

INFORMATION AND COMMUNICATIONS BILL, 2012

Deleted: The Malawi Posts Corporation

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A BILL

entitled

An Act to make provision for the regulation and provision of services in the Information and Communications Sector in Malawi comprising electronic communications, posts, information society issues and content; continued existence of the Malawi Communications Regulatory Authority, The Malawi Posts Corporation and Malawi Broadcasting Corporation; and for matters connected therewith or ancillary thereto

ENACTED by the Parliament of Malawi as follows -

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Part I
PRELIMINARY PROVISIONS

Short title and commencement

1. This Act may be cited as the Information and Communications Act, 2012 and shall come into force on a date to be appointed by the Minister by notice published in the Malawi Gazette.

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Objectives

2. The objective of this Act is to regulate electronic communications, broadcasting and postal services in a manner that enhances the welfare of the people of Malawi as a whole, in particular by --
- (1) recognising the convergence of telecommunications and information networks through the establishment of technologically-neutral licensing categories;
 - (2) removing unnecessary barriers to entry into and attracting investment in the communications sector;
 - (3) facilitating the deployment and use of communications in all sectors of life by the largest possible numbers of Malawians;
 - (4) encouraging the adoption of new services and technologies within the communications sector; and
 - (5) encouraging indigenous participation in the communications sector. For the purpose of this provision, indigenous means Malawian with tribes.

Supremacy

3. Where any inconsistency arises between the provisions of this Act and the provisions of any other written law relating to the regulation of information and communications, the provisions of this Act shall prevail to the extent of the inconsistency.

Principles

4. (1) Information and communications technology activities shall be undertaken freely, provided that they respect this Act.
- (2) Technology neutrality is guaranteed based on this Act.
- (3) Protection of the consumers shall be enhanced and respected.

Interpretation

5. In this Act, unless the context otherwise requires -

“access”

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

- (a) network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means and includes access to the local loop and to facilities and services necessary to provide services over the local loop;
- (b) physical infrastructure including, buildings, cable engineering networks, ducts and masts and poles;
- (c) relevant software systems, including operational support systems;
- (d) number translation facilities or to systems offering equivalent functionality;

	(e) fixed and mobile networks, in particular for roaming;
	(f) conditional access systems for digital television services; or
	(g) access to virtual network services;
“Act”	means the Information and Communications Act, 2012;
“allocation”	means the allocation of a given scarce resource for the purpose of its use by one or more communications services under specified conditions.
“apparatus”	means an equipment, instrument, or any other object, for use in the provision or in the reception of communications services, and includes a fitting to or accessory of the equipment, instrument or object;
“Authority”	means the Malawi Communications Regulatory Authority;
“broadcasting”	means any form of unidirectional electronic communications intended for reception by (i) the public, (ii) sections of the public, or (iii) subscribers to any broadcasting service, whether conveyed by means of frequency spectrum or any electronic communications network or any combination thereof;
“broadcasting service”	means any service which consists of broadcasting and which is conveyed by means of an electronic communications network but does not include - <ul style="list-style-type: none"> (a) a service which provides no more than data or text, whether without associated still images; (b) a service in which the provision of audiovisual material or audio material is incidental to the provision of that service; or (c) a service or a class of service, which the Authority may prescribe as not falling within this definition.
“broadcasting service licence”	means a communications licence entitling the holder to provide one or more broadcasting services;
“broadcasting service licensee”	means a holder of a broadcasting service licence;
“broadcasting signal distribution”	means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed, to any broadcast target area, by means of electronic communications and includes multi-channel distribution;
“class assignment”	means a licence issued by the Authority pursuant to this Act granting a class of persons, subject to certain guidelines, right to use- <ul style="list-style-type: none"> (a) frequencies; or (b) numbers;
“class assignee”	means the holder of a class assignment;

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“class licence”	means a licence issued by the Authority, as distinct from an individual licence, issued on the same terms to each applicant of a category of users in respect of the operation of a type of an electronic communications network or communications service which does not require the use of scarce resources. ;
“class licensee”	means the holder a class licence;
“commercial broadcasting”	means a broadcasting service operating for profit or as part of a profit entity but excludes any public broadcasting service;
“common carrier”	means a person licensed to provide electronic communications network services who is obliged to provide signal distribution for broadcasting services on non-discriminatory and non exclusive basis;
“communications service”	means any electronic communication service, broadcasting service or postal service;
“community”	includes geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest;
“community broadcasting service”	means a content service which - <ul style="list-style-type: none"> (a) serves a particular community; be it geographical community, a community with common interest or other types of communities; (b) is carried on for non-profitable purposes; and (c) is fully controlled by a non-profit entity;
“consumer”	means any natural person who uses or seeks to obtain broadcasting, postal or electronic communications services for personal use;
“content”	means information in the form of speech or other sound, data, text or images whether still or moving, except where transmitted in private communications;
“content provider”	means any natural person or legal entity broadcasting content accessible in Malawi;
“convey”	includes transmit and transport and “conveyance” shall be construed accordingly;
“courier service”	means an individualized and time sensitive service for collection, acceptance, conveying and delivery of postal articles on a door to door basis;
“coverage area”	means the area in which a communication service is intended to be received;
“election period”	means the period commencing with the date on which the election day is proclaimed and ending on the day immediately following upon the day on which candidates of any of the political parties are declared elected;
“electronic communications”	means the emission, transmission or reception of signs, signals, writing, images, sounds, data or intelligence of

any nature, transmitted in whole or in part by radio, electro-magnetic, photo electronic or photo optical system, but does not include -

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

“electronic communications apparatus” include electronic communications network and any equipment or facility constructed or adapted for use as part of, or for the purpose of an electronic communications service;

“electronic communications licence” means both network service licence and application service licence;

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

“electronic communications network” means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for sound and television content, and cable television networks, irrespective of the type of information conveyed;

“electronic communications numbering” means a number, sign or any other mark which an electronic communications licensee in its delivery of electronic communications services uses for identification of electronic communications facilities in order to connect between the place of transmission and the place of reception, or for identification of the type of content or transmission the electronic communications facilities is to deliver.

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

“exempted licensee” means a licensee who is exempted from some conditions including but not limited to the payment of fees in order to operate its activities.

“exempted service” means a service for which some conditions and fees are not required by the Authority to commence business;

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

“frequency” means the reservation of one or more radio frequency

allocation”	bands for a particular use or particular uses;
“frequency assignment”	means the reservation of one or more radio frequencies for use by a particular person in accordance with the national frequency plan;
“frequency spectrum licence”	means a licence issued to grant the right to use the radio-frequency spectrum to operate a network facility or radio communication equipment of a specified kind at a specified frequency or in any specified frequency band or bands, and which may include spectrum assignments and apparatus assignments;
“frequency spectrum service”	means a service involving the transmission, emission or reception of radio waves for specific communications purposes;
“Gazette”	means the Malawi Government Gazette;
“individual licence”	means a licence issued by the Authority granted to a particular person on terms specific to that person;
“communications technology”	means the application of modern communications and computing technologies to the creation, management and use of information through the utilization of hardware, software, networks, media for the collection, storage, processing, transmission and presentation of information and related services;
“infrastructure”	means any structure or facility installed and maintained for the purpose of the provision of a public utility service;
“interconnection”	means the physical and logical connection of two or more electronic communications networks;
“interconnection agreement”	means an agreement entered into, before or after the coming into force of this Act, between licensees in relation to the interconnection of their services;
“interconnection provider”	means a provider of a service who, in accordance with the licence issued by the Authority, is required to provide interconnection service to other licensees;
“licensed network”	means an electronic communications network, the establishment or operation of which is authorized by a licence issued under this Act;
“licence”	means a written authorization granted by the Authority under this Act;
“licence area”	means the geographical area specified in a licence;
“licensee”	means the holder of a licence issued (or deemed to have been issued) under this Act;
The Malawi Posts Corporation	means the Malawi Posts Corporation as mentioned in Part VIII Chapter 2
“message”	means any communication sent, received or made, by means of information and communications systems or services, or given to any person, to be sent by electronic

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	communications networks or services or to be delivered;
“multi-channel distribution service”	means a broadcasting signal distribution service that provides broadcasting signal distribution for more than one channel at the same time on the same signal;
“national frequency allocation plan”	means a national allocation plan that includes but is not limited to -- <ul style="list-style-type: none"> (a) a table of frequency allocations for all bands below 3,000 GHz taking into account the ITU table of allotments, in so far as such allotments have been adopted and agreed upon by the Republic, which may include designations of certain utilisations; and (b) a plan, as applicable, for the migration of systems and equipment of existing users within specific frequency bands, including frequency bands for security services to different frequency bands;
“post”	means any system for the collection, dispatch, conveyance, handling and delivery of letters, postcards, printed papers, commercial papers, samples, parcels or other similar articles;
“post office”	means any building, house, room, receptacle, vessel, vehicle or place where postal articles are received, sorted, made up or dispatched;
“postage”	means the amount chargeable for the transmission of an article by post and includes any special charges or fees for supplementary services supplied in connection with the transmission of an article by post;
“postal article”	means any article in course of transmission by post and includes any letter, postcard, newspaper, book, document, pamphlet, pattern, sample packet, small packet, parcel package, or any other article tendered for dispatch or specified by the Universal Postal Union or in the licence issued to an licensee
“postal services licensee”	means any person licensed to provide postal services;
“postal services”	means any service offered to people by a postal operator licensed to provide postal services;
“postal tariff”	means any charges raised by the licensee for the provision of postal services;
“Public Appointments Committee”	means the Public Appointments Committee of the National Assembly established under section 56 (7) of the Constitution;
“public broadcasting service”	means any broadcasting service provided by Malawi Broadcasting Corporation or other public state-owned enterprise holding a licence to this purpose;
“public postal services”	means any postal service provided by The Malawi Posts Corporation or other public state-owned enterprise;
“significant market power”	means holding either on its own or in conjunction with other legal entities a position equivalent to a dominant position, that is, a company which has a significant

	capacity to act in a manner independent of its competitors, its customers and ultimately consumers;
“subscriber”	means any person who has entered into a contract with an authorised provider of a communications service in order to obtain any communications services;
“subscription broadcasting service”	means a broadcasting service provided to a subscriber;
“television broadcasting service”	means a broadcasting service consisting of the transmission of visual images or other visible signals with or without accompanying sounds where the visual images are such that their sequences are seen as moving pictures;
“terminal equipment”	means any equipment to be connected to an electronic communications network which is operated by a person duly licensed to provide communications services;
“universal access”	shall mean the goal of ensuring that all people in every part of Malawi have means of access to publicly available communication services by means of shared access, including but not limited to, phone shops, roadside tele-businesses and telephone or postal bureaux or offices, multi – purpose community telecentres, internet cafes or other public internet or media centres or kiosks;
“Universal Access Committee”	means the committee established under this Act within the Authority in charge of managing and supervising the universal access and universal service;
“universal service”	means a defined set of products and information and communication services of general public interest to which customers are entitled to use without discrimination in terms of accessibility, price and quality throughout the country.

Part II
THE MALAWI INFORMATION AND COMMUNICATIONS TECHNOLOGIES REGULATORY
AUTHORITY

Chapter 1 - The Authority

Establishment of the Authority	6.-	<p>(1) The Malawi Communications Regulatory Authority established under the repealed Communication Act, 1998 shall continue to exist as if established under this Act and is for purposes of this Act hereby re-named the Malawi Communications Regulatory Authority.</p> <p>(2) The Authority shall be a body corporate and shall</p> <ul style="list-style-type: none">(a) have perpetual succession and a common seal;(b) be capable of suing and being sued in its corporate name;(c) be capable of acquiring and disposing of any moveable or immovable property and performing such acts and things as bodies corporate may by law do or perform; and(d) have power to perform such functions and exercise such powers as are conferred by this Act. <p>(3) The provisions of the First Schedule apply to the Authority.</p>
Independence of the Authority	7.-	<p>(1) The Authority shall be an independent and autonomous body, and, in this regard, shall - -</p> <ul style="list-style-type: none">(a) be fully impartial and perform its functions without fear, favour or prejudice and without any political or commercial interference; and(b) be subject to and comply with the Constitution and any other written laws of Malawi. <p>(2) Except as otherwise provided in this Act, the Authority shall not be subject to the direction of any other person or authority.</p>
Objectives	8.-	<p>(1) The Authority shall regulate the provision of communication services and ensure that, so far as it is practicable, there are provided throughout Malawi reliable and affordable information and communication services sufficient to meet the demand for such services.</p> <p>(2) Subject to the generality of subsection (1), the Authority shall</p> <ul style="list-style-type: none">(a) grant licences for the provision of communications services;(b) protect the interests of consumers, purchasers and other users of communication services in respect of the prices charged for the quality and variety of services provided and terminal equipment supplied;(c) promote access to information and the development of human resources in the communications sector.(d) promote efficiency and competition among persons engaged in provision of communication services or in the supply of communication equipment;(e) encourage the introduction of new communication services and technologies;(f) promote research and development in communication services; and(g) foster the development of communication service technologies in accordance with recognized international standards and applicable international law.

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Chapter 2 - Powers of the Authority

Functions of the Authority

9. –

(1) The Authority shall have the power to regulate the communication service throughout Malawi and shall, within this context, carry out in particular the following functions –

- (1) implement the objectives of this Act;
- (2) assist the Government in the definition of strategic guidelines, general policies and the drafting of legislation for the communications sector;
- (3) advise the Minister in the promulgation of guidelines and regulations relevant to the objectives of this Act;
- (4) grant, amend or withdraw rights under communications service licences;
- (5) monitor the activities of licensee to ensure compliance with the terms and conditions of their licence and applicable regulations and guidelines including the Act and related activities;
- (6) establish a type approval regime for terminal equipment to grant approval and to ensure that type approval procedures are adhered to;
- (7) collect and publish information with respect to information and communication services carried on in Malawi;
- (8) establish standards for regulated communications goods and communications services;
- (9) receive and investigate complaints relating to communications services and to take necessary action upon them;
- (10) carry out projects to promote the development of the communications sector;
- (11) provide technical support and represent the Government at international communications fora;
- (12) ensure compliance with national and international communications standards and obligations laid down by international communication agreements and treaties to which Malawi is a party and to issue certificates of compliance in relation thereto;
- (13) do all such things as are necessary or incidental or conducive to the better carrying out of the functions of the Authority specified in this Act; and
- (14) ensure the safety and quality of every communication services including electronic communications services and for that purpose, determine technical standards for electronic communications networks and the connection of consumer equipment to electronic communication networks.

(2) Pursuant to the above main duties, the Authority is to:

- (a) ensure industry compliance with mandatory standards, including standards covering electromagnetic interference and health issues such as exposure to electromagnetic radiation;
- (b) perform homologation of electronic communications and broadcasting apparatus;
- (c) determine appropriate technical standards where necessary to:
 - (i) avoid disruption to electronic communications networks;
 - (ii) ensure interoperability of the standard communications services;
 - (iii) minimise frequency interference; and
 - (iv) protect public health and safety.

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Powers of the Authority

10.

Without limiting its powers, the Authority shall –

- (1) as part of its general mission of regulation and monitoring of the communications sector –
 - (a) issue guidelines and regulations regarding the communications sector, i.e. electronic communications services, broadcasting services and postal services;
 - (b) assist the Government, and in particular the Minister, in elaborating regulations and designing policies for the communications sector,

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i.e. electronic communications services, broadcasting services and postal services;

- (c) participate in local and international fora;
 - (d) disseminate information and promote the confidence and participation of the public in the provision of communications services;
 - (e) settle disputes or complaints in the communications sector;
 - (f) hold inquiries and obtain information, documents and items pursuant to this Act;
 - (g) implement measures to enforce the Act, including the power to impose sanctions;
 - (h) by orders published in the Gazette by the Minister, levy certain charges and fees; and
 - (i) undertake all necessary measures for carrying out of the functions of the Authority specified in this Act.
- (2) Pursuant to its duty to implement guidelines regarding terminal equipment and right of way - -
- (a) publish technical standards and codes of conduct for the sector;
 - (b) establish a type approval regime for terminal equipment to grant approvals and to ensure the type approval procedure adhered to;
 - (c) cooperate with the Ministry responsible for public works and local authorities with respect to right of way.
- (3) Pursuant to its duty to implement the licensing and authorization schemes provided for under this Act -
- (a) issue, renew, cancel licences and authorizations in connection with communications services;
 - (b) enforce such licences and authorizations terms and conditions;
 - (c) monitor the performance of the regulated sectors;
 - (d) promote efficiency and competition among persons engaged in commercial activities relating to the provision of communication services or in the supply of communication equipment; and
 - (e) encourage the introduction of new information and communication services and technologies, in accordance with recognized international standards and applicable international law.
- (4) Pursuant to its duty to facilitate interconnection and access to the network -
- (a) implement and enforce guidelines on interconnection and access agreement;
 - (b) control the terms of interconnection or access agreements; and
 - (c) arbitrate situations where licensees fail to reach an agreement regarding terms of access or interconnection.
 - (d) settle interconnection disputes between licensees.
 - (a) (5) Pursuant to its duty to foster universal service - promote and facilitate the provision, in urban and rural areas, of such electronic communications services that meets all reasonable demand including, emergency services, directory information services and maritime services; and
 - (b) implement universal services by selecting licensees in charge of universal services obligations.
- (6) Pursuant to its duty to regulate tariffs - -
- (a) carry out reviews of prices applied in the sector;

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- (b) issue general guidelines on the determination of applicable rates and charges; .

(7) Pursuant to its duty to manage spectrum and other scarce resources - -

- (a) provide for national frequency and numbering plans;
(b) control and settle interference issues; and
(c) monitor and enforce efficient use and allocation of numbers and frequencies.

(8) Pursuant to its duty to regulate postal and broadcasting services - (a) set forth the general principles regulating broadcasting services;

(b) promote postal services by defining the guidelines; and

(c) issue, renew, cancel licences in connection with broadcasting and postal services.

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Power of the Minister

11. - The Minister may give to the Authority such policy directives with respect to the carrying out of its functions under this Act as the Minister may consider necessary or expedient and the Authority shall give effect to the directives.

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Transparency of the Authority

12. - (1) No guidelines or declaration issued by the Authority pursuant to this Act shall take effect until it is duly published in the Gazette.
(2) The Authority shall be open and transparent in its operations and, in this regard, shall, without limitation, undertake the following -
(a) subject to confidentiality obligations, publish when possible, within four weeks of its publication in the Gazette or in any other relevant publication modes, any guidelines it issues pursuant to this Act;
(b) submit to Parliament, no later than [30 June] of each year, an annual report detailing its activities, its financial performance and its annual audited accounts for the previous financial year throughout the previous financial year;
(c) publish in electronic format, no later than [30 July] of each year, the annual report referred to in subsection (2)(b); and
(d) publish in electronic format, within [three months] of the end of each financial year, details of the contributions to, and allocations from, the universal access fund.

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Power to issue guidelines

13. (1) In the exercise of its functions under this Act, the Authority may make such guidelines as are necessary for the better carrying out of the provisions of this Act.
(2) The Authority shall publish all the guidelines issued under this Act in the Gazette and the guidelines shall not take effect until they are so published.
(3) The guidelines issued by the Authority under this Act shall bind all persons regulated under this Act.

Consultation of stakeholders

14. - (1) Where the Authority intends to take a decision in accordance with this Act which may have an impact on all licensees, the Authority shall make available to interested parties, a statement of the proposed decision and give such interested parties the opportunity to comment on the proposed decision within a period which the Authority considers reasonable.
(2) The Authority shall publish its consultation procedures and shall establish a single information point through which all consultations shall be accessed.
(3) The results of any consultation launched publicly by the Authority shall be made available by the Authority through such means as the Authority considers appropriate in the circumstances, except in the case of information which the Authority considers to be confidential.

Chapter 3 - Representative bodies of the Authority

Composition of the Authority

15. The representative bodies of the Authority shall be the following - -
- (a) the Board of the Authority; and
 - (b) the Director General of the Authority.

Board of the Authority

16. The Board of the Authority shall consist of eleven members -
- (a) seven members, who shall be appointed in accordance with section 17 of this Act:

- (i) one representative nominated by [to be completed];
- (ii) one representative nominated by [to be completed];
- (iii) one representative nominated by [to be completed];
- (iv) one representative nominated by [to be completed];
- (v) one representative nominated by [to be completed];
- (vi) one representative nominated by [to be completed];
- (vii) one representative nominated by [to be completed];

- (b) the following members ex officio, who can be represented by duly appointed persons:-

- (i) the Chief Secretary to the President and Cabinet;
- (ii) the Secretary for Information;
- (iii) the Director General of the Authority; and
- (iv) the Secretary to the Treasury.

Board Appointment

17. - (1) The President shall on receiving the names of the proposed representatives under section 16 (a) consider the nomination subject to confirmation by the Public Appointments Committee and may reject any nomination.
- (2) Where the President rejects any proposed representative, the President shall direct the organisation or institution which proposed the representative to avail the President with the name of another representative.
- (3) The persons to be appointed members of the Board shall be persons who -
- (a) are residents and citizens of Malawi;
 - (b) possess qualifications, expertise and experience in any of the fields of posts, information and communications technology, electronic communications, broadcasting, posts, frequency planning, law, economics and finance; and
 - (c) are individuals who are committed to fairness, openness and accountability and to principles the Board is able to act on.
- (4) The names of all members of the Board and every change of membership shall be published in the Gazette.

Disqualification from membership

18. A person shall be disqualified from being appointed as a member of the Board of the Authority if he -
- (a) is a member of Parliament;
 - (b) is a Minister or Deputy Minister;
 - (c) is a member of a committee of a political party;
 - (d) holds or has a direct or indirect interest in a licence or authorization issued under this Act; and
 - (e) has any other direct or indirect financial interest in any

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Chairperson of the Board	19. -	The Board shall appoint one of its members as Chairperson at its first meeting. ▾	Deleted: the occasion of the Deleted: ..
Removal of member from Office	20.	A member of the Authority shall not be removed from office except after due inquiry, and then only upon a decision of the appointing authority. ▾	Deleted: ies
Powers and functions of the Board	21.	The Board shall be the ultimate representative body of the Authority and shall be in charge of supervising the activities of the Authority and the Director General. In this respect, the Board shall have powers to perform the following functions - - (a) issue guidance, advice and recommendations to the Director General; (b) approve the strategic plans, action plans and budget support programs submitted by the Director General; (c) approve annual reports and financial documentation submitted by the Director General; (d) issue guidelines, opinions and recommendations on any recurrent question related to the regulated missions of the Authority as defined under this Act.	Deleted: is
Remuneration of Members	22.	Members of the Board shall be paid from the funds of the Authority such remuneration, allowances or other benefits as the appointing Authority may, from time to time, deem appropriate.	
Director General of the Authority	23.	The Director General of the Authority shall be responsible for the day to day operations of the Authority, including the direction of and supervision over the work and staff of the Authority.	
Appointment of the Director General of the Authority	24. -	(1) The Board shall appoint the Director General of the Authority. (2) Notwithstanding the provisions of subsection (1) above, the Director General shall be appointed after advertisement in the print media and based on experience and capacity in matters relating to communication industry, finance, economics, engineering, accountancy, commerce, law and administration or shall also be required to demonstrate knowledge and excellence in one or more of the areas of electronic communications, postal and broadcasting services. (3) The Director General of the Authority shall not be removed from office except after due inquiry, and then only upon a decision in accordance with subsection (1) by the appointing authority.	
Powers of the Director General of the Authority	25.	The Director General of the Authority shall be in charge in particulars of - ▾ (a) implementing the Board's decisions; (b) keeping the Board informed on its activities; (c) submitting strategic plans, action plans and budget support programs to the Board of the Authority for approval; (d) implementing such plans and programs; (e) ensuring strict compliance with the provisions of procurement laws; and (f) representing the Authority before the Government, public administrations and third parties and to act on its behalf.	Deleted: -
Other staff of the	26. -	(1) The structure of the Authority including staff numbers, staff profiles and functional and operational structures necessary for the discharge of its	

Authority

functions under this Act shall be organized by the Director General and subject to approval by the Board.

- (2) The Director General shall have the power to appoint staff of such ranks as the Authority may specify within the approved organizational structure to discharge the functions of the Authority under this Act.
- (3) The Authority may pay to persons in its employ, or provide them with, such remuneration, pensions and employment benefits as the Authority may, after having obtained such professional advice as it may deem fit and consider as being competitive in the employment market in the Malawi.

Confidentiality and obligation of secrecy of all members of the staff

27. - (1) All members of the staff of the Authority, including members of the Board as well as consultants, adviser or subcontractor shall sign an oath of secrecy when joining the Authority.
- (2) A person shall not without the consent in writing given by, or on behalf of, the Board, publish or disclose to any person otherwise than in the course of the person's duties, the contents of any document, communication or information which relates to, and which has come to the person's knowledge in the course of, the person's duties under this Act.
- (3) All members of the staff of the Authority, including members of the Board as well as consultants, adviser or subcontractor shall not disclose any statement or take any official position on his personal behalf during the entire term of appointment.
- (4) Even upon termination of the members of the Board's mandate or upon termination of a contract with employees, consultants, adviser or subcontractor, the concerned person shall keep all information exchanged or disclosed to him during his mandate strictly confidential.
- (5) Any member of staff of the Authority who fails to respect any of the above obligations shall be considered as an offence and may lead to a fine and/or imprisonment.

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Delegation of powers and authority

28. - (1) The Authority may delegate any power or functions assigned to it under this Act to the Director General or any member of the staff of the Authority or any member of the Board to facilitate the day to day operations of the Authority.
- (2) The Director General of the Authority may, with the approval of the Authority, delegate any power of function assigned to him under this Act or delegated to him under subsection (1) to any member of the staff of the Authority.

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Advisory fora

29. - (1) The Authority may establish consultative or advisory fora in the communications sector to assist it with the discharge of its functions under this Act.
- (2) The Authority may contribute out of its annual budget to the expenses of any forum established under subsection (1).

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Chapter 4 - Financial provisions

Financing Authority

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30. - (1) The operating and financial costs of the Authority shall be financed from-
- (a) fees and other moneys payable to the Authority in respect of licence issued by the Authority under this Act ;
 - (b) fines payable to the Authority in respect of breaches of licence terms, conditions and obligations ;
 - (c) grants or donation received by the Authority;
 - (d) such moneys as are from time to time appropriated to the Authority by Parliament; and
 - (e) the proceeds from the sale by the Authority of any assets or

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equipment to which it has title.

- (2) The Authority may, with the prior written approval of the [Minister of Finance](#) borrow such amounts as it may require for the performance of its functions under this Act.
- (3) The Authority may charge fees in respect of publications, seminars, documents, and other services provided by the Authority.
- (4) The moneys of the Authority which are not immediately required for the performance of its functions may be invested on deposit with any bank or financial institution in Malawi.
- (5) All moneys of the Authority which at the end of each financial year are in excess of its budgetary requirements for that year shall be invested in the development of the communications sector in Malawi including, but not limited to into the universal service fund.

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Account and audit

31. - (1) The Authority shall maintain proper books of accounts and other records relating to its accounts;
- (2) the Authority shall appoint independent auditors in charge of auditing annually the accounts of the Authority.;
- (3) The financial year of the Authority shall be in line with the Government's financial year.

Annual Report

32. - (1) As soon as practicable, but not later than **[four months]** after the expiry of each financial year, the Authority shall submit to the [Minister](#) a report concerning its activities during that financial year.
- (2) The report referred to in subsection (1) shall be in such form and contain such information as the [Minister](#) shall require.
- (3) There shall be appended to the report referred to in subsection (2) -
 - (a) an audited balance sheet;
 - (b) an audited statement of income and expenditure;
 - (c) justification for the retaining of sums as provided for in section 30 above, where applicable; and
 - (d) such other information as the Authority may consider appropriate..

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Chapter 5 - Dispute resolution and complaints

Complaints

33. - (1) This [Chapter](#) shall apply to any complaint against a licensee in relation to any matter connected with its activities carried on under the licence it holds or to any complaint against an exempted licensee in connection with its activities carried on under an exemption.
- (2) The Authority shall investigate any complaint where a complaint is referred to or otherwise comes to the attention of the Authority and it appears to the Authority that (i) the complainant has an interest in the matter to which the complaint relates; and (ii) the complaint is not frivolous or vexatious.
- (3) The Authority may refer the complaint to the licensee with the request that the licensee should consider or reconsider the complaint where it appears to the Authority at any time during or after its investigation that the licensee has not considered the complaint, or has not considered it adequately.
- (4) The Authority may make representations to the licensee on behalf of the complainant or to the complainant on behalf of the licensee as the Authority sees fit.
- (5) For the purposes of dealing with consumer complaints, the Authority shall establish a dedicated unit which shall receive and follow up on complaints from consumers.
- (6) The Authority shall issue any guidelines in order to define the handling

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and the proceeding applicable to the complaint.

Dispute between licensees

34. (1) The Authority, when presented with a dispute between licensees, shall wherever practicable, apply conciliation, mediation and alternative dispute resolution techniques in resolving disputes.
- (2) For the following purposes, the Authority is entitled to hear and determine -
- (a) disputes between licensees of communications services;
 - (b) disputes between licensees and the public involving alleged breached of the Act or regulations or guidelines or licences;
 - (c) complaints between licensees and consumers;
 - (d) objections to agreements between licensees; and
 - (e) claims by a licensee for a change in rates payable for any services.

Hearing of matter by the Authority

35. - (1) The Authority shall expeditiously hear and inquire into and investigate any matter which is before it, and in particular shall hear, receive and consider statements, arguments and evidence made, presented or tendered.
- (2) The Authority shall determine the periods that are reasonably necessary for the fair and adequate presentation of the matter by the respective parties thereto and the Authority may require those matters to be presented within respective periods do determined.
- (3) The Authority may require evidence or arguments to be presented in writing and may decide the matters upon which it will hear oral evidence or arguments.
- (4) Each party to a matter shall be entitled to appear at the hearing thereon, and may be represented by an attorney or any other person who is competent to assist such person in the presentation of the matter.

Orders of the Authority

36. The Authority may make an order -
- (a) requiring a party to supply goods or services for specified periods;
 - (b) requiring a party to supply goods or services under specified terms and conditions;
 - (c) requiring a party to pay the costs of another party or of a person appearing at the hearing or producing documents;
 - (d) dismissing a complaint;
 - (e) imposing financial sanctions;
 - (f) for specific performance;
 - (g) for refunds;
 - (h) appointing trustees; and
 - (i) for such other relief as may be deemed necessary and reasonable.

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Appeals against the Authority's orders and decisions

37. - Where a person is not satisfied with an order of the Authority, it may appeal to the High Court

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Chapter 6 - Enforcement and compliance

Compliance orders

38. - (1) Where the Authority is satisfied that a person has committed or is likely to commit an offence against this Act or any sector regulation, it may make a compliance order under this section.
- (2) Any person against whom a compliance order is made shall comply with the order.

- (3) A compliance order may require a person to refrain from conduct which is in contravention of the provision of this Act or any sector regulation to take actions required to be taken in order to comply with this Act or any sector regulation.
- (4) A compliance order shall be made in writing specifying the grounds for its making and shall be enforceable as an order of a court.
- (5) A compliance order shall be served on the person against whom it is made.

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Offences

39. - (1) The Authority may, either on its own motion or upon request of the Minister, a professional body, a users association or an involved individual or legal entity punish any failure by the licensees to comply with a provision of this Act or any other legal and regulatory provisions applicable to their activities, or of the decisions taken to ensure the implementation of such provisions.
- (2) This sanction power shall be exercised as follow-
- (a) in case of failure of a licensee to comply with the provisions referred to in subsection (1), the Authority may send a compliance order under the conditions mentioned in section 38.
 - (b) in the absence of remedy within the time limit set in the compliance order, the Authority is entitled to order against the licensee according to the gravity of the offences -
 - (i). The compensation of the complainant's damage;
 - (ii). the total or partial suspension or withdrawal of the licence for a maximum duration of [three years];
 - (iii). the total or partial suspension or withdrawal of the right to use a frequency for a maximum duration of [three years]
 - (iv). a financial penalty proportionate to the gravity of the offence and the benefits which are being derived from it. This penalty shall not exceed [●]% of the turnover of the last financial year, or [●]% in case of repetition of the same offence.
 - (v). the publication of the decision;
 - (c) any person, who suffers loss or damage as a result of an offence against this Act, may recover by compensation for such loss or damage from the person who committed that offence whether or not that person has been convicted of an offence.

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Chapter 7 –Powers of the Minister

Powers of the Minister

40. - (1) The Minister, on the advice of the Authority, may from time to time make regulations governing the communications sector.
- (2) Before advising the Minister to make any regulations contemplated in subsection (1), the Authority shall publish a complete draft of the proposed regulations and consider any representations made to it concerning the draft.
- (3) No regulation or decision made by the Minister pursuant to this Act shall take effect until it is duly published in the Gazette.
- (4) The Minister shall not interfere with the exercise by the Authority of its powers under this Act.

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Part III
LICENSING

Chapter 1- General principles on licensing

General Principles	41. -	<p>(1) In the performance of its duties under this Act, the Authority must regulate electronic communications networks and communications services in Malawi so as to ensure the provision of a wide range of communications services in Malawi.</p> <p>(2) Any condition imposed with regard to the operation of electronic communication networks or the provision of communication services shall be non-discriminatory, relevant, and transparent and justified in relation to the targeted network or service.</p> <p>(3) The Authority shall create conditions for effective competition and its development in the communications sector as well as conditions to prevent the abuse of market power by licensees.</p>
Licence requirement	42. -	<p>(1) A person shall not operate an electronic communications network, provide communications services or operate any frequencies in Malawi or between any place in Malawi and any other place except in accordance with a licence issued by the Authority.</p> <p>(2) Where frequency spectrum requirement is involved, the holder of a licence shall make a separate application for a frequency spectrum licence as stated in this Act.</p> <p>(3) Any person who contravenes the provisions of this section commits an offence and shall be liable upon conviction, to a fine not exceeding K[●] and to imprisonment for [●] years.</p>
Licence classification	43. -	<p>The Authority shall, in respect of each of the licences referred to in Schedule[●], issue the following classes of licences - -</p> <p>(a) individual licence; or</p> <p>(b) class licence.</p>
Exemption	44. -	<p>(1) The Authority may exempt a person or class of persons, for a limited or unlimited period of time, from part or all of the requirements and obligations relating to an individual licence or a class licence under this Act as well as part or all of the fees payable by licensees under this Act or any related rules, where necessary and expedient to pursue the purposes of this Act. In such a case, the Authority shall nevertheless retain the power to reverse its decision, where necessary and expedient to pursue the purposes of this Act, and in the event of such reversal, shall provide reasonable notice to the affected party.</p> <p>(2) The fact that any activities are deemed to be exempted under subsection (1) of this Act shall not affect the requirement for persons undertaking such activities to comply with all other applicable provisions of this Act or regulations or guidelines made under this Act.</p>
Licence eligibility	45.	<p>Only a company validly incorporated in Malawi shall be eligible to apply for and hold an individual licence under this Act, or to act pursuant to a class licence under this Act.</p>
Shareholding Requirement	46. -	<p>(1) The Minister shall, in consultation with the Authority, make regulations prescribing the minimum local shareholding requirement and procedure for approval and transfer of shares in any entity holding a licence.</p> <p>(2) Notwithstanding any provision of any other law, a company incorporated in Malawi holding an individual licence or a class licence</p>

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under this Act shall be required to-

- (a) maintain a stipulated minimum local share-holding requirements as an on-going obligation throughout the life of the licence; or
- (b) maintain a minimum of [twenty one percent] local share-holding as an on-going obligation throughout the life of the licence for content service licensee.

Publication of licence guidelines

47. -
- (1) The Authority shall publish guidelines in the Gazette and other media relating to the types of licences that may be issued under this Act.
 - (2) Without prejudice to subsection (1) above, where the provision of an electronic communications network or facility services or communications service or operation of frequencies is not provided for in the guidelines, the Authority shall, within a reasonable timeframe, either adopt provisional conditions allowing the company to commence providing the network or the facility or service or operating frequencies or shall deny such licence applications or exempt it from the requirements of obtaining a licence.

Competition rules

- 48.
- If it appears to the Authority that a licensee is taking or intends to take any action which -
- (a) may constitute an abuse of a dominant position in relation to the provision of any communications service; or
- has or is likely to have the effect of placing another licensee engaged in communications activities at a competitive disadvantage in relation to that licensee, the Authority may, after giving the licensee an opportunity to make representations, direct that licensee to cease or refrain from taking such action.

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Chapter 2 Allocation of the licences

Application for licence

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49. -
- (1) Any person or legal entity who wishes to operate any electronic communications network or facility or offer communications services or operate frequencies shall apply to the Authority for a licence in the prescribed manner.
 - (2) The Authority shall, within [sixty days] of receipt of an application, grant, evaluate or reject the application for a licence.
 - (3) Within [thirty (30)] days upon receiving the application, the Authority may request further particulars or information in respect of an application.
 - (4) The Authority shall, where it rejects an application for a licence, inform the applicant accordingly in writing and give reasons for rejecting the application.
 - (5) On completion of the evaluation process, the Authority shall within [sixty days] from application, notify the successful or unsuccessful applicant the results of the application. Where the Authority reasonably considers that such licence should be subject to a restricted granting procedure, in particular where the operation of the communications services require the allocation of scarce resources, the Authority shall not grant this licence except in accordance with a restricted granting procedure to be set forth by the Authority and in such a case, the choice of the successful applicant shall be based, as far as reasonably possible, on objective criteria made known in advance to all applicants.

Issue of a licence

50. -
- The Authority shall issue a licence under this Act, if -
- (a) the application complies with the provision of this Act and in particular with the requirements as stated in sections 45 and 46 ; and
 - (b) the applicant is financially and technically capable of meeting the

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			applicant's obligations and the terms and conditions of the licence
General conditions	licence	51. -	<p>(1) A licence issued by the Authority under this Act shall</p> <ul style="list-style-type: none"> (a) be issued on payment by the applicant of the appropriate initial licence fees; (b) contain the terms and conditions of the licence; (c) be valid for the such period as may be prescribed from the date when it is published in the Gazette. <p>(2) Such licence will take effect as soon as it is published in the Gazette.</p> <p>(3) The terms and conditions referred to under subsection (1) may relate to the rights and obligations in respect of interconnection, access, facility sharing and any other term or condition as deemed necessary by the Authority.</p>
Licence fees		52. -	<p>(1) A licensee shall pay to the Authority the fees as may be prescribed by the Authority and such fees shall include-</p> <ul style="list-style-type: none"> (a) an initial licence fee payable before the licence is issued; (b) an annual fee of the amount specified in the regulations or guidelines made under this Act; (c) a fee in respect of the assigned frequency if applicable; and (d) a fee in respect of assigned numbering resource if applicable; and (e) any other fees including but not limited to the contribution to universal service fund as may be required from time to time by any regulation or guidelines applicable to the licensees. <p>(2) The Authority may, from time to time, review the licence fee.</p>
Amendments of licence	of	53. -	<p>(1) The Authority may modify any condition of a licence in accordance with the provisions of the licence or, in the absence of such provision, if it is in the public interest to do so.</p> <p>(2) Before modifying any condition of a licence, the Authority shall -</p> <ul style="list-style-type: none"> (a) publish a notice stating the reasons for the intended modification and giving any person with an interest in the matter the opportunity to make representation; and (b) give due consideration to any representation regarding the proposed modification made to it by any person having an interest or holding a licence. <p>(3) Where modifying any condition of a licence, the Authority shall inform all licensees of such modification.</p>
Transfer of licence rights		54.	A licensee shall not transfer, assign, pledge or otherwise dispose of neither its licence nor any rights there under without the prior written consent of the Authority, which consent may be made subject to such reasonable terms and conditions as the Authority may impose.
Suspension and withdrawal of licences		55. -	<p>(1) Among other regulatory sanctions, the Authority may suspend or withdraw a licence granted under this Act in any of the following circumstances-</p> <ul style="list-style-type: none"> (a) the licensee has failed to comply with the provisions of this Act or its related regulations or guidelines or the terms and conditions of the licence; (b) the licensee has contravened the provisions of any other written law relevant to the communications sector; (c) the licensee has failed to comply with any instrument, guidelines,

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or lawful orders given by the Authority;

- (d) the licensee-
 - (i) enters into receivership or liquidation;
 - (ii) takes any action for its voluntary winding-up or dissolution;
 - (iii) enters into any scheme of arrangement, other than in any such case for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority; or
 - (iv) is the subject of any order that is made by a competent court or tribunal for its compulsory winding-up or dissolution;
 - (e) the licensee has ceased, however briefly, to fulfil the eligibility requirements set forth in sections 45 and 46; or
 - (f) the suspension or withdrawal is in the public interest.
- (2) Prior to the suspension or revocation of a licence under this section, the Authority shall inform the licensee by written notice, as soon as practicable, of its intention to suspend or withdraw the licence and the reasons therefore.
- (3) The affected licensee shall be given a reasonable opportunity to make written submissions to the Authority within a time period specified in the notice and such time period shall not be less than **fourteen days** from the date of the notice.
- (4) The affected licensee may, within the time period specified in the notice, make written submissions and the Authority shall consider any such submissions in making its final determination and declaration on the suspension or withdrawal of the licence.
- (5) Subject to subsections (4) and (5) of this section, the suspension or withdrawal of a licence shall take effect on the expiration of **thirty days** from the date on which the notice of the Authority's declaration under subsection (3) of this section in respect of the suspension or revocation is served on the licensee.
- (6) When the suspension or withdrawal of a licence has taken effect, the Authority shall, as soon as practicable, cause the suspension or withdrawal to be published in at least one national daily newspaper.
- (7) Any delay or failure to publish the notice of suspension or withdrawal shall not in any manner affect the validity of the suspension or revocation

Renewal of licence

56. -

- (1) Upon expiration of the term of a licence, it shall not be automatically renewed. Renewal of a licence is subject to a prior application of the licensee and shall be granted by the Authority in compliance with subsections (2) and (3) below.
- (2) A licensee may, not less than **90** months before the expiry of a licence, apply for the renewal of the licence in the prescribed manner and form upon payment of the prescribed fees.
- (3) The Authority shall, where a licensee makes an application under subsection (1), renew the licence if the licensee -
- (a) continues to fulfil the eligibility requirements under this Act;
 - (b) continues to be financially and technically capable of meeting the licensee's obligations under this Act and any other related laws; and
 - (c) has not during the term of the licence contravened the provisions of this Act, the terms and conditions of the licence, the guidelines issued by the Authority or any other relevant laws and regulations.

Chapter 3 - Individual licences

Individual licence	57. -	(1) The Authority shall be entitled to grant individual licence for the operations of electronic communications network or the provision of communications services. (2) Individual licences shall be classified under various categories as detailed in the Second Schedule.
Grant of individual licence	58. -	Subject to compliance with the guidelines issued under this Act, individual licences shall be issued by the Authority to any applicant fulfilling the eligibility requirements set forth in sections 45 and 46.
Individual licence fees	59. -	(1) The Authority shall issue guidelines determining- (a) the initial fees payable upon the filing of an individual licence registration form; and (b) the annual fees payable for the monitoring of the licensee's compliance with the individual licence conditions. (2) The individual licence fees referred to in this section shall reflect the actual administrative costs involved for the Authority and shall be reviewed from time to time to this end
Standard terms and conditions	60.	Individual licences shall have standardised terms and conditions as far as practicable, and any differences shall be for objectively justifiable reasons.

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Chapter 4- Class licences

Scope of the class licence	61.	The Authority shall be entitled to authorize the operation of a communications network or the provision of communications services by way of a class licence with the exception of licences connected with any of the following - (a) the use of frequency spectrum; (b) the use of numbers; (c) the operation of electronic communications networks or facilities; (d) any other activities as the Authority may determine from time to time; in which case an individual licence is required.
Sub-classing	62.	The Authority shall be entitled to sub-class class licences issued under this Act into different categories to be determined from time to time.
Registration under class licence	63. -	(1) A class licence shall be issued by declaration of the Authority. (2) All persons intending to undertake activities covered by a class licence shall, prior to undertaking such activities, file with the Authority a completed version of the appropriate class licence registration form. (3) The Authority shall issue guidelines determining the format of class licence registration forms.
Class licence fees	64. -	(1) The Authority shall issue guidelines determining- (a) the initial fees payable upon the filing of a class licence registration form; and (b) the annual fees payable for the monitoring of the licensee's compliance with the class licence conditions. (2) The class licence fees referred to in this section shall reflect the actual

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administrative costs involved for the Authority and shall be reviewed from time to time to this end

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| Terms and conditions of a class licence | 65. | All class licences shall include the standard licence conditions set forth in guidelines to be issued by the Authority. |
| New class licences | 66. - | <ul style="list-style-type: none">(1) The Authority may at any time promulgate a new class licence or, with reasonable notice, or repeal an existing class licence.(2) No compensation shall be due for any promulgation, or repeal made pursuant to subsection (1) above. |

Chapter 5- Duties of the licensees

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| Provision of essential services | 67. - | <ul style="list-style-type: none">(1) All application services licensees shall provide the following communications services (the "essential services"), [twenty-four hours a day, seven days] a week, at a prescribed levels of quality, without discrimination-<ul style="list-style-type: none">(a) emergency service with priority routing, enabling any member of the public to make contact, with, in particular, the police, the fire brigade and the ambulance service;(b) directory assistance service, enabling any subscriber to obtain a telephone number through automated means;(c) licensee assistance service, enabling any subscriber to obtain assistance regarding, amongst other things, accessing services, setting up calls and remedying faults; and(d) such other services as may be reasonably determined by the Authority from time to time and published in the Gazette.(2) Essential services shall be provided in accordance with the terms and conditions of the applicable licence.(3) The following essential services shall be provided free-of-charge-<ul style="list-style-type: none">(a) emergency service; and(b) licensee assistance for remedying faults. |
| Secrecy of correspondence | 68. | Any communications licensee as well as their employees shall comply with the secrecy of correspondences. |
| Requirement for scarce resources | 69. | A licensee shall not begin its activities where they require the use of scarce resources without obtaining rights for scarce resources as provided under this Act. |

Chapter 6 - Shareholding

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| Change of control of a licensee | 70. - | <ul style="list-style-type: none">(1) A licensee shall without undue delay notify the Authority of any direct or indirect changes to its shareholding.(2) A licensee which holds a licence shall obtain the Authority's prior written consent for-<ul style="list-style-type: none">(a) any transfer of shares which would result in the direct or indirect ownership of 25% or more of the issued voting share capital of the licensee changing hands;(b) any change in ownership of the licensee's issued voting share capital that results in a change to the composition of one-quarter of the licensee's Board of Directors. |
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Part IV

ECONOMIC REGULATIONS

Chapter 1 - General Principles

- Presentation** 71. - (1) This Act defines the conditions to access, provide interconnection and to share infrastructures in Malawi.
- (2) The Authority is vested with the authority to control the implementation of the access, interconnection, co-location and infrastructure sharing, based on the catalogues, interconnection agreement and framed tariffs enforced by the licensees.
- (3) The Authority shall set forth the rules to be followed in settlement of interconnection, access, co-location and infrastructure sharing disputes.

- Coordination with the Competition and Fair Trading Commission** 72. - Where exercising its powers of economic regulations under the present Part IV of the Act, the Authority shall coordinate with the Competition and Fair Trading Commission.

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- Relevant markets and dominant market players** 73. - (1) The Authority shall, no later than 31 December of each year, publish in the Gazette, after having conducted a market analysis, a list for the following calendar year of-
- (a) all retail and wholesale electronic communications markets that, in the Authority's opinion, warrant prior regulatory control; and
- (b) licensees deemed to hold, for each electronic communications market so identified, a dominant position.
- (2) The Authority shall as soon as possible upon the Act has taken effect issue guidelines defining the criteria to be used for dominant position determination.
- (3) A licensee shall be considered as holding a dominant position with regard to the relevant market where the Authority finds that the particular licensee -
- (a) is dominant;
- (b) has control of essential facilities; or
- (c) has a vertical relationship that the Authority considers it could harm competition in the market applicable to the particular category of licence.
- (4) The Authority shall deem a licensee to hold a dominant position in a given electronic communications market for a given calendar year where in its opinion, for the communications market and calendar year concerned, the licensee would, acting alone, be able to profitably and materially restrain or reduce competition.
- (5) In the interests of transparency, the Authority shall produce and make public guidelines on the manner of defining a communications market and of determining whether a licensee holds a dominant position therein. The Authority shall take account of such guidelines when preparing a list pursuant to this section.
- (6) The Authority shall be entitled at any time, by notice published in the Gazette, to modify for the remainder of the calendar year concerned, any list published pursuant to subsection (1) of this section, subject to a notice period of at least four weeks.

Chapter 2 - Interconnection

- Interconnection request** 74. - (1) Upon written request of a network service licensee, another network service licensee has the obligation to interconnect and negotiate in good faith the terms of an agreement for interconnection with regard to electronic communications networks for the purposes of enabling the

provision of communications services to the public.

- (2) Any interconnection request of a network service licensee shall include the following-
- (a) the type of interconnection required;
 - (b) the technical requirements based on the technical standard of interconnection provision;
 - (c) the date for which interconnection is required; and
 - (d) the estimate of the interconnection capacity required.

Negotiation process

75. -

- (1) The parties shall negotiate on technical and commercial terms in a fair, transparent and balanced manner. The interconnection agreement shall be in writing and shall set forth the contractual terms and conditions agreed by the parties, including, but not limited to- (i) the interconnection location between the two networks, (ii) the interconnection costs, (iii) the interconnection charges and (iv) maintenance fees. The interconnection costs shall remain cost oriented and transparent.
- (2) In order to ensure compliance with regulations and guidelines, the Authority may, on its own initiative and in its absolute discretion, intervene during the period of negotiation between the network licensees in order to prescribe matters which the interconnection agreement under negotiation should contain or to prescribe terms with which one or more network licensees shall conform.
- (3) The total period of negotiation shall not exceed [●]. Where a network service licensee fails to reach agreement within the prescribed period of negotiation, the matter may be referred by either network service licensee to the Authority for examination and determination which may order the network service licensees to interconnect their electronic communications networks on such reasonable terms it may prescribe.
- (4) In the event of refusal, the interconnection provider shall notify the other party with its decision and the reasonable and legitimate grounds for such decision.
- (5) A network services licensee may only refuse the interconnection request on legitimate grounds such as-
 - (a) the interconnection request is unreasonable;
 - (b) the network services licensee would be prejudiced; and
 - (c) the interconnection would cause irreparable damages to the property.

Registration of the interconnection agreement

76. -

- (1) The Authority shall maintain a register of all interconnection agreements entered into between the network services licences providers, which shall without revealing the terms and conditions of the agreement contain the names of the parties, a general description of the matter governed by the agreement and the effective date and duration of the agreement. These agreements shall be open to public inspection.
- (2) All interconnection agreements shall be submitted to the Authority for registration. The Authority may request modifications of the terms of the agreement and the final version shall be re-submitted to the Authority for registration.
- (3) The registration shall be effective within [sixty] working days after submission of the agreement. Any information obtained by the network service licensee from the other network service licensee and which at the time it was obtained was previously unknown and not publicly available shall remain publicly unavailable and be used only for the purposes for which it was supplied.
- (4) The Authority may by guidelines prescribe any matter considered

necessary for inclusion in interconnection agreements.

**Disputes
interconnection**

on

77. -

- (1) In the event that the interconnection negotiation period lapses and no agreement is concluded or in the event a dispute arises between the network service licensees, one of the parties may request the Authority to arbitrate any open issue and petition.
- (2) The petitioner shall provide the Authority with all relevant documentation concerning the negotiation, issues and projects. Within [twenty] working days from the petition date, the other party shall provide its response and additional documentation, if it deems it to be necessary.
- (3) The parties shall submit any information that the Authority may ask for.
- (4) Based on the information provided and/or collected, the Authority shall proceed to solve the issue and pending negotiation within [forty] days from the receipt of all relevant documentation. The Authority may-
 - (a) impose appropriate conditions on implementation of the terms and conditions for the interconnection agreement;
 - (b) control that the requirements and offer meet the legal requirements;
 - (c) impose the parties to agree on an arrangement and enter into the interconnection agreement.
- (5) In the event that one party intends to appeal against the decision of the Authority such appeal shall lie to the [High Court](#).

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**Determination
interconnection
terminal rates**

of

78.

The Authority shall be entitled to issue guidelines determining the interconnection terminal rates to be applied by all licensees when negotiating interconnection agreement.

Chapter 3 - Access

Access agreement

79. -

- (1) Any person authorized to operate infrastructure may install, maintain and operate electronic communications equipment and facilities for the purposes of operating that infrastructure provided that any permits and /or licences required from the Authority to install, maintain and prepare such equipment and facilities have been obtained.
- (2) Every licensee shall [have](#) the right, for the purposes of enabling the provision of communications services to the public, to negotiate in good faith an agreement for access to those electronic communications network elements of any network services licensee that appear in a list to be published annually in the Gazette by the Authority.
- (3) When solicited in writing by a licensee, every network services licensee shall have, for the purposes of enabling the provision of communications services to the public, the obligation to negotiate such an agreement.
- (4) A network services licensee may only refuse the access request on legitimate grounds such as-
 - (a) the access request is unreasonable;
 - (b) the space available is not sufficient to implement an access;
 - (c) the network services licensee would be prejudiced; and
 - (d) the access would cause irreparable damages to the property.
- (5) Where the parties fail to reach agreement within a period of [six weeks](#) from the date or receipt of a written request, the matter may be referred by either party to the Authority for examination and determination. In such a case, the Authority may order the network service licensee to allow access to its electronic communications networks on such default terms and conditions as prescribed by the Authority from time to time.

- (6) Any network service licensee that has, for the calendar year in question, been deemed to hold a dominant position in a given electronic communications market, shall for the purposes of enabling the provision of communications services to the public, as concerns that electronic communications market, offer access to requesting licensees-
 - (a) on reasonable and non-discriminatory terms and conditions, in particular in respect of price;
 - (b) of at least the same technical quality as the technical quality provided on its own electronic communications network or, as the case may be, for its own communications services.
- (7) No access agreement shall be implemented without having first been filed with the Authority.
- (8) The Authority may prescribe any matter considered necessary for inclusion in access agreements.
- (9) The Authority shall maintain a register of all access agreements, which-
 - (a) shall, without revealing the terms and conditions of the agreement, contain-
 - (i) the names of the parties to the agreement;
 - (ii) a general description of the matter governed by the agreement; and
 - (iii) the date of the agreement;
 - (b) shall be open to public inspection, subject to such procedures and fees as may reasonably be prescribed by the Authority.
- (10) Any information obtained by either party to an access agreement as a result of the negotiation, and which was, at the time it was obtained previously unknown to the party obtaining it, and not publicly available may, for so long as such information remains publicly unavailable, be used only for the purposes for which it was supplied.

Power of the Authority

80. -
- (1) In the event that the access negotiation period exceeds [●] months and no agreement is concluded or in the event a dispute arises between the parties, one of the parties may request the Authority to arbitrate any open issue and petition.
 - (2) The petitioner shall provide the Authority with all relevant documentation concerning the negotiation, issues, and projects. Within [twenty] working days from the date of the petition, the other party shall provide its response and additional documentation, if it deems it to be necessary.
 - (3) The Authority may ask for additional information.
 - (4) Based on the information provided and/or collected, the Authority shall proceed to solve the issue and pending negotiation within [forty] days from the receipt of all relevant documentation. The Authority may-
 - (a) impose appropriate conditions on implementation of the terms and conditions for the access agreement;
 - (b) control that the requirements and offer meet the legal requirements;
 - (c) impose the parties to agree on an arrangement and enter into the access agreement.
 - (5) In the event that one party intends to appeal against the decision of the Authority such appeal shall lie to the High Court.

Chapter 4 - Co-location and infrastructure sharing

General principle

81. -
- (1) Where a network services licensee has the right to install facilities on, over or under public or private land, or to take advantage, it shall upon written request with respect to access, co-location and infrastructure

sharing of communications facilities, have the obligation to negotiate in good faith and to enter into a co-location or sharing agreement.

- (2) Infrastructure provider shall share communication facilities on a first-come-first served basis.
- (3) Facilities sharing shall be provided on the principles of impartiality and non-discrimination

Co-location and infrastructure sharing request

82. -

- (1) Upon request of a licensee, the owner of an infrastructure is obliged to submit an infrastructure sharing offer providing relevant details and substantial information to handle a feasibility study on its network to implement the infrastructure sharing.
- (2) The sharing offer and feasibility study have to be provided to the infrastructure requesting party within [thirty] days upon receipt of its request.
- (3) An infrastructure provider may only refuse the co-location or sharing of the network facilities on legitimate grounds such as-
 - (a) the request of co-location or infrastructure sharing is unreasonable;
 - (b) the space available is not sufficient to implement a co-location;
 - (c) the infrastructure provider would be prejudiced;
 - (d) the infrastructure sharing would challenge the capacity provided through the infrastructure, to lead to harmful interferences; and
 - (e) the infrastructure sharing would cause irreparable damages to the property or the interoperability of the infrastructure.
- (4) A refusal under subsection (3) shall be made in writing and shall state the reasons for such decision.

Co-location and infrastructure agreement

83. -

- (1) The infrastructure sharing agreement shall set forth the contractual obligations and conditions agreed by the parties and shall be submitted to the Authority for registration.
- (2) The agreement shall be in writing and address the following-
 - (a) the scope and specification of the facilities to be provided;
 - (b) the service level and maintenance facilities;
 - (c) the charges for the facilities;
 - (d) the technical specifications;
 - (e) the financial conditions of payment;
 - (f) the provision of co-location for facilities;
 - (g) the duration, re-negotiation and review of the agreement;
 - (h) disputes resolutions procedures and
 - (i) any other condition deemed necessary.
- (3) The infrastructure provider shall treat each infrastructure acquirer on a non-discriminatory basis and with no less favourable conditions than the offer provided to similar infrastructure acquirers.

Powers of the Authority with respect to infrastructure sharing and co-location

84. -

- (1) In the event that the infrastructure sharing negotiation period exceeds [●] months and no agreement is concluded or in the event a dispute arises between the parties, one of the parties may request the Authority to arbitrate any open issue and petition.
- (2) The petitioner shall provide the Authority with all relevant documentation concerning the negotiation, issues, and projects. Within [twenty] working days from the date of the petition, the other party shall provide its response and additional documentation, if it deems it to

be necessary.

- (3) The Authority may ask for additional information.
- (4) Based on the information provided and/or collected, the Authority shall proceed to solve the issue and pending negotiation within **forty** days from the receipt of all relevant documentation. The Authority may-
 - (a) impose appropriate conditions on implementation of the terms and conditions for the infrastructure sharing agreement;
 - (b) control that the requirements and offer meet the legal requirements;
 - (c) impose the parties to agree on an arrangement and enter into the infrastructure sharing agreement.
- (5) In the event that one party intends to appeal against the decision of the Authority, such appeal shall lie to the High Court.

Unbundled access to the local loop

85. -
- (1) Network services licensees shall publish and keep updated a reference offer for unbundled access to their local loops and related facilities, which shall include items to be listed by the Authority. The offer shall be sufficiently unbundled so that the beneficiary does not have to pay for network elements of facilities which are not necessary for the supply of its services and shall contain a description of the components of the offer, associated terms and conditions, including charges.
 - (2) Network services licensee shall meet reasonable requests from other licensees to access to their local loops and related facilities under transparent, fair and non-discriminatory conditions. Requests shall only be refused on the basis of objective criteria, relating to technical feasibility or the need to maintain network integrity.
 - (3) Where access is refused, the aggrieved party may submit the case to the dispute resolution procedure referred to in section 35.
 - (4) Network services licensees shall charge prices for unbundled access to the local loop and related facilities set on the basis of cost-orientation.

Supervision by the Authority

86. -
- (1) The Authority shall ensure that charging for unbundled access to the local loop fosters fair and sustainable competition.
 - (2) The Authority shall have the power to impose changes on the reference offer for unbundled access to the local loop and related facilities, including prices, where such changes are justified.
 - (3) The Authority may, where justified, intervene on its own initiative in order to ensure non-discrimination, fair competition, economic efficiency and maximum benefit for customers.

Chapter 5 - Dominant market players obligations

Dominant market players obligations

87. -
- (1) Dominant market players shall make publicly available information regarding interconnection, access and infrastructure share.
 - (2) In particular, dominant market players shall transmit each year before the **1** to the Authority their technical and price offers with respect to interconnection, access and infrastructure share.
 - (3) The Authority shall be entitled to require at any time the modification of these offers in order to make them compliant with this Act.
 - (4) Dominant market players shall have a separate account for interconnection, access and infrastructure share costs and fees as well as any other business activities sufficiently detailed to allow the Authority to identify all elements of revenue and costs together with the basis of their calculation.

Chapter 6 - Right of way

Access to public or private land

- 88. -** (1) A network services licensee may, for the purposes of enabling the provision of any communications service to the public need to -
- (a) enter upon any public or private land and survey the land or any portion of it; or
 - (b) enter upon any public or private land in order to construct, erect, place, maintain, examine, alter or remove any line, pole or radio link installation which is, respectively, either the property of the network licensee or is under the control of the network services licensee;
- (2) The network services licensee shall apply to the relevant authority having jurisdiction over such private and public land or property in order to request that the authority order the proposed entry or undertake the proposed acquisition under applicable land laws.

**Part V
TARIFFS**

Chapter 1- General principles

General principles

- 89. -** (1) A licensee may, for the applications services it provides to the public, set and revise such prices as it deems appropriate, unless otherwise stated in this Act.
- (2) The prices so determined by a licensee shall respect the following principles-
- (a) prices shall be transparent, based on objective criteria, and non-discriminatory;
 - (b) prices shall guarantee equal treatment;
 - (c) prices shall not contain discounts that unreasonably prejudice the competitive opportunities of other licensees providing applications services to the public and any promotion shall be submitted to the Authority for approval prior to being launched and offered to end-users; and
 - (d) prices shall be sufficiently clear to enable end-users to determine the description of the service, the details relating to the nature of the services and the applicable fees.

Chapter 2 - Notification requirement

Notification to the Authority

- 90. -** (1) A licensee shall-
- (a) notify the Authority of the prices it intends to charge to the public for each communications service, together with a detailed justification of such prices; and
 - (b) refrain from applying the prices in question until they have been notified to the Authority in accordance with subsection (2) below.
- (2) The Authority shall be entitled to carry out reviews of the prices referred to in this section to ensure that they respect the principles set forth in section 89.

Obligations of the licensee upon notification

- 91. -** A licensee shall upon notification of the tariffs by the Authority-
- (a) publish the tariffs at the licensee's own expense in at least two daily newspapers of general circulation in Malawi at least [a week] prior to their introduction; and
 - (b) provide all its communications services in accordance with the

tariffs approved by the Authority.

Public register	92.	The Authority shall maintain a register of tariffs made by the licensees which shall be open for public inspection on such terms and conditions as the Authority may determine.
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Chapter 3- Tariff framing

Definition	93. -	<ul style="list-style-type: none">(1) Framing shall be made by fixing lower and cap prices for one or several communications services and shall be imposed for several years or on a progressive term.(2) The Authority shall set forth in guidelines the formula to be applicable and the elements to be considered based on production, economic standards and cost evolution.
Tariffs framing	94. -	<ul style="list-style-type: none">(1) The Authority may reserve the right to frame the tariffs of a licensee in the event of a lack of competition in order to promote fair competition and the grant of new licences.(2) Before implementing a tariff framing, the Authority shall request the Competition Commission to advise on the suspected lack of competition in the affected market.(3) Framing shall consist in-<ul style="list-style-type: none">(a) orientating the tariffs to be cost efficient; and(b) deleting cross subvention between distinctive services.

Chapter 4 - Compliance

Investigation by the Authority	95. -	The Authority may, on its own motion or based on a claim, investigate the tariffs set up by a licensee pursuant to section 197.
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Part VI

FREQUENCY SPECTRUM MANAGEMENT AND SCARCE RESOURCES

Chapter 1- Frequency spectrum management

Powers of the Authority

96. -
- (1) The Authority shall have powers to manage and control frequencies spectrum and provide mechanisms governing allocation and assignment to persons for limited periods of time.
 - (2) The Authority shall make regulations~~...~~
 - (a) governing allocation, assignment and use of frequencies;
 - (b) governing harmful interference to other frequency spectrum licences; and
 - (c) establishing minimum performance standards of electronic equipment, appliances and devices in regard to manufacture, import, sale, shipment and use of such equipment, appliances or devices.
 - (3) The Authority shall develop and manage the national frequency allocation plan.

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National frequency allocation plan

97. -
- (1) A national frequency allocation plan developed by the Authority shall-
 - (a) be divided into such number of frequency bands as the Authority deems appropriate for the purpose of regulating communications under this Act;
 - (b) designate one or more bands to be used primarily by the Government for national security matters;
 - (c) specify the general purpose for which any other band may be used; and
 - (d) include such other matters as the Authority deems necessary to give full effect to the national frequency allocation plan.
 - (2) The Authority may revise, vary, suspend or revoke the national frequency allocation plan with prior consultation of licensees and shall issue a public notice to that effect.

Assignment

98. -
- (1) The Authority may designate the bands of frequency spectrum to be used for a frequency spectrum licence as well as the bands of frequency spectrum to be used without frequency spectrum licence.
 - (2) A person shall not undertake activities covered by a frequency spectrum licence without applying first to the Authority in the prescribed manner and form upon payment of the prescribed fee.
 - (3) In all cases not expressly covered by subsection (2), frequency shall be assigned individually by the Authority, which shall do so-
 - (a) in accordance with the national frequency allocation plan; and
 - (b) in a transparent and non-discriminatory manner,and all persons intending to undertake activities covered by a frequency spectrum licence shall, prior to undertaking such activities, apply to the Authority for such assignment.
 - (4) Where the Authority reasonably considers that such frequency band should be subject to a restricted granting procedure, the Authority shall not assign that frequency band except in accordance with a restricted granting procedure to be set forth by the Authority and in such a case, the choice of the successful applicant shall be based, as far as reasonably possible, on objective criteria made known in advance to all applicants.
 - (5) All frequency spectrum licences shall include the standard assignment

conditions set forth in guidelines to be issued by the Authority.

- (6) The Authority may, in respect of any frequency spectrum licence, determine and impose special terms and conditions including, without limitation, as regards the area for which the assignment is valid and such special terms and conditions shall be reasonable.
- (7) Where applicable, any frequency spectrum licence issued under this section shall be issued at the same time as any associated communications licence.
- (8) Licensees shall not be entitled to assign to anybody the frequency spectrum that the Authority has assigned to them.

Term - duration

99. -

- (1) Unless otherwise provided in the specific terms and conditions of the frequency spectrum licence, frequencies shall be assigned for a the same period as the one of the associated communications licence, renewable annually by decision of the Authority and thus assigned frequencies in the scope of communications services may exceed the term applicable for a licence
- (2) The right to use a frequency shall not be assigned, transferred or granted without the prior written approval of the Authority.

Assignment exemption

100. -

- (1) Notwithstanding the provisions of this Part, no assignment shall be required under this Part for the activities listed by the Authority.
- (2) In addition, notwithstanding the provisions of this Part, the Authority may publish in the Gazette, where necessary and expedient to pursue the purposes of this Act and following consultation with the [Minister](#), exempt a person or from the requirement to hold a frequency spectrum licence under this Part.

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Assignment fees

101. -

- (1) The Authority shall issue guidelines determining-
 - (a) the initial fees payable for the filing of individual assignment application forms; and
 - (b) the annual fees payable for the monitoring of the licensee's compliance with the conditions attached to the frequency spectrum licence.
- (2) The assignment fees shall reflect the actual administrative costs involved for the Authority and shall be reviewed from time to time.

Assignment renewal

102. -

- (1) Subject to such procedures and fees as may reasonably be prescribed by the Authority, a frequency spectrum licence granted under this Act may be renewed annually on application within a time period to be decided by the Authority.
- (2) The Authority shall renew a frequency spectrum licence pursuant to subsection (1), where the assignee-
 - (a) continues to fulfil the eligibility requirements set forth for communications licence applicants;
 - (b) in the Authority's opinion, continues to be financially and technically capable of meeting its statutory and regulatory obligations as well as the obligations to be set forth in the assignment concerned; and
 - (c) has not, during the current term of the assignment, committed a material breach of its provisions.

Modification, suspension and withdrawal of frequency spectrum licence

103. -

- (1) Subject to this section, and in particular the requirement to solicit and consider representations from the assignee concerned, the Authority may:
 - (a) modify the special terms and conditions of a frequency

spectrum licence;

- (b) vary the special terms and conditions of a frequency spectrum licence;
 - (c) suspend a frequency spectrum licence; and
 - (d) withdraw a frequency spectrum licence.
- (2) The Authority may exercise the powers conferred by subsection (1) where-
- (a) the holder of an assignment fails to make proper and efficient use of frequencies assigned to it;
 - (b) the holder of an assignment has failed to comply with the provisions of this Act or regulation or guidelines made under this Act or the terms and conditions of the frequency spectrum licence;
 - (c) the holder of a frequency spectrum licence has contravened the provisions of any written law relevant to the communications industry;
 - (d) the holder of a frequency spectrum licence has failed to comply with any guidelines issued, made or given by the Authority;
 - (e) the holder of a frequency spectrum licence has ceased, however briefly, to fulfil the eligibility requirements set forth for communications licence applicants; or
 - (f) the Authority is of the reasonable view that it is necessary or desirable in the public interest that it exercise such powers.
- (3) Before effecting a modification, suspension or withdrawal under this section, the Authority shall give notice to the assignee concerned-
- (a) stating that it proposes to act in the manner as specified in the notice and, as regards subsection 2(f), the compensation, if any, payable for any damage caused thereby; and
 - (b) specifying the time, not being less than **four weeks** from the date of service of the notice on such assignee, within which written representation in respect of the proposed actions may be made.
- (4) Upon receipt of any representation referred to in subsection (3), the Authority shall give due and proper consideration to such representation and may then-
- (a) reject the representation; or
 - (b) amend the proposed actions or compensation payable in accordance with the representation or otherwise;

and, in either event, it shall thereupon issue a direction in writing to such assignee requiring that, within such time as the Authority may specify, effect be given to the proposed actions specified in the notice or to such actions as subsequently amended by the Authority.

Frequency coordination

104. -

- (1) Frequency spectrum licensees shall in good faith coordinate their respective frequency usage with other licensees in order to-
- (a) avoid harmful interference among frequency spectrum licensees;
 - (b) ensure efficient use of any applicable frequency band; and
 - (c) allow the provision of cost-efficient services.
- (2) Where frequency spectrum licensees are unable or unwilling to coordinate in good faith in terms of subsection (1), the Authority shall intervene and resolve the dispute.
- (3) The Authority shall issue guidelines governing the coordination

contemplated in subsection (1) which may include a process for the resolution of disputes among frequency spectrum licensees on an expedited basis.

Enforcement powers of the Authority in case of interference

105. -
- (1) The Authority may require a person whom it has reasonable cause to believe is a person required to hold a frequency spectrum licence or other authority under this Act to produce his licence or authority.
 - (2) If authorized by a warrant issued by a magistrate court and accompanied by a police officer, the Authority may at all reasonable times enter premises which are owned or occupied by a person which the Authority has reasonable cause to believe is-
 - (a) using frequencies in contravention of this Act; or
 - (b) causing harmful interference with other communications.
 - (3) If, having entered or searched the premises, the Authority has reasonable cause to believe that an offence under this Act has been committed or is about to be committed, the Authority may -
 - (a) stop the operation of the illegal activity;
 - (b) seal the premises;
 - (c) seize the equipment which is being used for illegal purposes; or
 - (d) make any other order it deems necessary.
 - (4) The Authority may authorize in writing any other person to carry out on its behalf the functions set out in subsections (1) or (2) of this section, provided that the conditions stipulated in subsections (1) and (2) are complied with.
 - (5) Nothing in this section shall give any person a right of entry into a private dwelling house for the purpose of inspecting apparatus or equipment not designed or adapted for emission of frequencies.

Chapter 2 - Management of numbering

Powers of the Authority

106. The Authority shall regulate all electronic communication numbering and ensure efficient use by-
- (a) developing national numbering plan, allocating numbers, and monitoring compliance;
 - (b) maintaining national electronic communication numbering register for all assigned numbers.

National numbering plan

107. -
- (1) The Authority shall develop a national numbering plan for the efficient use and allocation of numbers.
 - (2) The national numbering plan shall consist of a scheme of identification so as to ensure that electronic communications are correctly and efficiently directed to the point of reception for which they are intended.
 - (3) The Authority shall maintain and manage a record of the status of all number ranges, codes and blocks of numbers comprising the national numbering plan in a central data numbering database system.
 - (4) The Authority may revise, vary or revoke the national numbering plan and shall issue a public notice to that effect.

Assignment of numbers or blocks of numbers

108. -
- (1) Numbers shall be assigned individually by the Authority, which shall do so-
 - (a) in accordance with the national numbering plan; and
 - (b) in a transparent and non-discriminatory manner,
 - (2) All persons intending to undertake activities covered by an assignment shall, prior to undertaking such activities, apply for such assignment.
 - (3) Assignments shall be issued to any person fulfilling the eligibility requirements set forth for communications licence applicants and who, in

the Authority's opinion, is financially and technically capable of meeting its legislative and regulatory obligations as well as the obligations to be set forth in the individual assignment concerned.

- (4) Where the Authority considers that such number or block thereof, should be subject to a restricted granting procedure, the Authority shall not assign that number or block thereof, except in accordance with a restricted granting procedure to be set forth by the Authority and in such a case, the choice of successful the applicant shall be based, as far as possible, on objective criteria made known in advance to the applicant.
- (5) All assignments of numbers shall include the standard assignment conditions set forth in guidelines to be issued by the Authority.
- (6) The Authority may, in respect of any assignment of numbers determine and impose special terms and conditions including, without limitation, as regards the area for which the assignment is valid and such special terms and conditions shall be reasonable.
- (7) Where applicable, any assignment shall be issued at the same time as any associated communications licence.

Rights transfer

109. A person to whom a number has been assigned shall not be permitted to transfer his rights to use such a number to any third party, whether for remuneration or otherwise, except with the prior written consent of the Authority.

Number portability

110. The Authority shall prescribe measures to ensure that number portability is introduced as soon as possible and as far as is practicably possible, including-
- (a) the creation of a national number portability database; and
 - (b) cost allocation and cost recovery among electronic communications licensees.

Chapter 3- Sim Card registration

Registration requirement

111. -
- (1) Every person who owns or intends to use detachable Sim Card or built-in Sim Card mobile telephone shall be obliged to register such Sim Card or built-in Sim Card mobile telephone.
 - (2) Any person who sells or, in any other manner provides detachable Sim Card or built-in Sim Card mobile telephone to any potential subscriber shall -
 - (a) where the potential subscriber is a natural person obtain and fill in a form which contains the following information -
 - (i) the full name of the potential subscriber;
 - (ii) identity card number or any other document which proves identity of the potential subscriber; and
 - (iii) residential and business or registered physical address which ever is applicable;
 - (b) where the potential subscriber is a legal person, obtain and fill in a form accompanied with a certified copy of -
 - (i) certificate of registration or incorporation;
 - (ii) business licence;
 - (iii) tax payer identification number certificate; and
 - (iv) where applicable the value added tax.
 - (c) obtain from the potential subscriber any other information which the person who sells or in other manner provides the detachable Sim Card or built-in Sim Card mobile telephone

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deems necessary.

- (3) Subject to the provision of subsection (2), the licensee, or the distributor, agent, dealer authorized to sell or provide the detachable Sim Card or built-in Sim Card mobile telephone by the respective licensee shall, before filling in the form, verify all the information obtained.
- (4) Subject to the provision of subsection (3), the licensee, or the distributor, agent, dealer authorized to sell or provide the detachable Sim Card or built-in Sim Card mobile telephone by the respective licensee shall retain in hard copy or electronically all photocopies of documents obtained under subsection (2).

Information

112. -
- (1) Any person desiring to own and use detachable Sim Card or built-in Sim Card mobile telephone shall before purchase thereof avail to the licensee or to the authorized distributor, agent, dealer or any person selling or distributing the detachable Sim Card or built-in Sim Card mobile telephone all the information specified under section 111.
 - (2) An authorized distributor, agent or dealer dealing with, selling or distributing the detachable Sim Card or built-in Sim Card mobile telephone shall within fifteen (15) days from the date of sale or distribution submit to the respective licensee all the information and documents obtained under section 111.
 - (3) Any change to the information required in detachable Sim Card or built-in Sim Card mobile telephone registration shall be registered with the licensee within fifteen (15) days from the date of occurrence of such change.

Sale, distribution by dealer and use by subscriber

113. -
- (1) A dealer shall not sell or distribute in any manner a detachable Sim Card or built-in Sim Card mobile telephone without prior authorization of the respective licensee.
 - (2) Every subscriber shall not use a non-registered Sim Card or built-in Sim Card mobile telephone.
 - (3) Any- subscriber or dealer selling or distributing detachable Sim Card or built-in Sim Card mobile telephone without prior authorization of respective licensee commits an offence.

Chapter 4 Type approval

Technical standards for equipment connected to a network

114. -
- (1) The Authority shall be responsible for the establishment and publication of technical standards relating to all electronic communications equipment to be used for connection to an electronic communications network in Malawi.
 - (2) In establishing such standards, the Authority shall-
 - (a) consult the Minister and shall keep him fully informed;
 - (b) where appropriate, seek submissions from other interested parties, in particular those persons likely to be most affected by the publication of such standards; and
 - (c) take due account of any relevant standards prescribed by international organisations of which Malawi is a member, such as the International Telecommunications Union.
 - (3) The Authority shall be entitled to issue any guidelines with respect to technical standards for equipment connected to a network.

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Approval of equipment connected to a network

115. -
- (1) Any equipment to be used for connection to any electronic communications network shall be approved by the Authority before use.
 - (2) Subject to applicable procedures and fees, the Authority shall, at the request of any licensee, equipment manufacturer or equipment supplier, conduct type approval tests and issue type approval certificates in respect of

electronic communications equipment intended for use in Malawi.

- (3) The Authority shall determine the types of equipment which do not require approval where the equipment has been approved for use by any other recognized international competent body and upon submission to the Authority of the proof of such prior approval.

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Part VII
POSTAL COMMUNICATIONS

Chapter 1 - Postal regulation

Powers of the Authority	116. -	<p>(1) The Authority shall be the postal regulator and shall be responsible for the implementation of the provisions of this Act regarding postal services.</p> <p>(2) The Authority shall issue guidelines describing the types of postal services in terms of their nature, form and scope, the mode of postage, technology used, service standards and attributes.</p> <p>(3) The duties of the Authority shall consist of facilitating investment and development of the postal sector in Malawi and shall in particular but not limited to-</p> <ul style="list-style-type: none"> (a) provide licenses to operators of postal and courier services; (b) promote the development of postal and courier services responding to the needs of customers; (c) ensure fair competition between different postal licensees; (d) promote universal accessible quality reliable and affordable postal and courier services; (e) regulate the main principles applicable to postage; (f) advice and resolve disputes involving postal licensees; and (g) allocate, manage and regulated addresses and postcodes.
Licensing of postal services	117. -	<p>(1) No person shall convey, deliver or distribute postal articles without a licence issued under this Act</p> <p>(2) Notwithstanding subsection (1) a person is entitled to convey, deliver or distribute personal and private postal articles without a licence, where such activity does not imply any cost. The Authority shall be in charge to issue postal licence for-</p> <ul style="list-style-type: none"> (a) conveying by post from one place to another whether by land or by sea or by air all postal articles; (b) performing all incidental services of receiving, collecting, sending, dispatching and delivering all postal articles except- <ul style="list-style-type: none"> (i) trade announcements, circulars, printed extracts from newspapers, or advertisements, not addressed to any specific person; (ii) postal articles delivered by an employee of the sender; (iii) postal articles delivered by a messenger employed by the sender especially for the purpose, not being a person employed or engaged in the course of his business or employment in delivering procuring the delivery of postal articles; and (iv) postal articles for delivery to another person or persons to whom they are directed, without hire, reward or other profit or advantage for receiving, carrying or delivering them. <p>(3) A person who operates a postal or courier service without a licence issued by the Authority shall commit an offence and shall be liable to a fine of K[●]. and to imprisonment for [●] years.</p> <p>(4) A postal licence granted under subsection (2) may be granted either to any person, class of persons or individual and may include without prejudice to the power to impose conditions conferred by</p>

that subsection and conditions requiring the payment of a fee to the Authority on the grant of the postal licence or the payment to the Authority of a periodic fees during the validity of the postal licence or to both such amounts as may be determined under the postal licence.

Categories of postal licences

118.

For the purpose of this Act, the Authority shall be entitled to issue the following categories of postal licences -

- (a) postal services licences to allow the holder thereof, which is a private commercial entity to provide postal services;
- (b) public postal licences to allow the holder thereof which is a public entity to provide postal services;
- (c) courier services licences to allow the holder thereof to provide courier services; and
- (d) any other category as the Authority may determine from time to time.

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Designated Public Postal Licensee

119. -

- (1) The Authority shall have the power to designate public postal operator to perform all or any of the functions relating to the operation and provision of the Universal Postal Services in provision of the Universal Postal Services in Malawi.
- (2) The Public Postal Licensee shall have postal exclusivity rights to issue stamps, installing private and posting letter boxes and the use of words "Post Office" "Letter box" "postage stamps" for a period to be determined by the Authority.
- (3) The Authority shall issue guidelines determining the exclusive area of the Public Postal Licensee.

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Financial services

120. -

- (1) A postal licensee may be allowed by the Authority to carry out postal financial services on its own account.
- (2) The financial services referred to in subsection (1) shall include-
 - (a) money orders, including postal orders;
 - (b) postal cheques;
 - (c) postal travellers' cheques;
 - (d) collection and payment of bills;
 - (e) provision of savings services; and
 - (f) such other financial services as the Authority, after consultation with the Minister may approve.

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Secrecy of correspondence, confidentiality and integrity of postal articles

121. -

- (1) A postal licensee shall be responsible for the inviolability of the secrecy of correspondence and for the confidentiality and integrity of postal articles.
- (2) A person carrying on postal services shall protect any postal articles and ensure that no employee of that person -
 - (a) opens a postal article;
 - (b) takes knowledge of or discloses the contents of a postal article;
 - (c) delivers a postal article in the course of transmission to a person other than the addressee, without the consent of the addressee; and
 - (d) permits a postal article to be opened by or delivered to a person other than the addressee, without the consent of the addressee, or permits anyone other than the addressee to take knowledge of or to disclose the content of a postal article.
- (3) Notwithstanding subsections (1) and (2), a postal article may legally

be opened only on exceptional circumstances expressly established under this section.

- (4) The following acts shall not constitute violations of the secrecy of correspondence or of the confidentiality and integrity of postal articles-
- (a) opening correspondence or obtaining knowledge of its contents when performed by a person residing at the same address as the addressee;
 - (b) submission of correspondence to the verification and control performed by the police service, the Authority or the Malawi Revenue Authority;
 - (c) opening of a postal article that presents signs of containing material subject to taxation;
 - (d) opening of a postal article that present signs of containing material subject to any other law prohibiting or regulating the importation or exportation of a postal article;
 - (e) opening of a postal article for purpose of ascertaining details pertaining to the sender or addressee which are necessary in order to return or deliver the postal article; or
 - (f) opening postal articles that present signs of containing material or substance whose dispatch, use, import or export or distribution is prohibited.
- (5) Any person who fails to comply with this section commits an offence and shall be liable to a fine of K.[●] and to imprisonment for [●] years.

Postal stamps and postal charges

122. -

- (1) A public postal licensee shall have postal exclusivity rights to issue postage stamps but may enter into arrangements with any person to resell those postage stamps.
- (2) A public postal licensee may, subject to such guidelines as the Authority may issue, cause postage stamps to be provided of such kinds and denoting such values as the licensee may determine for the purposes of this Act.
- (3) Any postage stamp provided under this Act shall be used for the prepayment of any postage or other sum chargeable under this Act in respect of any postal service, except where the Authority determines that prepayment may be made in some other manner.
- (4) All philatelic materials produced by the public postal licensee shall
- (a) belong to the Government and shall be kept in such custody as the Authority directs.
 - (b) for purpose of subsection (1), philatelic archival material shall include
- (i) postage stamps, (ii) artworks, proofs, progressive sheets, printed sheets and printed plates of postage stamps; or
- (iii) date-stamps, slogan dyes, and other artifacts used in connection with the production of postage stamps.
- (5) The Authority may issue guidelines as to the exemption of certain classes of persons from postal charges on postal articles and from commissions, fees or other charges payable for services rendered.
- (6) In particular and without prejudice to the generality of the power mentioned in subsection (5), such guidelines may exempt postal articles for charitable purposes from postal charges.

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Delivery of postal

123.

For the purposes of this Act, a postal article shall be deemed to be delivered if it is delivered into the private letterbox or private bag of the addressee or

article

is left at the house or office of the addressee, or with the addressee, or with his employee or agent or other person authorized to receive it and, where the addressee is a guest or is resident at a hotel, hostel or lodging of a similar nature, if it is left with the proprietor or manager thereof or with his agent.

Certificate of posting **124. -**

- (1) A postal licensee shall at the request of the sender of an unregistered postal article intended for transmission by letter box give the sender a certificate of posting of such postal article upon payment of the appropriate fee.
- (2) The certificate of posting of an article mentioned in subsection (1) shall convey no entitlement to compensation nor shall it be acceptable as proof of the nature of the contents of the postal article to which it relates.
- (3) No postal article in respect of which a certificate of posting is issued shall be returned after the issue of such certificate to the sender thereof.

Undelivered postal article **125. -**

- (1) The following provisions shall apply to any postal licensee that is unable to deliver or return to the sender after using his best efforts -
 - (a) the postal licensee shall have the right to examine the postal article for the purpose of determining from its contents the identity and address of the addressee or sender;
 - (b) the opening and examination of any postal article in terms of paragraph (a) shall be done by an employee of the postal licensee authorized in writing generally or specifically for the purpose by the postal licensee;
 - (c) if after an examination in terms of paragraph (a) the postal licensee -
 - (i) determines the identity of the address of the addressee or the sender, he shall re-seal the postal article and enclose or append a written explanation of the reasons and the authority for opening it; or
 - (ii) fails to determine the identity and the address of the addressee of the sender, he shall hold the postal article for six months after the date of the examination and, on being satisfied any time within that period that any person enquiring for it is entitled to the postal article, deliver it to that person.
 - (d) if no delivery of the postal article is made in terms of paragraph (ii) and paragraph (c) the postal licensee may -
 - (i) destroy the postal article or any of its contents; or
 - (ii) sell any of the contents of the postal article and credit the proceeds to his income;
 - (e) if the postal article is disposed of in terms of (d), the postal licensee shall make a record of the disposal and store such record together with other such records in a manner prescribed, or approved by the Authority, for a period of not less than twelve months from the date of the disposal, and the postal licensee shall make such record available for inspection by the Authority as it request.
- (2) No liability shall attach to a postal licensee in respect of any postal article dealt with in terms of subsection.

Transportation of postal articles **126. -**

- (1) Any postal licensee is entitled to enter into a contract with any person providing a regular public transport service within Malawi for the purpose of carrying mail between any places connected by

that postal or courier service.

- (2) The terms under which any person may carry mail pursuant to subsection (1) shall be normal commercial terms and shall be determined by agreement between the parties or, in the absence of agreement, by the Authority.

Prohibition of transmission by post

127.

No person shall send by post -

- (a) any explosive, inflammable, dangerous, filthy, noxious or deleterious substance, any sharp instrument not properly protected, or any living creature which is either noxious or likely to injure any person or any postal article in course of transmission by post;
- (b) any indecent or obscene printing, painting, photograph, lithograph, engraving, book or card or any other indecent or obscene article;
- (c) any postal article having thereon, or on the cover thereof, any words, marks or designs of any indecent, obscene, seditious, scurrilous, threatening or grossly offensive character;
- (d) any postal article bearing any fictitious stamp or purporting to be prepaid with any postage stamp which has previously been used to prepay any other postal article or which has been previously used in payment of any stamp duty; or
- (e) any other article which the Authority may prohibit under any of its guidelines made under this Act.

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Obligation of the licensee to inform the Authority

128. -

- (1) Where a postal article sent by post is reasonably suspected by a licensee to be sent in contravention of this Act, any guidelines made hereunder or any other written law, the licensee shall immediately inform and hand over such postal article to the Authority or any enforcement officer.
- (2) Where a postal article opened or examined under this Act or any other written law is found to be in contravention or to have been posted in contravention of this Act, the Authority or enforcement officer may direct that the postal article be returned to the sender or forwarded to the destination, in each case charged with such additional postage, as the Authority may prescribe.
- (3) Any postal article found to be in contravention or to have been posted in contravention of this Act may under the directions of the Authority or enforcement officer be forfeited and destroyed.
- (4) The detention, destruction or disposal of a postal article or its enclosures under this Act shall not relieve any person from liability for any offence under this Act or any other written law.

Postal licensee liability for losing or damaging

129. -

- (1) A postal licensee shall be responsible for correspondences and postal items entrusted to it and shall pay compensation to customers for losing, misplacing, delivery or failing to guarantee the integrity of postal articles in the form and amount specified by the Authority.
- (2) A postal licensee shall communicate to the Authority its respective compensation policies in case of loss or damage of postal articles.
- (3) No compensation shall be paid by a postal licensee where-
 - (a) the postal article is prohibited under this Act or under any regulations made under this Act;
 - (b) in the case of an insured article-
 - (i) the article has been insured for in excess of its value; and
 - (ii) any false statement in relation thereto has been made by the sender or addressee for such article; and
 - (c) the addressee thereof has signed and returned the receipt thereof without objection.
- (4) Any postal customer who has a postal article lost, misplaced,

delivered with delay, spoiled or damaged shall apply to the postal licensee for compensation.

- (5) Where the postal licensee fails to comply with the request for compensation, the postal customer may complain to the Authority.

Chapter 2- The Malawi Posts Corporation

Designation of public postal licensee	130. -	<p>(1) The Malawi Posts Corporation shall be designated by the Authority as a public postal licensee to provide postal service to customers.</p> <p>(2) The Malawi Posts Corporation shall be deemed to be licensed by the Authority under this Act.</p> <p>(3) The licence to be issued to the Malawi Posts Corporation shall set targets and prescribe, among others, the practices that shall ensure the achievement of universal access service obligations.</p>
Duties of the Malawi Posts Corporation	131. -	<p>(1) It shall be the general duty of the Malawi Posts Corporation to provide all reasonable facilities for the transmission of postal articles throughout Malawi and between Malawi and other countries.</p> <p>(2) It shall be the duty of the Malawi Posts Corporation to conduct its affairs according to commercial principles.</p> <p>(3) It shall be the exclusive duty of the Malawi Posts Corporation to make and sell postage stamps.</p>
Powers and Functions of the Malawi Posts Corporation	132. -	<p>(1) The Malawi Posts Corporation shall have power to-</p> <ol style="list-style-type: none"> provide postal services and to perform other services incidental to transmission of postal articles; establish and operate post offices; and (subject to the Financial Services Act,) provide financial services. <p>(2) Subject to the provisions of this Act, powers conferred on the Malawi Posts Corporation by subsection (1) shall include powers to-</p> <ol style="list-style-type: none"> enter into such contracts as may be necessary for carrying out the purposes of the Malawi Posts Corporation; construct, acquire, maintain and repair buildings and premises and to carry out works required for the purposes of the Malawi Posts Corporation; acquire, manufacture, maintain and repair equipment and facilities required for the purposes of the Malawi Posts Corporation; levy rates and charges for any service performed by the Malawi Posts Corporation or for the use by any person of the premises, equipment or facilities provided by the Malawi Posts Corporation; and represent Malawi in matters relating to the Universal Postal Union, the Pan African Postal Union and such other international organisations as the Authority or the Minister may designate.
Board of Directors of the Malawi Posts Corporation	133. -	<p>(1) There shall be a Board of Directors of the Malawi Posts Corporation which shall direct the operations of the Malawi Posts Corporation.</p> <p>(2) The Board of the Malawi Posts Corporation shall consist of the following seven members-</p> <ol style="list-style-type: none"> a Chairperson appointed by the President and confirmed by the Public Appointments Committee; one member, not being a public officer or an employee of the Malawi Posts Corporation, appointed by the Minister on account

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- of his knowledge and experience in matters of postal administration or postal services;
- (c) the Principal Secretary responsible for posts, ex- officio;
 - (d) the Secretary to the Treasury, ex-officio; and
 - (e) three other members, not being public officers or employees of the Malawi Posts Corporation, appointed by the President by virtue of their knowledge and experience in matters of law, commerce, industry, finance, and public administration.
- (3) A member of the Board of the Malawi Posts Corporation, other than a member ex officio-
- (a) shall hold office for a period of **[two years]** from the date of his appointment;
 - (b) may hold office for a maximum of **[two terms]**; and
 - (c) may resign his office by notice in writing to the Minister.

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Vacation of Office

134. -

- (1) The office of a member of the Board of the Malawi Posts Corporation (in this Part referred to as the "Board"), other than a member ex- officio, shall become vacant-
- (a) if he resigns;
 - (b) upon his death;
 - (c) if he becomes bankrupt;
 - (d) if he is convicted of an offence punishable by imprisonment for more than twelve months;
 - (e) if he is absent, without the consent in writing of the Chairperson or without valid excuse, from three consecutive meetings of the Board of which he has had notice;
 - (f) upon the expiry of his term of office;
 - (g) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Board; or
 - (h) if any circumstances arise that, if he were not a member of the Board, would cause that member to be disqualified as a member of the Board.
- (2) A vacancy in the Board of a member other than a member ex-officio shall be filled by the appointment of another member in accordance with section 133 as soon as may be reasonably practicable after the occurrence of the vacancy and the member so appointed shall hold office for the unexpired period of his predecessor's term of office.

Remuneration of Members

135. -

A member of the Board shall be paid from the funds of the Malawi Posts Corporation such remuneration, allowances and other benefits as the Minister may, from time to time, prescribe.

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Meetings of the Board

136. -

- (1) The Board shall meet for the transaction of business at least **[once every three months]** at such places and times as the Chairperson may determine.
- (2) The Chairperson shall convene meetings of the Board by giving the members at least seven days written notice unless the Chairperson notifies the members of the Board in writing that the urgency of the matter to be discussed requires a shorter period of notice.
- (3) The quorum for any meeting of the Board shall be a majority of the total number of members.
- (4) A decision of the Board at any meeting shall be that of the majority of the members present at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

		(5) No member of the Board shall attend a meeting of the Board by representation.
		(6) Subject to this Act, the Board shall have power to determine its own rules of procedure.
Committees of the Board	137. -	<p>(1) The Board may establish one or more committees and delegate to any such committee or committees any of its functions as it considers necessary.</p> <p>(2) The Board may invite any person to attend any of the meetings of its committees and that person shall be entitled to participate in the deliberations of the meetings but shall not have the right to vote.</p> <p>(3) The Chairperson of every committee of the Board shall be a person who is a member of the Board.</p> <p>(4) Members of a committee shall be paid from the funds of the Malawi Posts Corporation such allowances as the Board may determine.</p> <p>(5) Subject to the general or special directions of the Board and to the provisions of this Act, every committee of the Board shall have power to determine its own rules of procedure.</p>
Postmaster General	138. -	<p>(1) There shall be a Postmaster General who shall be appointed by the Minister on the recommendation of the Board of the Malawi Posts Corporation.</p> <p>(2) The Postmaster General shall be appointed based on experience and capacity in matters relating to industry, finance, economics, accountancy, commerce, law and postal administration.</p> <p>(3) The terms and conditions of service of the Postmaster General shall be determined by the Board of the Malawi Posts Corporation and shall be specified in the letter of appointment of the Postmaster General.</p> <p>(4) The Postmaster General shall be the chief executive officer of the Malawi Posts Corporation and, subject to the general supervision and control of the Board of the Malawi Posts Corporation, shall be responsible for-</p> <ol style="list-style-type: none"> the day to day operations of the Malawi Posts Corporation; the management of funds, property and affairs of the Malawi Posts Corporation; the administration, organization and control of the staff of the Malawi Posts Corporation; and any other functions that the Board may assign to the Postmaster General. <p>(5) The Postmaster General shall attend meetings of the Board and of any committees of the Board, and may address such meetings but shall not vote on any matter;</p> <p>Provided that the person presiding at any meeting may, for good cause, require the Postmaster General to withdraw from such meeting.</p>
Other Staff of the Malawi Posts Corporation	139. -	<p>(1) The Board of the Malawi Posts Corporation may appoint such other staff, subordinate to the Postmaster General, as the Board considers necessary for the discharge of the functions of the Malawi Posts Corporation under this Act.</p> <p>(2) The Postmaster General shall have the power to appoint staff of such junior rank as the Board of the Malawi Posts Corporation may specify.</p> <p>(3) The Board of the Malawi Posts Corporation may pay to the persons employed by the Malawi Posts Corporation such remuneration, allowances, pensions, gratuities and other employment benefits as the Board may, after having obtained professional advice as it may deem</p>

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fit, consider as being competitive in the employment market in Malawi.

**Financing of the
Malawi Posts
Corporation**

140. -

- (1) The funds of the Malawi Posts Corporation shall consist of-
 - (a) such sums as may be appropriated by Parliament for the purposes of the Malawi Posts Corporation; such moneys or other assets as may accrue to or vest in the Malawi Posts Corporation by way of grants, subsidies, donations, bequests, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;
 - (b) such sums as are derived from the sale of any property by or on behalf of the Malawi Posts Corporation; and
 - (c) such sums as the Malawi Posts Corporation may charge in respect of its services.
- (2) The Malawi Posts Corporation may, subject to any directions which may be given to the Board by the Minister of Finance, invest such part of its funds as are not for the time being required for the purposes of its operations.
- (3) The Malawi Posts Corporation may borrow money for the purposes of the Malawi Posts Corporation-
 - (a) by the issue of loan stock on such terms as may be approved by the Minister of Finance;
 - (b) by way of overdraft or credits in Malawi or abroad with the approval of, and subject to such limitations as may be imposed by, the Minister of Finance.

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Account and Audit

141. -

- (1) The Malawi Posts Corporation shall keep proper books of accounts and other records relating to its accounts.
- (2) The accounts of the Malawi Posts Corporation shall-
 - (a) be audited annually by independent auditors appointed by the Board of the Malawi Posts Corporation; and
 - (b) be presented to the Minister.
- (3) The financial year of the Malawi Posts Corporation shall be in line with the Government's financial year, unless otherwise directed by the Minister of Finance.

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Annual Report

142. -

- (1) As soon as practicable, but not later than six months after the expiry of each financial year, the Malawi Posts Corporation shall publish in the Gazette and submit to the Minister a report concerning its activities during that financial year.
- (2) The report referred to in subsection (1) shall be in such form as the Minister, after consultation with the Authority, shall approve and shall include information on the financial affairs of the Malawi Posts Corporation, and there shall be appended to the report-
 - (a) an audited balance sheet;
 - (b) an audited statement of income and expenditure; and
 - (c) such other information as the Minister may direct.

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**Exemption from
liability of the
Malawi Posts
Corporation**

143. -

- (1) Save in so far as it is otherwise provided in its licence or in regulations made under this Act, the Malawi Posts Corporation shall not incur any liability-
 - (a) by reason of the loss, misdelivery or delay of, or damage to, any postal article in the course of transmission by post outside its scope of control; or
 - (b) by reason of the detention or disposal of any postal article in accordance with the provisions of this Act.

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

Part VIII

BROADCASTING SERVICES

Chapter 1- Broadcasting Regulation

Powers of the Authority	144. -	<p>(1) The Authority shall be the broadcasting regulator and shall be responsible for the implementation of the provisions of this Act regarding broadcasting services.</p> <p>(2) The Authority shall issue guidelines describing the types of broadcasting services in terms of their nature, form and scope, service standards and attributes.</p> <p>(3) The duties of the Authority consist of facilitating investment and development of the broadcasting sector in Malawi and shall be, in particular but not limited to-</p> <ul style="list-style-type: none">(a) providing licences to operators of broadcasting services;(b) promoting the development of broadcasting services responding to the needs of the customers;(c) ensuring fair competition between the different broadcasting licensees;(d) promoting universal accessible and quality reliable and affordable broadcasting services;(e) regulating the main principles applicable to broadcasting; and(f) advising and resolving disputes involving broadcasting licensees.
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Chapter 2 - Licensing of broadcasting services

Licensing of broadcasting services	145.	No person shall provide broadcasting services without a content licence issued by the Authority under this Act.
Terms and conditions of content licences	146. -	<p>(1) All content licensees shall comply with this Act, and the applicable, regulations and guidelines made under this Act and their licences.</p> <p>(2) A content licence issued by the Authority-</p> <ul style="list-style-type: none">(a) shall be issued on payment by the applicant of the prescribed licence fee; and(b) shall specify the broadcasting services that may be provided and the coverage area. <p>(3) A content licence may only be issued on such terms and subject to such conditions as are consistent with the principles stated in this Act.</p>
Categories of content licences	147.	<p>For the purpose of this Act, the Authority shall be entitled to issue the following categories of content licences -</p> <ul style="list-style-type: none">(a) <u>public content licences to allow the holder thereof which is a public entity to provide broadcasting services;</u>(b) <u>commercial content licences to allow the holder thereof to provide commercial broadcasting services;</u>(c) <u>community content licences to allow the holder thereof to</u>

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provide community broadcasting services: and

- (d) ~~any other category as the Authority may determine from time to time.~~

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Public content
licences 148. -

- (1) The Authority shall have the power to designate one or several public content licensees to perform all or any of the functions relating to the operation and provision of public broadcasting services in Malawi.
- (2) In considering the grant of a new public content licence, the Authority shall, in due regard to the objects and principles enunciated in Part III of this Act, among others, take into account the following-
 - (a) the demand for the proposed broadcasting service within the proposed licence area;
 - (b) the need for the proposed broadcasting service within such area, having regard to broadcasting services already existing in that area; and
 - (c) the technical quality of the proposed broadcasting service in regard to developments in broadcasting technology.

Commercial content
licences 149.

In considering the granting of a commercial content licence, the Authority shall, with due regard to the objects and principles enunciated in Part III of this Act among others, take into account the following-

- (a) the demand for the proposed broadcasting service within the proposed licence area;
- (b) the need for the proposed broadcasting service within such licence area having regard to the broadcasting services already existing in that area;
- (c) the expected technical quality of the proposed broadcasting service, having regard to developments in broadcasting technology;
- (d) the capability, expertise and experience of the applicant;
- (e) the financial means and business record of the applicant;
- (f) the business record of persons in a position to control the operations of the licensee, either in an individual capacity or directly or indirectly in relation to management or corporate structure; and
- (g) whether either the applicant or persons referred to in paragraph (f) above have been convicted of an offence under this Act or regulations or guidelines made hereunder.

Community content
licences 150.

In considering the grant of a community content licence, the Authority shall, with due regard to the objects and principles enunciated in Part III of this Act, among others take into account the following-

- (a) the applicant is fully controlled by a non-profit entity and is carried on or is to be carried on for non-profit purposes;
- (b) the applicant intends to serve the interests of the relevant community;
- (c) as regards the provision of the proposed broadcasting service, the applicant has the support of the relevant community or those associated with or promoting the interests of such community, which support shall be measured according to such criteria as the Authority may prescribe;
- (d) the applicant intends to encourage members of the relevant community or those associated with or promoting the interests of such community to participate in the selection and provision of programs to be broadcast in the course of such broadcasting services;
- (e) the applicant has never been convicted of an offence under this

Act or regulations or guidelines made hereunder;

- (f) the expected technical quality of the proposed broadcasting service, having regard to developments in broadcasting technology;
- (g) the capability, expertise and experience of the applicant;
- (h) the financial means and business record of the applicant; and
- (i) any other condition deemed necessary.

Prohibition

151.

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

Limitation on control of commercial broadcasting services

152. -

- (1) A foreigner may not, whether directly or indirectly-
 - (a) exercise control over a commercial content licensee; or
 - (b) have a financial interest or an interest either in voting shares or paid up capital in a commercial content licensee, exceeding [twenty] percent.
- (2) Not more than [twenty] percent of the directors of a commercial content licensee may be foreigners.
- (3) No person may-
 - (a) directly or indirectly exercise control over more than one commercial content licence in the television broadcasting service; or
 - (b) be a director of a company which is of two or more companies which between them are in a position to exercise control over more than one commercial content licence in the television broadcasting service; or
 - (c) be in a position to exercise control over a commercial content licence in the television broadcasting service and be a director of any company which is in a position to exercise control over any other commercial content licence in the television broadcasting service.
- (4) No person may-
 - (a) be in a position to exercise control over more than two commercial content licences in the sound broadcasting service; or
 - (b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than two commercial content licences in the sound broadcasting service; or
 - (c) be in a position to exercise control over two commercial content licences in the sound broadcasting service.
- (5) A person referred to in subsection (4) shall not be in a position to control two commercial content licence in the sound broadcasting service, which either have the same licence areas or substantially overlapping licence areas.
- (6) The Authority may, on application by any person, on good cause being shown, exempt such person from the provision of this section.

Limitations on cross-media control

153. -

- (1) Cross-media control of broadcasting services shall be subject to such limitations as may from time to time be determined by Parliament acting on the recommendation of the Authority..
- (2) No commercial content licensee or person applying to a commercial content licence is entitled to acquire or retain financial control of a newspaper.
- (3) No person who is in a position to control a newspaper may be in a

		<p>position to control a commercial content licence, either in the television broadcasting service or sound broadcasting service, in an area where the newspaper has an average circulation of [twenty] percent of the total newspaper readership in the area, if the licence area of the commercial content licence overlaps substantially with the said circulation area of the newspaper.</p> <p>(4) A [twenty] percent shareholding in a commercial content licence, in either the television broadcasting service or sound broadcasting service, shall be considered as constituting control.</p> <p>(5) The Authority may, on application by any person, on good cause being shown, exempt such person from the provision of this section.</p>	
Television licence	154. -	<p>(1) The Authority may require that all persons who have in their possession equipment capable of receiving broadcast television programmes obtain each year a television licence to operate the equipment.</p> <p>(2) A television licence shall be available without any condition to any person who pays the prescribed fee.</p> <p>(3) The net proceeds from the issuing of television licences shall be used exclusively for the purpose of financing public television broadcasting services.</p> <p>(4) The public television content licensee shall collect the fees and account for the proceeds to the Authority.</p> <p>(5) The public television content licensee is entitled to enter into commercial agreement with any other entity for the purpose of collecting the fees mentioned in subsection (4).</p> <p>(6) Any person who holds an equipment capable of receiving broadcast television programmes without a television licence commits an offence and shall be liable to upon conviction to a fine of K [●] and to imprisonment for [●] years.</p>	Deleted: Parliament
Guidelines and rules	155. -	<p>(1) The Authority shall, as soon as reasonably possible after the coming into force of this Act and subject to this Act, make guidelines for content licensees.</p> <p>(2) All content licensees shall comply with such guidelines.</p>	Deleted: ,
Restriction on subscription broadcasting services	156. -	<p>(1) Subscription broadcasting services may not acquire exclusive rights that prevent or hinder the free-to-air broadcasting of national sporting events, as identified in the public interest from time to time by the Authority after consultation with the Authority and in accordance with the guidelines made by the Authority.</p> <p>(2) The Authority shall make guidelines regarding the extent to which subscription broadcasting services shall carry, subject to commercially negotiable terms, the television programs provided by a public broadcasting service licensee.</p> <p>(3) Subscription broadcasting services may draw their revenues from subscriptions, advertising and sponsorship, however, in no event may advertising or sponsorship, or a combination thereof, be the largest source of annual revenue.</p>	Deleted: ,
Chapter 3 - Content regulation			
Control of the programs by the Authority	157. -	<p>(1) A content licensee shall, on demand by the Authority, produce to the Authority any recording of every program broadcast in the course of its broadcasting service for examination or reproduction, within [sixty days] from the date of broadcast.</p> <p>(2) Nothing in this Act may be construed as requiring or authorizing the Authority, in the performance of its functions, to view programs prior to their being broadcast.</p>	

Third Schedule

158.

In addition to the provisions of this Act the Third Schedule shall apply to the content licensees with respect to the matter specified in that Schedule.

Chapter 4 - The Malawi Broadcasting Corporation

**The Malawi
Broadcasting
Corporation**

159. -

- (1) The Malawi Broadcasting Corporation shall be designated by the Authority as a public sound and television broadcasting services licensee in Malawi.
- (2) The Malawi Broadcasting Corporation shall-
 - (a) be an independent body corporate with perpetual succession and a common seal;
 - (b) be capable of suing and being sued in its corporate name;
 - (c) be capable of acquiring and disposing of any moveable or immovable property; and
 - (d) subject to this Act, have power to do or perform all such acts or things as bodies corporate may by law do or perform.

**Public service
obligations of the
Malawi
Broadcasting
Corporation**

160. -

- (1) The Malawi Broadcasting Corporation shall provide public broadcasting services in accordance with the following principles-
 - (a) the provision of programs which educate, entertain and inform;
 - (b) the encouragement of free and informed opinion on all matters of public interest;
 - (c) the need to reflect the wide diversity of Malawi's cultural life; and
 - (d) respect for human rights, the regulations of law and the Constitution of Malawi.
- (2) The Malawi Broadcasting Corporation shall, in the provision of its broadcasting services-
 - (a) function without any political bias and independently of any person or body of persons;
 - (b) support the democratic process;
 - (c) refrain from broadcasting any matter expressing its opinion or the opinion of its Board or management on current affairs or on matters of public policy, other than broadcasting matters;
 - (d) provide balanced coverage of any elections; and
 - (e) have regard to the public interest.

**Powers and
functions of the
Malawi
Broadcasting
Corporation**

161. -

- (1) The Malawi Broadcasting Corporation shall have power to-
 - (a) provide public broadcasting services throughout Malawi;
 - (b) carry on such undertakings and provide such other services as are conducive to the exercise of the functions and fulfilment of the service obligations specified in this Act or are ordinarily within the functions of a public broadcasting service.
- (2) Subject to the provisions of this Act, the powers conferred on the Malawi Broadcasting Corporation by subsection (1) shall include the power to-
 - (a) enter into contracts that may be necessary for carrying out the purposes of the Malawi Broadcasting Corporation;
 - (b) construct, acquire, maintain and repair buildings and premises and to carry out works required for the purposes of the Malawi Broadcasting Corporation;
 - (c) acquire, maintain and repair radio equipment and other facilities required for the purposes of the Malawi Broadcasting Corporation;
 - (d) arrange for the broadcasting of paid advertisements and

sponsored programmes; and

(e) collect television licence fees payable under the Act.

(3) Subject to the Public Finance Management Act, the Malawi Broadcasting Corporation may borrow money for the purposes of the Malawi Broadcasting Corporation -

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

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

**Board of Directors
of the Malawi
Broadcasting
Corporation**

162. -

(1) There shall be a Board of Directors of the Malawi Broadcasting Corporation which shall be the body solely responsible for directing the affairs of the Malawi Broadcasting Corporation.

(2) The Board of the Malawi Broadcasting Corporation shall consist of the following eight members-

(a) one representative of [to be completed];

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(b) one representative of [to be completed];

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(c) one representative of [to be completed];

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(d) one representative of [to be completed];

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(e) one representative of [to be completed];

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(f) one representative of [to be completed];

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(g) one representative of [to be completed]; and

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(h) the Secretary for Information who shall be a member ex- officio.

(3) The Board shall appoint one of its members as Chairperson at its first meeting.

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(4) In the event of the Chairperson being absent for a period of more than [thirty days], the Board may authorize one of the other members to exercise the powers and perform the duties and functions of the Chairperson.

**Appointment of
members of the
Board of the Malawi
Broadcasting
Corporation**

163. -

(1) The President shall on receiving the names of the proposed representatives under section 162 consider the nomination subject to confirmation by the Public Appointments Committee.

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(2) Provided that where the President rejects any proposed representative, the President shall direct the organisation or institution which proposed the representative to avail the President with the name of another representative.

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(3) Members of the Board of the Malawi Broadcasting Corporation appointed under this section shall be persons who-

(a) are citizens of, and resident in, Malawi;

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

(1) No person shall qualify to be appointed under this section who-

(a) has in the preceding three years, been sentenced to a term of imprisonment of more than six months for an offence involving fraud or dishonesty;

(b) is an undischarged bankrupt;

(c) is a member of Parliament;

(d) is a Minister or Deputy Minister; or

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		(e) is a member of a committee of a political party at district, regional or national level.
Tenure of office and vacancies	164. -	<p>(1) A member of the Board of the Malawi Broadcasting Corporation, in this part hereinafter referred to as the "Board", shall hold office for a period of [two years] and shall be eligible for re-appointment for [two] further mandates, but the office of that member shall become vacant-</p> <p>(a) if he resigns;</p> <p>(b) upon his death;</p> <p>(c) if he becomes bankrupt;</p> <p>(d) if he is convicted of an offence punishable by imprisonment of more than twelve months;</p> <p>(e) if he is absent, without the consent in writing of the Chairperson or without valid excuse, from three consecutive meetings of which he has had notice;</p> <p>(f) upon the expiry of his term of office;</p> <p>(g) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Board; and</p> <p>(h) if any circumstances arise that, if he were not a member of the Board,, would cause that member to be disqualified for appointment as a member of the Board.</p> <p>(2) A member of the Board shall not be removed from office except after due inquiry, and then only upon a decision in accordance with subsection, (1) by the appointing authority.</p> <p>(3) A vacancy in the Board shall be filled by the appointment of another member in accordance with section 163 and any member so appointed shall hold office for the remaining period of his predecessor's term of office.</p>
Remuneration of members	165.	A member of the Board shall be paid from the funds of the Board such remuneration, allowances or other benefits as the Authority may from time to time approve.
Meetings of the Board	166. -	<p>(1) The Board shall meet for the transaction of the business of the Board at least once every three months at such places and times as the Chairperson may determine.</p> <p>(2) The Chairperson shall convene meetings of the Board by giving the members at least [seven days] written notice unless the Chairperson notifies the members of the Board in writing that the urgency of the matter to be discussed requires a shorter period of notice.</p> <p>(3) The quorum for any meeting of the Board shall be a majority of the total number of members.</p> <p>(4) The Chairperson shall preside at any meeting of the Board and, in his absence, the members present shall elect one of their number to preside at the meeting.</p> <p>(5) A decision of the Board at any meeting shall be that of the majority of the members present at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.</p> <p>(6) No member of the Board shall attend a meeting of the Board by representation.</p> <p>(7) Subject to this Act, the Board shall have power to determine its own rules of procedure.</p>
Committees of the Board	167. -	(1) The Board may establish one or more committees and delegate to any such committee or committees such of its functions as it considers

necessary.

- (2) The Board may invite any person to attend any of the meetings of its committees and that person shall be entitled to participate in the deliberations of the meetings but shall not have the right to vote.
- (3) The Chairperson of every committee shall be a person who is a member of the Board.
- (4) Any member of a committee may be paid from the funds of the the Malawi Broadcasting Corporation such allowances as the Board may determine.
- (5) Subject to the general or special directions of the Board and to the provisions of this Act, every committee of the Board shall have power to determine its rules of own procedure.

**Director General
and other employees
of the Malawi
Broadcasting
Corporation**

168. -

- (1) The Board of the Malawi Broadcasting Corporation shall appoint a Director General, who shall be the chief executive officer of the Malawi Broadcasting Corporation and, subject to the general supervision and control of the Board, shall be responsible for -
 - (a) the day to day operations of the Malawi Broadcasting Corporation;
 - (b) the management of funds, property and activities of the Malawi Broadcasting Corporation;
 - (c) the administration, organisation and control of the staff of the Malawi Broadcasting Corporation.
- (2) The Director General, or in his absence, such other employee of the Malawi Broadcasting Corporation as he may designate, shall attend meetings of the Board and of any committees of the Board and may address such meetings but shall not vote, on any matter. Provided that the person presiding at any meeting may, for good cause, require the Director General or such other officer to withdraw from such meeting.
- (3) The Board of the Malawi Broadcasting Corporation may appoint such other employees, subordinate to the Director General, as the Board deems necessary for the discharge of its functions under this Act.
- (4) The Director General shall have the power to appoint employees of such junior ranks as the Board of the Malawi Broadcasting Corporation may specify.
- (5) The Board of the Malawi Broadcasting Corporation may pay to the persons in its employ, or provide them with, such remuneration, allowances, pensions, gratuities and other employment benefit as the Board may, after having obtained such professional advice as it may deem fit, consider as being competitive in the employment market in Malawi.

**Financial duty of
the Malawi
Broadcasting
Corporation**

169. -

- (6) The Malawi Broadcasting Corporation shall discharge its duties on a commercial basis.
- (7) The funds of the Malawi Broadcasting Corporation shall consist of-
 - (d) such sums as may, from time to time, be payable to the Malawi Broadcasting Corporation from the moneys appropriated by Parliament for the purposes of the Malawi Broadcasting Corporation;
 - (e) such moneys or other assets as may accrue to or vest in the Malawi Broadcasting Corporation by way of grants, subsidies, donations, bequests, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;
 - (f) such sums as are derived from the sale of any property by or on behalf of the Malawi Broadcasting Corporation;
 - (g) fees and charges payable under this Act; and
 - (h) any fees and charges as the Malawi Broadcasting Corporation may raise in respect of commercial advertising, sponsored programmes

and other services.

- (8) The Malawi Broadcasting Corporation may, subject to any directions of a general nature which may be given to the Board by the Minister responsible of Finance, invest part of its funds that are not for the time being required for the purposes of its operations.

Account and Audit

170. -

- (1) The Malawi Broadcasting Corporation shall keep proper books and other records relating to its accounts.
- (2) The accounts of the Malawi Broadcasting Corporation shall-
- (a) be audited annually by independent auditors appointed by the Board of the Malawi Broadcasting Corporation; and
- (b) be examined by the Auditor General before being presented to the Minister.
- (3) The financial year of the Malawi Broadcasting Corporation shall be in line with the financial year of the Government.
- (4) The Minister may, by order published in the Gazette, prescribe a different date for the ending of the financial year of the Malawi Broadcasting Corporation.

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Annual reports

171. -

- (1) As soon as practicable, but not later than **six months** after the expiry of each financial year, the Malawi Broadcasting Corporation shall publish and submit to the Minister a report concerning its activities during that financial year.
- (2) The report referred to in subsection (1) shall be in such form as the Minister, after consultation with the Authority, shall approve and shall include information on the financial affairs of the Malawi Broadcasting Corporation and there shall be appended to the report-
- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) other information that the Minister may direct.

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Part IX

CONSUMER PROTECTION

General principle	172. -	(1) The Authority shall protect the interests of consumers, purchasers and other users of communications services in respect of the prices charges, the quality and variety of services provided and terminal equipment supplied.
Quality of service	173. -	(2) All service providers shall, in respect of their specific services and in accordance with the guidelines issued by the Authority under this Act - (a) meet such minimum standards of quality of service as the Authority may specify and publish; (b) deal reasonably with consumers; and (c) address consumer complaints (3) A person who contravenes paragraph (a) of subsection (1) commits an offence and shall be liable upon conviction to a fine of K [●] and to a term for [●] years.
Code of conduct	174. -	(1) The Authority shall prepare a code of conduct for licensees. (2) The code of conduct referred to under subsection (1) shall include the following: (a) the provision of information to consumers regarding services, rates and performance; (b) the provisioning and fault repair of services; (c) the advertising or representation of services; (d) the provision of, and access to, network services by persons with disabilities; (e) consumer charging, billing, collection and credit practices; and (f) any other matter relating to the provision of services under this Act. (3) The Authority shall publish the code of conduct in the Gazette. The code of conduct shall be effective from the date of its publication.
Equal treatment towards consumers	175. -	(1) Licensees shall treat consumers in an equal, non discriminatory and fair manner. In particular, licensees shall comply with these principles paying special attention to- (a) tariffs and rebates; (b) access conditions; and (c) quality, availability and reliability of the services. (2) Licensees shall provide to consumers on demand a detailed invoice regarding the communications services provided.
Bundled sales	176. -	(1) Licensees shall not require as a prerequisite for the provision of a communications service that the consumer - (a) subscribes to an additional service provided by the licensee; and (b) purchases a terminal equipment provided by the licensee. (2) On demand from a consumer, licensees shall unblock any terminal equipment no later than twelve months after the date of purchase.

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Part X

UNIVERSAL ACCESS AND UNIVERSAL SERVICES

Chapter 1 - Definition and scope of the universal service

Universal Access	177.	Universal access consists of promoting the widespread access, availability and usage of electronic communications networks and communications services throughout Malawi by encouraging the installation of electronic communications networks and the provision of communications services in Malawi.
Universal service	178. -	<p>(1) Universal service includes access to minimum communications services, of a minimum quality offered to the population of Malawi, in spite of its geographic localization and based on affordable tariffs conditions and without distortion of competition.</p> <p>(2) Universal service shall be composed of-</p> <ul style="list-style-type: none">(a) access to the public fixed line telephone network;(b) access to the internet;(c) public payphone;(d) the printed or electronic telephone directory, under a format duly approved by the Authority;(e) directory services;(f) emergency services remaining accessible on a free basis;(g) access to postal services;(h) access to broadcasting services;(i) any other services that the Authority may include, subject to the Minister's prior written approval. <p>(3) The Authority shall establish the obligations to be respected in terms of universal services implementation.</p>
Duties of the Authority	179. -	<p>(1) The Authority shall define the expected components of universal services and the remote areas which are un-served or under-served areas and communities and the Authority shall consider-</p> <ul style="list-style-type: none">(a) the level of competition in particular areas or communities;(b) the availability of services in particular areas or communities;(c) the absence of infrastructure coverage;(d) any barriers to the use of available services; and(e) the commercial viability of network facilities of communications services in particular areas or communities. <p>(2) The Authority shall ensure the implementation of universal service as the minimum set of services of specified quality to which end-users have access at an affordable price in the light of specific national conditions in Malawi.</p>

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Chapter 2 - the Universal Access Department

Universal Access Department	180. -	There is hereby established a Universal Access Department within the Authority.
Powers of the Universal Access	181. -	(1) The Universal Access Department shall be mandated to manage and administrate a universal service fund which shall be used for the

Department

financing of universal access and service.

- (2) The service fund shall become operational not later than [●] months after the coming into force of this Act.
- (3) In addition, the Universal Access Department shall be in charge of-
 - (a) setting forth the operations to be undertaken to ensure universal services;
 - (b) proposing annual and multi-annual universal access programs and budgets, as well as activity plans to be submitted to the Universal Access Fund Consultative Committee;
 - (c) defining, planning, coordinating the implementation and monitoring of the universal access and universal service; and
 - (d) designating one or several licensees in charge of the universal service or components of the universal service.

Chapter 3 - The Universal Access Fund Consultative Committee

Composition of the Universal Access Fund Consultative Committee

182. -

- (1) There is hereby established a Universal Access Fund Consultative Committee within the Authority.
- (2) The Universal Access Fund Consultative Committee shall consist of-
 - (a) One representative of each licensee which is a contributor the universal service fund as nominated by the licensee;
 - (b) one representative nominated by the Internet Service Providers Association;
 - (c) one representative nominated by the Consumer Association of Malawi; and
 - (d) the Director General of the Authority.

Membership duration

183. -

The members of the Universal Access Fund Consultative Committee shall hold office for a period of [three years], renewable once.

Powers of the Universal Access Fund Consultative Committee

184. -

- The Universal Access Fund Consultative Committee shall be in charge of-
- (a) reviewing all proposed annual and multi-annual universal access programs and budgets, as well as activity plans submitted by the Universal Access Department; and
 - (b) providing written comments and specific recommendations for improving the proposed annual and multi-annual universal access programs and budgets, as well as activity plan.

Chapter 4 - Implementation of the universal service

Selection of the licensee in charge of the universal service or components of the universal service

185. -

- (1) The Universal Access Department shall designate one or several licensees in charge of providing universal services components in order to have a satisfying coverage area in Malawi. The Universal Access Department may designate several licensees to handle different components and/or to cover different coverage areas.
- (2) The Universal Access Department may select a licensee further to a tender based on technical and financial conditions, and if applicable, the net cost of service provision and in due respect of a fair and equitable process of selection.
- (3) The Universal Access Department shall be in charge of drafting and launching the appropriate tender to ensure universal service in Malawi.
- (4) In case of failure for the tender to select a licensee, the Universal Access Department reserves the right to designate with their approval one or several licensees to ensure the implementation of universal

		services.
Licence of the selected licensee	186. -	<p>(1) Where the licensee holds a licence, the Universal Access Department shall establish in the specific terms and conditions the obligations relating to the provisions of the components of the universal service that need to be undertaken.</p> <p>(2) Where the licensee does not hold a licence, the Authority shall issue a specific licence with specific terms and conditions including the conditions relating to the provision of the components of the universal service that need to be undertaken but also general obligations and provisions existing in all licences.</p> <p>(3) The licence and specific conditions of the selected licensee shall state financial estimates and figures with regards to the implementation of the universal service as well as the targets to be met. It shall in particular-</p> <ul style="list-style-type: none"> (a) specify appropriate equipments, goods or services to be supplied; (b) deal with how the provider fulfils its universal service obligations; (c) set out appropriate conditions for supplying universal services in different selected areas. <p>(4) Implementation of the conditions above shall remain transparent, non-discriminatory and public.</p> <p>(5) Details on such measures shall be provided in the guidelines issued by the Universal Access Department.</p>
Tariffs	187.	The Universal Access Department shall ensure that the provision of universal services is made on affordable tariffs accessible for all.
Universal service fund	188.	<p>(1) Support for the implementation of universal service and universal access shall be made through a universal service fund.</p> <p>(2) The sources and financing of the universal service fund shall come from-</p> <ul style="list-style-type: none"> (a) a levy imposed upon all communications licensees under this Act; (b) money appropriated by Parliament or grants, subsidies, bequests, donations (c) gifts and subscriptions from the Government or any person; (d) competitive minimum subsidy auctions; (e) public access projects designed to generate income for long term financial self sustainability; and (f) funds from the budget of the Authority. <p>(3) Notwithstanding subsection (1), the universal service fund shall mainly be supported by a levy imposed annually on all holders of communications licensees and shall be calculated on the licensee's gross revenue.</p> <p>(4) Failure of a licensee to pay such levy shall be as an offence and upon conviction shall be held liable to a fine not exceeding [●]. In addition, the universal service levy which is due and has not been paid shall be recovered under a civil law suit by way of summary procedure.</p>
Use of the universal service fund	189.	<p>(1) The proceeds of the universal service fund shall be used to -</p> <ul style="list-style-type: none"> (a) offer subsidies on a competitive basis to licensees in order to provide them with incentive to provide universal access in areas which are uneconomic or only marginally viable without

subsidies;

(b) provide other financial incentives and assistance;

(c) meet administrative expenses associated with the execution of the duties and functions and responsibilities of the Universal Access Fund Consultative Committee, the management of the universal service fund, publication and independent audit costs of annual reports of the universal service fund, and the staff costs for the implementation of the fund which shall not exceed a certain amount, to be determined in regulations; and

(2) conduct research and consultancy assignments related to universal access.

Chapter 5 - Obligation of the selected licensee(s)

Control	190.	A licensee duly selected and benefiting from the fund shall keep books and accounts and maintain proper records of its operations in accordance with commercial accounting standards.
Reporting	191. -	<p>(1) A licensee duly selected shall provide on a annual basis before the [Note- date to be provided] a report on the accounts and targets reached as stated in the Specific Conditions of the license and shall provide in particular-</p> <p>(a) a copy of the report of the auditor general on the performance audit carried out during the year up to the report provision; and</p> <p>(b) information on the implementation of the universal services.</p> <p>(2) Upon decision of the Universal Access Department, accounts may at any time be audited by a person registered as an independent auditor.</p>
Penalty	192.	Failure for the selected licensee to comply with its obligations in terms of universal service implementation [to be completed] shall be an offence and upon conviction shall be liable to a fine not exceeding the subsidy received by the Universal Access Department.

Part XI
ENFORCEMENT AND OFFENCES

Chapter 1 - Enforcement powers of the Authority

Powers of the Authority	193.	The Authority may take enforcement measures against any person who contravenes the provisions of this Act, guidelines or regulations made under this Act or licence conditions..
Monitoring and enforcement	194. -	<p>(1) The Authority shall ensure that any licensees operate or provide services in accordance with the provisions of this Act, regulations or guidelines, made under this Act and the terms and conditions of licences.</p> <p>(2) In order to carry out its monitoring mandate under subsection (1) above, the Authority shall use any reasonable means possible including-</p> <ul style="list-style-type: none"> (a) carrying out investigations; (b) carrying out inspections; (c) requesting information from the licensees; or (d) using any other means deemed appropriate by the Authority. <p>(3) In all enquiries under this section, the Authority shall give the licensee twenty eight days within which to respond to an allegation levelled against the licensee.</p> <p>(4) Where, after due inquiry, the Authority is satisfied that the licensee has breached a term or condition of its licence, it shall notify the licensee of the fact in writing and may-</p> <ul style="list-style-type: none"> (a) require the licensee to remedy the breach; (b) order the licensee to pay compensation; (c) order the licensee to account for the profits made out of the breach; (d) order the licensee to pay a fine; (e) suspend the licensee's licence; (f) revoke the licensee's licence; or (g) make any other order the Authority may deem appropriate. <p>(5) Any licensee aggrieved by the decision of the Authority made under subsection (4) may, within [30 days] of the receipt by it of the order, appeal to the High Court.</p> <p>(6) The decision of the Authority shall, unless otherwise ordered by the High Court, remain in force-</p> <ul style="list-style-type: none"> (a) during the period referred to in subsection (5); or (b) while the appeal of the licensee is under consideration by the High Court.
Electronic monitoring	195. -	<p>(1) The Authority shall use any technology possible to establish, install, and maintain an electronic monitoring system to monitor the activities of licensees to ensure and enforce compliance with this Act, related regulations or guidelines and licence issued by the Authority.</p> <p>(2) Where the establishment of the electronic monitoring system stipulated under subsection (1) above, requires connection between the system and the licensees network, the licensee shall cooperate with the Authority to ensure that it provides appropriate interface sites between the Authority's' electronic monitoring system and its network to ensure direct submission of data to the monitoring system.</p>

		(3) Any licensee who contravenes subsection (2) commits a fundamental or material breach of this Act and the Authority may take any appropriate regulatory sanctions under this Act.	
		(4) The Minister shall, in consultation with the Authority, make regulations governing Electronic Monitoring by the Authority.	Deleted: Minister responsible for Information
		(5) The Electronic Monitoring carried out by the Authority shall be subject to the laws of Malawi.	Deleted: L Deleted: the Land
Quality of service	196. -	(1) Any licensee shall provide annually to the Authority a quality of service report stating the level of service quality it achieved in the previous year.	
		(2) The Authority shall in consultation with licensees -	
		(a) prescribe whether in the licence or in dedicated guidelines the necessary quality of service parameters;	
		(b) monitor compliance with the prescribed quality of service parameters; and	
		(c) audit the quality of service reports submitted by licensees.	
Investigations and Inquiries	197. -	(1) The Authority may investigate any complaint made to it concerning activities undertaken under a licence or appoint an independent person to carry out an investigation into such complaint.	
		(2) Pursuant to its monitoring power, as stated in section 194, the Authority may investigate on its own motion, where it suspects any breach of any licensee to its obligations under the Act, or the applicable guidelines and regulations.	
		(3) In all enquiries under this section, the Authority shall give the licensee [28 days] within which to respond to an allegation levelled against the licensee.	
		(4) Where, after due inquiry, the Authority is satisfied that the licensee has breached a term or condition of its licence, it shall notify the licensee of the fact in writing and may order any regulatory sanctions as listed in section 198.	
		(5) Any licensee aggrieved by the decision of the Authority made under subsection (4) may, within [thirty (30)] days of the receipt by it of the order, appeal to Supreme Court.	
		(6) The decision of the Authority shall, unless otherwise ordered by the High Court, remain in force -	
		(a) during the period referred to in subsection (4); or	
		(b) while the appeal of the licensee is under consideration by the High Court.	
Regulatory sanctions	198. -	(1) Where, after due inquiry, the Authority is satisfied that the licensee has breached a term or condition of its licence, it shall notify the licensee of the fact in writing and may -	
		(a) require the licensee to remedy the breach;	
		(b) order the licensee to pay compensation;	
		(c) order the licensee to account for the profits made out of the breach;	
		(d) order the licensee to pay a fine;	
		(e) suspend the licensee's licence in case of substantial breach;	
		(f) revoke the licensee's licence in case of substantial breach; or	
		(g) make any other order the Authority may deem appropriate.	

Chapter 2 - Offences relating to electronic communications

Failure to obtain licence	199. -	<p>(1) Any person who constructs, owns, makes available or operates an electronic communications network without having first obtained a relevant individual licence, or having filed any relevant class licence registration form, commits an offence and shall be liable upon conviction to a fine of K[●] and to a term of imprisonment for [●] years.</p> <p>(2) Any person who provides a communications service without having first obtained a relevant individual licence, or filed any relevant class licence registration form, and any person who connects to an unapproved terminal equipment, commits an offence and shall be liable upon conviction to a fine of K[●] and to a term of imprisonment for [●] years.</p>
Failure to pay	200.	Any person who dishonestly obtains an electronic communications service with intent to avoid payment of any charge applicable to the provision of that service commits an offence and shall be liable upon conviction to a fine of K[●] and to a term for [●] years.
Interception	201. -	<p>(1) Any person licensed to operate an electronic communications network or to provide an electronic communications service, who otherwise than in the course of his duty intentionally intercepts, interferes with the contents of, or modifies any message sent as part of the electronic communications service shall be guilty of an offence and shall be liable upon conviction to pay a fine of K[●] and to imprisonment for [●] years.</p> <p>(2) Any person who, without lawful authority under this Act or any other written law-</p> <p>(a) intercepts, attempts to intercept, or procures any other person to intercept or attempt to intercept any communications; or</p> <p>(b) discloses or attempts to disclose to any other person the contents of any communications, knowingly or having reason to believe that the information was obtained through the interception of any communications in contravention of this Act; or</p> <p>(c) uses or attempts to use the contents of any communications, knowingly having reason to believe that the information was obtained through the interception of any communications in contravention of this Act,</p> <p>commits an offence and shall be liable upon conviction to pay a fine of K[●] and to a term of imprisonment for [●] years.</p>
Disclosure of content	202.	Any person licensed to operate an electronic communications network or provide an electronic communication service who discloses other than in his official capacity- the content of a message as part of an electronic communication service or information about a user, shall be guilty of an offence and shall be liable upon conviction to a fine of K.[●] and to a term of imprisonment for.[●] years.
Failure to obtain assignment	203. -	<p>(1) Any person who uses one or more numbers without having first obtained any relevant individual assignment, or filed any relevant class assignment registration form, commits an offence and shall be liable upon conviction to a fine of MK [●] and to imprisonment for [●] years.</p> <p>(2) Any person who uses frequencies without obtaining a relevant individual frequency spectrum licence or class frequency spectrum licence, commits an offence and shall be liable upon conviction to a fine of MK 50 million and to imprisonment for 20 (twenty) years</p> <p>(3) Notwithstanding the provisions of subsections (1) and (2), any person who contravenes or fails to comply with the conditions imposed under a licence granted under this Act in relation to the use of frequencies or numbers shall have his licence cancelled.</p>
Damages/stealing	204. -	(1) Any person who steals or is found in possession of stolen infrastructure equipment commits an offence and shall be liable upon conviction to a fine of MK 50 million and to imprisonment for 20 (twenty) years

		(2) Any person who unlawfully destroys or damages electronic communication infrastructure equipment commits an offence and shall be liable upon conviction to a fine of K[●]. and to imprisonment for [●] years.
Interference of transmission of electronic communications	205. -	<p>(1) Any person who, without probable cause, interferes with or obstructs the transmission or reception of any electronic communications commits an offence and shall be liable upon conviction to a fine of K [●]. and to imprisonment for [●] years.</p> <p>(2) Where a court convicts a person of an offence under this section it may in addition to any penalty that it may impose, order forfeiture to the Authority of any electronic communication equipment or other material in relation to or in connection with the means by which the offence was committed.</p>
Offences relating to tariffs	206.	Any licensee who contravenes any provision of this Act related to the tariff regulation commits an offence and shall be liable upon conviction to a fine of [●] and to imprisonment for [●] years.

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Chapter 3 - Offences relating to postal communications

Failure to obtain licence	207.	<p>Any person who-</p> <p>(a) conveys a postal article, otherwise than in accordance with the terms of a valid postal licence; or</p> <p>(b) performs any service incidental to conveying a postal article otherwise than in accordance with the terms of a valid postal licence;</p> <p>commits an offence and shall be liable upon conviction to a fine of K.[●] and to imprisonment for [●] years.</p>
Transmission of prohibited articles	208.	Any person who sends by post any postal article or anything injurious, indecent or prohibited under this Act commits an offence and shall be liable upon conviction to a fine of K[●] and to imprisonment for [●] years.
Damaging letter boxes	209.	Any person who places in or against any letter box provided by a postal licensee for the reception of postal articles any fire, match or lights or any explosive, dangerous, filthy, noxious, or deleterious substance or any fluid, or commits a nuisance in or against any such letter box, or does anything likely to destroy or damage any such letter box or its appurtenances or its contents, commits an offence and shall be liable upon conviction to a fine of K [●] and to imprisonment for [●] years.
Opening of postal articles	210.	<p>Any person who, without lawful authority under this Act or any other written law-</p> <p>(a) intercepts, attempts to intercept, or procures any other person to intercept or attempt to intercept any postal article; or</p> <p>(b) discloses or attempts to disclose to any other person the contents of any postal article; or</p> <p>(c) uses or attempts to use the contents of any postal articles,;</p> <p>commits an offence and shall be liable upon conviction to a fine of K[●] and to imprisonment for [●]years.</p>
Disclosing contents of postal articles	211.	Any person who reveals, discloses or in any way makes known the contents of any postal article opened under the authority of this Act, except so far as may be necessary for the purpose of returning the same or so far as may be authorized by the Authority in writing, commits an offence and shall be liable upon conviction to a fine of K.[●] and to imprisonment for [●]. years.
Forgery	212.	<p>Any person who -</p> <p>(a) makes or knowingly alters, deals in, hawks, distributes, or sells any fictitious stamp or knowingly uses for postal purposes any fictitious stamp;</p>

- (b) has in his possession without lawful excuse any fictitious stamp;
- (c) makes or without lawful excuse has in his possession, any dye plate, instrument or materials for making any fictitious stamp; or
- (d) makes issues or sends by post any stamped or embossed envelope, wrapper, card, form, or paper in imitation of one issued under the authority of the licensee

commits an offence and shall be liable upon conviction to a fine of K[●] and to imprisonment for [●] years.

Chapter 4 - Offences relating to broadcasting services

Licence offences	213. -	<p>(1) Any person who provides broadcasting service without a licence issued under this Act commits an offence and shall be liable to upon conviction to a fine of K[●] and to imprisonment for [●] years.</p> <p>(2) Any person who has in his possession a television set capable of receiving broadcast television programs and who has not paid the prescribed fees commits an offence and shall be liable upon conviction to a fine of K [●] and to imprisonment for [●] years</p>
Content	214.	Any broadcasting service licensee who does not comply with the provisions of this Act or regulations or guidelines made hereunder in terms of content commits an offence and shall be liable upon conviction to a fine or K[●], and to imprisonment for [●] years.

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Chapter 5 - General offences

General Offences	215. -	<p>(1) Any person who falsely holds himself out to be-</p> <ul style="list-style-type: none"> (a) a member of the Authority, an employee of the Authority or authorized by the Authority; or (b) a licensee, an employee of a licensee or authorized by a licensee, <p>commits an offence and shall be liable upon conviction to a fine of K[●] and to imprisonment for [●] years.</p> <p>(2) Any licensee who-</p> <ul style="list-style-type: none"> (a) fails to comply with an order, directive or public notice issued by the Authority in the exercise of its functions under this Act; (b) refuses, delays or fails to produce any documents or other information relating to communications services and networks which may be required to be produced under this Act; (c) knowingly or without reasonable grounds for believing the same to be true, furnishes a document or other information which is false or misleading in any material aspect, whether upon demand or otherwise; (d) publishes or otherwise discloses any information in contravention of any provision of this Act; (e) resists, hinders or obstructs an officer of the Authority or any other person who acts in compliance with the provisions of this Act to enter or inspect any premises or to stop and search any vehicle or to examine any books, accounts or other records or to otherwise comply with his duties and rights under this Act; or (f) refuses, delays or fails to comply with any order, prohibition, direction, demand, requirement or notice lawfully made, served, published or otherwise given under this Act, <p>commits an offence and shall be liable upon conviction to a fine of K [●] and to imprisonment for [●] years.</p> <p>(3) Subject to the specific penalties set forth elsewhere in this Act, any person who contravenes or fails to comply with a provision of this Act commits an offence and shall be liable upon conviction, for each such breach, to a fine</p>
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of K [●].and to imprisonment for [●]years.

- (4) Subject to any specific penalties set forth herein, any person who contravenes or fails to comply with a provision of regulations, guidelines or decision issued pursuant to this Act, commits an offence and shall be liable upon conviction, for each such breach, to a fine of K[●].and to imprisonment for [●]years.
- (5) Any person who without lawful excuse contravenes or fails to comply with any term or condition expressed in an individual licence or assignment which that person holds, or a class licence or assignment that person is acting under, including, without limitation, in respect of due dates for fee payments, commits an offence and is liable upon conviction, for each such breach, to a fine of K. [●]

Joint liability

216. -

- (1) Where a person charged with any offence under this Act is a body corporate, and any person who, at the time of the occurrence of the offence was a chief executive officer, manager or officer of such body corporate, may be charged jointly in the same proceedings with the body corporate if that person was party to the commission of the offence.
- (2) A person who is a partner in a firm shall be answerable and jointly and severally liable for the acts or omissions of his partner in so far as the acts or omissions relate to the firm.
- (3) An employer shall be vicariously liable for the acts or omissions of his agent, clerk, servant or other person in so far as the acts or omissions relate to the business of the licensee.

Initiation of court actions

217.

Any consumer of communications services and products, or any recognized consumer organization, may initiate court action against any licensee for offences under this Act, provided that such consumer or consumer organization has previously filed a complaint with the Authority and is not satisfied with the decision of the Authority.

Penalty for abetting, or attempting to commit, offences

218.

Any person who abets the commission of any offence punishable under this Act, or attempts to commit any offence so punishable, shall, on conviction, be liable to the penalty provided for that offence.

Court to have full jurisdiction

219.

Notwithstanding the provisions of any written law to the contrary, the High Court may try any offence under this Act or any regulations made under it and may impose the full penalty for such offence.

Part XII

TRANSITIONAL PROVISIONS

Transitional provisions

220. -
- (1) Any agreement, contract, document, licence, or permission made, granted or approved under any law relating to communication matters shall except as otherwise expressly provided in this Act or in any other written law, continue and be deemed to have been made, granted or approved by the Authority or the Minister, as the case may be, under the provisions of this Act.
 - (2) Any frequency assignment duly made under applicable legislation prior to the commencement of this Act shall continue in force as if made under this Act, provided that-
 - (a) the information relating to frequency assignment is made available to the Authority; and
 - (b) any conditions generally contained in a frequency licence applicable to such an assignment, if made under this Act, are complied with.
 - (3) Any equipment approval duly given under applicable legislation prior to the commencement of this Act shall continue in force as if given under this Act.
 - (4) All licensees granted, issued or considered to have been granted or issued, prior to the commencement of this Act, must be converted by the Authority within 24 months from the commencement date of this Act or such extension period, which must not exceed an additional 6 months, from the expiry of the 24 month period.

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Vesting of assets of the Malawi Communications Regulatory Authority

- 221.
- (1) On or after the appointed date, there shall be transferred to, and vested in, or subisted against, the Authority, by virtue of this Act and without further assurance -
 - (a) the affairs of the Malawi Communications Regulatory Authority;
 - (b) subject to this Act, all property, rights and obligations which immediately before the appointed date were the property, rights and obligations of the Malawi Communications Regulatory Authority.
 - (2) Except as provided in this Act, every deed, bond and agreement (other than an agreement for personal service) to which the Malawi Communications Regulatory Authority was a party immediately before the appointed date, whether in writing or not, and whether or not of such nature that rights, liabilities and obligations thereunder could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified in the manner provided by this subsection, have effect from the date of the assignment thereof, as if-
 - (a) the Authority had been a party thereto ;
 - (b) for any reference to the Malawi Communications Regulatory Authority there were substituted, as regards anything falling to be done on or after the appointed date, a reference to the Authority; and
 - (c) for any reference to any officer of the Malawi Communications Regulatory Authority not being a party thereto and beneficiary interested therein there were substituted, as regards anything falling to be done on or after the appointed date, or reference to such officer of the Authority as the Authority shall designate.
 - (3) Subject to the provisions of subsection (2), documents, other than those referred to therein, which refer specifically or generally to the Malawi Communications Regulatory Authority shall be construed in accordance with subsection (2) as far as applicable.

Registration of property to be

- 222.
- (1) Where under this Act, any property, rights, property to be transferred by liabilities and obligations of the Malawi Communications Malawi

transferred by
Malawi
Communications
Regulatory
Authority

Communications Regulatory Authority are deemed to have been transferred to the Authority in respect of which transfer a written law provides for registration, the Authority shall make an application in writing to the appropriate authority for registration.

- (2) The registration authority referred to in subsection (1) shall make such entries in the appropriate register as shall give effect to such transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register, as the case may be, and shall make endorsement on the deeds relating to the title, right or obligation concerned, and no registration fees, stamp duty or other duties shall be payable in respect thereof.

Legal Proceedings

223. -

- (1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in the Authority by virtue of this Act, the Authority and all other persons shall, as from the appointed date, have the same rights, powers and remedies (and in particular the same rights as to the instituting or defending of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Authority.
- (2) Any legal proceedings or application of any authority pending immediately before the appointed date by or against the Malawi Communications Regulatory Authority may be instituted by or against the Authority.
- (3) After the appointed date, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Malawi Communications Regulatory Authority may be instituted by or against the Authority.

Terms of service
of employees of
the Malawi
Communications
Regulatory
Authority

224. -

- (1) On or after the appropriate date, the Authority shall, on such terms and conditions as it may with the approval of the Minister appoint as staff of the Authority such employees from the Malawi Communications Regulatory Authority shall be deemed to have automatically transferred to the Authority under no less favourable terms and conditions than those the employee enjoyed in the Malawi Communications Regulatory Authority.
- (2) On or after the appointed date any employee of the Malawi Communications Regulatory Authority who is not appointed to the service of the Authority under subsection (2) may -
- (a) be retired in accordance with his Contract of employment with the Malawi Communications Regulatory Authority; or
- (b) be re-deployed in the public service on terms and conditions applicable in that service.

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Repeal
savings and

225. -

- (1) Subject to subsection (2), the Communications Act is hereby repealed.
- (2) Members of the Board of the Authority, the Malawi Post Corporation and Malawi Broadcasting Corporation, as constituted immediately before the commencement of this Act, shall continue to hold office until new members have been appointed in accordance with this Act.
- (3) Anything done in accordance with the Communications Act repealed by subsection (1) prior to the commencement of this Act and which may be done in accordance with the provisions of this Act, shall be deemed to have been done in accordance with this Act.
- (4) Any subsidiary legislation made or deemed to have been made under the Communications Act, repealed by subsection (1) in force immediately before the commencement of this Act-
- (a) shall remain in force, unless in conflict with this Act, and shall be

deemed to be subsidiary legislation made under this Act; and

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(5) All contracts awarded by the Malawi Communications Regulatory Authority in accordance with Communications Act repealed by subsection (1), prior to the commencement of this Act, shall be deemed to be contracts awarded by the Authority in accordance with this Act.

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Part XIII

MISCELLANEOUS

Inconsistency with other written laws	226.	Where any provision of any written law relating to information and communications is inconsistent with any provision of this Act, the provision of that written law shall be invalid to the extent of such inconsistency.	
Regulations	227. -	<p>(1) The Minister may, consultation with the Authority, by notice published in the Gazette, make regulations for the better carrying into effect the provisions of this Act.</p> <p>(2) Without prejudice to the generality of subsection (1), such regulations may provide for -</p> <p>(a) any matter which under this Act is required or permitted to be prescribed;</p> <p>(b) the financial management of the affairs of the Authority;</p> <p>(c) the manner in which the Authority may exercise any power of perform any duty or function under this Act; or</p> <p>(d) any other matter which the Minister considers necessary or expedient to give effect to the objects of this Act.</p>	<p>Deleted: Minister responsible for Information</p> <p>Deleted: Minister responsible for Information</p>
Code of Conduct	228. -	<p>(1) Licensees shall be entitled to make codes of conduct providing for best practices when carrying out their activities.</p> <p>(2) Such codes of conduct shall be notified to the Authority and enter into force upon publication in the Gazette.</p>	
Failure of the Authority	229. -	<p>(1) Any person who is of the opinion that the Authority to comply with certain has failed to comply with any provision of this Act or a licence issued under this Act may provisions lodge with the Minister a written complaint, which shall-</p> <p>(a) set out the grounds of the complaint;</p> <p>(b) state the full names, the address and the interest of the complainant in the matter; and</p> <p>(c) if appropriate, be accompanied by any proof of the alleged failure which is in the possession of the complainant.</p> <p>(2) On receiving a complaint under subsection (1), the Minister shall send a copy thereof to the Authority.</p> <p>(3) The Authority shall, within fourteen days after receipt of copy of the complaint under subsection (2) furnish the Minister with a written reply.</p> <p>(4) After receipt of the Authority's replay under subsection (3), and subject to subsection (5) the Minister may</p> <p>(a) dismiss the complaint; or</p> <p>(b) if the Minister responsible for information is satisfied that the Authority has failed to comply with the provision referred to in subsection (1), by written notice direct the Authority to comply with such provision within such period as may be determined and specified by the Minister in the notice.</p> <p>(5) Where the Minister considers it necessary or desirable for the purpose of making a decision under subsection (4), the Minister may appoint a committee, on such terms and conditions as he may determine, to investigate the complaint, to hear any representations made by the complainant and the Authority and to report to the Minister.</p>	<p>Deleted: Minister responsible for Information</p> <p>Deleted: Minister responsible for Information</p> <p>Deleted: Minister responsible for Information</p> <p>Deleted: Minister responsible for Information</p> <p>Deleted: Minister responsible for Information</p> <p>Deleted: Minister responsible for Information</p> <p>Deleted: Minister responsible for Information</p> <p>Deleted: Minister responsible for Information</p>

- (6) The procedure for an investigation under subsection (5) shall be as prescribed and a committee referred to in that subsection shall, for the purpose of such investigation, have the prescribed powers with regard to the summoning and examination of witness and the production of books or objects.
- (7) The costs incidental to the appointment of a committee and the conducting of an investigation under subsection (5) shall be paid from the funds of the Authority.
- (8) Any person who wilfully -
- (a) interrupts the proceedings of a committee referred to in subsection (5) ;
 - (b) hinders or obstructs such committee in the performance of its functions; or
 - (c) contravenes or fails to comply with any regulation referred to in subsection (6) relating to the duties or conduct of persons summoned to appear before a committee referred to in subsection (5) to give evidence or produce any book of object

shall be guilty of an offence and shall, upon conviction, be liable to a fine not exceeding K100,000 or to imprisonment for a period not exceeding twelve months.

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FIRST SCHEDULE

ADMINISTRATION OF AUTHORITY

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|---------------------------------------|-------------|--|
| Absence of the Board | 1. | In the event of a member of the Board being absent for a period for more than ● days, the President shall direct the organisation or institution which proposed the representative to avail the President with the name of another representative and nominate a new representative according to the proceeding provided in section 17. |
| Absence of the Chairperson | 2. | In the event of the Chairperson being absent for a period of more than twenty-eight days, members of the Board shall elect one of their number to exercise the powers and perform the duties of the Chairperson until the President appoints a new Chairperson. |
| Tenure of Office and vacancies | 3. - | <p>(1) A member, other than a member ex officio, shall hold office for a period of three years and shall be eligible for a single re-appointment.</p> <p>(2) The office of a member shall become vacant - -</p> <ul style="list-style-type: none">(a) if he resigns;(b) upon his death;(c) if he is declared bankrupt under a written law;(d) if he knowingly fails to declare a conflict of interest relating to any matter under consideration by the Authority;(e) if he is absent, without the consent in writing of the Chairperson or without valid excuse, from three consecutive meetings of the Board of which he has had notice;(f) upon the expiry of the period of his appointment;(g) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member; or(h) in case of disqualification according to the provisions of section 18. <p>(3) A vacancy in the Board shall be filled by the appointment of another member in the same manner as described in section 17 and the member so appointed shall hold office for the unexpired period of his predecessor's term of office.</p> <p>(4) The Board shall keep fulfilling its duties until the vacancy has been filled.</p> |
| Meetings of the Board | 4. - | <p>(1) Meetings of the Board shall be held at such times and places as the Chairperson may direct-</p> <ul style="list-style-type: none">(a) Provided that the Board shall meet for the transaction of business once every three months;(b) Provided further that the Chairperson shall convene a special meeting after receiving written requests to that effect signed by at least two members, and if the Chairperson fails to convene a special meeting within seven days of receipt of such request, any two members may jointly convene the special meeting. <p>(2) The quorum for any meeting of the Board shall be a majority of the total number of members excluding ex officio members.</p> <p>(3) The Chairperson shall preside at any meeting of the Board and, in his absence, the members present shall elect one of their number to</p> |

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preside at the meeting.

- (4) A decision of the Board at any meeting shall be that of the majority of the members present and, in the event of an equality of votes, the Chairperson or the person presiding shall have the casting vote in addition to his deliberative vote.
- (5) No member of the Board, shall attend a meeting of the Board by representation.

The Board may, at its discretion, allow members of the public to attend any of its meetings.

Committees of the Authority

5. -

- (1) The Board may, for the purpose of performing its functions under this Act, establish one or more committees and delegate to any such committee such of its functions as it deems necessary.
- (2) The Authority may invite any person to attend any of the meetings of its committees and such person shall be entitled to participate in the deliberations of the meetings but has the right to vote.
- (3) The Chairperson of every committee shall be a person who is a member of the Board of the Authority, excluded ex officio members.
- (4) The Chairperson of the Board shall be prohibited from being a member of a committee.
- (5) The Authority shall pay a member of a committee from the funds of the Authority such allowance as the Authority may determine from time to time.
- (6) Subject to the general or special directions of the Authority and to the provisions of this Act, every committee of the Authority shall have power to determine its own procedure.

Appointment of other staff of the Authority

6. -

- (1) The Authority shall appoint staff after invitation via public advertisements and based on qualification, experience and capacity in matters relating to operational requirements of the Authority.
- (2) For the avoidance of doubt, a person who before the commencement of this Act, was a officer, an employee of the Authority shall continue to be an officer or employee of the Authority, as the case may be, as if appointed or employed under this Act.

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Disclosure of conflicts of interest

7. -

- (1) Any person being a member, part of the staff, consultant, adviser or sub-contractor of the Authority shall disclose to the Director General any interest that he has or that may arise in the course of duties related to the operations of the Authority and the Director General or the Authority, shall make decisions as considered appropriate in each case.
- (2) Any person being a member, part of the staff, consultant, adviser or sub-contractor of the Authority shall disclose, prior to or as soon as is practicable after the commencement of a meeting, any conflict of interest which may occur during a meeting of the Authority. This member shall not take part in any consideration or discussion of, or vote on, any question touching on such matter.
- (3) The Director General shall disclose to the Chairperson of the Authority any interest he has in any matter that is under consideration by the Authority and shall not attend any meeting of the Authority or of any committee of the Authority while any question touching such matter is being discussed.
- (4) This section shall apply to any information which - -
 - (a) a member, part of the staff, consultant, adviser or sub-contractor of the Authority holds by virtue of his office or dealings with the Authority;
 - (b) would not be expected, or would not be reasonable for it, to

be disclosed by a member, part of the staff, consultant, adviser or sub-contractor of the Authority except in the proper performance of the functions of his office; or

- (c) the member, part of the staff, consultant, adviser or sub-contractor of the Authority holding the information knows or ought to know that it is unpublished information in relation to any contract or proposed contract of the Authority.
- (5) Any member, part of the staff, consultant, adviser or sub-contractor of the Authority who holds information to which this section applies, or any person who has, directly or indirectly, obtained any such information from a member, part of the staff, consultant, adviser or sub-contractor of the Authority whom that person knows or has reasonable cause to believe held the information by virtue of his office, and who - -
- (a) deals in any contract or proposed contract to which the information relates and in which the Authority is involved;
 - (b) counsels or procures another person to deal in any such contract or proposed contract, knowing or having reasonable cause to believe that such other person would deal in such contract or proposed contract;
 - (c) communicates to any other person the information held or, as the case may be, obtained by him if he knows or has reasonable cause to believe that such other person or any other person would make use of the information for the purpose of dealing in, or counselling or procuring any person to deal in, any contract or proposed contract to which the information relates and in which the Authority is involved shall be guilty of an offence.

(6) Any person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine not exceeding [●] and/or to [●] years imprisonment.

SECOND SCHEDULE

LICENCE CATEGORIES

Licence categorisation	1. -	<p>(1) The Authority shall issue the different categories of individual licences for the purposes of Part III of the Act -</p> <ul style="list-style-type: none">(a) network services licences, to allow the holder thereof to construct, own or make available an electronic communications network;(b) facility services licences, to allow the holder thereof to construct, own or make available facilities used for the provision of communications services;(c) application services licences, to allow the holder thereof to provide one or more communications services;(d) content licences, to allow the holder thereof to provide one or more broadcasting services;(e) frequency spectrum licences; and(f) postal services licences. <p>(2) The duration of each licence shall be specified by the Authority in its guidelines and/or in the specific conditions of the licence.</p>
Network services licence	2.	A person shall not operate, manage and provide network services in Malawi except in accordance with the terms and conditions of a network services licence issued by the Authority.
Facility services licence	3.	A person shall not operate, manage and provide facility services in Malawi except in accordance with the terms and conditions of a facility services licence issued by the Authority.
Application services licence	4.	A person shall not provide application services except in accordance with the terms and conditions of an application services licence issued by the Authority.
Content licence	5. -	<p>(1) A person shall not provide broadcasting services except in accordance with the terms and conditions of a content licence issued by Authority.</p> <p>(2) The Authority shall define each broadcasting service licence in relation to one of the following categories-</p> <ul style="list-style-type: none">(a) public broadcasting services;(b) commercial broadcasting services;(c) community broadcasting services; and(d) any other licence as may be determined by the Authority. <p>(3) A content licensee shall enter into an agreement with the holder of a network services licence for purposes of distribution of signals. Such agreement shall include a service level agreement in order to evaluate the quality of the services provided by the network services licensee.</p>
Postal licence	6.	A person shall not provide postal services except in accordance with the terms and conditions of a postal licence issued by the Authority.

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THIRD SCHEDULE

CONTENT REGULATION FOR BROADCASTING SERVICES

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Content regulation

1. -

- (1) The Authority shall have the power to make regulations and guidelines and to control the content provided through broadcasting services.
- (2) The main principles for content regulation shall consist of-
 - (a) the protection of the public against offensive and harmful content;
 - (b) the exclusion of material likely to encourage crime or other illegal acts;
 - (c) the presentation of comprehensive, accurate and impartial news;
 - (d) the presentation of religious material in a balanced and responsible manner;
 - (e) the protection of children and young persons; and
 - (f) appropriate advertising and sponsorships.

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Local and independent programming

2. -

- (1) The Authority shall issue guidelines which shall specify percentage of local content and independent and original productions-
 - (a) the extent to which content service licensees shall provide-
 - (i) content produced in Malawi;
 - (ii) content produced by independent producers; and
 - (iii) content of an original nature; and
 - (b) the times of the day or week when such content shall be provided.
- (2) This Act and the regulations and guidelines pertaining to local content and independent and original productions shall be designed to-
 - (a) stimulate the production of content in Malawi; and
 - (b) prevent the excessive provision of content which is not relevant to, or not conducive to the development of the Malawi society.
- (3) The Authority may, in respect of the television content licence, impose and specify in the licence, such conditions regarding local television content and independent television production which without derogating from the generality of the foregoing, may include any conditions requiring the content licensee -
 - (a) to annually expend a specified sum of money, subject to reasonable yearly escalation or, alternatively, a specified minimum percentage of its gross revenues, on programs which have local television content;
 - (b) to allocate a specified minimum percentage of its local broadcasting time to television programs which have local television content;
 - (c) in the case where the content licensee has a regional or local licence area, to allocate a specified minimum percentage of broadcasting time to local television programs which have been produced in the relevant region or locality; and
 - (d) to allocate a specified minimum portion of the percentage referred to in paragraph (a), (b) or (c), whichever is applicable to a prescribed diversity of television programs which are independent television productions.

The Authority may, in relation to a sound broadcasting service, prescribe

conditions in terms of which the content licensee is required to broadcast a specified minimum percentage of musical works which qualify as local music.

Advertising

3. -

- (1) The Authority shall issue guidelines for advertising on the broadcasting services.
- (2) Without derogating from the granted powers to the Authority to issue guidelines pertaining to advertising and sponsorships, such guidelines may include provisions-
 - (a) prohibiting, restricting or regulating advertisements of specified goods, products, services or activities, or prohibiting, restricting or regulating specified forms and methods of advertising or sponsorship;
 - (b) prohibiting, restricting or otherwise regulating political advertising;
 - (c) restricting or otherwise regulating the extent, relative to other content, of coverage of advertising and sponsorships which a content service licensee may give in the provision of its service, including, but not limited to-
 - (i) the maximum amount of time to be allocated to advertisements in any hour or other period;
 - (ii) the minimum interval which shall elapse between any two periods allocated to advertising;
 - (iii) the number of such periods to be allowed in any hour or day;
 - (iv) the prominence that may be given to advertisements or sponsorships; and

the exclusion of advertisements or sponsorships from a specified part of a broadcasting services licensee.

Political matters and advertising

4. -

- (1) The Authority shall issue guidelines for political advertising on broadcasting services.
- (2) The following provisions shall apply to the regulation of political advertising-
 - (a) a political advertisement shall include any advertisement which-
 - (i) is inserted or placed by or on behalf of a body, organization or group whose objects are wholly or mainly of a political nature; and
 - (ii) is directed towards a political end.
 - (b) objects of a political nature and political ends include each of the following-
 - (i) influencing the outcome of elections or referenda;
 - (ii) bringing about changes of the law in the whole or any part of Malawi;
 - (iii) influencing the policies or decisions of national, regional or local governments;
 - (iv) influencing public opinion on a matter; and
 - (v) promoting the interests of a political party or other organisation or group, for political ends;
 - (c) a content licensee shall not carry any political advertisement, except during a period which is designated as an election period, being a period not exceeding **thirty days**, immediately before an election in respect of a legislative body is to be conducted by or under regulations or guidelines made under this section ;

(d) guidelines issued by the Authority under this section and designed to regulate political advertisements-

- (i) shall determine the maximum coverage that a content licensee may give to political advertisements during an election period;
- (ii) shall determine the conditions applicable to the dissemination of political advertisements by broadcasting service licensees during an election period;
- (iii) shall give primacy to the fundamental principle that all political parties or organisations are to be treated equitably and fairly;
- (iv) shall provide that no political advertisement may be carried by a content licensee later than forty eight hours prior to the commencement of the relevant polling period;
- (v) may differentiate between different classes of content licensees and, in particular, may provide that certain specified classes of content licensees shall not have any obligation to carry political advertisements;
- (vi) shall provide that any content licensee that shall carry, or that elects to carry, political advertisements shall treat all political parties and organizations equitably and fairly, and shall not discriminate against any political party or organization or give preference to any political party or organization or subject any political party or organization to any prejudice; and

(4) any guidelines made under this section shall give due regard to the rights and freedoms entrenched in the Malawian Constitution.

Content of an educational nature

5. -

- (1) The Authority shall issue guidelines for the provision of content of an educational nature on broadcasting services.
- (2) The guidelines may impose an obligation on content licensees, or on certain specified classes of content licensees, to ensure that a specified proportion of content provided by each one of them constitutes content of an educational nature.
- (3) The guidelines contemplated in subsection (1)-
 - (a) shall include an appropriate definition of the term “content of an educational nature”;
 - (b) shall specify-
 - (i) the extent to which content licensees shall be obliged to finance the production of content of an educational nature; and
 - (ii) the extent to which content licensees may acquire and provide content of an educational nature produced by other persons;
 - (c) may distinguish between different categories of content of an educational nature and impose differential obligations on content licensees in relation to such categories;
 - (d) shall include provisions designed to ensure that content of an educational nature provided by content licensees-
 - (i) are of high quality; and
 - (ii) are suitable to meet the needs and requirements of Malawi society; and
 - (iii) require a content licensees, or specified classes of

content licensees, to ensure that a specified proportion of the content provided by them constitutes content of an educational nature.

Counter-version

6. -

- (1) A content licensee shall broadcast a counter-version presented by any person or body of persons affected by an assertion of fact in any program transmitted by that licensee, if the person or body of persons concerned claims that the assertion of fact is in fact false.
- (2) Notwithstanding subsection (1), a content licensee shall not transmit a counter-version if-
 - (a) the person or organization concerned has no direct interest in the transmission of the counter-version; or
 - (b) the counter-version is not of reasonable length, and in particular, if it is substantially longer than the part of the broadcast which dealt with the false assertion of fact.
- (3) The counter-version referred to in subsection (1) shall-
 - (a) be limited to a factual account;
 - (b) not contain any material which may reasonably be anticipated to expose the content service licensee to legal action if such material were to be broadcast;
 - (c) be made in writing;
 - (d) specify the program and the assertions to which objection is raised; and
 - (e) be signed by the person affected or, in the case of an organisation, by the chief executive officer thereof.
- (4) The person or body of persons affected shall not be entitled to insist on the transmission of a counter-version if the counter-version referred to in subsection (1) is presented to the content licensee after the expiry of a period of **thirty** days from the date of broadcast of the false assertion of fact.
- (5) The content licensee shall-
 - (a) at the first opportunity, but not later than **ten days** from receipt of a counter-version referred to in subsection (1), broadcast the counter-version within the same program or program section as the one in which the false assertion was made and at the same time of day or, should that not be possible, at time equal in value to that of the program objected to;
 - (b) broadcast the counter-version without any omissions and interruptions; and
 - (c) broadcast the counter-version free of charge.
- (6) A content service licensee shall immediately upon receipt of the counter version referred to in subsection (1) inform the Authority of that fact, and shall keep and store the program objected to and the counter-version until the content licensee receives a notice to the contrary from the Authority.

Freedom of Broadcasters

7.

The freedom of all content licensees is indivisible from and subject to the same restraints as those relevant to the individual person, and is founded on the individual's right to be informed and to freely receive and disseminate opinions.

General obligations of broadcasters

8.

- (1) Content licensees shall -
 - (a) not broadcast any material which is indecent or obscene or offensive to public morals (including abusive or insulting language) or offensive to religious convictions of any section of the population or likely to prejudice the safety of the Republic or public order and tranquility;
 - (b) exercise due care and sensitivity in the presentation of

material which depicts or relates to acts of brutality, violence, atrocities, drug abuse, obscenity;

- (c) exercise due care and responsibility in the presentation of programmes where a large proportion of the audience is likely to be children.

News	9. -	<p>(1) Content licensees shall report news truthfully, accurately and objectively.</p> <p>(2) News shall be presented in an appropriate context and in a balanced manner without intentional or negligent departure from the facts.</p> <p>(3) Where a report is founded on opinion, supposition, rumour or allegation, it shall be presented in such a manner as to indicate clearly that such is the case.</p> <p>(4) Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay.</p>
Comments	10. -	<p>(1) Content licensees shall be entitled to comment on and criticise any actions or events of public importance.</p> <p>(2) Comment shall be presented in such manner that it appears clearly to be comment.</p> <p>(3) Comment shall be an honest expression of opinion.</p>
Controversial Issues	11. -	<p>(1) In presenting a programme in which controversial issues of public importance are discussed, a content licensee shall make reasonable efforts to present differing points of view in the same programme or in subsequent programme within a reasonable period of time and in substantially the same time slot.</p> <p>(2) A person whose views, deeds or character have or has been criticised in a broadcasting programme on a controversial issue shall be given a reasonable opportunity by the content licensee to reply to such criticism, should that person so request.</p>
Elections	12.	During any election period, all content licensees shall ensure equitable treatment of political parties, election candidates and electoral issues.
Privacy	13.	In so far as news and comment are concerned, content licensees shall exercise exceptional care and consideration in matters involving the private lives and private concerns of individuals, but may however bear in mind that the right to privacy may be overridden by a legitimate public interest.
Payment for information	14.	No payment shall be made to persons involved in crime or who have been engaged in crime in order to obtain information, unless compelling public interest indicates the contrary.

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