

Malawi

Press Trust Reconstruction Act Chapter 5:04

Legislation as at 31 December 2014

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Press Trust Reconstruction Act
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Malawi

Press Trust Reconstruction Act

Chapter 5:04

Commenced on 15 November 1995

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

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

[15 of 1995]

An Act to make provision for the reconstruction of the Press Trust; to clarify the objects and status of the Press Trust and to provide for consequential changes relating to assets forming part of the Press Trust Fund and for matters connected with or incidental to the foregoing

1. Short title

This Act may be cited as the Press Trust Reconstruction Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**existing trustees**” means the trustees of the Press Trust at the commencement of this Act;

“**initial trustee**” means the person appointed as such in accordance with [section 4](#);

“**original deed**” means the Press Trust Deed dated the 10th day of February, 1982, and incorporated under the Trustees Incorporation Act on the 5th day of March, 1982, at the office of the Registrar General;

[Cap. 5:03]

“**official receiver**” has the meaning ascribed to it in the Companies Act;

[Cap. 46:03]

“**Press (Holdings) Limited**” means the company of that name incorporated under the Companies Act on 13th January, 1969, under company registration number 1210;

[Cap. 46:03]

“**Press Trust**” means the Trust established under the original deed;

“**Settlor**” means the person referred to in the original deed as the Founder Trustee;

“**Trust Fund**” has the meaning ascribed to it in the original deed and includes any sums wherever held on account of the Trust Fund.

3. Variation of original deed

For the better administration of the Press Trust, the original deed shall be deemed varied in the terms and form as set out in the Schedule at the expiry of 14 days from the date of publication in the *Gazette* of a notice to that effect given by the Minister of Finance and the terms and form as set out in the Schedule are hereinafter referred to as the “Deed of Variation”.

[Schedule]

4. Appointment of Trustees

- (1) Upon the publication of the notice referred to in [section 3](#), the President and the Settlor shall, within twenty days from the date thereof, each appoint, by notice in writing to the Attorney General, one person to hold office as initial trustee provided such person is qualified to be appointed a trustee under the Deed of Variation.
- (2) In the event that either the President or the Settlor fails for whatever reason within the twenty days to appoint the initial trustee under subsection (1), the Attorney General shall appoint such person as he thinks fit, being a person who is qualified under the Deed of Variation to be appointed a trustee, to be initial trustee and such appointment shall be valid for all purposes as if it had been made by the President or Settlor, as the case may be.
- (3) Upon the appointment of the second of the initial trustees, the existing trustees other than an initial trustee shall cease to hold office as trustee of Press Trust.

5. Transfer of assets, liabilities, etc.

Upon the appointment of the initial trustees all the assets or rights of the Trust Fund and all liabilities or obligations of the Trust Fund properly incurred by the existing trustees shall be deemed transferred from the existing trustees to the initial trustees.

6. Freezing of the Trust Fund

- (1) During the period referred to in [section 3](#), no withdrawal, transfer or disposal shall be made of, nor any overdraft, loan or other encumbrance shall be charged upon, any assets held on account of the Trust Fund without the prior written approval of the Attorney General who, in giving approval, shall at all times act in the best interest of the Press Trust having regard to the provisions of the Deed of Variation.
- (2) Any person acting in any capacity whatsoever who does anything contravening, or which has the effect of contravening, subsection (1) shall be guilty of an offence.

7. Liquidation of Press (Holdings) Limited

- (1) Upon the publication of the notice referred to in [section 3](#), all assets and liabilities of Press (Holdings) Limited shall, notwithstanding the provisions of the Companies Act or any other law, be placed in liquidation.
- (2) For the purposes of the liquidation of the Press (Holdings) Limited under subsection (1), the official receiver shall appoint a duly qualified person as liquidator to wind up the affairs of Press (Holdings) Limited and such costs of liquidation as may be reasonable shall be paid out of the Trust Fund.

[Cap. 46:03]

8. Penalty

Any person guilty of an offence under this Act shall be liable to a fine of K50,000 and to imprisonment for five years.

9. Rules

The Minister responsible for finance may make rules or orders for the better carrying out of the provisions of this Act.

Schedule

Dated _____ 20 ____

THE DEED OF VARIATION OF THE PRESS TRUST BY

The Government of Malawi

THIS DEED OF VARIATION is made the, _____ day of 20 ____

BY: The Government of Malawi (“the Government”)

WHEREAS:

- (A) The Government acting through the Minister responsible for finance under the powers given to it by the Press Trust Reconstruction Act has made this Deed in order to vary the terms of the Press Trust (which expression shall have the same meaning in this Deed as in the said Act) in the manner hereinafter appearing;
- (B) This Variation shall be irrevocable.

NOW THIS DEED WITNESSETH as follows—

1.

Under the powers given to it by the Press Trust Reconstruction Act and all other powers the Government hereby declares that the Press Trust shall from the date of this Deed be read and construed for all purposes as if all the clauses contained in the Press Trust Deed dated 10th February, 1982, and registered at the office of the Registrar General on 5th March, 1982, had been revoked and the following Clauses of this Deed had replaced them.

2. Interpretation

In this Deed the following expressions have the following meaning—

- (a) “**Initial Trustees**” shall mean the persons appointed as Initial Trustees under the terms of the Press Trust Reconstruction Act, and “Initial Trustee” shall mean one of the Initial Trustees;
- (b) “**Chartered Accountant**” means an accountant who is admitted to membership of and entitled to practise according to the rules of a professional body regulating Chartered Accountants in any Commonwealth country, any member state of the European Union or the United States of America;
- (c) “**National Benefit Purposes**” (“NBP”) means such charitable purposes as are in the interest and for the benefit of the people of Malawi including but without prejudice to the generality of the foregoing for the advancement of their education, health, welfare and housing;
- (d) “**the Trust Fund**” means—
 - (i) all monies, investments or other property which form any part or parts of the Trust Fund of the Press Trust at the date of this Deed;
 - (ii) all monies, investments or other property hereinafter paid or transferred by any person or persons to or so as to be under the control of and (in either case) accepted by the Trustees as additions to the Trust Fund;
 - (iii) all accumulations (if any) of income directed to be held as an accretion to the capital of the Trust Fund;
 - (iv) the monies, investments and property from time to time representing the said monies, investments, property, additions and accumulations;

- (e) **“Trustees”** means the Initial Trustees, the Successor Trustees, the International Trustee and Ordinary Trustees and **“Trustee”** means any one of them;
- (f) **“Associate”** means—
 - (i) a Trustee’s spouse;
 - (ii) a Trustee’s parents, sister, brother, child, business partner and the spouse of any of them; and
 - (iii) a company controlled by a Trustee or a person or persons falling within paragraphs (i) and (ii) of this sub-clause;
- (g) **“the Trust’s Year End”** shall mean 31st March in each year;
- (h) **“Financial Year”** shall mean from 1st April in one year to 31st March in the following year provided that the first Financial Year shall be the period starting at the date of this Deed and ending on 31st March, 1996.

3. Objects

- (a) the Trustees shall hold the capital and the income of the Trust Fund upon trust to apply the income for or towards the NBP by making such charitable donations, grants, or contributions to any person or persons or Institution or institutions at such time or times and in such manner as the Trustees may in their absolute discretion think fit provided that subject always to sub-clauses (b) and (c) hereof the Trustees may at their absolute discretion for the period of 21 years from the date of this Deed instead of applying the income of the Trust in any year accumulate part of such income at compound interest by investing the same and the resulting income in any investments authorized under the terms of this Deed or by law and hold the same as an accretion to and as part of the capital of the Trust Fund;
- (b) the Trustees shall distribute not less than 50 per cent of the Trust’s income in any Financial Year;
- (c) if at the end of any five Financial Years the total amount of income distributed is less than 66 per cent of the income arising to the Trust during that period then the Trustees shall distribute sufficient of the income accumulated during that period as if the same were income of the Trust arising in the then current year so that not less than 66 per cent of the total income of the Trust is distributed in any five year period;
- (d) the Trustees may not distribute to any one person, institution or project in any Financial Year more than 25 per cent of the total of such distributions;
- (e) the Trustees shall have power to apply from time to time the whole or any part or parts of the Trust Fund for or towards the NBP provided always and notwithstanding anything to the contrary in this Deed this power shall only be exercisable by the Trustees if they agree to do so unanimously and provided that the court agrees that such distribution of the Trust Fund would further the NBP.

4. Investment power

In addition to the Trustees’ investment powers under the general law, money to be invested may be applied or invested as the Trustees shall in their absolute discretion think fit in—

- (a) the purchase of or at interest upon security of any shares, stocks, funds or securities quoted on any recognized stock exchange anywhere in the world (subject to the Exchange Control Act and the Regulations made thereunder) provided that the Trustees shall not control more than 50 per cent of the voting rights of any company which forms part of the Trust Fund unless the company is the Press Corporation Limited or any other company that by reason of any reorganization of the Press Corporation Limited or any of its subsidiaries may be owned directly by the Trustees;

- (b) the purchase of or at interest upon security of any land or building (the "Relevant Land") provided that before any such transaction the Trustees obtain from a qualified Chartered Surveyor selected by the Trustees for such purpose, a written report covering the following:
 - (i) a full description of the Relevant Land; and
 - (ii) the Surveyor's opinion as to the current value of the Relevant Land having regard to its current state of repair and other relevant circumstances;
- (c) assets which in the opinion of the Trustees have a development benefit to Malawi but would not normally be considered a suitable investment for Trustees PROVIDED that monies so applied or invested represent no more than 50 per cent of the total value of such asset and provided that the Trustees satisfy themselves that the Co-investor being a Pension Fund, Financial Institution or reputable developer has carried out (and made available to the Trustees) appropriate due diligence work in respect of the proposed investment and has provided the remainder of the funding for the total value of such asset. Investment in such assets is within the sole discretion of the Trustees and no more than 5 per cent of the Trust income arising in a Financial Year may be invested in such assets;
- (d) all assets of the Trust Fund shall be held on trust for sale but the Trustees shall have power to postpone such sale for such period as they, in their absolute discretion, think it.

5. Further powers

In furtherance of the NBP but not further or otherwise the Trustees shall have the following additional powers—

- (a) to construct, maintain, improve or alter any buildings or works (so far as necessary for carrying out the purposes of the Trust) on land comprised in the Trust Fund;
- (b) subject to appropriate professional advice to sell, lease, demise, let, license and generally manage and deal with any land or buildings or interest therein at the prevailing market rates;
- (c) to accept donations, subscriptions, covenants, sponsorships and legacies to be held on trust for the purposes of the Trust or any of them and as an addition to the Trust Fund;
- (d) subject to the restrictions imposed by this Deed, to make regulations for the management of the Trust and for the conduct of the business of the Trustees and from time to time to amend such regulations;
- (e) to delegate the management of any land forming part of the Trust Fund to any person who is in the opinion of the Trustees qualified for that purpose provided that all acts and proceedings made by any such person are reported to the Trustees as soon as possible;
- (f) to delegate upon such terms and at such reasonable remuneration as the Trustees may think it to professional investment managers ("the Managers") the exercise of all or any of their powers of investment and to a secretary ("the Secretary") the exercise of their powers of administration for day to day management of the Trust:

Provided always that-

- (i) neither the Managers nor the Secretary shall be a Trustee or an Associate;
- (ii) the Managers shall be persons who are qualified to carry on investment business under the laws of the country in which they are resident;
- (iii) the delegated powers shall be exercisable only within clear policy guidelines drawn up in advance by the Trustees and within the powers of investment conferred by this Trust;
- (iv) the Managers and the Secretary shall be under a duty to report promptly to the Trustees any exercise of the delegated powers and in particular the Managers will report every transaction

- carried out by them to the Trustees within 14 days and report on the performance of investments managed by them at least every three months;
- (v) the Trustees shall be entitled at any time and without notice to review, alter or determine the delegation of terms;
 - (vi) the Trustees shall be bound to review the arrangements for delegation at intervals (in the absence of special reasons) not exceeding 12 months but so that any failure by the Trustees to undertake such reviews within the period of 12 months shall not invalidate the delegation;
 - (vii) the Trustees shall be liable for wilful default and any failure to take reasonable care in choosing the Managers or the Secretary, fixing or enforcing the terms upon which the Managers or the Secretary are employed, requiring the remedying of any breaches of those terms and otherwise supervising the Managers and the Secretary but otherwise shall not be liable for the acts and defaults of the Managers or the Secretary;
- (g) to employ any person, firm or company not being a Trustee or an Associate to manage or assist in managing the day to day running of the Trust Fund upon such reasonable terms as the Trustees think it and to pay the Secretary or such officials or staff not being a Trustee or an Associate as the Trustees may in their discretion from time to time determine and to enter into agreements and fix such reasonable salaries as the Trustees may deem proper and to enter into any service arrangements which they shall consider to be reasonable and necessary including power to determine any such employment upon such terms as the Trustees may decide and to make all reasonable and necessary provisions for payment of pensions and superannuation to or on behalf of employees and their widows or widowers and dependants;
 - (h) to apply income in insuring any buildings or other property comprised in the Trust Fund to their full value;
 - (i) to arrange for the accounts of the Trust to be audited annually by a Chartered Accountant at the expense of the Trust Fund and generally to take all such actions as are necessary to comply with the accounting and reporting requirements contained in the Laws of Malawi;
 - (j) to do such acts or things in collaboration with any person, institution, authority or otherwise not being a Trustee or Associate provided that no part of the Trust Fund shall be used or applied for purposes other than the NBP;
 - (k) when making grants of any funds to any charitable organization or charitable institution to accept as a good discharge in respect of any such funds the receipt of the treasurer or secretary or other authorized officer for the time being of such charitable organization or charitable institution;
 - (l) in respect of any property subject to the trusts hereof to vest the same in any corporation or any other person or persons being at least two in number (whether or not including one or more of the Trustees) as nominee or nominees for the Trustees.

6. Trustees' appointment

- (a) the total number of Trustees appointed at any one time shall be seven individuals who shall comprise a Board of Trustees and if the number shall fall below seven the remaining Trustees cannot conduct any Trust business except that of appointing a new Trustee or Trustees (in accordance with the provisions set out below) until the number of Trustees is once again seven;
- (b) confirmation of the appointment of any Trustee shall be recorded in the Minutes of a meeting of the Board of Trustees;
- (c) an Initial Trustee shall hold office for the period of six years from the date of this Deed (to be called the "Initial Term");
- (d) an initial Trustee may designate by prior notice in writing to be delivered to each of the other Trustees a person called a Successor Trustee who shall succeed the Initial Trustee for the remainder of his Initial Term in the event of his death, retirement or disqualification as Trustee (under the provisions of sub-clause (k) of this clause) at any time during the Initial Term. The Successor

Trustee's appointment shall forthwith on the occasion of any such event be notified by the Successor Trustee, and in the event of retirement with the Initial Trustee jointly, to each of the other Trustees who shall, upon receipt, be deemed to have confirmed such appointment. Upon such appointment any Successor Trustee shall have all the same powers as the Initial Trustee he replaced (including the power to appoint a Successor Trustee.) If in the event of death, retirement or disqualification of an Initial Trustee there shall be no Successor Trustee to take office then the remaining Trustees shall appoint by unanimous agreement an Ordinary Trustee to replace him to serve for the remainder of his Initial Term;

- (e) an International Trustee who shall be a person of good standing and repute who is not a citizen of Malawi shall within 10 days of the date of this Deed be appointed by agreement between the Initial Trustees;
- (f) the International Trustee shall hold office for six years from the date of this Deed;
- (g) there shall be appointed within 21 days of the date of this Deed by the unanimous agreement of the Initial Trustees and the International Trustee acting together four Ordinary Trustees—
 - (i) two Ordinary Trustees to hold office for two years from the date of this Deed; and
 - (ii) two Ordinary Trustees to hold office for four years from the date of this Deed;
- (h)
 - (i) if the International Trustee or an Ordinary Trustee dies, retires or is otherwise disqualified from acting as a Trustee before the expiry of his term of office then the remaining Trustees shall appoint by unanimous agreement an Ordinary Trustee to replace him for the remainder of his term;
 - (ii) at the expiry of any Trustee's term of office the remaining Trustees shall appoint by unanimous agreement an Ordinary Trustee to serve for a term of six years;
 - (iii) all Trustees except the International Trustee shall be eligible for re-appointment once only for a period of six years;
- (i) in the event of either appointment to be made under sub-clauses (e) and (g) above not being made within the respective time limits specified therein or in the event of the remaining Trustees being unable to reach unanimous agreement on the appointment of a Trustee to fill any vacancy occurring within sixty days of such vacancy occurring, then any two Trustees may apply to Court and ask the Court to make the appropriate appointment;
- (j) in selecting the persons to be appointed as Trustees the Trustees shall take into account the person's standing in the community, technical abilities and other characteristics normally required of a Trustee;
- (k) no person may be appointed nor continue acting as a Trustee—
 - (i) unless he has attained the age of 30 years; or
 - (ii) if by reason of mental disorder, illness or injury he is incapable of managing and administering his own affairs; or
 - (iii) if he is disqualified from acting as a trustee under the Laws of Malawi; or
 - (iv) (except the International Trustee) unless he is a citizen and resident of Malawi; or
 - (v) if he is a director of Press Corporation Limited or any subsidiary or associated company of Press Corporation Limited or if he is a director of a company of which the Trustees control more than 50 per cent of the voting rights;
- (l)
 - (i) the Chairman of the Board of Trustees shall hold office for one year and shall be elected from amongst the eligible candidates by simple majority and shall have no casting vote;
 - (ii) the first Chairman shall be elected from amongst the two Ordinary Trustees appointed in accordance with clause (g) (i) above and the other Ordinary Trustee appointed in accordance with clause (g) (i) above shall become the Second Chairman;

- (iii) the third and fourth Chairmen will be chosen in like manner from amongst the two Ordinary Trustees appointed in accordance with clause (g) (ii);
- (iv) the fifth and sixth Chairmen will be chosen in like manner from amongst the two initial Trustees;
- (v) in the seventh and subsequent years the Chairman will be elected annually by simple majority by a procedure to be determined by the Trustees provided no retiring Chairman shall be eligible for immediate re-election.

7. Meetings

- (a) the Board of Trustees shall meet within thirty days from the date of the Board of Trustees being fully constituted at such place and time as agreed by the Initial Trustees, and thereafter at such times and places as the Board of Trustees shall agree;
- (b) an annual meeting of the Board of Trustees will be held on a date not less than 120 days and not more than 180 days from the Trust's Year End and at that meeting the accounts and annual report shall be considered;
- (c) a special meeting of the Board of Trustees may be called at any time by any Trustee upon not less than 28 days' notice in writing being given to the other Trustees of the date and place of the meeting and the matters to be discussed;
- (d) there shall be a quorum when at least four of the number of Trustees are present at the meeting in person or by proxy;
- (e)
 - (i) Trustees may attend meetings in person or by proxy; Any proxy must be in writing and specific for that meeting.
 - (ii) an individual is eligible to be appointed a proxy if-
 - (A) he is eligible to be appointed as a Trustee hereunder; and
 - (B) he is not a Trustee at the date of the meeting.
 - (iii) no person may hold more than one proxy for any given meeting;
- (f) meetings of the Trustees shall be held in Malawi and all Trustees shall be given at least 28 days notice in writing of such meetings (unless the Trustees unanimously agree to dispense with such notice);
- (g) the Board of Trustees shall keep minutes, in books for the purpose, of the proceedings at their meetings;

8. Initial meeting business

At the first meeting of the Board of Trustees as prescribed in subclause 7(a) the Board of Trustees shall—

- (a) requisition an Extraordinary General Meeting of the Press Corporation Limited at the earliest date permitted by the Articles of Association of Press Corporation Limited to consider a motion to remove from office the Board of Directors of Press Corporation Limited and to elect a new Board of Directors to serve in its place;
- (b) resolve that the Trust's shares shall be voted at such Extraordinary General meeting in favour of dismissal of the Board of Directors of Press Corporation Limited;
- (c) agree by simple majority vote a list of nominees to the Board of Directors of Press Corporation Limited in support of whom the Trust's shares in Press Corporation Limited shall be voted at the said Extraordinary General Meeting.

9. Voting

- (a) Unless otherwise stated in this Deed powers of the Trustees shall be exercisable only by two-thirds majority decision of the Trustees present in person or by proxy at any duly constituted meeting;
- (b) if a Trustee (other than in his capacity as a Trustee) is a shareholder or director of any company the shares of which form part of the Trust Fund or the shares of which the Trustees are considering acquiring then he shall declare any such interest and shall not be able to vote on any issue relating to such company and he shall be treated (on such issue or issues only) as not being present at the meeting for the purpose of the voting requirements set out in sub-clause (a) above.

10. Reporting

- (a) The Trustees shall prepare in respect of each Financial Year an annual report containing—
 - (i) a report by the Trustees on the activities of the Trust during that year; and
 - (ii) a statement of assets, creditors, liabilities, cash, investments, debtors, gross income and expenditure; and
 - (iii) a detailed statement of all expenditure, costs, expenses, remuneration and other charges, together with the amounts paid and the identity of the recipients of such amounts; and
 - (iv) an audit of the accounts of the Trust together with detailed notes of the accounts carried out by a firm of Chartered Accountants with a statement that the receipts and payment accounts and statement of assets and liabilities are in all material respects complete and accurate and give a true and fair view of the Trust; and
 - (v) a statement that the reporting and audit requirements set out in sub-clause (b) of this clause have been complied with; and
 - (vi) a statement as to whether in the opinion of the auditor to the Trust the expenses incurred by the Trust have been reasonable; and
 - (vii) a statement by the auditor of any activities or affairs of the Trust which the auditors reasonably believe not to be in the interest of the Trust on the proper exercise of the Trustees' powers and the reasons for such a view. In the absence of any such activities or affairs the auditor shall confirm such in a statement in the annual report; and
 - (viii) a forecast of anticipated income and a budget for the current Financial Year approved by the Trustees which will set out details of—
 - (A) the estimated amount of income to be distributed for the NBP;
 - (B) committed funding and an outline of the proposed allocation of other distributions;
 - (C) the estimated costs and expenses of the Trust;
 - (D) a scheme of investment for any income retained by the Trustees.
- (b) the Trustees shall procure as a condition for the distribution of funds that all recipients of any amounts of income or capital from the Trust Fund prepare an annual report on the use of such funds and submit themselves to an audit. If the Trustees shall enter into any projects themselves then the same reporting requirements will also apply to such projects. The manner and form of the report to be prepared and the information to be provided by the recipients shall—
 - (i) if the distribution is in excess of K200,000 be similar to that required to be prepared and provided by the Trustees under clause 10 (a) above;
 - (ii) if the distribution is less than K200,000 and if required by the Trust's auditor to do so, be a simple report on the way the funds from the Trust have been used by such recipients;

- (iii) the sum of K200,000 stated in paragraphs (i) and (ii) above shall be increased each year by an amount to be set by the auditor. Such increase is to be based on a scale equivalent to the increase in the consumer prices index during the same period. At every five-year interval the Trustees shall have power to alter this figure to such amount as shall in the circumstances be reasonable.
- (c) the Trustees shall cause to be published in at least one national newspaper of Malawi within seven days of the annual meeting the following information—
 - (i) an income and expenditure account for the preceding year;
 - (ii) the balance sheet at the preceding Trust's Year End;
 - (iii) a complete list of recipients of the Trust income and capital during the year in question and the amount received by each;
 - (iv) an outline of the proposed allocation of distributions and a list of projects to which funding has been committed;
 - (v) an abbreviated form of the Trustees' Report;
- (d) the Trustees shall cause to be published in like manner above within seven days of each meeting at which they resolve to distribute funds for the NBP, a complete list of the proposed recipients and the amount and the purpose for which the funds are to be applied.

11. Trustees' responsibility as shareholder

The Trustees shall not by exercise of their vote in general meeting or otherwise interfere in the management or conduct of the business of any company the shares or securities of which comprise the whole or any part of the Trust Fund or any subsidiary of such company except in so far as required to safeguard their economic interest in such companies or subsidiaries and Provided Always that where the Trustees' holding of such share is sufficient to confer voting control of the company concerned the Trustees shall nevertheless from time to time seek to obtain such information from the company as would be made available to a non-executive director to satisfy themselves (so far as may be possible from such information) that the affairs of the company are being properly managed and in the absence of any notice to the contrary the Trustees shall leave the conduct of its business (including the payment or non-payment of dividends) wholly to the directors.

12. Power to amend administrative provisions

If at any time during the continuance of the Trust it shall appear to the Trustees that either by reason of changes in the law affecting the administration of charitable or this or other trusts or of changes in social, scientific or educational conditions or by reason of any defect or omission in the preceding provisions of this Deed it would be necessary for the effective operation of the trusts set up by this Deed that the Trustees should possess or be invested with any further or administrative powers which the Trustees do not or may not possess then the Trustees shall apply to the Court for the Court to determine if such amendment to the administrative powers would be in the best interests of the Trust.

13. Trustee liability

In the professed execution of these trusts and powers Trustees shall not be liable for any loss to the Trust Fund arising by reason of any investment made in good faith (so long as the Trustees shall have sought and considered professional advice before making such investment) or for the negligence or fraud of any agent employed by any of the Trustees in good faith although the employment of such agent was not strictly necessary or expedient (provided reasonable supervision shall have been exercised) or by reason of any mistake or omission made in good faith by any Trustee.

14. Trustee's remuneration and expenses

- (a) no Trustee shall benefit from the Trust nor from any position held by a Trustee on behalf of the Trust save that Trustees shall be reimbursed for the cost of travelling to attend meetings of the Trust or board meetings of companies where they are attending as nominees of the Trust and reasonable costs of accommodation incurred wholly, exclusively and necessarily in the attendance of such meetings:

PROVIDED always that the auditor of the Trust shall certify that any such sums are so payable and reasonable and, in the event that any sums paid to a Trustee by the Trust shall not be so certified, such sum shall be due as a debt from the Trustee to the Trust.

- (b) if any Trustee shall in his personal capacity be or become a director of a company no more than 50 per cent of the voting rights of which are controlled by the Trustees then he shall be entitled to retain for his own use and benefit any fee or other remuneration received by him from such company.

15. Notice

Notices required to be given under the terms of this Trust shall be in writing and shall be sufficiently given if delivered to the addressee either personally or sent by Express Mail and a receipt obtained provided that in the case of the International Trustee notice shall be sufficiently given if it is delivered personally or by facsimile with acknowledgement by the addressee or by international courier with a receipt obtained.

16. Prohibition on trading

The Trustees shall not carry on any permanent trading activities in raising funds for the charitable objects hereof.

17. Clause headings

The clause headings are included for reference only and do not affect the interpretation of this Settlement.

IN WITNESS whereof the Minister responsible for finance, acting on behalf of the Government of Malawi, has hereunder set his hand and seal the day and year first before written.

SIGNED, SEALED and

DELIVERED by: _____

in the presence of: _____

SIGNED, SEALED and

DELIVERED by: _____

in the presence of: _____

[G.N. 72/1995]