsection (1) (a), the Authority shall consider—

- (a) the level of competition in a particular area or community;
- (b) the availability of services in a particular area or community;
- (c) the absence of infrastructure coverage;
- (d) any barriers to the use of available services; and
- (e) the commercial viability of network facilities of communications services in a particular area or community.

157. There is hereby established the Universal Service Fund which shall be managed by the Authority, and shall become operational on such date as the Minister shall appoint, by notice published in the *Gazette*.

Establishment of the Universal Service Fund

158.—(1) The Universal Service Fund shall be used for purposes of the implementation of universal service and universal access.

Purpose of the Universal Service Fund

(2) Without prejudice to the generality of subsection (1), the proceeds of the Universal Service Fund shall be used to—

- (a) offer subsidies on a competitive basis to licensees in order to provide them with incentives to provide universal access in areas that are not economically viable or that are marginally viable without subsidies;
- (b) provide other financial incentives and assistance;
- (c) meet administrative expenses associated with the execution of the duties, functions and responsibilities of the Universal Service Fund Committee, the management of the Universal Service Fund, publication and independent audit costs of annual reports of the Fund, and the staff costs for the implementation of the Fund, which shall not exceed a certain amount, as determined in regulations made under this Act; and
- (d) conduct research and consultancy assignments related to universal access.

159.—(1) The Authority shall establish a Universal Service Fund Committee which shall be composed of—

Establishment and composition of the Universal Service Fund Committee

- (a) one member nominated by each of the communications services sectors;
- (b) one member nominated by the consumer protection organizations;
- (c) the Director General of the Authority; and

(d) one representative from Government, as identified by the Minister.

(2) The members nominated under subsection (1), shall be appointed by the Authority.

Financing of
the Universal
Service Fund

160. The Universal Service Fund shall be financed through—

(a) operators' levy as prescribed in the licensee, which shall be set by the Authority and reviewed from time to time;

(b) moneys appropriated by Parliament;

(c) grants, subsidies, bequests, donations, gifts and subscriptions from Government or any other person;

(d) competitive minimum subsidy auctions;

(e) public access projects designed to generate income for long-term financial self sustainability; and

(f) funds made available by the Authority.

Tenure of office
for members

161. Members of the Universal Service Fund Committee shall hold office for a period of three years, and shall be eligible for re-appointment to one more term.

Rules of the
Universal
Service Fund
Committee

162. The Authority shall develop rules relating to the functioning of the Universal Service Fund Committee, which may include the following—

(a) appointment;

(b) disqualification;

(c) vacancies;

(d) meetings; and

(e) any other matter relating to the functions of the Committee.

Functions of
the Universal
Service Fund
Committee

163. The Universal Service Fund Committee shall be in charge of—

(a) reviewing all proposed annual and multi-annual universal access programmes and budgets, as well as activity plans submitted by the Authority; and

(b) providing written comments and specific recommendations for improving the proposed annual and multi-annual universal access programmes and budgets, and the activity plans.

Selection of
universal
service
licensees

164.—(1) The Authority shall select and designate one or more licensees to be in charge of providing universal services components in order to have a satisfactory coverage area in Malawi.

(2) The Authority may designate several licensees to handle various components and to cover various coverage areas.

(3) For purposes of subsections (1) and (2), the Authority shall select a licensee after a tendering process based on technical and financial conditions, and if applicable, the net cost of service provision and based on principles of fair and equitable selection process.

(4) Notwithstanding subsection (3), the Authority may, where it fails to select a licensee, designate, with the approval of the concerned licensees, one or more licensees to implement the universal services.

165.—(1) The Authority shall specify obligations for licensees selected to implement the universal service.

Obligations of licensees in relation to universal service licence

(2) The obligations under subsection (1) shall—

(a) specify appropriate equipment, goods or services to be supplied;

(b) specify the manner in which the licensee shall fulfil its universal service obligations; and

(c) set out appropriate conditions for supplying universal services in various selected areas.

166.—(1) A licensee selected to implement the universal services shall—

Accounting and reporting obligations for universal service licensees

(a) keep books and accounts and maintain proper records of its operations in accordance with accepted accounting standards; and

(b) on an annual basis and in any case within six months after the end of the Government's financial year, submit a report on the accounts and targets reached as stated in the specific conditions of the licence, and shall, in particular, provide—

(i) a copy of the report to the Universal Service Fund Committee on the performance audit carried out during the financial year; and

(ii) information on the implementation of the universal services.

(2) The Authority shall require a licensee selected to implement the universal services to have its accounts audited annually by an independent auditor.

(3) A licensee who fails to comply with its obligations in terms of universal service implementation commits an offence and shall, upon conviction, be liable to a fine of K1,000,000.

(4) Notwithstanding the fine imposed under subsection (3), the licensee shall repay, with interest, the subsidy received from the Fund for the purpose of the implementation of the universal service.

PART XIX—ELECTRONIC MONITORING AND ENFORCEMENT

Establishment of electronic monitoring system

167. The Authority shall use the appropriate technology to establish, install, and maintain an electronic monitoring system to monitor the activities of licensees to ensure and enforce compliance with this Act and licences issued by the Authority:

Provided that a system shall not be used for monitoring actual content of communication, network traffic or for any other purpose other than for its monitoring mandate under this Act.

Licensee's obligation to connect with electronic monitoring system

168. Where the establishment of the electronic monitoring system requires connection between the system and a licensee's network, the licensee shall co-operate with the Authority to ensure that it provides appropriate interface sites between the Authority's electronic monitoring system and the licensee's network to ensure direct submission of data to the monitoring system.

Monitoring in accordance with the Act

169. The Authority shall carry out electronic monitoring in accordance with this Act and regulations made under this Act.

Contravention of licensee's obligations

170.—(1) A licensee that fails to discharge its obligation under this Part commits an offence and shall, upon conviction, be liable to a fine of K20,000,000.

(2) Notwithstanding the fine imposable under subsection (1), the Authority shall reserve the right to impose any regulatory sanction under this Act.

PART XX—COMPLAINTS AND DISPUTES

Lodge of complaints and disputes

171.—(1) A licensee shall refer to the Authority any complaint or dispute relating to electronic communications and postal services.

(2) The Authority shall investigate any complaint or dispute referred to it where it appears to the Authority that—

(a) the complainant has an interest in the matter to which the complaint relates; and

(b) the complaint is not frivolous or vexatious.

(3) In particular, the Authority may hear and determine—

(a) disputes between or among licensees;

(b) disputes between licensees and the public involving alleged breaches of the Act, regulations, rules or licences;

(c) disputes between, or complaints relating to, licensees and consumers; and

(d) disputes relating to agreements between or among licensees.

(4) The Authority may, where necessary, make representations to the licensee on behalf of the complainant or to the complainant on behalf of the licensee, as the Authority may deem appropriate.

(5) For the purposes of dealing with consumer complaints, the Authority shall establish a dedicated unit that shall receive and follow up on complaints from consumers.

(6) The Authority shall adopt rules and procedures on handling complaints or disputes referred to it under this Act.

172—(1) When presented with a dispute, the Authority shall, wherever practicable, apply conciliation, mediation and alternative dispute resolution techniques in resolving the dispute.

Dispute
resolution
techniques

(2) The Authority shall establish and maintain a procedure by which any matter which—

(a) relates to the provision of communications service;

(b) has not, after allowing reasonable period, been resolved between a consumer and a communications service provider; and

(c) in relation to which the Authority has been requested to act by a consumer, may be resolved in an effective, timely, fair and relatively cheap manner.

(3) The Authority may intervene at the request of any party in order to resolve any dispute between holders of licence to offer communications services.

173.—(1) Where the Authority is satisfied that a person has breached or is likely to breach any requirement under this Act, the Authority shall make an appropriate order against that person.

Compliance
orders

(2) The order made by the Authority under subsection (1) may include any of the following—

(a) a compliance order requiring the person to comply with the provisions of this Act;

(b) a cease and desist order requiring a person to stop or refrain from doing an act which is in contravention of this Act;

(c) a compensation order;

(d) suspension or withdrawal of a licence for a maximum period of three years; or

(e) any other order considered appropriate by the Authority.

(3) An order made under this section shall be in writing, shall specify reasons and shall be served on the person concerned.

(4) A person who fails to comply with any order made under this section commits an offence and is liable to a fine of K5, 000, 000 and imprisonment for five years.

(5) Notwithstanding subsection (4), the Authority may take any appropriate action against a licensee who fails to comply with a provision of this Act or any other legal or regulatory provision applicable to the activities of the licensee.

Appeals against orders of the Authority

174. A person who is not satisfied with an order of the Authority may appeal to the High Court within thirty days from the date the order was made.

PART XXI—OFFENCES

Use of communication services without payment

175. A person who uses an electronic communications service without paying for the applicable charge commits an offence and shall, upon conviction, be liable to a fine of K1, 000,000 and imprisonment for two years.

Unlawful intercept

176.—(1) A licensee operating an electronic communications network or providing an electronic communications service who, other than in the course of its duty, intercepts, interferes with the contents of, or modifies, any message sent as part of the electronic communications service, commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

(2) A person who, without lawful authority under this Act or any other written law—

(a) intercepts, attempts to intercept, or causes any other person to intercept or to attempt to intercept, any communications;

(b) discloses or attempts to disclose to any person the contents of any communications, knowingly or having reason to believe that the information was obtained through the interception of any communications in contravention of this Act; or

(c) uses or attempts to use the contents of any communications, knowingly or having reason to believe that the information was

obtained through the interception of any communications in contravention of this Act,

commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

177. A licensee, an employee or agent of the licensee, who—

Disclosure of content

(a) discloses, other than in accordance with this Act, the content of a message which is part of an electronic communication service or information about a user; or

(b) misuses an electronic communications service,

commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

178.—(1) A person who steals electronic communication infrastructure equipment commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for ten years.

Sabotage and theft

(2) A person who is found in possession of stolen electronic communication infrastructure equipment commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for five years.

(3) A person who unlawfully destroys or damages electronic communication infrastructure equipment commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for ten years.

179. A person who, without lawful cause, interferes with or obstructs the transmission or reception of any electronic communications, commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

Interference with transmission of electronic communications

180. A person who sends by post any postal article or thing which is injurious, indecent or prohibited under this Act commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

Transmission of prohibited articles

181. A person who operates a postal service without a licence issued by the Authority commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for two years.

Operation of a postal service without a licence

182. A person who—

(a) conveys a postal article, other than in accordance with the terms of a valid postal licence; or

Conveyance of a postal article without a licence

(b) performs any service incidental to conveying a postal article, other than in accordance with the terms of a valid postal licence,

commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

Damaging
letter boxes

183. A person who—

(a) places in or against any letter box provided by a postall-
censee for the reception of postal articles, any fire, or any-
explosive, or dangerous, filthy, noxious, deleterious substance or
any fluid;

(b) causes a nuisance in or against such letter box; or

(c) does anything likely to destroy or damage such letter box or
its appurtenances or contents,

commits an offence and shall, upon conviction, be liable to a
fine of K1,000,000 and imprisonment for two years.

Opening of
postal articles

184. A person who unlawfully—

(a) intercepts, attempts to intercept, or causes any other person
to intercept or to attempt to intercept any postal article;

(b) discloses or attempts to disclose to any other person
the contents of any postal article; or

(c) uses or attempts to use the contents of any postal articles,

commits an offence and shall, upon conviction, be liable to a
fine of K1,000,000 and imprisonment for two years.

Disclosure of
contents of
postal articles

185. A person who unlawfully reveals, discloses or in any way
makes known the contents of any postal article that is opened in
accordance with this Act commits an offence and shall, upon
conviction, be liable to a fine of K1,000,000 and imprisonment for
two years.

Fake stamps

186. A person who—

(a) makes or knowingly alters, deals in, peddles, distributes,
orsells any fake stamp, or knowingly uses for postal purposes
any fake stamp;

(b) has any fake stamp in his possession without lawful excuse;

(c) makes or, without lawful excuse, has in his possession, any
dye plate, instrument or material for making fake stamps; or

(d) makes, issues or sends by post any stamped or embossed
envelope, wrapper, card, form, or paper in imitation of one issued
under the authority of a licensee,

commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

187.—(1) A person who provides broadcasting services without a licence issued under this Act commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

Provision of broadcasting services without a licence

(2) A person who—

(a) has in his possession equipment capable of receiving television broadcasts; and

(b) has not paid the prescribed fees,

commits an offence and shall, upon conviction, be liable to a fine of K250,000 and imprisonment for six months.

188. A person who falsely holds himself out to be—

Impersonation

(a) a member of the Authority, an employee of the Authority or a person authorised by the Authority; or

(b) a licensee, an employee of a licensee or a person authorised by the licensee,

commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and imprisonment for two years.

189. A licensee who—

General offences by a licensee

(a) fails to comply with an order, directive or public notice issued by the Authority in the exercise of its functions under this Act;

(b) refuses, delays or fails to produce any document or other information relating to communication services or networks, which may be required to be produced under this Act;

(c) knowingly or without reasonable grounds for believing the same to be true, provides to the Authority a document or other information that is false or misleading in any material aspect, whether upon demand or otherwise;

(d) publishes or otherwise discloses any information in contravention of this Act;

(e) hinders the Authority from carrying out any of its functions under this Act;

(f) resists, hinders or obstructs an officer or agent of the Authority from—

(i) entering or inspecting any premises;

(ii) stopping and searching any vehicle;

(iii) examining any book, accounts or other records; or

(iv) otherwise discharging his duties under this Act; or

(g) refuses, delays or fails to comply with any order, prohibition, direction, demand, requirement or notice lawfully made, served, published or otherwise given under this Act,

commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

General penalty

190. A person who commits an offence under this Act for which no punishment has been provided for in this Act shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

PART XXII—TRANSITIONAL AND MISCELLANEOUS PROVISIONS

Unbundling of, and access to, essential facilities

191.—(1) Electronic communications licensees shall publish and keep up to date a reference offer for unbundled access to their essential facilities as determined by the Authority.

(2) The offer referred to in subsection (1) shall be sufficiently unbundled to enable a beneficiary not to pay for network elements of facilities that are not necessary for the supply of its services, and shall contain a description of the components of the offer, associated terms and conditions, including charges.

(3) Network services licensees shall meet reasonable requests from other licensees to access their local loops and related facilities using transparent, fair and non-discriminatory conditions.

(4) Requests shall only be refused on the basis of objective criteria, relating to technical feasibility, or the need to maintain network integrity.

(5) Where access is refused by a network services licensee, the aggrieved party may submit the matter for dispute resolution in accordance with this Act.

(6) Network services licensees shall charge prices for unbundled access to the local loop and related facilities set on the basis of cost orientation.

Supervision by the Authority

192.—(1) The Authority shall ensure that charging for unbundled access to the local loop encourages fair and sustainable competition.

(2) The Authority shall have the power to impose changes on the reference offer for unbundled access to the local loop and related facilities, including price, where such changes are justified.

(3) The Authority may, where justified, intervene on its own initiative in order to ensure non-discrimination, fair competition, economic efficiency and maximum benefit for customers.

193.—(1) A licensee providing facility services shall apply to the relevant authority having jurisdiction over private or public land or property requesting entry to, or acquisition of, the land or property under applicable land laws.

Access to public or private land

(2) Subject to subsection (1) a licensee providing facility services may, for the purposes of enabling the provision of any communications service to the public—

(a) enter upon any public or private land and survey the land or any portion of it; or

(b) enter upon any public or private land in order to construct, erect, place, maintain, examine, alter or remove any line, pole or radio link installation that is, respectively, either the property of the network services licensee, or is under the control of the network services licensee.

(3) A licensee providing facility services shall enjoy the rights and comply with the obligations specified in the Code of Conduct set out in the Third Schedule.

194. The Authority shall be open and transparent in its operations and shall, in this regard—

Transparency of the Authority

(a) submit to Parliament an Annual Report detailing its activities, its financial performance and its annual audited accounts for the previous financial year, within six months after the end of the Government financial year;

(b) publish, in electronic format, the Annual Report, one month after its submission to Parliament; and

(c) publish, in electronic format, details of the contributions to, and allocations from, the Universal Service Fund, one month after the submission of the Annual Report to Parliament.

195.—(1) Notwithstanding any criminal sanctions under this Act, the Authority may, if it is satisfied that a licensee has breached any provision of this Act, or a term or condition of its licence, make any appropriate order or impose a sanction on the licensee, and shall inform the licensee in writing of its decision.

Enforcement orders and sanctions

(2) An order made or sanction imposed under subsection (1) shall include the following—

(a) requiring the licensee to remedy the breach;

(b) ordering the licensee to pay compensation;

(c) ordering the licensee to account for the profits made out of the breach;

- (d) ordering the licensee to pay a fine;
- (e) suspending the licensee's licence;
- (f) revoking the licensee's licence; or
- (g) any other order the Authority may deem appropriate.

Appeals against
decisions of
the Authority

196. A licensee aggrieved by a decision of the Authority made under this Act may, within thirty days of receiving the order, apply to the High Court for judicial review of the decision.

Joint and
vicarious
liability

197.—(1) Where an entity charged with an offence under this Act is a body corporate, any person who, at the time the offence was committed was a chief executive officer, manager or officer of such body corporate, may be charged jointly in the same proceedings with the body corporate, if the person was party to the offence committed.

(2) A person who is a partner in a firm shall be jointly and severally liable for acts or omissions of other partners in the firm so far as the acts or omissions relate to the firm.

(3) A licensee shall be vicariously liable for the acts or omissions of its agent, clerk, servant or other person, in so far as the acts or omissions relate to the business of the licensee.

Initiation of
court action

198. A consumer of communication services or products, a recognized consumer organization, or any aggrieved entity, may initiate court action against any licensee for an offence committed against the consumer, the consumer organization or the entity, provided that the consumer, the consumer organization or the entity has previously filed a complaint with the Authority, and is not satisfied with the decision of the Authority.

Code of
conduct

199.—(1) A licensee may develop a code of conduct providing for best practices when carrying out its activities.

(2) A licensee that develops a code of conduct shall notify, and provide a copy to, the Authority.

Regulations

200.—(1) The Minister may, on recommendation from the Authority, make regulations for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

- (a) the financial management of the affairs of the Authority;
- (b) the content of service level agreements;
- (c) the protection of consumers of the services provided under this Act;

(d) the manner in which the Authority may exercise any power or perform any duty or function under this Act;

(e) standard terms and conditions of each licence category or type;

(f) universal services;

(g) the minimum local ownership requirement and procedures for the approval and transfer of ownership in any entity holding a licence;

(h) electronic monitoring;

(i) any matter that under this Act is required or permitted to be prescribed; or

(j) any matter that the Minister considers necessary or expedient to give effect to the objectives of this Act.

(3) Notwithstanding section 21(e) of the General Interpretation Act, the regulations made under this Act may create offences in respect of any contravention to the regulations, and may for any such contravention impose a fine of up to K5,000,000 and to imprisonment for up to five years. Cap. 1: 01

201.—(1) In the exercise of its functions under this Act, the Authority may make such rules as are necessary for the better carrying out of the provisions of this Act. Power to make rules

(2) The Authority shall publish in the *Gazette* the rules made under this Act.

(3) The Authority shall, within twenty eight days of the publication in *Gazette* of the rules, inform the public, through the print and electronic media, of the publication of the rules.

202.—(1) Where the Authority intends to take a decision in accordance with this Act, it shall consult with any interested party, and shall give the interested party an opportunity to comment on the proposed decision within a period specified by the Authority. Consultations with interested parties

(2) The Authority shall publish the results of any consultation launched publicly and the results shall be made available through such means as the Authority considers appropriate in the circumstances, except in the case of information that the Authority considers to be confidential.

203.—(1) Subject to subsection (2), the Communications Act is hereby repealed. Repeal and savings
Cap. 68:01

(2) Any subsidiary legislation made under the repealed Act 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 replaced, amended, revoked or repealed by subsidiary legislation made under this Act.

Transitional provisions

204.—(1) Any licence issued or permission granted in accordance with the repealed Act shall, unless otherwise expressly provided for in this Act or in any other written law, continue to be in force and be deemed to have been issued or granted by the Authority or the Minister, as the case may be, under this Act.

(2) Any frequency assignment made under the repealed Act shall continue to be in force and be deemed to have been made under this Act, provided that—

(a) the information relating to the frequency assignment is made available to the Authority; and

(b) any conditions contained in a frequency licence applicable to the frequency assignment are complied with.

(3) Any approval for equipment given under the repealed Act shall continue to be in force and be deemed to have been made under this Act.

(4) Members of the Authority, the Malawi Broadcasting Corporation, and the Malawi Posts Corporation as constituted immediately before the coming into force of this Act, shall continue to hold office as Members until the appointment of new Members in accordance with this Act.

(5) The Authority shall, within twenty-four months from the commencement of this Act, convert all licences issued or granted under the repealed Act, and the Authority may extend the twenty-four months period by a period not exceeding six months after the expiry of the twenty-four months period.

Legal proceedings

205. Any legal proceedings commenced immediately before the coming into force of this Act by or against the Malawi Communications Regulatory Authority, the Malawi Broadcasting Corporation, or the Malawi Posts Corporation established under the repealed Act, shall be deemed to have been commenced by or against the Authority, the Malawi Broadcasting Corporation, or the Malawi Posts Corporation, respectively established under this Act.

206.—(1) All property, funds and assets, except any such property, funds and assets as the Minister may determine by notice published in the *Gazette*, which, immediately before the commencement of this Act were vested in the Malawi Communications Regulatory Authority, the Malawi Broadcasting Corporation, or the Malawi Posts Corporation established under the repealed Act, for the use of the Authority, the Malawi Broadcasting Corporation, or the Malawi Posts Corporation shall, on the commencement of this Act, and without further assurance, be deemed to have vested in or to have been acquired by or on behalf of the Authority, the Malawi Broadcasting Corporation, or the Malawi Posts Corporation, respectively established under this Act, subject to all interests, liabilities, charges, obligations and trusts affecting such property, funds and assets.

Transfer of assets, funds, liabilities, etc.

(2) Except as otherwise provided in subsection (1), in relation to property, funds and assets, all debts, obligations, liabilities, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Malawi Communications Regulatory Authority, the Malawi Broadcasting Corporation, or the Malawi Posts Corporation established under the repealed Act, shall, on the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Authority, the Malawi Broadcasting Corporation, or the Malawi Posts Corporation, respectively established under this Act, and shall become enforceable by or against the Authority to the same extent as they were enforceable by or against the Malawi Communications Regulatory Authority, the Malawi Broadcasting Corporation, or the Malawi Posts Corporation, established under the repealed Act.

207. Unless the Authority, the Malawi Broadcasting Corporation, or the Malawi Posts Corporation otherwise determines, all persons who, immediately before the commencement of this Act, were employed by the Malawi Communications Regulatory Authority, the Malawi Broadcasting Corporation, or the Malawi Posts Corporation established under the repealed Act shall, on the commencement of this Act, be deemed to have been transferred to the employment of the Authority, the Malawi Broadcasting Corporation, or the Malawi Posts Corporation, respectively established under this Act, on terms and conditions of service not less favourable than the terms and conditions of service with the Malawi Communications Regulatory Authority, the Malawi Broadcasting Corporation, or the Malawi Posts Corporation, respectively established under the repealed Act, and, for the purpose of determining their rights thereunder, their services

Transfer of employees

shall be regarded as being continuous from the time they were employed, respectively, by the Malawi Communications Regulatory Authority, the Malawi Broadcasting Corporation, or the Malawi Posts Corporation, established under the repealed Act.

FIRST SCHEDULE

(s. 46 (2))

LICENCE CATEGORIES

1. The Authority shall issue the following categories of licences for purposes of Part III of the Act—
 - (a) network services licences, to allow the holder thereof to construct their own or make available an electronic communications network;
 - (b) facility services licences, to allow the holder thereof to construct their own or make available facilities used for the provision of communications services;
 - (c) application services licences, to allow the holder thereof to provide one or more communications services;
 - (d) content service licences, to allow the holder thereof to provide one or more content services;
 - (e) frequency spectrum licences; and
 - (f) postal services licences.
2. The duration of each licence shall be specified by the Authority in its Rules or in the specific conditions of the licence.
3. An entity shall not operate, manage and provide network services or facility services in Malawi except in accordance with the terms and conditions of a network services licence issued by the Authority.
4. An entity shall not provide application services except in accordance with the terms and conditions of an application services licence issued by the Authority.
5. An entity shall not provide broadcasting services except in accordance with the terms and conditions of a content licence issued by Authority.
6. The Authority shall define each broadcasting service licence in relation to one of the following categories—
 - (a) public broadcasting services;
 - (b) commercial broadcasting services;
 - (c) community broadcasting services; and
 - (d) any other licence as may be determined by the Authority.
7. A content licensee shall enter into an agreement with the holder of a network

services licence for purposes of distribution of signals. The agreement shall include a service level agreement in order to evaluate the quality of the services provided by the network services licensee.

8. An entity shall not provide postal services except in accordance with the terms and conditions of a postal licence issued by the Authority.

SECOND SCHEDULE

(s. 107 (3))

REGULATION FOR CONTENT SERVICES

1. The Authority shall have the power to make rules and to control the content provided through content services.
2. The main principles for content regulation shall consist of—
 - (a) protecting the public against offensive and harmful content;
 - (b) excluding material likely to encourage crime or other illegal acts;
 - (c) presenting comprehensive, accurate and impartial news;
 - (d) presenting religious material in a balanced and responsible manner;
 - (e) protecting children and young persons; and
 - (f) appropriate advertising and sponsorships.
3. The Authority shall issue rules specifying—
 - (a) the percentage of local content and independent and original productions;
 - (b) the extent to which content service licensees shall provide—
 - (i) content produced in Malawi;
 - (ii) content produced by independent producers; and
 - (iii) content of an original nature; and
 - (c) the times of the day or week when such content shall be provided.
4. The regulations and rules pertaining to local content and independent and original productions shall be designed to—
 - (a) stimulate the production of content in Malawi; and
 - (b) prevent the excessive provision of content that is not relevant to, or not conducive to the development of, Malawi society.
5. The Authority may, in respect of the television content licence, impose and specify in the licence, such conditions regarding local television content and independent television production that, without derogating from the generality of the foregoing, may include any conditions requiring the content licensee—

- (a) to annually expend a specified sum of money, subject to reasonable annual escalation or, alternatively, a specified minimum percentage of its gross revenues, on programmes that have local television content;
 - (b) to allocate a specified minimum percentage of its local broadcasting time to television programmes that have local television content;
 - (c) in the case where the content licensee has a regional or local licence area, to allocate a specified minimum percentage of broadcasting time to local television programmes that have been produced in the relevant region or locality; and
 - (d) to allocate a specified minimum portion of the percentage referred to in paragraph (a), (b) or (c), whichever is applicable to a prescribed diversity of television programmes that are independent television productions.
6. The Authority may, in relation to a sound broadcasting service, prescribe conditions in terms of which the content licensee is required to broadcast a specified minimum percentage of musical works that qualify as local music.
7. The Authority shall issue rules for advertising on broadcasting services.
8. Without derogating from the powers granted to the Authority to issue rules pertaining to advertising and sponsorships, such rules may include provisions—
 - (a) prohibiting, restricting or regulating advertisements of specified goods, products, services or activities, or prohibiting, restricting or regulating specified forms and methods of advertising or sponsorship;
 - (b) prohibiting, restricting or otherwise regulating political advertising; and
 - (c) restricting or otherwise regulating the extent, relative to other content, of coverage of advertising and sponsorships that a content service licensee may give in the provision of its service, including, but not limited to—
 - (i) the maximum amount of time to be allocated to advertisements in any hour or other period;
 - (ii) the minimum interval that shall elapse between any two periods allocated to advertising;
 - (iii) the number of such periods to be allowed in any hour or day;
 - (iv) the prominence that may be given to advertisements or sponsorships; and
 - (v) the exclusion of advertisements or sponsorships from a specified part of a broadcasting services licensee's.
9. The Authority shall issue rules for political advertising on broadcasting services.
10. (1) Rules issued by the Authority under paragraph 9 shall apply to political advertisement, including any advertisement that—

- (a) is inserted or placed by or on behalf of a body, organization or group whose objects are wholly or mainly of a political nature; and
 - (b) is directed towards a political end.
- (2) Objects of a political nature and directed towards a political end shall include objects that—
- (a) influence the outcome of elections or referenda;
 - (b) bring about changes of the law in all or any part of Malawi;
 - (c) influence policies or decisions of national, regional or local governments;
 - (d) influence public opinion on a matter; or
 - (e) promote the interests of a political party or other organization or group, for political ends.
- (3) A content licensee shall not carry any political advertisement, except during a period that is designated as an election period, being a period not exceeding 30 days, immediately before an election.
11. Rules issued by the Authority under paragraph 9 and designed to regulate political advertisements—
- (a) shall determine the maximum coverage that a content licensee may give to political advertisements during an election period;
 - (b) shall determine the conditions applicable to the dissemination of political advertisements by broadcasting service licensees during an election period;
 - (c) shall give primacy to the fundamental principle that all political parties or organizations are to be treated equitably and fairly;
 - (d) shall provide that no political advertisement may be carried by a content licensee later than 48 hours prior to the commencement of the relevant polling period;
 - (e) may differentiate between different classes of content licensees and, in particular, may provide that certain specified classes of content licensees shall not have any obligation to carry political advertisements;
 - (f) shall provide that any content licensee that carries or that elects to carry political advertisements, shall treat all political parties and organizations equitably and fairly, and shall not discriminate against any political party or organization or give preference to any political party or organization, or subject any political party or organization to any prejudice; and
 - (g) shall give due regard to the rights and freedoms entrenched in the Constitution of Malawi.
12. The Authority shall issue rules for the provision of content of an educational nature on broadcasting services.

13. The rules may impose an obligation on content licensees, or on certain specified classes of content licensees, to ensure that a specified proportion of content provided by each of the licensees constitutes content of an educational nature.
14. The rules contemplated in paragraph 12—
 - (a) shall include an appropriate definition of the term “content of an educational nature”;
 - (b) shall specify—
 - (i) the extent to which content licensees are obliged to finance the production of content of an educational nature; and
 - (ii) the extent to which content licensees may acquire and provide content of an educational nature produced by other entities;
 - (c) may distinguish between various categories of content of an educational nature and impose different obligations on content licensees in relation to such categories; and
 - (d) shall include provisions designed to ensure that content of an educational nature provided by content licensees—
 - (i) is of high quality;
 - (ii) is suitable to meet the needs and requirements of the Malawian society; and
 - (iii) constitutes content of an educational nature.
15. A content licensee shall broadcast a counter-version presented by any entity or body of entities affected by an assertion of fact in any programme transmitted by that licensee, if the entity or body of entities concerned claims that the assertion of fact is in fact false.
16. Notwithstanding paragraph 15, a content licensee shall not transmit a counter-version if—
 - (a) the entity or organization concerned has no direct interest in the transmission of the counter-version; or
 - (b) the counter-version is not of reasonable length, and in particular, if it is substantially longer than the part of the broadcast that dealt with the false assertion of fact.
17. The counter-version referred to in paragraph 15 shall—
 - (a) be limited to a factual account;
 - (b) not contain any material that may reasonably be anticipated to expose the content service licensee to legal action if such material were to be broadcast;
 - (c) be made in writing;
 - (d) specify the programme and the assertions to which the objection is raised; and

- (e) be signed by the entity affected or, in the case of an organization, by the chief executive officer thereof.
18. The entity or body of entities affected shall not be entitled to insist on the transmission of a counter-version if the counter-version referred to in paragraph 15 is presented to the content licensee more than 30 days after the date of broadcast of the false assertion of fact.
19. The content licensee shall—
- (a) at the first opportunity, but not later than ten days from receiving a counter-version referred to in paragraph 15, broadcast the counter-version within the same programme or programme section as the one in which the false assertion was made and at the same time of day or, if that is not possible, at a time equal in value to that of the programme objected to;
 - (b) broadcast the counter-version without any omissions and interruptions; and
 - (c) broadcast the counter-version free of charge.
20. A content service licensee shall, immediately upon receipt of the counter-version referred to in paragraph 15, inform the Authority of that fact, and shall keep and store the programme objected to and the counter-version until the content licensee receives a notice to the contrary from the Authority.
21. The freedom of all content licensees is indivisible from and subject to the same restraints as those relevant to individuals, and is founded on the individual's right to be informed and to freely receive and disseminate opinions.
22. Content licensees shall—
- (a) not broadcast any material that is indecent or obscene or offensive to public morals, including abusive or insulting language, or offensive to religious beliefs of any section of the population, or likely to prejudice the safety of the Republic or public order and tranquillity;
 - (b) exercise due care and sensitivity in the presentation of material that depicts or relates to acts of brutality, violence, atrocities, drug abuse, or obscenity; and
 - (c) exercise due care and responsibility in the presentation of programmes where a large proportion of the audience is likely to be children.
23. Content licensees shall report news truthfully, accurately and objectively.
24. News shall be presented in an appropriate context and in a balanced manner, without intentional or negligent departure from the facts.
25. Where a report is founded on opinion, supposition, rumour or allegation, it shall be presented in such a manner as to indicate clearly that that is the case.

26. Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay.
27. Content licensees shall be entitled to comment on and criticise any actions or events of public importance.
28. Comment shall be presented in such manner that it appears clearly to be comment.
29. Comment shall be an honest expression of opinion.
30. In presenting a programme in which controversial issues of public importance are discussed, a content licensee shall make reasonable efforts to present differing points of view in the same programme or in a subsequent programme within a reasonable period of time and in substantially the same time slot.
31. An entity whose views, deeds or character have or has been criticised in a broadcasting programme on a controversial issue shall be given a reasonable opportunity by the content licensee to respond to such criticism, should that entity so request.
32. During any election period, all content licensees shall ensure equitable treatment of political parties, election candidates and electoral issues.
33. Where news and comment are concerned, content licensees shall exercise exceptional care and consideration in matters involving the private lives and private concerns of individuals, but may bear in mind that the right to privacy may be overridden by a legitimate public interest.
34. No payment shall be made to anyone involved in crime, or who has been engaged in crime in order to obtain information, unless compelling public interest requires otherwise.

THIRD SCHEDULE

(s. 193(3))

CODE OF CONDUCT FOR LICENSEES PROVIDING FACILITY SERVICES

1. A facilities service licensee may, for the purposes of the provision of communication services in accordance with its licence, enter upon any land, including any road, footpath or other land reserved for public purposes, and construct and maintain a communication facility upon, over or under any such land, and alter or remove the same, provided that—
 - (a) lines installed over any land shall be placed at the minimum height above the surface of the ground prescribed by regulations made under this Act; and
 - (b) lines installed under any land shall be placed at the minimum height above the surface of the ground prescribed by regulations made under this Act.

2. Subject to any written law, if a facilities service licensee finds it necessary to move any line or other facility constructed upon, over or under any land, owing to any work on the part of any person or public authority, the cost of the alteration or removal shall be borne by that person or public authority.
3. Where a facilities service licensee undertakes any work which disturbs the surface of a road or footpath, it shall—
 - (a) restore or re-instate the surface to its original condition; or
 - (b) compensate the relevant authority or owner of the road.
4. In taking any action under paragraph 3, due regard shall at all times be had to visual amenity and the preservation of the environment.
5. If any local authority requires that in a particular area electricity supply and communication services shall be provided by means of underground cable, each facilities service licensee shall enter into an agreement with the local authority as to the installation and use of ducts and other facilities necessary for the running of underground cables.
6. Where ducts and other facilities are provided by the local authority under paragraph 5, the costs of provision shall be payable by the facilities service licensees and other public utilities making use of the facilities in proportion to their use.
7. A facilities service licensee or his representative authorized in writing may, for the purposes of provision of communication services in accordance with his licence—
 - (a) at all times on reasonable notice, enter upon any land and install and maintain any line upon, over or under that land;
 - (b) cut back or prune any branch of a tree which may in any way injure, or which is likely to injure, impede, or interfere with any line; and
 - (c) do and perform all other acts and things necessary for the purpose of establishing, constructing, repairing, improving, examining, altering, or removing any line.
8. A facilities service licensee shall not exercise the powers conferred by paragraph 7 except with the prior consent of the owner of the land upon, over or under which any line is or is to be placed.
9. A facilities service licensee shall not, by reason of the exercise of the rights conferred by paragraph 7, acquire any right other than that of user only in the land upon, over or under which any line is or is to be placed.
10. A facilities service licensee shall do as little damage as possible to land and to the environment and shall pay reasonable compensation to all interested persons for any damage or loss sustained by them by reason of the exercise of the powers under paragraph 7.

11. A facilities service licensee or his representative authorized in writing may, with the prior written consent of the occupier, enter any private premises for the purposes of—
 - (a) the provision of public communication services in accordance with his licence;
 - (b) the installation, maintenance or removal of any line; or
 - (c) the inspection or testing of any terminal equipment.
12. A telecommunication operator shall not interfere with or obstruct any means of entering or leaving any private premises.
13. A facilities service licensee shall pay compensation to the owner of private premises, not being the occupier, in the event that the exercise of the right of access granted under paragraph 11 depreciates the value of the owner's interest in the premises.

Passed in parliament this fifth day of July, two thousand and sixteen

FIONA KALEMBA
Clerk of Parliament