

Malawi

Export Incentives Act

Chapter 39:04

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1988/6/eng@2014-12-31

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PDF created on 21 February 2024 at 15:51.

Collection last checked for updates: 31 December 2014.

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Malawi

Export Incentives Act

Chapter 39:04

Assented to on 18 May 1988

Commenced on 1 June 1989

[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 export incentives, for the establishment of a National Export Policy Committee and for matters incidental thereto or connected therewith

Part I – Preliminary

1. Short title

This Act may be cited as the Export Incentives Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Bank**” means the Reserve Bank of Malawi established by the Reserve Bank of Malawi Act;

[Cap. 44: 02]

“**Committee**” means the National Export Policy Committee established by [section 4](#);

“**Council**” means the Export Promotion Council of Malawi established by the Export Promotion Council Act;

[Cap. 39: 03]

“**export sales**” mean a value determined from invoices, bills of lading, inward letters of credit, landing certificates and other commercial documents of products of Malawi exported directly from Malawi by a registered exporter in a financial year;

“**Foreign Exchange Revolving Fund**” means the Fund established under [section 11](#);

“**production**” means any process by which value is created or added to the value of products already in existence, to transform or change the nature or state of the products;

“**Minister**” means the Minister responsible for trade and industry;

“**registered exporter**” means a person registered by the Council under Part V to report products of Malawi;

“**financial year**” means any period of twelve months in respect of which export incentives are claimable under this Act.

Part II – Administration of this Act

3. Duties and powers of the Minister

- (1) It shall be the duty of the Minister to supervise the implementation of this Act and he shall have power to do all such acts and things as are necessary to develop and foster exports of Malawi.
- (2) In the exercise of any power and performance of any duty under this Act, the Minister may have due regard to any recommendations made to him in that behalf by the Committee and the Council so far as such recommendations are compatible with the efficient promotion of exports of Malawi.
- (3) Without prejudice to the generality of subsections (1) and (2), the Minister shall—
 - (a) supervise the Committee and the Council in the performance of their functions under this Act;
 - (b) review programmes of the Council in the light of national policies and annual priority programmes designed to develop and foster the production and exportation of products of Malawi and in reviewing such programmes the Minister may take such action or consider such measures as in his opinion are necessary to ensure that the programmes are adequately funded; and
 - (c) review legislative and administrative obstacles to export expansion of all products and where necessary to formulate and adopt measures for the removal of such obstacles.
- (4) The Minister may, where he considers it necessary so to do, delegate the performance of any duty and the exercise of any power conferred under this Act, to the Committee and the Council subject to such general and special directions as he considers appropriate.

4. Establishment and composition of the Committee

There is hereby established a committee to be known as the National Export Policy Committee which shall consist of—

- (a) the Secretary to the President and Cabinet, who shall be the Chairman of the Committee;
- (b) the Secretary for Trade, Industry and Tourism, who shall be the secretary of the Committee;
- (c) the Secretary for Economic Planning and Development;
- (d) the Secretary to the Treasury;
- (e) the Secretary for Agriculture;
- (f) the Comptroller of Statutory Bodies;
- (g) the General Manager of the Council;
- (h) the General Manager of the Bank;
- (i) the General Manager of the Agricultural Development and Marketing Corporation, a corporation established under the Agricultural Development and Marketing Act; and
- (j) not more than three other members as the Minister may appoint from the export trade sector in Malawi.

[Cap. 67:03]

[24 of 1988]

5. Functions of the Committee

Subject to any general or special directions of the Minister, the functions of the Committee shall be—

- (a) to review, for the purpose of making appropriate recommendations to the Minister—
 - (i) programmes of the Council in the light of national policies and annual priority programmes designed to develop and foster the production and exportation of all products so that the Council's programmes are adequately funded;
 - (ii) legislative and administrative obstacles to export expansion of products of Malawi and where necessary to formulate and adopt measures for the removal of such obstacles;
- (b) to do all other acts and things as are required under this Act to be done by the Committee or are necessary or conducive to the performance of its functions.

6. Proceedings of the Committee

- (1) Subject to the provisions of this section, the Committee may regulate its own procedure.
- (2) For the transaction of its business, the Committee shall meet at least once every three months, at such times and places as the Chairman may determine.
- (3) Any six members of the Committee shall form a quorum at any meeting of the Committee.
- (4) A meeting of the Committee may be called by the Chairman, or in his absence by a Committee member designated by the Chairman, upon giving fourteen days notice to its members:

Provided that if the urgency of any particular matter does not permit the giving of fourteen days notice, a special meeting may be called upon giving a shorter notice.
- (5) There shall preside at any meeting of the Committee—
 - (a) the Chairman; or
 - (b) in the absence of the Chairman, any member of the Committee designated by the Chairman; or
 - (c) where no member has been designated under paragraph (b) a member elected by the members present from among their number to preside at that meeting.
- (6) A decision of the Committee on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.
- (7) Where a member of the Committee, who is a member *ex officio*, is for any reasonable cause unable to attend a meeting of the Committee, his ministry or organization, as the case may be, may in writing designate another senior officer to attend such meeting in his stead and such other senior officer shall be deemed to be a member of the Committee for the purpose of such meeting.
- (8) The Committee may invite any person whose presence is in its opinion desirable to attend, and to participate in the deliberations of, a meeting of the Committee but such person shall not be entitled to vote thereat.
- (9) The validity of any proceedings, act or decision of the Committee shall not be affected by any vacancy in the membership of the Committee or by defect in the appointment of any member or by reason that any person not entitled so to do took part in the proceedings.
- (10) The Committee shall cause minutes to be kept of the proceedings of every meeting of the Committee.

7. Disclosure of interest

- (1) If a person is present at a meeting of the Committee at which any matter is the subject of consideration and in which matter the person or his spouse is directly or indirectly interested in a private capacity he shall, as soon as practicable after commencement of the meeting, disclose such interest and may thereafter only participate at the discretion of the Chairman.
- (2) Disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

8. Immunity of committee members

No action or other proceedings shall lie or be instituted against any member of the Committee for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.

9. Secretarial of the Committee

The Ministry of Trade, Industry and Tourism shall form the secretariat of the Committee.

10. Functions of the Council

- (1) Subject to any general and special directions of the Committee, the functions of the Council under this Act shall be—
 - (a) to receive and investigate every application made by any person or company for registration as an exporter of products of Malawi;
 - (b) to register exporters upon such terms and conditions as the Committee may determine;
 - (c) to issue certificates of registration to registered exporters; and
 - (d) to maintain a register of all registered exporters and of all certificates of registration issued under this Act.
- (2) In addition to the performance of the functions set out in subsection (1), the Council shall render to registered exporters the services specified in [section 16](#) and shall perform all such functions as are assigned to it in this Act.

Part III – Foreign Exchange Revolving Fund

11. Foreign Exchange Revolving Fund

- (1) There shall be established a fund to be known as the Foreign Exchange Revolving Fund for the purpose of facilitating foreign exchange requirements of registered exporters.
- (2) The Foreign Exchange Revolving Fund shall consist of—
 - (a) such sums as may from time to time be appropriated for the purpose by Parliament;
 - (b) all repayments of advances or in respect of facilities granted to registered exporters out of the funds of the Foreign Exchange Revolving Fund together with accrued interest thereon, if any;
 - (c) such sums as may, with the approval or agreement of the Committee, be received or otherwise become payable for the purposes of the Foreign Exchange Revolving Fund.
- (3) the Foreign Exchange Revolving Fund shall be maintained in an account with the Bank and shall be administered by the Bank in accordance with the standing orders of the Committee.

12. Registered exporters to have access to the Foreign Exchange Revolving Fund

- (1) Every registered exporter shall have access to the facilities under the Foreign Exchange Revolving Fund.
- (2) Any advance or other facility granted to a registered exporter out of the Foreign Exchange Revolving Fund shall be subject to such terms and conditions as the Committee or the Bank may deem necessary to impose either generally or in relation to a particular registered exporter or class or classes of registered exporters; and such terms and conditions may be imposed to be fulfilled prior or subsequent to the grant of an advance or any facility.

13. Standing orders for the administration of the Foreign Exchange Revolving Fund

The Committee may, under the hand of the Chairman, make standing orders containing provisions for the administration of the Foreign Exchange Revolving Fund and may, in such standing orders—

- (a) specify the class or classes of registered exporters or the class or classes of exports which may enjoy overriding preference;
- (b) prescribe ceilings of advances or other facilities out of the Foreign Exchange Revolving Fund available to a registered exporter or to a class or classes of registered exporters or available in respect of any class or classes of exports.
- (c) provide for any thing or matter deemed by the Committee to be necessary or expedient for the administration of the Foreign Exchange Revolving Fund.

Part VI – Export incentives and technical assistance to registered exporters

14. Income tax allowance

- (1) A registered exporter shall, in every financial year during which he exports products of Malawi, be entitled to an income tax allowance of twelve per cent of his taxable income derived from his export sales.
- (2) Upon the recommendation of the Committee, the Minister, after consultation with the Minister of Finance, may, by order published in the *Gazette*, revise the rate of income tax allowance prescribed in subsection (1)
- (3) A registered exporter who, for the purpose of claiming an income tax allowance under subsection (1), makes a false claim as to the amount of the gross proceeds of his export sales, shall be guilty of an offence and liable to a fine of K5,000 or an amount three times the amount of income tax allowance falsely claimed, whichever is greater and to imprisonment for one year.

[24 of 1988]

[G.N. 39/1992]

15. Duty drawback

- (1) A registered exporter who exports products of Malawi which are manufactured or otherwise produced in Malawi and for the manufacture, processing or production of such products raw materials, including packaging materials on which duty was paid were used shall be entitled to drawback of duty under section 97 of the Customs and Excise Act, which for the purposes of this Act, shall be determined in accordance with the succeeding provisions of this Act.
- (2) The drawback of duty under subsection (1) shall be computed on the basis of a ratio prescribed by the Minister; and the Minister may prescribe different ratios for different products.

- (3) Upon the recommendation of the Committee, the Minister, after consultation with the Minister of Finance, may, by order published in the *Gazette*, prescribe the ratio or ratios applicable in respect of this section.
- (4) For the purposes of this section, reference in section 97 of the Customs and Excise Act to “such limitations and conditions as may be prescribed in regulations made under this Act” shall, in relation to drawback of duty to be effected pursuant to this section, be construed to be reference to any ratio or ratios prescribed by order made under subsection (2) and to other provisions contained in such order.
- (5) The Controller of Customs and Excise shall effect a drawback of duty within sixty days after receipt by him of the presentation of the claim for drawback of duty, but subject to proof to his satisfaction being made by a registered exporter claiming drawback of duty—
 - (a) that the registered exporter exported the products in question; and
 - (b) that the duty being claimed was paid.
- (6) Any registered exporter who, for the purpose of obtaining drawback of duty under section (1), makes a false claim as to the amount of duty paid by him on the raw materials, machinery, equipment and other items shall be guilty of an offence and liable to a fine of K5,000 or an amount three times the amount of the duty drawback falsely claimed, whichever is greater and imprisonment for one year.

[24 of 1988]

[22 of 1989]

16. Council to provide technical assistance to registered exporters

The Council shall provide technical assistance to registered exporters in the following activities—

- (a) diversification of export products and export markets;
- (b) improving existing methods of production so as to reduce cost of export products;
- (c) promoting effective marketing of export products abroad;
- (d) developing export packaging and product design;
- (e) conducting seminars, training, courses and other training events on functional aspects of exports;
- (f) promoting investments in export-oriented enterprises; and
- (g) promoting improvements in the quality of export products.

Part V – Registration of exporters

17. Application for registration

- (1) An application for registration as an exporter of products of Malawi shall be accompanied with the prescribed fee and shall be made to the Council and shall be in the prescribed form and shall include the following particulars—
 - (a) the name and address of the applicant;
 - (b) the nature of business activity in which the applicant is engaged and the principal place where the business activity is carried on;
 - (c) the date of issue and duration of licence, if any, authorizing the applicant to carry on the business activity specified pursuant to paragraph (b); and

- (d) the description of products of Malawi to be exported.
- (2) Any particulars contained in the prescribed form of application which are not specified in subsection (1) or not specifically prescribed under this Act, shall be deemed to be particulars required for the purposes of this Part.
- (3) Notwithstanding that an application has been made in the prescribed form, the Council may call upon the applicant or upon any other person to provide such further or other information or particulars as the Council may deem necessary for the proper consideration of the application.

18. Processing applications

Upon receipt of an application, the Council shall consider the application and register the applicant as a registered exporter if it is satisfied that—

- (a) the application is made in accordance with [section 17\(1\)](#); and
- (b) the business activities of the applicant will contribute towards the economic development of Malawi and are generally in the interest of the national economy.

19. Certificate of registration

- (1) Upon registration, the Council shall issue to the registered exporter a certificate of registration in the form prescribed and shall in writing or in such form as may be prescribed give notification of such registration to—
 - (a) the Secretary of the Committee;
 - (b) the General Manager of the Bank;
 - (c) the Commissioner of Taxes; and
 - (d) the Controller of Customs and Excise.
- (2) A certificate of registration issued under subsection (1) shall, upon production to the Bank and other appropriate authorities and subject to the provisions of this Act, entitle the holder thereof to the grant of export incentives and facilities and other benefits provided under this Act.

20. Refusal of application for registration

- (1) Where after due consideration of an application for registration under this Part, the Council decides to refuse the application it shall refer the matter to the Committee together with its comments on the application and its reasons for the intended refusal.
- (2) The Committee shall, at its meeting next occurring after a matter has been referred to it under subsection (1) or at a specially convened meeting to be held earlier, consider the matter and for that purpose may call for any information from any person or hear representations from any person as it deems necessary for its consideration of the matter, and thereupon the Committee may—
 - (a) accept the recommendations of the Council in which case the application shall stand refused and the Council shall with due dispatch notify the applicant accordingly; or
 - (b) direct the Council to register the applicant as a registered exporter with or without conditions;
 - (c) require the applicant to fulfill, prior to his registration, such conditions as the Committee may deem necessary to impose.

21. Registered exporter to keep and maintain books of account and to furnish returns

Every registered exporter shall keep and maintain proper books of account and shall, within such period and in such form as may be prescribed, submit returns to the Council on products of Malawi exported by him.

22. Confidentiality of information

Any information given by a registered exporter in his application for registration and in any periodic returns submitted by him to the Council under [section 21](#) shall be confidential.

23. Cancellation and withdrawal of a certificate of registration

- (1) Where a certificate of registration has been issued and it is subsequently found that such certificate was issued as a result of any fraudulent representation made or incorrect information supplied by any holder thereof in his application for registration to the Council, the Council may give written notice to the holder of such certificate requiring him to show cause within a period of thirty days, or such longer period as the Council may specify, why his certificate of registration should not be withdrawn and his registration cancelled.
- (2) Where a registered exporter fails to export any products of Malawi within such period as may be prescribed either generally or in relation to him and does not notify the Council of the reasons of his failure so to do, the Council may give notice to such registered exporter requiring him to show cause within a period of thirty days, or such longer period as the Council may specify, why his certificate of incentives should not be withdrawn and his registration cancelled.
- (3) If the registered exporter to whom notice has been given under subsection (1) or subsection (2) fails to show cause as required within the time specified or if the Council deems the cause shown to be inadequate, the Council shall, with the prior approval of the Committee, cancel the certificate of registration of such registered exporter; and in the notice of cancellation the Council shall require the registered exporter forthwith to surrender the certificate to the Council.

24. Cancellation in other circumstances

Where a registered exporter—

- (a) fails to comply with the provisions of this Act or with any condition imposed in respect of his registration or;
- (b) has committed an offence under this Act; or
- (c) has committed an offence under the Exchange Control Act or is otherwise in breach of the provisions of that Act or the regulations made thereunder,

the Council may, with the prior approval of the Committee, cancel the registration of that registered exporter; and in the notice of cancellation to the registered exporter, the Council shall require the registered exporter forthwith to surrender the certificate to the Council.

25. Failure to surrender a certificate where registration cancelled

A person who, without valid excuse, fails forthwith to surrender to the Council a certificate of registration where the registration has been cancelled shall be guilty of an offence.

26. Cancellation of not to debar future registration

A cancellation of registration shall not disqualify the former registered exporter from being considered for fresh registration in accordance with this Act.

Part IV – Miscellaneous

27. Appeals to the Minister

An aggrieved registered exporter or former registered exporter may appeal to the Minister against the decision of the Council or the Committee and the decision of the Minister upon such appeal shall be final and shall not be subject to review by, or to any question in, any court.

28. Penalties

- (1) A person guilty of an offence under this Act for which a penalty has not been specified shall be liable to a fine of K2,000 and to imprisonment for six months.
- (2) Any regulations made under this Act, may notwithstanding the provisions of section 21 (e) of the General Interpretation Act, prescribe a fine of up to K1,000 and imprisonment of up to three months for an offence committed against the provisions of such regulations.

[Cap. 1: 01]

29. Regulations

The Minister may make regulations for carrying out or giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may—

- (a) prescribe registration fees payable upon application for registration or upon registration;
- (b) prescribe forms of application, certificates of registration and forms of returns to be submitted by registered exporters;
- (c) anything which by this Act is required or permitted to be prescribed.

30. Non-application of the Act to certain products, etc.

The Minister may, by order published in the *Gazette*, exclude from the application of all or any of the provisions of this Act—

- (a) any products specified in such order, either by reference to the name, use, nature, class or description of such products;
- (b) any registered exporter or class of registered exporters.

[24 of 1988]