

PUBLIC FINANCE MANAGEMENT ACT

(No. 4 of 2022)

PUBLIC FINANCE MANAGEMENT (DEBT AND AID MANAGEMENT)
REGULATIONS, 2023

IN EXERCISE of the powers conferred by section 115 of the Public Finance Management Act, 2022, I, SIMPLEX CHITHYOLA, Minister of Finance and Economic Affairs, make the following Regulations—

1. These Regulations may be cited as the Public Finance Management (Debt and Aid Management) Regulations, 2023. Citation

2.—(1) The Secretary to the Treasury shall, in consultation with relevant stakeholders, facilitate all activities for the preparation of the debt management strategy. Preparation of the debt management strategy

(2) The Secretary to the Treasury may—

(a) organize key stakeholder consultations to inform the debt management strategy;

(b) carry out detailed public debt analysis and identify critical success factors and challenges;

(c) assess past public debt performance and identify key strategies for sustainable public debt management; and

(d) assess and identify priority areas which may justify debt financing.

(3) The Secretary to the Treasury shall, at the beginning of every financial year, include the activities provided for in subregulation (2) in the annual work plan.

3.—(1) The Secretary to the Treasury shall—

(a) analyze the annual revenue and expenditure projections to identify funding gaps; Preparation of the annual borrowing plan

(b) identify the most cost-effective and efficient external resources to bridge the funding gap; and

(c) prepare and submit the annual borrowing plan to the Minister, by end February, in each financial year.

(2) The Secretary to the Treasury shall, at the beginning of every financial year, include the activities in subregulation (1) in the annual work plan.

4. Where the Minister decides to on-lend, the Secretary to the Treasury shall— Subsidiary loans

(a) carry out a due diligence of the intended recipient of the subsidiary loan by—

- (i) assessing the feasibility, viability and public interest of the proposed project for which the subsidiary loan is required;
- (ii) assessing the capacity of the recipient to properly apply the funds, account for them and repay the loan to the Government;
- (iii) assessing the terms of the principal loan and synchronizing the subsidiary loan accordingly; and
- (iv) identifying and proposing critical strategies to be implemented to ensure that risks and challenges associated with both the principal and subsidiary loans are mitigated;

(b) negotiate the terms and conditions of the subsidiary loan agreements; and

(c) prepare a term sheet setting out the on-lending details which shall, together with the signed subsidiary loan agreement, be recorded in the debt recording and management system.

5.—(1) The Secretary to the Treasury shall account for amounts which are on-lent under a subsidiary loan agreement.

(2) A recipient of a subsidiary loan shall—

(a) keep records of all receipts and payments under a subsidiary loan agreement; and

(b) submit to the Accountant General reports on all receipts and payments under the subsidiary loan.

6.—(1) The Secretary to the Treasury shall, when a payment under a subsidiary loan is due, prepare a payment notice and serve it on a recipient of a subsidiary loan.

(2) A copy of the notice of repayment under subregulation (1) shall be submitted to the Accountant General for record purposes.

(3) A payment made by a recipient of a subsidiary loan shall be recorded in the debt recording and management system.

(4) The Secretary to the Treasury shall, as soon as reasonably possible, notify the Accountant General of receipt of any payment from a recipient of a subsidiary loan.

7.—(1) Where a person, body corporate, organization or statutory body seeks to obtain a loan guaranteed by Government, the person, body corporate, organization or statutory body shall apply for a loan guarantee.

(2) The application under subregulation (1) shall be accompanied by—

(a) a board resolution approving the intention to seek a loan guaranteed by Government;

(b) a detailed project proposal replete with its objectives and justification for the involvement of the Government;

(c) term sheet setting out the terms and conditions of the loan including the proposed repayment schedule and liquidation model;

Duty to
account for
subsidiary
loans

Repayment of
subsidiary
loans

Issuance of
guarantee

(d) audited financial statements for the immediate past five financial years; and

(e) letters from at least two immediate previous creditors of the applicant stating the performance of the applicant from the date of borrowing to the debt of full repayment.

(3) The Secretary to the Treasury shall, upon receipt of an application for a loan guarantee, assess—

(a) if the proposed project, or activity, for which the money is being borrowed is consistent with the principles of prudent fiscal management and sustainable debt management;

(b) the importance of the proposed project and its measurable contribution towards the provision of public goods and services by the Government;

(c) the uniqueness of the proposed project and its projected economic and social impact to necessitate Government support;

(d) the current and past financial performance of the applicant, including its debt levels credit-worthiness;

(e) the cash flow forecast, operational and financial capacity of the applicant to service the loan;

(f) the economic and financial impact which the proposed project or activity may have in the country; and

(g) the fiscal risk the borrowing may have on the budget and overall public debt.

(4) The Secretary to the Treasury shall, after the assessment under subregulation (3), submit to the Minister a report of the findings and recommendations.

8.—(1) A controlling officer of a ministry, department or agency shall submit to the Accountant General, periodic reports on total outstanding debts, government guarantees or on-lending facilities directly affecting the respective ministry, department or agency. Submission of reports

(2) A controlling officer shall submit to the Secretary to the Treasury a copy of the report under subregulation (1) for recording and inclusion in the database.

(3) The report under subregulation (1) shall include—

(a) disclosure of the loans obtained by the ministry, department or agency in the period under review;

(b) loan repayment plans replete with proposed amounts and dates;

(c) the loans that have been repaid during the period under review; and

(d) the total amount of loans outstanding at the end of the period under review.

Treatment of
accounts
payable

9.—(1) The Secretary to the Treasury shall—

(a) account for on accrual basis; and

(b) recognize as liabilities,

accounts payable and loans acquired by the government or directly by a vote.

(2) A loan guarantee issued pursuant to section 82 of the Act shall be accounted for as a contingent liability or contingent asset, as the case may be.

Accounting
for foreign
gains and
losses

10.—(1) Where a lender disburses a loan in a foreign currency, the funds shall be converted into its equivalent of Malawi Kwacha using the official buying rate published by the Reserve Bank of Malawi on the value date of the disbursement.

(2) Where the foreign currency transaction involves commercial bank, the disbursed funds shall be converted into its equivalent of Malawi Kwacha, using the foreign exchange rates used by that bank on the value date of the disbursement.

(3) Where a controlling officer pays for an expense in Malawi Kwacha from a foreign currency bank account, the applicable foreign exchange rate shall be the Reserve Bank of Malawi rate on the date of payment.

(4) A controlling officer shall report on transactions involving a financing in foreign currency in Malawi Kwacha equivalence at the applicable middle rate published by the Reserve Bank of Malawi.

(5) A controlling officer shall present book balances of assets and liabilities denominated in foreign currencies into the equivalent of Malawi Kwacha at the mid-rate of foreign currency exchange issued by Reserve Bank of Malawi at the close of business on the date concerned.

Donations
and grants

11.—(1) The Secretary to the Treasury shall coordinate and account for donations and grants received by public bodies.

(2) A controlling officer shall—

(a) seek approval from the Minister before receiving a grant or a donation, indicating the type and source of the donation or grant;

(b) where donation or grant is provided as commodity aid, provide details of the items received; and

(c) record the monetary value of the donation or grant in the books of accounts.

Made this 26th day of October, 2023.

(FILE NO. PFMS/2/1)

S. CHITHYOLA

Minister of Finance and Economic Affairs