

Malawi

Stamp Duties Act

Chapter 43:01

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Stamp Duties Act

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Malawi

Stamp Duties Act

Chapter 43:01

Commenced on 16 May 1969

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

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

An Act to provide for the imposition of stamp duties, fees and penalties in respect of certain instruments, to provide for the stamping of such instruments, to provide for the management of stamp duties, fees and penalties and for other matters incidental thereto and connected therewith

1. Short title

This Act may be cited as the Stamp Duties Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"adhesive stamp" means a stamp which may be securely fixed by means of an adhesive paste and by no other means;

"banker" includes the Reserve Bank of Malawi, any banking business registered under the Banking Act, and any person conducting such a banking business: "bill of lading" includes a through bill of lading, but does not include a mate's receipt;

[Cap. 44:01]

"bond" includes—

- (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
- (b) any instrument (other than a bill of exchange or promissory note) attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and
- (c) any instrument so attested, whereby a person obliges himself to deliver any agricultural produce to another;

"chargeable", as applied to an instrument executed or first executed after the commencement of this Act, means chargeable under this Act, and, as applied to any other instrument means chargeable under the law in force in Malawi when such instrument was executed, or where several persons executed the instrument at different times, first executed;

"cheque" has the meaning assigned to that expression in the Bills of Exchange Act;

[Cap. 43:01]

"the Commissioners" means the Commissioners of Stamp Duties appointed, or deemed to have been appointed under [section 4](#), and includes one or any of them;

"consideration" or "valuable consideration" includes valuable consideration in money or money's worth, marriage or natural love and affection;

"die" includes any plate, type, tool or implement whatever used under the direction of the Commissioners for expressing or denoting any duty, or rate of duty, or the fact that any duty or rate of duty or penalty has

been paid, or that any instrument is duly stamped, or is not chargeable with any duty or for denoting any fee, and includes any part of any such plate, type, tool or implement;

"duty" and "stamp duty" means any stamp duty for the time being leviable by means of stamps under any written law;

"executed" and "execution" used with reference to any instrument not under seal means "signed" and "signature" respectively;

"franked stamp" means a stamp denoted by means of a stamp franking machine in accordance with this Act or any regulations made thereunder;

"impressed stamp" includes–

- (a) labels affixed and impressed by the proper officer;
- (b) stamps embossed or engraved on stamped paper;
- (c) adhesive stamps over-embossed; and
- (d) franked stamps;

"instrument" includes every kind of written document;

"marketable security" includes a security of such a description as to be capable of being sold on any stock exchange;

"material" includes every sort of material on which words and figures can be expressed or denoted;

"money" includes all sums expressed in Malawi currency, or in the currency of any country;

"power of attorney" includes any instrument empowering a specified person to act for and in the name of the person executing it;

"settlement" means any non-testamentary disposition in writing of movable or immovable property made–

- (a) in consideration of marriage;
- (b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him; or
- (c) for any religious or charitable purpose, and includes an agreement in writing to make such a disposition, and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition;

"stamp" means an impressed stamp, or an adhesive stamp used for denoting the payment of any stamp duty or fees or penalty under this Act;

"stamped" or "duly stamped" means that the instrument referred to is stamped with the required and sufficient stamp and that such stamp has been cancelled, if necessary, in accordance with this Act;

"stock" includes any share in the stock transferable at the Bank of England, and any share in the stocks or funds of the government of any Commonwealth or foreign country, or in the capital stock or funded debt of any local authority, corporation, company or society in Malawi or any Commonwealth country, or of any foreign corporation, company or society;

"write", "written", and "writing" includes every mode in which words or figures can be expressed or denoted upon material.

3. Application of Act

This Act shall apply to all stamp duties and to all fees and penalties which are for the time being directed to be collected or received by means of stamps under or by virtue of any written law.

4. Appointment of Commissioner of Stamp Duties

The Minister may, by notice published in the *Gazette*, appoint such public officers as he deems necessary to be Commissioners of Stamp Duties, who shall have the care and management of all stamp duties, fees and penalties to be collected or received under or by virtue of this Act:

Provided that, until such time as the Minister appoints Commissioners under this section, the Commissioners appointed under section 4 of the Stamps Ordinance, repealed by this Act, shall be deemed to have been appointed Commissioners under this Act.

[Cap. 162]

Part II – Provisions applicable to instruments generally

Charge of duty upon instruments

5. Liability to stamp duty and alterations of stamp duty

- (1) Subject to the provisions of, and to the exemptions contained in, this Act and any other written law, every instrument specified in the Schedule, wheresoever executed, which relates to property situate, or any matter or thing done or to be done, in Malawi, shall be chargeable with the stamp duty specified in the Schedule.
- (2) The Minister may by order published in the *Gazette* amend the Schedule, imposing new stamp duties, or increasing, diminishing or repealing existing stamp duties or granting new exemptions.
- (3) An order made under subsection (2) shall not be made retrospective and shall cease to be of effect on the expiration of the period provided under subsection (4) unless approved by a resolution of the National Assembly in accordance with that subsection.
- (4) A resolution of the National Assembly approving an order made under subsection (2) shall be passed within 28 days of the date of commencement of such order:

Provided that–

- (i) if before the expiration of the said 28 days the National Assembly is dissolved or is prorogued or adjourned for more than 7 days such resolution shall be passed before the end of the next meeting of the National Assembly; or
 - (ii) if, on the date of commencement of the order the National Assembly is dissolved or is prorogued or adjourned such resolution shall be passed within 28 days of the next meeting of the National Assembly, or if the National Assembly is earlier dissolved or is earlier prorogued or adjourned for more than 7 days then before the end of the next following meeting of the National Assembly.
- (5) Where an order ceases to be of effect under subsection (3) the Schedule shall revert to what it was immediately before it was amended by such order.

6. Time of stamping and liability for stamping

- (1) Subject to this Act or any other written law, every instrument, unless it is written on duly stamped material, shall be duly stamped with the proper duty before the expiration of thirty days after it is first executed, or after it has been first received in Malawi where it is first executed at any place outside Malawi, unless the opinion of the Commissioners with respect to the amount of duty with which the instrument is chargeable has, before the expiration of such period, been required under section 16.

- (2) If the opinion of the Commissioners with respect to the amount of duty with which any instrument is chargeable has been required under [section 16](#), such instrument shall be stamped in accordance with the assessment of the Commissioners within thirty days of the date of notice of the assessment.
- (3) Where, in the Schedule or in any other written law, it is specified that an instrument is to be stamped before execution such instrument shall be stamped before execution by any party thereto.
- (4) If any instrument which is chargeable with stamp duty is not duly stamped, the person or persons respectively specified in the Schedule or in any other written law as being liable for stamping shall be liable, or jointly and severally liable, as the case may be, to the Commissioners for the payment of the specified duty.
- (5) If any instrument which is liable to stamp duty is not duly stamped, every person specified in the Schedule or in any other written law as being responsible for stamping shall also be guilty of an offence and liable to a fine of £100.
- (6) Where in the Schedule or in any other written law the responsibility for stamping is imposed upon more persons than one, every person on whom the said responsibility is imposed may, if the instrument is not duly stamped, be proceeded against either civilly or criminally without reference to any civil liability of the parties *inter se* for the payment of the stamp duty.

7. Duties, how to be paid

- (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be denoted upon such instruments, by means of stamps in such manner as the Minister may, in regulations made under this Act, prescribe.
- (2) Regulations made under subsection (1) may, *inter alia*, provide for—
 - (a) in the case of each kind of instrument, the description of stamps which may be used;
 - (b) in the case of instruments stamped with impressed stamps, the number of stamps which may be used.
- (3) Until regulations are made under this section any stamps which might lawfully be used immediately before the commencement of this Act for the payment of stamp duties may be used for the purposes of this Act.

8. How instruments are to be written and stamped

- (1) Every instrument written upon stamped material shall be written in such manner, and every instrument partly or wholly written before being stamped shall be so stamped, that the stamp may appear on the face of the instrument, and cannot be used for, or applied to, any other instrument written upon the same piece of material.
- (2) If more than one instrument is written upon the same piece of material, every one of the instruments shall be separately and distinctly stamped with the duty with which it is chargeable.

9. Instruments to be separately charged in certain cases

- (1) An instrument containing or relating to several distinct matters shall be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the matters.
- (2) An instrument made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and also for any further or other valuable consideration or considerations, shall be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the considerations.

10. Facts and circumstances affecting duty to be set forth in instruments

- (1) All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, shall be fully and truly set forth in the instrument; and every person who with intent to defraud the Government—
 - (a) executes any instrument in which all the said facts and circumstances are not fully set forth; or
 - (b) being employed or concerned in or about the preparation of any instrument, fails fully and truly to set forth therein all the said facts and circumstances,shall be guilty of an offence and liable to a fine of £500.
- (2) The Commissioners may require any person executing, or any person employed or being concerned in or about the preparation of any instrument, to give evidence on oath, or by statutory declaration, as to the fullness and truth of the facts and circumstances set forth; and for the purpose of taking such evidence the Commissioners may summon any such person to appear before them, and the person so summoned shall be legally bound to appear and to answer such questions and to produce such documents as the Commissioners may put to him or require to be produced, as the case may be, relating to the facts and circumstances aforesaid.

11. Mode of calculating *ad valorem* duty in certain cases

- (1) Subject to subsection (2), where an instrument is chargeable with *ad valorem* duty in respect of—
 - (a) any money in any currency other than that of Malawi; or
 - (b) any stock or marketable security,the duty shall be calculated on the value, on the day of the date of the instrument, of the money in Malawi currency according to the current rate of exchange, or of the stock or security according to the average price thereof:

Provided that where such stock or security is the consideration for any conveyance or transfer of property, and, in the opinion of the Commissioners, such consideration is inadequate having regard to the actual value of the stock or security, *ad valorem* duty shall be chargeable on the value of the property to be conveyed or transferred.
- (2) The current rate of exchange for the purpose of the conversion of any value expressed in a foreign currency shall be the rate of exchange on the particular day as the Commissioners may determine after consultation with the Governor of the Reserve Bank of Malawi.
- (3) Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with that statement it shall, so far as regards the subject matter of the statement, be deemed to be duly stamped, unless or until it is shown that the statement is untrue and that the instrument is in fact insufficiently stamped.

12. Instruments to be in English

Every instrument chargeable with duty shall be written in the English language, or shall have annexed thereto a full and accurate translation thereof into the English language, certified to the satisfaction of the Commissioners.

Use of adhesive stamps

13. General directions as to cancellation of adhesive stamps

- (1) Where stamp duty is required or permitted by any written law to be denoted by adhesive stamps, each and every such stamp shall be cancelled in such manner as to render it incapable of being used again for any revenue purpose.
- (2) Where an instrument, the stamp duty on which is required or permitted by any written law to be denoted by adhesive stamps, is to be stamped before execution, or before issue, or before being parted with by the maker, or before the doing of any other act, the first person so executing, issuing or parting with such instrument or doing such other act, as the case may be, shall cancel such adhesive stamps.
- (3) Where an instrument, the stamp duty on which is required or permitted by any written law to be denoted by adhesive stamps, is to be stamped within a certain period after any event, the person affixing the adhesive stamps shall cancel them forthwith and before he parts with the instrument.
- (4) Subject to sections 19, 20, 32 and 34, an instrument, the stamp duty on which is denoted by an adhesive stamp, shall not be deemed to have been duly stamped unless such stamp has been cancelled as required by this section.
- (5) The person required by the foregoing provisions of this section to cancel an adhesive stamp shall cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing.
- (6) Any person who neglects or refuses duly and effectively to cancel an adhesive stamp in accordance with the provisions of this section shall be guilty of an offence and liable to a fine of £25.

14. Penalty for frauds in relation to adhesive stamps

If any person—

- (a) fraudulently removes or causes to be removed from any instrument any adhesive stamp, or affixes to any other instrument or uses for any other purpose any adhesive stamp which has been so removed with intent that the stamp may be used again; or
- (b) sells, or offers for sale, or utters, any adhesive stamp which has been so removed, or utters any instrument, having thereon any adhesive stamp which has to his knowledge been so removed as aforesaid,

he shall be guilty of an offence and liable, in addition to any other fine or penalty to which he may be liable, to a fine of £100.

Denoting stamps

15. Denoting stamps

Where the duty with which an instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of the last-mentioned duty shall, upon application to the Commissioners and production of both the instruments, be denoted upon the first-mentioned instrument in such manner as may be prescribed.

Adjudication stamps

16. Adjudication

- (1) Subject to any regulations made under this Act, the Commissioners may be required by any person to express their opinion with reference to any executed instrument upon the following questions—
 - (a) whether it is chargeable with any duty;
 - (b) with what amount of duty it is chargeable.
- (2) If the Commissioners are of the opinion that the instrument is not chargeable with any duty, it shall be stamped with a particular stamp denoting that it is not chargeable with any duty.
- (3) If the Commissioners are of the opinion that the instrument is chargeable with duty, they shall assess the duty with which it is, in their opinion, chargeable, and when the instrument is stamped in accordance with the assessment it shall be stamped with a particular stamp denoting that it is duly stamped.
- (4) Every instrument stamped with the particular stamp, denoting either that it is not chargeable with any duty or that it is duly stamped, shall be admissible in evidence and available for all purposes notwithstanding any objection relating to duty.
- (5) Nothing in this section shall extend to any instrument chargeable with *ad valorem* duty, and made as a security for money or stock without limit; or shall authorize the stamping after the execution thereof of any instrument which by law cannot be stamped after execution.
- (6) A statutory declaration made for the purpose of this section shall not be used against any person making the same, in any proceedings whatever, except in an inquiry as to the duty with which the instrument to which it relates is chargeable; and, if such declaration is true, every person by whom it is made shall, on payment of the duty chargeable upon the instrument to which it relates, be relieved from any fine or disability to which he may be liable by reason of the omission to state truly in the instrument any fact or circumstance required by this Act to be stated therein.

17. Persons dissatisfied may appeal

- (1) Any person who is dissatisfied with the assessment of the Commissioners may, within 14 days after the date of the assessment, and on payment of duty in conformity therewith, or on securing the same to the satisfaction of the Commissioners, appeal against the assessment to the High Court, and may be that purpose require the Commissioners to state and sign a case, setting forth the question upon which their opinion was required, and the assessment made by them.
- (2) A sum of fifteen pounds shall be lodged with the Commissioners as security for the costs referred to in subsection (6).
- (3) The Commissioners shall thereupon state and sign a case and deliver the same to the person by whom it is required, and the case may, within seven days thereafter, and after service thereof upon the Attorney-General, be set down by such person for hearing.
- (4) Upon the hearing of the case the court shall determine the question submitted, and, if the instrument in question is in the opinion of the court chargeable with any duty, shall assess the duty with which it is chargeable.
- (5) If it is decided by the court that the assessment of the Commissioners is erroneous, any excess of duty which may have been paid in conformity with the erroneous assessment, together with any fine or penalty which may have been paid in consequence thereof, shall be ordered by the court to be repaid to the appellant, with or without costs as the court may determine.
- (6) If the assessment of the Commissioners is confirmed wholly or in part, the court may make an order for payment to the Commissioners of the costs incurred by them in relation to the appeal.

Production of instruments in evidence and instruments not duly stamped

18. Non admissibility, of unstamped instruments in evidence; and penalty

- (1) Subject to subsection (3) and to sections 19 and 20 no instrument chargeable with stamp duty shall be received in evidence in any proceedings whatsoever, except–
 - (a) in criminal proceedings; and
 - (b) in civil proceedings by the Commissioners to recover stamp duty,unless such instrument is duly stamped.
- (2) No instrument chargeable with stamp duty shall be filed, enrolled, registered or acted upon by any person unless such instrument is duly stamped.
- (3) Upon the production to any court (other than a criminal court), arbitrator, referee, or to any officer or servant of the Government of any instrument which is chargeable with stamp duty and which is not duly stamped, it shall be the duty of such court, arbitrator, referee, or officer or servant, to take notice of the omission or insufficiency of the stamp on such instrument and thereupon to take action in accordance with the following provisions–
 - (a) if the period of time within or before which the instrument should have been stamped has expired and the instrument is one in respect of which a person is specified in the Schedule as being liable for the stamping thereof, the instrument shall be impounded and, unless the instrument has been produced to the Commissioners, shall forthwith be forwarded to the Commissioners;
 - (b) in any such case, before the exclusion or rejection of the instrument, the person tendering such instrument shall, if he desires, be given a reasonable opportunity of applying to the Commissioners for leave under [section 19](#) or of obtaining a certificate under [section 20](#);
 - (c) in all other cases, unless otherwise expressly provided in this Act, the instrument shall, saving all just exceptions on other grounds, be received in evidence upon payment to the court, arbitrator or referee of the amount of the unpaid duty and of the penalty specified in subsection (5) and such duty and penalty, if any, shall forthwith be remitted to the Commissioners with the instrument to be stamped after the instrument has been admitted in evidence.
- (4) If any person is empowered or required by any written law to act upon, file, enrol or register a duplicate or copy of any instrument, and if the original of such instrument would require to be duly stamped if acted upon, filed, enrolled or registered by such person, such person may call for the production of the original instrument or for evidence to his satisfaction that it was duly stamped, and no person shall act upon, file, enrol or register any such duplicate or copy without production of the original instrument duly stamped or of evidence as aforesaid.
- (5) The penalty on stamping any instrument out of time referred to in subsection (3) (c) shall be ten shillings in respect of every pound and of any fractional part of one pound of the duty chargeable thereon and in respect of every period of three months or any part of such a period after the expiration of the time within or before which the instrument should have been stamped.

19. Stamping out of time

- (1) Where an instrument is chargeable with stamp duty under this Act and should have been stamped before a certain event or before the expiration of a certain period, but has not been so stamped, the Commissioners may give leave for the stamping of such instrument if they are satisfied–
 - (a) that the omission or neglect to stamp did not arise from any intention to evade payment of stamp duty or otherwise to defraud; and

- (b) that the circumstances of the case are such as to justify leave being given.
- (2) If the Commissioners grant leave under subsection (1) for the stamping of any instrument, such instrument shall be stamped on payment of the unpaid duty and of a penalty of five shillings in respect of every pound and of any fractional part of one pound of the duty chargeable thereon and in respect of every period of three months or any part of such period after the expiration of the time within or before which the instrument should have been stamped:

Provided that the Commissioners may, in their discretion, remit the whole or any part of the penalty provided by this sub-section.
- (3) Where an instrument has been stamped by leave under this section, such instrument shall be deemed to have been duly stamped.
- (4) Notwithstanding the provisions of this section, no bill of exchange or promissory note shall, except as provided in sections [20](#), [21](#), [32](#) and [34](#) be stamped after execution.

20. Certain improperly stamped instruments

Subject to this Act, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable and of a penalty of ten shillings, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped.

21. Effect of non-compliance in case of certain bills of exchange

Notwithstanding any written law to the contrary, a bill of exchange, which is presented for acceptance, or accepted, or payable, outside Malawi, or a cheque, whether presented for acceptance, or accepted, or payable, outside or inside Malawi, shall not be invalid by reason only that it is not stamped in accordance with this Act, and any such bill of exchange or cheque which is unstamped or not properly stamped may be received in evidence on payment of the proper duty and penalties as provided by sections [18](#) and [19](#).

22. Instruments executed out of Malawi

Every instrument executed out of Malawi by any person, not being a bill of exchange or a promissory note, shall, before being used, brought into force or registered, within Malawi be stamped according to the rate of duty chargeable thereon in accordance with this Act, whatever the provision of the Schedule may be with regard to the time before which or the period within which such an instrument, if executed in the first instance within Malawi, should be stamped.

Miscellaneous

23. Refund where instrument erroneously assessed

Where the Commissioners are satisfied that an instrument has been erroneously assessed with duty or penalty, they may, if application for a refund is made at any time within one year after the date of the payment of that duty or penalty, refund the amount thereof to the person by whom it was paid.

24. Splitting

- (1) Where any minimum amount is prescribed below which stamp duty shall not be payable, no person shall execute more instruments than would ordinarily be necessary for the transaction in question, in order to evade stamp duty by such splitting.
- (2) Where a scale is prescribed under which the rate of stamp duty is increased after passing certain limits, no person shall execute more instruments than would ordinarily be necessary for the transaction in question, in order to evade stamp duty by such splitting.

- (3) In any question whatsoever arising under this section the onus of proof shall lie upon the person who asserts that there has been no splitting in order to evade stamp duty.

25. Penalty for evasion of duty by splitting

Any person executing an instrument in contravention of [section 24](#) shall be guilty of an offence and liable to a fine of £250.

26. Stamp where value of subject-matter is indeterminate

Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution, or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient:

Provided that if the owner of an instrument which was duly stamped in accordance with the information then available to him receives information showing that the instrument is insufficiently stamped, and produces the instrument with the information to the Commissioners within fourteen days after such receipt, the instrument may be stamped without penalty for such further sum as is proper, but this proviso shall not apply to instruments which are required to be stamped before execution.

Recovery of stamp duty

27. Recovery of stamp duty

Stamp duty in arrear may be recoverable by civil suit as a debt due to the Commissioners from any person liable, or, on the *ex parte* application of the Commissioners to any competent court and without the institution of a suit, may be recovered from the person liable in manner following—

- (a) a statement in writing by any Commissioner shall be sufficient evidence of the amount of stamp duty in arrear and payable by the person therein named;
- (b) on production of the statement of the Commissioner and on proof of service of the statement on the person liable to pay the stamp duty, the court shall make an order for the payment by such person of the stamp duty in arrear together with the costs of the application, and may direct the immediate execution of the order;
- (c) the order shall as soon as possible be served on the person concerned who may at any time within fourteen days after such service apply to the court for the order to be discharged, and the order may then be discharged on any ground which would be a valid defence to proceedings for recovery of stamp duty;
- (d) property liable to attachment and sale in execution of the order may be seized immediately after the order is made, but shall not be sold until the time for applying for discharge of the order has elapsed and any application for such a discharge has been disposed of.

28. Stay of execution pending appeal

Where, in any proceedings for the recovery of stamp duty or for the discharge of an order for payment of stamp duty, it appears that an appeal against the assessment is pending or that the time for so appealing has not yet elapsed, the court may, if it thinks fit, grant a stay of execution for such period and on such terms as it thinks just.

Part III – Regulations applicable to particular instruments

Agreements

29. Certain mortgages of stock to be chargeable as agreements

- (1) Every instrument under hand only (not being a promissory note or bill of exchange) given upon the occasion of a deposit of any share warrant or stock certificate to bearer, or Commonwealth or foreign share certificate, or any security for money transferable by delivery, by way of security for any loan, shall be deemed to be an agreement, and shall be charged with duty accordingly.
- (2) Every instrument under hand only (not being a promissory note or bill of exchange) making redeemable or qualifying a duly stamped transfer intended as a security of any registered stock or marketable security shall be deemed to be an agreement and shall be charged with duty accordingly.
- (3) A release or discharge of any such instrument shall be charged with the like duty.

30. Hire purchase or installment sale agreement to be stamped

The exemption numbered (1) under the heading AGREEMENT OR ANY MEMORANDUM OF AN AGREEMENT in the Schedule shall not apply in the case of any agreement for or relating to the supply of goods on hire, whereby the goods, in consideration of periodical payments, become or may become the property of the person to whom they are supplied.

Bills of exchange and promissory notes

31. Meaning of "bill of exchange" and "promissory note"

For the purposes of this Act, "bill of exchange" and "promissory note" shall have the meanings assigned to these expressions in the Bills of Exchange Act.

[Cap. 48:02]

32. Provisions as to stamping foreign bills and notes

- (1) Every person into whose hands any bill of exchange or promissory note drawn or made outside Malawi comes into Malawi before it is stamped shall, before he presents it for payment, or endorses, transfers or in any manner negotiates, or pays, the bill or note, affix thereto the proper stamp, and, if an adhesive stamp, cancel the same:

Provided that–

- (i) if at the time when any such bill or note comes into the hands of any *bona fide* holder there is affixed thereto an adhesive stamp effectually cancelled, the stamp shall, so far as relates to the holder, be deemed to be duly cancelled, although it may not appear to have been affixed or cancelled by the proper person; and
 - (ii) if at the time when any such bill or note comes into the hands of any *bona fide* holder there is affixed thereto an adhesive stamp not duly cancelled, the holder may cancel the stamp as if he were the person by whom it was affixed, and upon his so doing the bill or note shall be deemed to be duly stamped, and as valid and available as if the stamp had been cancelled by the person by whom it was affixed.
- (2) Nothing contained in subsection (1) shall relieve any person from any fine or penalty to which he may be liable for not cancelling an adhesive stamp.

33. As to bills and notes purporting to be drawn abroad

A bill of exchange or promissory note which purports to be drawn or made outside Malawi shall, for the purpose of determining the mode in which the stamp duty thereon is to be denoted, be deemed to have been so drawn or made, although it may in fact have been drawn or made within Malawi.

34. Penalty for issuing, etc., any unstamped bill or note

- (1) Every person who issues, endorses, transfers, negotiates, presents for payment or pays any bill of exchange or promissory note liable to duty and not being duly stamped shall be guilty of an offence and liable to a fine of £25, and the person who takes or receives from any other person any such bill or note either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon or to make the same available for any purpose whatever:

Provided that if any bill of exchange payable on demand or at sight, or on presentation, or within three days after date or sight, is presented for payment unstamped the person to whom it is presented may affix thereto an adhesive stamp of three pence, and cancel the same as if he had been the drawer of the bill, and may thereupon pay the sum in the bill mentioned and charge the duty in account against the person by whom the bill was drawn, or deduct the duty from the said sum, and the bill shall, so far as respects the duty, be deemed valid and available.

- (2) Nothing contained in subsection (1) shall relieve any person from any fine or penalty incurred by him in relation to such bill.

35. One bill only of a set need be stamped

Where a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the others of the set shall, unless issued or in some manner negotiated apart from the stamped bill, be exempt from duty; and, upon proof of the loss or destruction of a duly stamped bill forming one of the set, any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill.

Conveyances on sale

36. Meaning of "conveyance on sale"

- (1) For the purposes of this Act, "conveyance on sale" includes—
- (a) any instrument whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction;
 - (b) a decree or order for, or having the effect of an order for, foreclosure: Provided that—
 - (i) the *ad valorem* duty upon any such decree or order shall not exceed the duty on a sum equal to the value of the property to which the decree or order relates, and where the decree or order states that value that statement shall be conclusive for the purpose of determining the amount of duty; and
 - (ii) where *ad valorem* duty is paid upon such decree or order any conveyance following upon such decree or order shall be exempt from *ad valorem* duty.
- (2) Any vesting order by the court shall bear the same stamp as if it were a conveyance on sale.

37. How *ad valorem* duty is to be calculated in respect of stock and securities

- (1) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any stock or marketable security, the conveyance shall be charged with *ad valorem* duty in respect of the value of the stock or security.
- (2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any security not being a marketable security, the conveyance shall be charged with *ad valorem* duty in respect of the amount due on the day of the date thereof for principal and interest upon the security.

38. How consideration consisting of periodical payments to be charged

- (1) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period not exceeding twenty years, so that the total amount to be paid can be previously ascertained, the conveyance shall be charged in respect of that consideration with *ad valorem* duty on such total amount.
- (2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period exceeding twenty years or in perpetuity, or for any indefinite period not terminable with life, the conveyance shall be charged in respect of that consideration with *ad valorem* duty on the total amount which will or may according to the terms of sale be payable during the period of twenty years next after the day of the date of the instrument.
- (3) Where the consideration or part of the consideration for a conveyance on sale consists of money payable periodically during any life or lives, the conveyance shall be charged in respect of that consideration with *ad valorem* duty on the amount which will or may, according to the terms of sale, be payable during the period of twelve years next after the day of the date of the instrument.
- (4) Notwithstanding the foregoing provisions of this section, no conveyance on sale chargeable with *ad valorem* duty in respect of any periodical payments and containing also provision for securing the payments shall be charged with any duty in respect of such provision, and no separate instrument made in that case for securing repayment shall be charged with any higher duty than ten shillings.

39. Conveyance on sale with further covenant

A conveyance on sale made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration of a covenant by the purchaser to make, or of his having previously made, any substantial improvement of or addition to the property conveyed to him, or of any covenant relating to the subject-matter of the conveyance, shall not be chargeable, and shall be deemed not to have been chargeable, with any duty in respect of such further consideration.

40. How conveyance in consideration of a debt etc., to be charged

Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance or not, the debt, money or stock shall be deemed to be the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty.

41. Direction as to duty, in certain cases of conveyances mortgages and settlements

- (1) Where property contracted to be sold for one consideration for the whole is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance shall be charged with *ad valorem* duty in respect of such distinct consideration.

- (2) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly or by any person for himself or others or wholly for others is conveyed in parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel shall be charged with *ad valorem* duty in respect of the distinct part of the consideration therein specified.
- (3) Where there are several instruments of conveyance for completing the purchaser's title to property sold, the principal instrument of conveyance only is to be charged with *ad valorem* duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but the last-mentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument.
- (4)
 - (a) Where any property is conveyed by one person to another by the direction, or at the request, or with the consent, of an intermediary or intermediaries, the conveyance shall be charged with duty as if it were both a conveyance of the property by the transferor to the intermediary or, as the case may be, to the first intermediary, and also a number of conveyances whereby each intermediary conveys the property to the next intermediary or, in the final case, to the transferee.
 - (b) Every conveyance to which this subsection refers shall recite the fact of each such direction, request or consent; and, if the instrument is executed without that recital, every person executing the same knowing that it does not contain that recital (which knowledge shall be presumed unless the contrary is proved) shall be guilty of an offence and liable to a fine of £250.
 - (c) In this subsection, "intermediary" means a person, other than the transferee, who since the commencement of this Act acquired the right to call for a conveyance of any property under an agreement for sale, trust or otherwise howsoever, and includes two or more such persons acting jointly.
- (5) If the holder of a registered claim, mining lease or exclusive prospecting licence has granted to any person the right to purchase such claim, lease or licence, and if the said right to purchase becomes vested in some other person by the surrender or transfer of the said right, then, upon the exercise of the said right to purchase, any sums paid for such surrender or transfer shall be deemed to form part of the consideration in the transfer of such claim, lease or licence.

42. Certain contracts to be chargeable as conveyances on sale

- (1) Any contract or agreement for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property except lands, tenements, hereditaments, or property locally situate outside Malawi, or goods, wares or merchandise, or stock, or marketable securities, or any ship or vessel, or part interest, share, or property of or in any ship or vessel, shall be charged with the same *ad valorem* duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate, interest, or property contracted or agreed to be sold.
- (2) Where the purchaser has paid the said *ad valorem* duty and, before having obtained a conveyance or transfer of the property, enters into a contract or agreement for the sale of the same, the contract or agreement shall be charged, if the consideration for that sale is in excess of the consideration for the original sale, with the *ad valorem* duty payable in respect of such excess consideration, and in any other case with the fixed duty of ten shillings.
- (3) Where duty has been duly paid in conformity with the foregoing provisions, the conveyance or transfer made to the purchaser or sub-purchaser, or any other person on his behalf or by his direction, shall not be chargeable with any duty, and the Commissioners, upon application, either shall denote the payment of the *ad valorem* duty upon the conveyance or transfer, or shall transfer the *ad valorem* duty thereto upon production of the contract or agreement, or contracts or agreements, duly stamped.

- (4) Where any such contract or agreement is stamped with the fixed duty of ten shillings the contract or agreement shall be regarded as duly stamped for the mere purpose of proceedings to enforce specific performance or recover damages for the breach thereof.
- (5) Where any such contract or agreement is stamped with the said fixed duty, and a conveyance or transfer made in conformity with the contract or agreement is presented to the Commissioners for stamping with the *ad valorem* duty chargeable thereon within the period of six months after the first execution of the contract or agreement, or within such longer period as the Commissioners think reasonable in the circumstances of the case, the conveyance or transfer shall be stamped accordingly, and the same, and the said contract or agreement, shall be deemed to be duly stamped:

Provided that nothing in this sub section shall alter or affect the provisions as to the stamping of a conveyance or transfer after the execution thereof.

- (6) The *ad valorem* toy paid upon any such contract or agreement shall be returned by the Commissioners in case the contract or agreement be afterwards rescinded or annulled.

43. As to sale of an annuity or right not before in existence

- (1) Where upon the sale of any annuity or other right not before in existence, such annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract or otherwise, the bond or other instrument, or some one of such instruments if there are more than one, shall be charged with the same duty as an actual grant or conveyance and shall for the purposes of this Act be deemed to be an instrument of conveyance on sale.
- (2) Notwithstanding the provisions of subsection (1), an instrument being a grant or contract for payment of a purchased life annuity shall be chargeable with stamp duty under paragraph (3) of the heading BOND, COVENANT OR INSTRUMENT OF ANY KIND WHATSOEVER in the Schedule, whether or not the annuity is a superannuation annuity as defined in that paragraph.
- (3) In this section, “purchased life annuity” means a life annuity granted for consideration in money or money’s worth in the ordinary course of a business of granting annuities on human life.

44. Principal instrument how to be ascertained

The parties may determine for themselves which of several instruments shall be deemed to be the principal instrument and may pay the *ad valorem* duty thereon accordingly:

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments.

45. Duty on gifts *inter vivos*

- (1) Any conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale, with the substitution in each case of the value of the property conveyed or transferred for the amount or value of the consideration for the sale.
- (2) Notwithstanding the provisions of subsection (1), a conveyance or transfer, or an agreement for a conveyance or transfer, operating as a voluntary disposition of property shall not be chargeable with any duty, if such conveyance or transfer is in favour of—
 - (a) any body of persons incorporated by a written law and that body is by its written law precluded from dividing any profit amongst its members and the property conveyed is to be held for the purposes of its preservation for the benefit of Malawi; or
 - (b) any body of persons established for charitable purposes only or the trustees of a trust so established.

- (3) Notwithstanding anything contained in [section 17](#), the Commissioners may be required to express their opinion under that section on any conveyance, transfer or agreement mentioned in the foregoing provisions of this section, and no such conveyance, transfer or agreement shall be deemed to be duly stamped unless the Commissioners have expressed their opinion thereon in accordance with that section and the instrument has been stamped accordingly.
- (4) Where any instrument is chargeable with duty both as a conveyance or transfer under this section and as a settlement under the heading Settlement in the Schedule, the instrument shall be charged with duty as a conveyance or transfer under this section and not as a settlement.
- (5) Any conveyance or transfer (not being a disposition made in favour of a purchaser or encumbrancer or other person in good faith and for valuable consideration) shall, for the purposes of this section, be deemed to be a conveyance or transfer operating as a voluntary disposition *inter vivos*, and (except where marriage is the consideration) the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where the Commissioners are of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred.
- (6) The foregoing provisions of this section shall not apply to a conveyance or transfer made for a nominal consideration for the purpose of securing the repayment of an advance or loan or made for effectuating the appointment of a new trustee or the retirement of a trustee, whether the trust is expressed or implied, or under which no beneficial interest passes in the property conveyed or transferred, or made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust, whether express or implied, and this subsection shall have effect notwithstanding that circumstances exempting the conveyance or transfer from charge under this section are not set forth in the conveyance or transfer.

Conveyances on any occasion except sale or mortgage

46. What is to be deemed a conveyance on any occasion not being a sale or mortgage

Every instrument, and every decree or order of any court, whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person, shall be charged with duty as a conveyance or transfer of property:

Provided that a conveyance or transfer made for effectuating the appointment of a new trustee, or for effectuating the retirement of a trustee although no new trustee is appointed, shall not be charged with any higher duty than thirty shillings.

Leases and licences

47. Agreements to be charged as leases

- (1) An agreement for a lease, or in respect of any letting, shall be charged with the same duty as if it were an actual lease made for the term and consideration mentioned in the agreement.
- (2) A lease made subsequently to, and in conformity with, such an agreement duly stamped shall be charged with the duty of five shillings.

48. Duty on leases in other cases

A lease shall, so far as the consideration therefor consists of any premium or other consideration whatsoever other than rent, moving either to the lessor or to any other person, be charged with *ad valorem* stamp duty computed on that consideration, as if it were a conveyance on sale for the amount of that consideration.

49. Duty on leases granted in perpetuity

A lease granted in perpetuity shall be charged with *ad valorem* stamp duty as if it were a conveyance on sale, and the duty shall be computed on the value of the property.

50. Leases, how to be charged in respect of produce, etc.

- (1) Where the consideration, or any part of the consideration, for which a lease is granted or agreed to be granted, consists of any produce or other goods, the value of the produce or goods shall be deemed a consideration in respect of which the lease or agreement is chargeable with *ad valorem* duty.
- (2) Where it is stipulated that the value of the produce or goods is to amount at least to, or is not to exceed, a given sum, or where the lessee is specially charged with or has the option of paying after any permanent rate of conversion, the value of the produce or goods shall, for the purpose of assessing the *ad valorem* duty, be estimated at the given sum, or according to the permanent rate.
- (3) A lease or an agreement for a lease made either wholly or partially for any such consideration, if it contains a statement of the value thereof, and is stamped in accordance with the statement, shall, so far as regards the subject-matter of the statement, be deemed to be duly stamped, unless or until it is otherwise shown that the statement is incorrect, and that the lease or agreement is in fact not duly stamped.

51. Directions, as to duty in certain cases

- (1) A lease made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease, is not to be charged with any duty in respect of such further consideration:

Provided that this subsection shall not apply in respect of any further consideration in the lease consisting of a covenant which, if it were contained in a separate deed would be chargeable with *ad valorem* stamp duty, and accordingly the lease shall in any such case be charged with duty in respect of any such further consideration under [section 5](#).

- (2) An instrument, whereby the rent reserved by any other instrument chargeable with duty and duly stamped as a lease is increased, shall not be charged with duty otherwise than as a lease in consideration of the additional rent thereby made payable.

52. Duty on leases granted for inadequate consideration

A lease granted for a consideration which in the opinion of the Commissioners is inadequate, unless it is a lease granted by the Government or its predecessors in title, shall, in respect of the consideration therefor, be charged in accordance with the foregoing provisions; and such a lease shall also be charged as if it were an instrument operating as a voluntary disposition *inter vivos* in respect of the value of the leasehold interest after deducting the amount of the consideration.

53. Duty where consideration cannot be fixed with accuracy

Where, in the opinion of the Commissioners, the amount of the consideration for a lease cannot be ascertained with reasonable accuracy, they may, in their discretion, either disregard that consideration to the extent to which its amount is deemed to be unascertainable and stamp the lease as if it were a voluntary disposition *inter vivo* in accordance with [section 45](#), or they may assess the lease with a fixed duty of five pounds in respect of the consideration so far as it is deemed to be unascertainable.

54. Licences

- (1) Every licence relating to immovable property shall for the purposes of this Act be deemed to be a lease by the grantor of the licence to the grantee, and shall be charged with duty accordingly.
- (2) In the application to licences of this Act with respect to leases, every consideration which would have been rent if the licence had been a lease shall be deemed to be rent, and duty shall be charged accordingly.

Marketable securities

55. Meaning of marketable securities for charge of duty and foreign and Commonwealth share certificate

Marketable securities, for the purpose of the charge of duty thereon, whether or not transferable by delivery, include-

- (a) a marketable security, made or issued by or on behalf of any company or body of persons corporate or unincorporate formed or established in Malawi; and
- (b) a marketable security by or on behalf of any foreign state or government, or Commonwealth or foreign municipal body, corporation or company (hereinafter called a foreign security)-
 - (i) which is made or issued in Malawi; or
 - (ii) which, though originally issued out of Malawi, is offered for subscription, and is given or delivered to a subscriber in Malawi; or
 - (iii) which is assigned, transferred or in any other manner negotiated in Malawi; and
- (c) a marketable security by or on behalf of the government of any country in the Commonwealth (hereinafter called a Commonwealth government security) which if the borrower were a foreign government, would be a foreign security; and
- (d) a share warrant or stock certificate to bearer, or any other instrument to bearer, by means of which any share or stock of any company or body of persons formed or established out of Malawi is assigned, transferred or in any manner registered in Malawi.

56. Meaning of marketable security transferable on delivery and instrument to bearer

An instrument used for the purpose of assigning, transferring or in any manner negotiating the right to any marketable security, share or stock shall, if the delivery thereof is by usage treated as sufficient for the purpose of a sale on the market, whether that delivery constitutes a legal assignment, transfer or negotiation or not, be deemed to be a marketable security transferable on delivery, or an instrument to bearer, as the case may be, and the delivery thereof an assignment, transfer or negotiation.

Mortgages, etc.

57. Meaning of "mortgage" and "equitable mortgage" and provisions in relation to equitable mortgages

- (1) For the purposes of this Act, "mortgage" means a legal charge or security by way of mortgage for the payment of any definite or certain sum of money advanced or lent at the time, or previously due and owing or foreborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be; and includes-
 - (a) any conditional surrender by way of mortgage, charge, further charge or disposition; and

- (b) any conveyance of any property in trust to be sold or otherwise converted into money intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise; and
 - (c) any instrument in writing for defeating or making redeemable or explaining or qualifying any conveyance, transfer, disposition or assignation of any immovable property, apparently absolute, but intended only as a security; and
 - (d) any agreement (other than an agreement chargeable with duty as an equitable mortgage), contract or bond accompanied with a deposit of title deeds or with other instruments evidencing a right to property, for making a mortgage, or any other security or conveyance as aforesaid of any property comprised in the title deed, or for pledging or charging the same as a security; and
 - (e) any deed operating as a mortgage of any stock or marketable security,
- but does not include an instrument registrable under the Bills of Sale Act.

[Cap. 48:03]

- (2) For the purpose of this Act, "equitable mortgage" means an agreement or memorandum relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any property (other than any stock or marketable security) or creating a charge on such property.
- (3)
 - (a) There shall be embodied in every equitable mortgage a certificate setting forth the amount secured thereby, or, if such be the case, that the amount secured is uncertain.
 - (b) In the case of an equitable mortgage to which [section 59 \(2\)](#) applies, where any advance or loan is made in excess of the amount covered by the *ad valorem* duty impressed thereon, there shall be presented with or endorsed on the equitable mortgage, when it is presented for stamping, a certificate setting forth the amount of the advance or loan so made.
 - (c) There shall be embodied in every discharge of an equitable mortgage a certificate setting forth the greatest amount which was at any time secured by the mortgage.
 - (d) Nothing shall be claimable under any equitable mortgage more than the highest amount for which the stamp actually used would, at the date of the stamping thereof, have been sufficient.

58. Direction as to duty in certain cases

- (1) A security for the transfer or retransfer of any stock shall be charged with the same duty as a similar security for a sum of money equal in amount to the value of the stock; and a transfer, assignment or disposition of any such security, and a reconveyance, release, discharge, surrender, resurrender, warrant to vacate or renunciation of any such security, shall be charged with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of the stock.
- (2) A security for the payment of any rent charge annuity or periodical payments, by way of repayment, or in satisfaction or discharge of any loan, advance or payment intended to be so repaid satisfied or discharged, shall be charged with the same duty as a similar security for the payment of a sum of money so lent, advanced or paid.
- (3) A transfer of a duly stamped security, and a security by way of further charge for money or stock added to money or stock previously secured by a duly stamped instrument, shall not be charged with any duty by reason of it containing any further or additional security for the money or stock transferred or previously secured, or the interest or dividends thereof, or any new covenant, proviso, power, stipulation or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security.

- (4) An instrument chargeable with *ad valorem* duty as a mortgage shall not be charged with any further duty by reason of the equity of redemption in the mortgaged property being thereby conveyed or limited in any other manner than to a purchaser, or in trust for, or according to the direction of, a purchaser.

59. Security for future advances, how to be charged

- (1) A security for the payment or repayment of money to be lent, advanced or paid, or which may become due upon an account current, either with or without money previously due, shall be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited.
- (2) Where such total amount is unlimited, the security shall be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover, but where any advance or loan is made in excess of the amount covered by that duty the security shall, for the purpose of stamp duty, be deemed to be a new and separate instrument bearing the date of the day on which the advance or loan is made.
- (3) Notwithstanding the foregoing provisions of this section, no money to be advanced for the insurance of any property comprised in the security against damage by fire, or for keeping up any policy of life insurance comprised in the security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in the security upon the dropping of any life whereon the property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with *ad valorem* duty.

Partitions

60. Partitions

- (1) Every instrument whereby the co-owners of any property divide or agree to divide such property in severalty, shall be charged with duty as a partition.
- (2) For the purpose of computing the duty on an instrument of partition, the largest share remaining after any property has been divided (or, if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated.
- (3) When an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than one pound.
- (4) Where a final order for effecting a partition passed by any civil court, or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall be reduced by the amount of the duty paid in respect of the first instrument, but shall not be less than one pound.

Policies of insurance

61. Meaning of "policy of insurance", "policy of life insurance" and "policy of insurance against accident"

- (1) For the purposes of this Act, "policy of insurance" includes every writing whereby any contract of insurance is made or agreed to be made, or is evidenced; and "insurance" includes assurance.

- (2) For the purposes of this Act, “policy of life insurance” means a policy of insurance upon any life or lives or upon any event or contingency relating to or depending upon any life or lives except a policy of insurance against accident; and “policy of insurance against accident” means a policy of insurance for any payment agreed to be made upon the death of any person only from accident or violence or otherwise than from a natural cause, or as compensation for personal injury.

62. Penalty for not making out policy or making, etc., any policy not duly stamped

Every person who—

- (a) receives, or takes credit for, any premium or consideration for any insurance and does not within three months after receiving, or taking credit for, the premium or consideration make out and execute a duly stamped policy of insurance or endorsement or renewal document, as may be appropriate; or
- (b) makes, executes or delivers out or pays or allows in account, or agrees to pay or allow in account, any money upon or in respect of any such policy, endorsement or renewal document which is not duly stamped,

shall be guilty of an offence and liable to a fine of £10.

63. Assignment or surrender of policy of life insurance to be stamped

- (1) No assignment or surrender of a policy of life insurance shall confer on the assignee or surrenderee therein named, or his executors, administrators or assigns, any right to sue for the money assured or secured thereby, or to give a valid discharge for the same, or any part thereof, unless the assignment or surrender is duly stamped, and no payment shall be made to any person claiming under any such assignment or surrender unless the same is duly stamped.
- (2) If any payment is made in contravention of this section, the duty not paid upon the assignment or surrender, together with the penalty payable on stamping the same, shall be a debt due to the Government from the person by whom the payment is made.

Receipts

64. Provisions as to duty upon receipts

For the purposes of this Act, “receipt” includes any note, memorandum or writing whereby any money amounting to K4 or upwards, or any bill of exchange, cheque or promissory note for money amounting to K4 or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand, of the amount of K4 or upwards is acknowledged to have been settled, satisfied or discharged, or which signifies or imports any such acknowledgement, and whether the same is or is not signed with the name of any person.

65. Obligation to give receipt in certain cases, and penalty for offences in relation to receipts

- (1) Any person receiving any money of K4 or upwards in amount, or any bill of exchange (other than a cheque) or promissory note for an amount of K4 or upwards, or receiving in satisfaction or part satisfaction of debt any moveable property of K4 or upwards in value, shall, on demand by the person paying or delivering such money, bill, note or property, give a duly stamped receipt for the same.
- (2) If any person—
- (a) fails to give a receipt, as required by subsection (1); or
- (b) gives a receipt liable to duty and not duly stamped; or

- (c) upon a payment to the amount of K4 or upwards, gives a receipt for a sum not amounting to K4, or separates or divides the amount paid with intent to evade the duty, he shall be guilty of an offence and liable to a fine of K20.

Settlements

66. As to settlement of policy or security

Where any money which may become due or payable upon any policy of life insurance, or upon any security, not being a marketable security, is settled or agreed to be settled, the instrument whereby the settlement is made or agreed to be made shall be charged with *ad valorem* duty in respect of that money:

Provided that—

- (a) where, in the case of a policy, no provision is made for keeping up the policy, the *ad valorem* duty shall be charged only on the value of the policy at the date of the instrument;
- (b) where, in any such case, the instrument contains a statement of the said value and is stamped in accordance with the statement, it shall, so far as regards the policy, be deemed to be duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

67. Settlements, when not to be charged as securities

An instrument chargeable with *ad valorem* duty as a settlement in respect of any money, stock or security shall not be charged with any further duty by reason of containing provision for the payment or transfer of the money, stock or security, or by reason of containing, where the money, stock or security is in reversion or is not paid or transferred upon the execution of the instrument, provision for the payment by the person entitled in possession to the interest or dividends of the money, stock or security during the continuance of such possession of any annuity or yearly sum not exceeding interest at the rate of four *per centum* per annum upon the amount or value of the money, stock or security.

68. Where several instruments one only to be charged with *ad valorem* duty

- (1) Where several instruments are executed for effecting the settlement of the same property, and the *ad valorem* duty chargeable in respect of the settlement of property exceeds K2, one only of the instruments is to be charged with the *ad valorem* duty.
- (2) Where a settlement is made in pursuance of a previous agreement upon which *ad valorem* settlement duty exceeding K2 has been paid in respect of any property, the settlement is not to be charged with *ad valorem* duty in respect of the same property.
- (3) In each of the aforesaid cases the instruments not chargeable with *ad valorem* duty are to be charged with the duty of K2.

Part IV – Allowances for stamps in certain cases

69. Allowance for spoiled stamps

Subject to the provisions of [section 70](#), and of any regulations made under this Act, and to the production of such evidence by statutory declaration or otherwise as the Commissioners may require, allowance shall be made by the Commissioners for stamps spoiled in the cases hereinafter mentioned—

- (a) an impressed stamp on any material inadvertently and undesignedly spoiled, obliterated or by any means rendered unfit for the purpose intended, before the material bears the signature of any person or any instrument written thereon is executed by any party;

- (b) an impressed stamp on any bill of exchange signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance;
- (c) an impressed stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands;
- (d) an impressed stamp on any bill of exchange or promissory note which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange, may have been accepted or endorsed or, being a promissory note, may have been delivered to the payee, provided that another completed and duly stamped bill of exchange or promissory note is produced identical in every particular, except in the correction of the error or omission, with the spoiled bill or note;
- (e) an impressed stamp used for any instrument executed by any party thereto—
 - (i) but afterwards found to be absolutely void from the beginning;
 - (ii) but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;
 - (iii) which has not been made use of for any purpose whatever and which, by reason of the inability or refusal of some necessary party to sign the same or to complete the transaction according to the instrument, is incomplete and insufficient for the purpose for which it was intended;
 - (iv) which by reason of the refusal of any person to act under the same, or for want of enrolment or registration within the time required by law, fails of its intended purpose or becomes void;
 - (v) which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped, or which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped.

70. Conditions upon which applications under section 69 shall be granted

No application for relief under [section 69](#) shall be granted—

- (a) unless the application is made within two years after the stamp has been spoiled or becomes useless or, in the case of an executed instrument, after the date of the instrument or, if it is not dated, within two years after the execution thereof by the person by whom it was first or alone executed, or within such further time as the Commissioners may allow in the case of any instrument sent out of Malawi for execution or when from unavoidable circumstance any instrument, for which another has been substituted, cannot be provided within the said period;
- (b) if, in the case of an executed instrument, any legal proceedings have been commenced in which the instrument could or would have been given or offered in evidence and unless the instrument is given up to be cancelled.

71. Allowance, for misused stamps

Where any person has inadvertently used for an instrument liable to duty an impressed stamp of sufficient amount but of improper description or an impressed stamp of greater value than was necessary, or has inadvertently used an impressed stamp for an instrument not liable to any duty, the Commissioners may, on application made within one year after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if liable to duty, being stamped with the proper duty, and subject to the provisions of [section 21](#), cancel and allow as spoiled the stamp so misused.

72. Allowance for spoiled or misused stamps, how to be made

In any case in which allowance is made for spoiled or misused stamps, the Commissioners may give in lieu thereof–

- (a) other stamps of the same description and value; or
- (b) if required, and they think fit, stamps of any other description to the same amount in value; or
- (c) at their discretion, the value in money of the spoiled or misused stamps less five *per centum* for each shilling or fractional part of a shilling, or paper bearing impressed stamps to the value of the spoiled or misused stamps less five *per centum* for each shilling or fractional part of a shilling.

Part V – Miscellaneous**73. As to discontinuance of dies**

Whenever the Commissioners determine to discontinue the use of any die and provide a new die to be used in lieu thereof and give public notice thereof in the *Gazette*, then from and after any day to be stated in the notice (such day not being within one month after the same is so published) the new die shall be the only lawful die for denoting the duty chargeable in any case in which the discontinued die would have been used; and every instrument first executed by any person or bearing date after the day so stated and stamped with the discontinued die shall be deemed to be not duly stamped:

Provided that–

- (i) if any instrument stamped as last aforesaid, and first executed after the day so stated at any place outside Malawi, is brought to the Commissioners within fourteen days after it has been received in Malawi, then upon proof of the facts to the satisfaction of the Commissioners the stamp thereon shall be cancelled and the instrument shall be stamped with the same amount of duty by means of the lawful die, without payment of any penalty;
- (ii) all persons having in their possession any material stamped with the discontinued die, and which by reason of the providing of such new die has been rendered useless, may, at any time within six months after the day stated in the notice, send the same to the Commissioners, who may thereupon cause the stamp on such material to be cancelled and the same material, or if the Commissioners think fit any other material, to be stamped with the new die, in lieu of and to an equal amount with the stamp so cancelled.

74. Conditions and agreements as to duty void

Every condition of sale framed with the view to precluding objection or requisition upon the ground of absence or insufficiency of stamp upon any instrument executed after the commencement of this Act, and every contract, arrangement or undertaking for assuming the liability on account of absence or insufficiency of stamp upon any such instrument or indemnifying against such liability, absence or insufficiency, shall be void.

75. Compounding duty on cheques

- (1) The Commissioners may enter into an agreement with any banker for the composition of the stamp duty on unstamped cheques on the following conditions–
 - (a) that the said cheques shall be drawn and issued on forms to be supplied or adopted by the said banker;
 - (b) that the said banker shall levy upon or charge to the person to whom such cheques are issued the stamp duty mentioned in the Schedule;

- (c) that the said banker shall as soon as possible pay to the Commissioners the amount due and collected thereon as duties on such unstamped cheques issued during the immediately preceding quarter, and shall render with each such payment an account in such form as the Commissioners may require;
 - (d) that the said banker shall deposit with the Commissioners, as security for the due payment of any moneys payable under paragraph (c), such sum (if any) as the Commissioners may direct.
- (2) Cheques drawn and issued on forms supplied or adopted by such bank in accordance with this section shall be deemed to be duly stamped.

76. The Commissioners may call for, and refuse to proceed without, evidence

With reference to any instrument, the Commissioners may require to be furnished with such evidence as they may deem necessary in order to show to their satisfaction whether all the facts and circumstances affecting the liability of the instrument to duty, or the amount of the duty chargeable thereon, are fully and truly set forth therein, and may refuse to proceed upon any application to them under this Act until such evidence has been furnished accordingly.

77. Registers, books, etc., to be open to inspection

Every officer or servant of a local authority or statutory corporation having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person thereto authorized by the Commissioners to inspect the registers, books, records, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or reward, and in case of refusal shall be guilty of an offence and liable to a fine of £25.

78. Search

- (1) If it appears to a magistrate upon the oath of any person that there is reason to believe that there are or may be upon or in the possession or under the control of any person, or on any premises, any books of account or other instruments whatsoever of which any of the contents may tend to show that an offence under this Act has been committed, such magistrate may issue a search warrant authorizing any person named or referred to in the said warrant to search any such person, and to enter and search any such premises and any person found therein, and to inspect and without fee or reward take copies or extracts of any books of account or other instruments found on such premises or upon such person.
- (2) Any copies so taken shall be admissible in evidence in any proceedings under this Act.
- (3) If any person obstructs any such inspection or taking of copies in any manner whatsoever he shall be guilty of an offence and liable to a fine of £100.

79. Penalty for enrolling, etc., instrument not duly stamped

If any person, whose office it is to enrol, register or enter in or upon any rolls, books or records any instrument chargeable with duty, enrolls, registers or enters any such instrument not being duly stamped, he shall be guilty of an offence and liable to a fine of £25.

80. Responsibility for loss of or damage to instrument

- (1) If any instrument sent to the Commissioners under [section 18](#) (3) is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

- (2) When any instrument is about to be sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument:

Provided that in the event of the loss, destruction or damage of the original instrument such authenticated copy shall be admissible in evidence in any court, but such copy shall be chargeable with duty and penalty as if it were the original.

81. Commissioners may administer oaths

The Commissioners may administer any oath or affirmation which may be necessary for the purposes of this Act.

82. Power to reward informers

The Commissioners may in their discretion reward any person who informs any Commoner of any offence under this Act or assists in the recovery of any fine or penalty, but a reward exceeding £5 shall not be paid in any case without the consent of the Treasury.

Part VI – Criminal offences and procedure

83. Penalty for not drawing full number of bills purporting to be in sets

Any person drawing or executing a bill of exchange purporting to be drawn or executed in a set of two or more and not at the same time drawing or executing, on paper duly stamped, the whole number of bills of which such bill purports the set to consist shall be guilty of an offence and liable to a fine of £500.

84. Penalty for post-dating bills and for other devices to defraud the revenue

Any person who—

- (a) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note, bearing a date subsequent to that on which such bill or note is actually drawn or made; or
- (b) knowing that such bill or note has been so post-dated, endorses, transfers or presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same,

shall be guilty of an offence and liable to a fine of £500.

85. Penalty for frauds in relation to stamp duties

- (1) Any person who practises or is concerned in any fraudulent act, contrivance or device, not specially provided for by any written law, with intent to defraud the Government of any stamp duty or penalty shall be guilty of an offence and liable to imprisonment for one year and to a fine of £500.
- (2) Any person who for the purpose of evading any stamp duty or penalty, falsifies, mutilates or destroys any book of account or other instrument whatsoever shall be guilty of an offence and liable to imprisonment for one year and to a fine of £200.

86. Liability in the case of corporate bodies and firms

- (1) Where any obligation or liability is under this Act imposed upon a corporate body and such obligation or liability is not discharged, every director, manager, secretary and other officer of the corporate body who is wilfully a party to the default, and the said corporate body, shall be guilty of an offence and liable to a fine of £250.

- (2) Where any obligation or liability is under this Act imposed upon a firm and such obligation or liability is not discharged, every partner in the said firm, and every servant of the said firm, who is wilfully a party to the default, and the person appearing to have the management of the said firm within Malawi shall be guilty of an offence and liable to a fine of £250.

87. General penalty for acting and practising, etc., without licence

If any person practises or acts in any capacity, or does anything in respect of which a licence subject to stamp duty is required without having such a licence duly stamped, he shall, in the absence of a specific penalty in any other law provided, be guilty of an offence and liable to a fine of £50.

88. Exemptions from stamp duty

- (1) There shall be exempt from stamp duty under this Act–
- (a) any instrument on which stamp duty would be payable by the Government;
 - (b) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage, or otherwise, of any ship or vessel or of any part, interest, share or property of or in any ship or vessel;
 - (c) any pension warrant issued by any government;
 - (d) any bond given by a public officer for the due execution of his duties;
 - (e) any will, codicil or other testamentary disposition;
 - (f) all instruments for the conveyance or transfer, or for the lease of premises for use as an Embassy or High Commission office, or as a residence for the head or any member of the staff (whether diplomatically privileged or not) of such Embassy or High Commission, such exemption to apply to such governments as shall appear to the Minister to have granted a like exemption to the Government of Malawi, and only to instruments in respect of which duty would be payable by such government; and
 - (g) any instrument generally or specially exempted in the Schedule.
- (2) In addition to subsection (1) the Minister may, by notice published in the *Gazette*, direct that any instrument or any class of instruments shall be exempt from stamp duty or from any of the provisions of this Act. The power conferred on the Minister by this subsection may be exercised with retrospective effect.

89. Regulations

The Minister may make regulations as may appear to him to be necessary or expedient for the proper carrying out of the intent and provisions of this Act, and, without prejudice to the generality of the foregoing, may make regulations respecting–

- (a) the supply and sale of stamps and stamped papers;
- (b) the persons by whom alone such supply or sale is to be conducted;
- (c) the duties and remuneration of such persons; and
- (d) the licensing, control and use of stamp franking machines.

Schedule (Sections 5, 6(3) and (4) and 88)**Stamp duties on instruments**

Instrument	Duty	Persons responsible for stamping	Time for stamping if other than that generally or specially provided in this Act	
Administration Bond	See Bond, etc.			
Agreement for Dissolution of Partnership	See Partnership and Conveyance, etc.			
Agreement to Divide	See Partition			
Agreement for Exchange	See Exchange of Property and Agreement and section 42			
Agreement for Hire of Goods	See Agreement and section 30			
Agreement for Lease, Letting or Tenancy	See Lease			
Agreement or Contract accompanied with a deposit	See Mortgage, etc.			
Agreement for Partition	See Partition			
Agreement for Partnership	See Partnership			
Agreement to Sell Property	See Agreement and Conveyance, etc., and section 42			

Instrument		Duty	Persons responsible for stamping	Time for stamping if other than that generally or specially provided in this Act
1.	<p>AGREEMENT OR ANY MEMORANDUM OF AN AGREEMENT under hand only and not otherwise specifically charged with any duty, whether the same be only evidence of a contract or obligatory upon the parties from its being a written instrument.</p> <p>Exemptions–</p> <p>(1) Agreement, letter or memorandum of agreement made for or relating to the sale of any goods, wares or merchandise (except as chargeable under any other heading).</p> <p>(2) Agreement or memorandum for the hire of any labourer, artificer, manufacture or menial servant.</p> <p>(3) Agreement or memorandum the matter whereof is not of the value of K10.</p> <p>(4) Agreement or contract exempted</p>	K500	The person first executing	

	under section 65 of the Employment Act.			
	Annuity			
	(1) Conveyance in consideration of	See Conveyance, etc.		
	(2) Creation of, by way of security	See Mortgage, etc.		
	(3) Purchase of	See Conveyance, etc.		
	(4) Instrument relating to, upon any other occasion	See Bond, Covenant, etc.		
2.	APPOINTMENT OF A NEW TRUSTEE AND APPOINTMENT in execution of a power of any property, or of any use, share or interest in any property, by any instrument not being a will; And see section 46.	K600	The appointer	
3.	(1) BILL OF EXCHANGE payable on demand, other than a cheque, or at sight or on presentation or within three days after date of sight And See sections 31, 32, 34 and 75.	K200	All Persons executing	(a) If drawn in Malawi, before execution
	(2) BILL OF EXCHANGE, being a cheque drawn, on a banker payable on demand	30t		(b) If drawn out of Malawi in accordance with section 32

	And See sections 31, 32, 34 and 75.			
	Exemption— Any cheque drawn on any of the official banking accounts of any government.			
4.	BILL OF EXCHANGE of any other kind whatsoever and PROMISSORY NOTE of any kind whatsoever drawn, or expressed to be payable, or actually paid or endorsed, or in any manner negotiated in Malawi—		All Persons executing	(a) If drawn in Malawi, before execution
	For every K50 and also 20t for every fractional part of K50 of the amount or value	20t		(b) If drawn out of Malawi in accordance with section 32
	And See sections 31 to 35 and section 75.			
	Exemption— Any cheque drawn on any of the official banking accounts of any government.			
5.	BILL OF LANDING	K500	All persons executing	Before executing
	Bill of Sale—			
	(1) Absolute	See Conveyance, etc.		

	(2) As security	See Mortgage, etc.		
	Bond–			
	(1) For securing the payment or repayment of money	See Conveyance, etc.		
	(2) For securing the transfer or retransfer of stock	See Marketable Security		
	(3) In relation to any annuity upon the original creation and sale thereof.	See Mortgage, etc.		
6.	<p>BOND, COVENANT OR SIMILAR INSTRUMENT of any kind whatsoever–</p> <p>(1) Being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security and except a superannuation annuity), or for any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease–</p>			
	For a definite and certain period so that the total amount to be	The same <i>ad valorem</i> duty as a Mortgage, Bond, Debenture or	The obligee, covenantee, or other person taking the security.	

ultimately payable can be ascertained.	Covenant for such total amount (<i>See</i> Mortgage, etc.)		
For a term of life or any other amount any other indefinite period, for every K10 and also for any fractional part of the annuity or sum periodically payable.	K2	The obligee, covenantee, or other person taking the security.	
(2) Being a collateral or auxiliary or additional or substituted security for any of the above-mentioned purposes where the principal is duly stamped			
Where the total amount to be ultimately payable can be ascertained	As above (<i>See</i> Mortgage, etc.)		
In any other case, for every K10, and also for any fractional part of K10.00 of the annuity or sum periodically payable	K2	The obligee, covenantee, or other person taking the security.	
(3) Being a grant or contract for payment of a superannuation annuity, that is to say, a deferred life annuity granted or secured to any person in consideration of annual premiums payable until he			

	attains a specified age, and so to commence on his attaining that age			
	For every K10, and also for any fractional part of K10, of the annuity	K2	The grantor	
	(4) Of any kind whatsoever, not specifically charged with any duty Exemption— Rail Bond	K500	The obligee, covenantee, or other person taking the security.	
7.	CONVEYANCE OR TRANSFER ON SALE OF ANY PROPERTY Where the amount or value of the consideration			
	Does not exceed K50	K5	The purchaser or transferee	
	Exceeds K50 but does not exceed K100	K10		
	Exceeds K100 but does not exceed K150	K20		
	Exceeds K150 but does not exceed K200	K50		
	Exceeds K200, for every K100 and also for any fractional part of K100	K1.50		
	And See sections 36 to 46, 55 and 57.			

	Conveyance or transfer by way of security of any property of any security	See Mortgage, etc., and Marketable Security		
8.	CONVEYANCE OR TRANSFER or any kind not hereinbefore described	K500	The purchaser or transferee	
9.	COPY OR EXTRACT Certified to be a true copy by, or by order, of, any public officer and not charged for under any written law.	K500	The person for or on whose behalf the copy or extract is made	Within thirty days of certification.
	Exemptions–			
1.	Any copy or extract which a public officer is expressly required by any written law to make and to furnish for record in any Government Department or for any public purpose.			
2.	Any copy of, or extract from, any register relating to births, baptisms, marriages, adoptions, divorces, deaths or burials.			
	Covenant for securing the payment or repayment of money, or the transfer or retransfer of stock	See Mortgage, etc.		

	Covenant in relation to any annuity upon the original creation and sale thereof	See Conveyance, etc., and section 43		
	Covenant in relation to any annuity (except upon the original creation and sale thereof) or to other periodical payments	See Bond, etc.		
10.	COVENANT: Any separated deed of covenant (not being an instrument chargeable with <i>ad valorem</i> duty as a conveyance on sale or mortgage) made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the documents of title relating thereto, or to all or any of the matters aforesaid			
	Where the <i>ad valorem</i> duty in respect of the consideration or mortgage money does not exceed K100	A duty equal to the amount of such <i>ad valorem</i> duty	The covenantee	
	In any other case	K500		
	Counterpart Debenture	See Duplicate See Marketable		

	for securing the payment of repayment of money, or the transfer or retransfer of stock	Security and Mortgage, etc.		
11.	DECLARATION of any use or trust of or concerning any property by any instrument, not being a will or any instrument chargeable with <i>ad valorem</i> duty as a settlement.	K600	The declarer	
12.	DEED or other SIMILAR INSTRUMENT of any kind whatsoever not described in this Schedule and not generally or specially exempted from duty.	K500	All persons executing	
13.	DEED OF ARRANGEMENT registered under the Deeds of Arrangement Act–			
	For every K200, and also for any fractional part of K200, computed as provided by section 7 (2) of the said Act.	K100	The debtor	Before registration under the said Act.
	Deposit of Title Deeds	See Mortgage, etc., and section 57		
	Draft for money	See Bill of Exchange		
14.	DUPLICATE OR COUNTERPART of any instrument			

	chargeable with any duty–			
	Where such duty does not amount to K200	The same duty as the original instrument	The person for whose benefit the duplicate or counterpart was executed	The time allowed for stamping the original instrument.
	In any other case	K200		
	Equitable Mortgage	See Mortgage, etc., and sections 29 and 57.		
15	EXCHANGE OF PROPERTY	The same duty as on a Conveyance, etc., for a consideration equal to the value of the property of greatest value.	All persons executing	
	Extract	See Copy or extract		
	Foreign Security	See Marketable Security and section 55		
	Further Charge or Further Security	See Mortgage, etc., and sections 57		
16.	HIRE PURCHASE AND INSTALMENT SALE AGREEMENTS			
	Insurance	See Policy of Insurance	All persons executing	
17	LEASE OR LICENCE			
	(1) For any definite term less than a year–			

	Where rent does not exceed K50	K50		
	Where rent exceeds K50, for every K50 and also for every fractional part of K50	K5		
	(2) For any other definite term–			
	For each K50 and also for every fractional part of K50 of the annual rent–		The lessee or licensee	
	Where the term does not exceed 7 years	K1.20		
	Where the term exceeds 7 years but does not exceed 21 years	K2		
	Where the term exceeds 21 years	K1		
	(3) For an indefinite term–	K50		
	Where the rent does not exceed K2 per annum	K5	The lessee or licensee	
	For each K50 and also for every fractional part of K50 of the annual rent	K1.50		
	(4) For any other kind whatsoever not herein before described	K500		

	And See sections 47 and 54			
	Letter of Credit	See Bill of Exchange		
	Letter of Guarantee	See Agreement		
	Letter of Indemnity	See Agreement		
	Letter or power of Attorney	See Power of Attorney		
18	MARKETABLE SECURITY–			
	Transfer, assignment or disposition of a marketable security of any description:			
	(1) Upon a sale thereof	See Conveyance, etc		
	(2) Upon a mortgage thereof	See Mortgage, etc.		
	(3) In any other case than sale or mortgage	K500	The transferee, assignee, etc.	
	And See sections 55 and 56			
	Marriage Settlement	See Settlement		
19	MORTGAGE, BOND, DEBENTURE OR COVENANT (not being a marketable security otherwise			

	specifically charged with duty).			
	(1) Being the only or principal or primary security (other than an equitable security) for the payment or repayment of money–			
	Not exceeding K1,000–			
	For every K100 and also for every fractional part of K100 of the amount secured	K500		
	Exceeding K1,000–			
	For every K200 and also for every fractional part of K200 of the amount secured	K1.20		
	(2) Being a collateral or additional or substituted security (other than an equitable mortgage), the principal security having been duly stamped			
	For every K200 and also for any fractional part of K200 of the amount secured	30t.		
	(3) Being an equitable mortgage–			

	Deed of pledge or hypothecation to a banking company of goods, merchandise, stocks, shares, bills, notes and other marketable securities (including power of attorney therein)	K500		
	Deed of pledge or hypothecation or assignment or cession, to a banking company of policies of insurance (including power of attorney therein)	K500		
	Of any other kind	50t.	The mortgagee, chargee, etc.	
	Under hand—			
	For every K200 and also for any fractional part of K200 of the amount secured under Seal	The same <i>ad valorem</i> duty as upon a security chargeable under Head 1 hereof		
	(4) Transferred or assignment of any mortgage, bond, debenture or covenant(except a marketable security)			
	For every K200 and also for any fractional part of K200 of the amount transferred or assigned	50t.	The transferee	

	(5) Reconveyance, release, discharge, surrender or renunciation, of any such security as aforesaid, or of the benefit thereof or of the money thereby secured–			
	For every K200 and also for any fractional part of K200 of the total amount or value of the money at any time secured	30t.	The mortgagor, charger, etc.	
	Exemptions– (1) Bond given by a public officer for the due execution of his duty. (2) Bond on which a fee is chargeable under the provisions of the Courts Act. (3) Bond given solely in relation to any payment due to the Consolidated Fund And See sections 57, 58 and 59.			
	Mortgage of Stock or Marketable Security			
	(1) Under hand only	See Mortgage and section 29		
	(2) By Deed	See Mortgage, etc., and section 57		
20.	NOTARIAL ACT OR INSTRUMENT	K500		

	Order for payment of money	See Bill of Exchange		
21.	PARTITION, INSTRUMENT of			
	For every K200 and also for any fractional part of K200 of the amount or value of the separated share or shares of the property And See section 60	K10	All persons executing	
22.	PARTNERSHIP			
	(1) Instrument of	K2,000		
	(2) Instrument of dissolution of, including an agreement to dissolve, without consideration	K500	All persons executing	
	(3) Instrument of dissolution of, including an agreement to dissolve with consideration	See Conveyance, etc.		
	Pawn or pledge	See Mortgage, etc.		
23.	POLICY OF INSURANCE			
	(1) Policy of Life Insurance			
	For every K200 and also for any fractional part of K200 of the amount insured	80t		

	(2) Any other policy of insurance issued for a specified period–			
	Upon the issue or the renewal or the extension thereof for any period of 12 months and also for any part thereof	K 1,000	The insurer, or in the case of a policy issued outside Malawi and sent to the insured or his agent, the insured	
	(3) Any other policy of insurance issued for the term of a journey or journeys			
	For each journey	K 1,000		
	(4) Any other policy of insurance not specifically mentioned– Upon the issue, or the renewal of the extension thereof.			
	(5) Any endorsement on a policy of the insurance–			
	To increase the amount of insurance, or to make any other material addition to or a substantial change in the policy.	The same duty as for the issue of a new policy.		
	Exemptions–. (1) Policy of insurance on baggage or personal or personal and			

	<p>household effects only, if made or executed outside Malawi.</p> <p>(2) Letter or cover or engagement to issue a policy of insurance–</p> <p>Provided that unless such letter or cover or engagement is duly stamped for such policy, nothing shall be claimable thereunder nor, shall it be available for any purpose except to compel the delivery of the policy therein mentioned.</p> <p>And See sections 61 to 63.</p>			
24.	POWER OR LETTER OF ATTORNEY or other instrument in the nature thereof other than the appointment of a proxy to vote at any meeting or revocation thereof–			
	For the issue thereof in respect of each donor	K 1,000		
	For the revocation thereof in respect of each person revoking	K 1,000	The person executing	
	Promissory Note	See Bill of Exchange		

25.	RECEIPT given for, or upon the payment of, money, or for movable property, amounting to K4 and upwards.	K1,000	The person giving the receipt	Before being parted with by the person giving the receipt
	<p>Exemptions–</p> <p>(1) Receipt given for or on account of any salary, pay, or wages or for or on account of any other like payments made to or for the account or benefit of any person, being the holder of an office or an employee, in respect of his office, or employment, or for or on account of money paid in respect of any pension, superannuation allowance, compassionate allowance or other like allowance.</p> <p>(2) Receipt endorsed or otherwise written upon or contained in any instrument liable to stamp duty, and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt, of any principal money, interest, or annuity thereby secured or therein mentioned:</p>			

	<p>Provided that this exemption shall not extend to any receipt merely by reason of its being written or endorsed upon a bill of exchange or promissory note.</p> <p>(3) Receipt given for money deposited in any bank or with any banker to the account of any person and for money withdrawn from a savings bank account with any bank.</p> <p>(4) Receipts given for money paid out of any court by way of compensation or damages.</p> <p>(5) Receipt given for any refund from the general revenues of Malawi.</p> <p>(6) Receipts given by any ecclesiastical, charitable or educational institution of a character.</p> <p>And See sections 64 and 65.</p>			
	Reconveyance, Release or Renunciation of any security	See Mortgage, etc.		
26.	RELEASE OR RENUNCIATION of any property or of any right or			

	interest in any property			
	(1) Upon a sale	See Conveyance, etc.		
	(2) By way of security	See Mortgage, etc.		
	(3) In any other case	K 1,000	All persons executing	
27.	REVOCATION of any use or trust or any property by any writing not being a will.	K 1,000		
28.	SETTLEMENT—Any instrument, whether voluntary or upon any good or valuable consideration, other than a <i>bona fide</i> pecuniary consideration, whereby any definite and certain principal sum of money (whether charged or chargeable on any, immovable property or not, or to be laid out in the purchase of immovable property or not), or any definite and certain amount of stock, or any security, is settled in any manner whatsoever—			
	For every K200 and also for any fractional part of K200 of the amount or value of the property	K10	The Settler	

	settled or agreed to be settled.			
	And See sections 66, 67 and 68.	See Bond, etc.		
	Superannuation Annuity			
29.	SURRENDER of any kind whatsoever not chargeable with duty as a conveyance on sale or mortgage.	K500	The surrenderee	
	Temporary Occupation Licence	See Lease		
	Transfer	See Conveyance, etc.		
	Trust	See Declaration		
	Voluntary Conveyance and Transfer (including assignment) operating as a Gift Inter Vivos.	See Conveyance		

[G.N. 29/2009]

[13/2013]