

[Chap5302]CHAPTER 53:02

ARCHITECTS AND QUANTITY SURVEYORS

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29 of 1991

G.N. 72/1992

An Act to provide for matters relating to the professions of architecture and quantity surveying in Malawi and to the qualifications, registration and control of the members thereof; to establish the Board of Architects and Quantity Surveyors, a body corporate, as the qualifying, registering and disciplinary authority of such professions; and to provide for matters connected therewith and incidental thereto

[1ST APRIL 1992]

## PART I

### PRELIMINARY

[Ch5302s1]1. Short title

This Act may be cited as the Architects and Quantity Surveyors Act.

[Ch5302s2]2. Interpretation

In this Act, unless the context otherwise requires—

“approved institution” means any university, institute, college or school of architecture or quantity surveying approved by the Board pursuant to section 14 (b);

“Board” means the Board of Architects and Quantity Surveyors established by section 3;

“Chairman” means the Chairman of the Board designated by the Minister pursuant to section 4 (3);

“financial year” means the financial year of the Board as provided by section 20;

“register” means the register of Architects, or the register of Graduate Architects, or the register of Architectural Technicians, or the register of Quantity Surveyors, or the register of Graduate Quantity Surveyors, or the register of Quantity Surveying Technicians, as the case may be, maintained by the Board pursuant to section 22;

“Registrar” means the Secretary;

“Secretary” means the Secretary to the Board designated by the Minister pursuant to section 8; and

“Vice-Chairman” means the Vice-Chairman of the Board designated by the Minister pursuant to section 4 (3).

## PART II

### ADMINISTRATION

Division A—Board of Architects and Quantity Surveyors

[Ch5302s3]3. Establishment of the Board

(1) There is hereby established a Board under the name of the Board of Architects and Quantity Surveyors (in this Act referred to as the “Board”) which shall be a body corporate with perpetual succession and a common seal, with power to alter and change the same from time to time, and shall, under that name, be capable of suing and being sued and, subject to the provisions of this Act, of purchasing or otherwise acquiring, holding or alienating property, real or personal, and of doing all such acts and things as bodies corporate may by law do or perform.

(2) The common seal of the Board shall be authenticated by the signatures of the Chairman, or of the person for the time being performing the functions of Chairman, and of one other member of the Board designated by the Board for such purpose, and any document purporting to be sealed with the seal of the Board and so authenticated shall be admissible in evidence of the particulars stated in that document.

(3) The Board may use a wafer or rubber stamp in lieu of an embossed seal until such time as an embossed seal is procured by the Board.

[Ch5302s4]4. Composition of the Board

(1) The Board shall consist of the following members—

(a) the public officer for the time being holding, or acting in, the post of Controller of Buildings;

(b) an officer in the public service, who is a registered architect or quantity surveyor and a resident of Malawi, appointed by the Minister;

(c) two persons appointed by the Minister from a panel of not less than five registered architects nominated by the Malawi Institute of Architects;

(d) two persons appointed by the Minister from a panel of not less than five registered quantity surveyors nominated by the Surveyors Institute of Malawi; and

(e) one other person appointed by the Minister.

(2) The Minister may appoint to the Board such other persons, not exceeding three in number, as he deems qualified to assist the Board in its work and deliberations.

(3) The Minister shall designate from amongst members of the Board two persons both of whom shall be citizens of Malawi to serve as Chairman and Vice-Chairman of the Board.

(4) Members of the Board shall not by virtue only of their appointment to the Board, be deemed to be officers in the public service.

[Ch5302s5]5. Disqualifications

Any person who—

- (a) is an undischarged bankrupt;
- (b) has been convicted, at any time, of an offence under this Act or under any written law which is repealed or replaced by this Act;
- (c) has, within three years last past, for an offence under any written law, been sentenced to a term of imprisonment of not less than six months save as an alternative to, or in default of, the payment of a fine;
- (d) has been convicted, within six years last past, of an offence involving fraud or dishonesty,

shall be disqualified from being appointed to, or from continuing to hold, office as a member of the Board.

[Ch5302s6]6. Tenure of office of members of the Board and vacancies thereon

(1) Subject to subsection (4), any person who is appointed a member of the Board in pursuance of section 4 (1) (b), (c), (d) or (e) shall hold office for such period not exceeding three years as may be specified in the instrument of his appointment.

(2) Any retiring member of the Board, other than a member who is disqualified under section 5, shall be eligible for reappointment.

(3) Upon expiry of the period for which a member is appointed he shall continue to hold office until his successor has been appointed.

(4) The office of a member of the Board, who is not a member thereof ex officio, shall be vacated—

- (a) upon his death;
- (b) if he is absent from three consecutive meetings of the Board without the permission of the Board or of the Minister;
- (c) upon the expiry of one month's notice in writing of his intention to resign given by him to the Minister and to the Board;
- (d) upon his dismissal from the Board by the Minister by notice in writing;
- (e) if he becomes mentally or physically unfit, and the Minister is of the opinion that he is no longer, by reason of such unfitness, capable of performing his duties as a member of the Board; and
- (f) if he becomes disqualified for membership of the Board under section 5.

(5) An ex officio member of the Board shall continue as such for so long as he holds the office by virtue of which membership of the Board is ordained by this Act.

[Ch5302s7]7. Remuneration of members of the Board

Any member of the Board who is not an officer in the public service shall be paid out of the funds of the Board such remuneration and allowances, if any, as may be prescribed.

[Ch5302s8]8. Secretary/Registrar

(1) There shall be an officer of the Board designated as the Secretary to the Board who shall be appointed by the Board with the approval of the Minister and on such terms and conditions as the Board shall determine with the approval of the Minister.

(2) Until a person has been appointed under subsection (1) the Minister may designate an officer in the public service to be the Secretary to the Board.

(3) The Secretary to the Board shall be the Registrar for all of the purposes of this Act.

(4) The Secretary shall be the chief executive officer of the Board and as such shall be responsible to the Board for the administration and management of its affairs, and shall be in charge of all administrative, executive and other staff of the Board, and, in all such matters, shall, at all times, be subject to the direction and control of the Board.

(5) The Secretary shall exercise such powers and perform such duties as the Board may delegate to him in writing from time to time, and in any such delegation the Board may impose such conditions as to the exercise of such powers or the performance of such duties as the Board deemes fit.

[Ch5302s9]9. Other staff of the Board

(1) In addition to the Secretary the Board may appoint, on such terms and conditions as the Board may determine with the approval of the Minister, such other administrative, executive, or technical staff or other servants or agents as the Board considers necessary for the better administration of the provisions of this Act or the affairs of the Board.

(2) The Secretary may, with the approval of the Board, employ such temporary or part-time staff as are necessary for the time being efficiently to effect the objects of the Board.

(3) The Board shall be liable for all salaries and other expenses incurred in relation to persons employed under subsections (1) and (2).

[Ch5302s10]10. Meetings of the Board

(1) The Board may meet at such places and times as the Chairman may determine and such meetings shall be convened by the Chairman or by the Minister.

(2) In the absence of the Chairman from any meeting of the Board, the Vice-Chairman shall preside, and in the absence of both the Chairman and the Vice-Chairman from any such meeting the members present, if constituting a quorum, shall elect one of their number to preside at that meeting.

(3) The Board shall have power to determine its own procedure for the conduct of its meetings.

(4) Any five members of the Board shall constitute a quorum.

(5) At any meeting of the Board the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

#### [Ch5302s11]11. Committees of the Board

(1) The Board may, with the approval of the Minister, establish one or more committees to carry out any special or general functions determined by the Board and may delegate to any such committee such of the functions of the Board as it may deem expedient.

(2) The Chairman of the Board shall, by reason of his office, be a member of every committee established pursuant to subsection (1).

(3) The chairman of each committee established pursuant to subsection (1) shall be appointed by the Board from amongst the members of the Board.

(4) Each committee may, with the prior approval of the Board or the Chairman, co-opt as members of such committee persons who are not members of the Board and who are not disqualified for such membership, and any of such members so co-opted may or may not be officers in the public service.

(5) The chairman of any committee may, at any time and at any place, convene a meeting of the committee of which he is chairman.

(6) The Board or the Chairman may, at any time, direct the chairman of any committee to convene a meeting of such committee and such chairman shall, as soon as is practicable, comply, with such direction.

(7) Every committee established pursuant to subsection (1) shall keep minutes of its meetings and shall inform the Board of its activities and conduct its proceedings in such manner as the Board may direct.

(8) The Minister may, in writing, nominate any officer in the public service to attend any meeting or meetings of any committee established pursuant to subsection (1), which officer may take part in the proceedings of any such meetings as if he were a member of such committee, save that he shall not be entitled to vote thereat.

(9) A member of a committee established pursuant to subsection (1), who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while

discharging his duties as such member, be paid out of the funds of the Board, such allowances as may be prescribed.

[Ch5302s12]12. Co-opted persons

The Board or any committee of the Board may, in its discretion, at any time and for any length of time invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Board or of a committee of the Board and to take part in the deliberations thereat, but such person or officer shall not be entitled to vote at that meeting.

[Ch5302s13]13. Minutes of Board and committee meetings

Minutes of every meeting of the Board and of a committee of the Board shall be taken and kept by the Secretary or by such other officer of the Board as the Secretary may designate in that behalf and shall be subject to confirmation by the Board or the committee at the succeeding meeting.

Division B—Powers of the Board

[Ch5302s14]14. Powers of the Board

The Board shall be the sole qualifying and registering authority for the professions of architecture and quantity surveying in Malawi and shall have the following powers—

- (a) to register persons qualified to be registered under this Act;
- (b) to approve universities, institutions, colleges or schools of architecture, or quantity surveying or other educational or training institutions within or outside Malawi, as approved institutions the training at which in architecture or quantity surveying or any branch thereof will be recognized by the Board as acceptable training for the registration of persons under this Act;
- (c) to establish educational standards and qualifications for the professions of architecture and quantity surveying in Malawi;
- (d) to exercise disciplinary control over practitioners in the professions of architecture and quantity surveying in Malawi;
- (e) to purchase, lease, or otherwise acquire any property, real or personal, for or in connexion with the exercise of any of its powers or objects;
- (f) to manage, insure, let, sell, alienate, mortgage or otherwise deal with any property of the Board as it may deem necessary or expedient;
- (g) to receive donations or gifts of moneys or other property from any person or body of persons and, for the furtherance of its objects, to receive such donations or gifts beneficially or as the trustee of any trust established for the furtherance of such objects; and

(h) to do or perform any act or thing required by this Act to be done or performed by the Board or which the Board considers to be expedient for the purposes of this Act.

[Ch5302s15]15. Power of the Board to make rules

The Board may, with the approval of the Minister, make rules for all or any of the following purposes—

(a) for the management of the Board, for the holding of meetings of the Board, for the issue of notices calling such meetings, and for the procedure to be followed at such meetings;

(b) for the definition of unprofessional conduct and for determining the mode of inquiry into and the penalties which may be imposed upon any Architect or Quantity Surveyor found guilty of such conduct;

(c) for the definition of misconduct and for determining the mode of inquiry into and the method of dealing with such misconduct and the penalties which may be imposed upon any person registered under this Act found guilty of such misconduct;

(d) for recommending the scale of fees to be charged by persons registered under this Act in respect of professional advice, services rendered and work done, and the Board shall base such scale of fees on the recommendations of the Malawi Institute of Architects or the Surveyors Institute of Malawi;

(e) for describing the procedure to be followed by persons applying for registration;

(f) for the maintenance and improvement of the dignity and reputation of the professions of architecture and quantity surveying and the social standing of the practitioners of those professions;

(g) for prescribing the conditions under which persons registered under this Act may practise as limited liability companies, and for requiring professional indemnity insurance in the case of such companies; and

(h) for approving examinations authorized or permitted under this Act and for approving any curriculum for education or training in architecture or quantity surveying formulated by the Malawi Institute of Architects or the Surveyors Institute of Malawi.

[Ch5302s16]16. Non-liability of members of the Board

No member of the Board shall be liable for any act or default of his, or of the Board, done in good faith in the exercise or purported exercise of his duties as member of the Board.

PART III

FINANCIAL AND ACCOUNTING PROVISIONS

[Ch5302s17]17. Funds of the Board

(1) The funds of the Board shall consist of—

(a) such sums as may be payable to the Board from moneys appropriated by Parliament for the purpose;

(b) such moneys or other property as may be payable to or vest in the Board whether in the course of the exercise of its powers or functions or otherwise; and

(c) such moneys or other property as may be payable to or vest in the Board pursuant to this or any other written law or pursuant to any trust or gift.

(2) The funds of the Board shall be deposited and held on such accounts as the Minister may approve.

[Ch5302s18]18. Investment of surplus sums

The Board may invest any sums which are not immediately required for its objects in such manner as the Minister may approve.

[Ch5302s19]19. Borrowing powers

Subject to the provisions of section 32 (1) of the Finance and Audit Act, the Board may borrow, either temporarily, by way of overdraft or otherwise, such sums as it may require for meeting its obligations or discharging its functions under this Act. Cap. 37:01

[Ch5302s20]20. Financial year of the Board

The financial year of the Board shall be the period commencing on the date of commencement of this Act and ending on the following 31st March and thereafter it shall be a period of twelve months ending on 31st March every year.

[Ch5302s21]21. Books, accounts, audits and reports

(1) The Board shall cause to be kept proper books of account and other records in relation to all moneys and other property vested, received or otherwise obtained, and of all moneys expended or other property sold or otherwise disposed of, by the Board.

(2) The accounts of the Board shall be audited annually by professional auditors appointed by the Board with the approval of the Minister.

(3) The expenses of, and incidental to, any audit shall be payable out of the funds of the Board.

(4) The Board shall as soon as is practicable, but not later than six months after the end of each financial year, submit to the Minister an annual report upon its work and operations.

(5) The report required under subsection (4) shall include a balance sheet, an income and expenditure account and the annual report of the auditors, and shall be laid by the Minister before the National Assembly pursuant to section 32F of the Finance and Audit Act. Cap. 37:01

#### PART IV

#### REGISTRATION

##### [Ch5302s22]22. Registers

(1) The Board shall, for the purposes of this Act, keep and maintain, in the appropriate prescribed forms—

- (a) a Register of Architects;
- (b) a Register of Graduate Architects;
- (c) a Register of Architectural Technicians;
- (d) a Register of Quantity Surveyors;
- (e) a Register of Graduate Quantity Surveyors; and
- (f) a Register of Quantity Surveying Technicians.

(2) The Registers shall be in the custody of the Registrar and shall be kept at the offices of the Board, or at such other place in Malawi as the Board may direct.

(3) The Registrar shall perform such duties in connexion with the Registers as may be prescribed, and, in this regard, shall be under the control of the Board in the performance of such duties.

(4) A Register shall, at all reasonable times, be open to inspection by—

- (a) public officers and members of the police force in course of duty;
- (b) every person registered under the register; and
- (c) members of the public, upon payment of the prescribed fee.

(5) Every person registered under this Act shall, before 31st March each year, pay to the Board such annual fee and in such manner as may be prescribed.

(6) The Registrar shall, once in every year and as soon as may be convenient after 1st April, publish in the Gazette the names, addresses, qualifications, dates of registration and other particulars of all persons registered under this Act.

##### [Ch5302s23]23. Architects and Quantity Surveyors must be registered

(1) Save where this Act otherwise provides, no person shall engage in the practice of architecture or quantity surveying in Malawi, or hold himself out as being entitled so to do, unless he is registered under this Act.

(2) Any person who engages in the practice of architecture or quantity surveying in contravention of subsection (1) shall not be entitled to recover in any court any charge or fee in respect of any architectural or quantity surveying work or activity done or performed by him in the course of his practice which constitutes a contravention of subsection (1).

#### [Ch5302s24]24. Applications to the Board

Every application for registration under this Act shall be made to the Board in the form and manner prescribed and shall be accompanied with the appropriate prescribed fee.

#### [Ch5302s25]25. Qualification for registration as an Architect

Any person may, upon making application for registration, be registered as an Architect provided that he proves to the satisfaction of the Board that his professional and general conduct has been such as not, in the opinion of the Board, to debar him from registration and that he—

(a) is a member of the Malawi Institute of Architects or such other institution or society as the Minister may, by notice published in the Gazette, declare to be of adequate standing; and

(b) either—

(i) has passed a qualifying examination approved by the Board and has had at least two years' practical training in the work of an Architect to the satisfaction of the Board; or

(ii) has satisfied the Board that he possesses a qualification which, in the opinion of the Board, furnishes a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of the work of an Architect.

#### [Ch5302s26]26. Qualifications for registration as a Graduate Architect

(1) Any person shall be entitled to make application for registration as a Graduate Architect under this Act if he has, in consequence of an examination, obtained from an approved institution a degree or other qualifying certificate which the Board considers acceptable for registration.

(2) Every Graduate Architect registered pursuant to this section shall be entitled to practise architecture as an Architect in training, by agreement with and under the direction or control of a registered Architect.

#### [Ch5302s27]27. Qualifications for registration as an Architectural Technician

(1) Any person shall be entitled to make an application for registration as an Architectural Technician under this Act if—

(a) he has passed an examination recognized by the Malawi Institute of Architects or has obtained from an approved institution other qualifications which the Board considers acceptable for registration; and

(b) subsequent to his qualifying certificate, has received practical training from approved employment as a technician for a period of not less than two years.

(2) If the Board is satisfied that the applicant is of good character and is a fit and proper person to be registered and that he has complied with all the requirements of this section, it shall direct the Registrar to register the applicant.

[Ch5302s28]28. Qualifications for registration as a Quantity Surveyor

Any person may, upon making application for registration, be registered as a Quantity Surveyor provided that he proves to the satisfaction of the Board that his professional and general conduct has been such as not, in the opinion of the Board, to debar him from registration and that he—

(a) is a full member of the Surveyors Institute of Malawi or of such other institution or society as the Minister may, by notice published in the Gazette, declare to be of adequate standing; and

(b) either—

(i) has passed a qualifying examination approved by the Board and has had at least two years' practical training in the work of a Quantity Surveyor to the satisfaction of the Board; or

(ii) has satisfied the Board that he possesses a qualification which, in the opinion of the Board, furnishes a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of the work of a Quantity Surveyor.

[Ch5302s29]29. Qualifications for registration as a Graduate Quantity Surveyor

(1) Any person shall be entitled to make application for registration as a Graduate Quantity Surveyor under this Act if he has, in consequence of an examination, obtained from an approved institution a degree or other qualifying certification which the Board considers acceptable for registration.

(2) Every Graduate Quantity Surveyor registered pursuant to this section shall be entitled to practise quantity surveying as a Quantity Surveyor in training, by agreement with and under the direction or control of a registered Quantity Surveyor.

[Ch5302s30]30. Qualification for registration as a Quantity Surveying Technician

(1) Any person shall be entitled to make an application for registration as a Quantity Surveying Technician under this Act if—

(a) he has obtained Part I and Part II technician certificates in quantity surveying from the Polytechnic of Malawi or has obtained from an approved institution other qualifications approved by the Surveyors Institute of Malawi which the Board considers acceptable for registration; and

(b) subsequent to his qualifying certificate, has received practical training from approved employment as a technician for a period of not less than two years.

(2) If the Board is satisfied that the applicant is of good character and is a fit and proper person to be registered and that he has complied with all the relevant requirements of this section, it shall direct the Registrar to register the applicant.

#### [Ch5302s31]31. Certificate of registration

The Registrar shall issue to every person registered as an Architect, Graduate Architect, Architectural Technician, Quantity Surveyor, Graduate Quantity Surveyor, Quantity Surveying Technician, as the case may be, under this Act, a certificate of registration in the appropriate prescribed form.

#### [Ch5302s32]32. Correction of Registers

(1) The Registrar may, with the prior approval of the Board, from time to time, make any necessary alteration or correction in any Register in relation to any entry therein.

(2) The Registrar shall remove from any Register the name of any deceased person, and shall, when directed by the Board so to do, remove from any Register any entry which has been incorrectly or fraudulently made therein.

(3) The Registrar may, with the consent, in writing, of the person concerned, remove from any Register the name of any person who has ceased to practise architecture or quantity surveying in Malawi.

(4) Any name removed from any Register pursuant to subsection (3) shall, at the request in writing of the person concerned, be reinstated by the Registrar.

### PART V

#### DISCIPLINARY PROVISIONS

#### [Ch5302s33]33. Suspension or striking out of Architects or Quantity Surveyors

The Board shall, in its own right or on the recommendation of the Malawi Institute of Architects or the Surveyors Institute of Malawi, as the case may be, have the right to reprimand or suspend any Architect or Quantity Surveyor or strike out of the register the name of any such person who shall have been found by the Board to have been guilty of unprofessional conduct as defined by Rules made under section 15.

[Ch5302s34]34. Suspension or striking out of Graduate Architects, Architectural Technicians, Graduate Quantity Surveyors or Quantity Surveying Technicians

The Board shall, in its own right or on the recommendation of the Malawi Institute of Architects or the Surveyors Institute of Malawi, as the case may be, have the right to reprimand or suspend any person registered under this Act as a Graduate Architect, an Architectural Technician, a Graduate Quantity Surveyor or a Quantity Surveying Technician or strike out of the register the name of any such person who shall have been found by the Board to have been guilty of misconduct as defined by Rules made under section 15.

PART VI

OFFENCES

[Ch5302s35]35. Unlawful practice of architecture or quantity surveying

Save where this Act otherwise provides, any person who is not registered under this Act, and who in Malawi—

- (a) engages, or purports to engage, in the practice of architecture or quantity surveying;
- (b) holds himself out as being entitled to engage in the practice of architecture or quantity surveying;
- (c) does or performs, or purports to do or perform, any act or thing which, under this Act may be done or performed exclusively by a person registered under this Act,

shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for a term of one year.

[Ch5302s36]36. Unlawful use of descriptions

Any person who, in relation to himself or to any business which he owns, manages or controls, assumes or uses, in Malawi—

- (a) the title or description of “Architect”;
- (b) the title or description of “Graduate Architect”;
- (c) the title or description of “Architectural Technician”;
- (d) the title or description of “Quantity Surveyor”;
- (e) the title or description of “Graduate Quantity Surveyor”;
- (f) the title or description of “Quantity Surveying Technician”,

or any abbreviation of any such title or description, without being registered as such under this Act, shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for a term of one year.

[Ch5302s37]37. Unlawful employment of non-registered person

(1) Any person who, without the prior consent of the Board—

(a) employs any person not registered under this Act to do or perform; or

(b) during the course of his employment of any person not registered under this Act, requires such person to do or perform,

any prescribed architectural or quantity surveying work or activity shall be guilty of an offence and liable to a fine of K5,000 and imprisonment for a term of one year.

(2) Any person not registered under this Act, who, while in the employment of any other person, knowingly, in the course of such employment, does or performs any prescribed architectural or quantity surveying work or activity shall be guilty of an offence and liable to a fine of K2,500 and to imprisonment for a term of six months.

[Ch5302s38]38. Fraudulent entries and copies

Any person who knowingly or fraudulently makes, or causes, or permits to be made—

(a) any false or incorrect entry in any Register; or

(b) any false or incorrect copy of any entry in any Register,

shall be guilty of an offence and liable to a fine of K2,500 and to imprisonment for a term of six months.

PART VII

MISCELLANEOUS

[Ch5302s39]39. Use of title

(1) Any person registered as an Architect under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Architect.

(2) Any person registered as a Graduate Architect under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Graduate Architect.

(3) Any person registered as an Architectural Technician under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Architectural Technician.

(4) Any person registered as a Quantity Surveyor under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Quantity Surveyor.

(5) Any person registered as a Graduate Quantity Surveyor under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Graduate Quantity Surveyor.

(6) Any person registered as Quantity Surveying Technician under this Act shall, by virtue of such registration, be entitled to take and use the title and description of Quantity Surveying Technician.

(7) Any person registered under this Act shall not take, or use, or affix to, or use in connexion with his business office or premises, any title in addition to that under which he is registered under this Act, other than as indicated by the particulars relating to his qualifications entered in the relevant Register.

(8) The Board may approve abbreviations of titles and descriptions recognized under this Act and persons registered under any category shall be entitled to use the abbreviation of that category approved by the Board.

#### [Ch5302s40]40. Execution of certificates and other documents

No certificate or other document which is required by law, or under the terms or conditions of any contract, to be signed by a duly qualified architect or quantity surveyor, shall, if so signed in Malawi, be valid unless signed by a person duly registered, and competent to sign such certificate or other document, under this Act.

#### [Ch5302s41]41. Regulations

The Minister may, from time to time, by Regulations, made by notice in the Gazette, prescribe anything which by the provisions of this Act may be prescribed and in respect of which no other prescribing authority is specified, and may, in like manner, from time to time, make Regulations for the better carrying out of this Act, and without prejudice to the generality of the foregoing, such Regulations may make provision for—

- (a) the forms of the registers required to be maintained by the Board under this Act;
- (b) the forms of application, notices, licences, certificates and other documents required for the purposes of this Act;
- (c) the forms of books and records to be kept for the purposes of this Act;
- (d) the allowances to be paid to members of the Board and to members of committees of the Board in respect of honorarium or travelling expenses and subsistence;
- (e) the fees to be paid to the Board on any application for registration as an Architect, Graduate Architect, Architectural Technician, Quantity Surveyor, Graduate Quantity Surveyor and Quantity Surveying Technician;
- (f) the fees to be paid upon the issue of any certificate of registration, or of any certified copy thereof or any entry in any Register maintained pursuant to this Act; and
- (g) annual fees payable to the Board by Architects, Graduate Architects, Architectural Technicians, Quantity Surveyors, Graduate Quantity Surveyors and Quantity Surveying Technicians.

[Ch5302s42]42. Appeals

Any person aggrieved by any decision of the Board may appeal to the Minister, whose decision in the matter shall be final and shall not be subject to appeal to, or review or question by any court of law and the Minister shall not be required to assign any reasons therefor.

[Ch5302s43]43. Repeal of Cap. 53:02 and savings

(1) The Architects and Quantity Surveyors Act is hereby repealed.

(2) Any subsidiary legislation made under the Architects and Quantity Surveyors Act in force immediately before the commencement of this Act—

(a) shall remain in force unless in conflict with this Act and 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.

SUBSIDIARY LEGISLATION

ESTABLISHMENT OF BOARD

under s. 3

A Board of Registration of Architects and Quantity Surveyors has been established for the purposes of this Act.

ARCHITECTS AND QUANTITY SURVEYORS RULES

under s. 15

G.N. 105/1995

PART I

GENERAL

1. Citation

These Rules may be cited as the Architects and Quantity Surveyors Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“Registrar” has the meaning assigned thereto in section 2 of the Act.

“member” means an Architect, Quantity Surveyor, Graduate Architect, Graduate Quantity Surveyor, Architectural Technician or Quantity Surveying Technician registered under the Act.

3. Communications

All communications to the Board shall be addressed to the Registrar at the postal address of the Board.

4. Applications for registration

(1) All applications for registration as an Architect or Quantity Surveyor shall be made on Form 1 in the Second Schedule.

(2) All applications for registration as a Graduate Architect or Graduate Quantity Surveyor shall be made on Form 2 in the Second Schedule.

(3) All applications for registration as an Architectural Technician or a Quantity Surveying Technician shall be made on Form 3 in the Second Schedule.

5. Certificate of registration and form of registers

(1) The Board shall provide a certificate of registration to every member.

(2) The certificate of registration shall be in Form 4 set out in the Second Schedule.

(3) The Registrar shall keep and maintain each of the registers required under Part IV of the Act.

6. Certificate of registration in event of resignation, expulsion or suspension to be delivered to Board

(1) In the event of the resignation, expulsion or suspension of a member, his certificate of registration shall be delivered up by him to the Board.

(2) In the event of suspension, such certificate of registration shall be held by the Board during the period of suspension, and in the case of resignation or expulsion, such certificate shall be cancelled by the Board.

7. Change of address

It shall be the duty of every member to notify the Registrar of any change of address.

8. Professional remuneration

Every member shall be entitled to remuneration for his services.

9. Scale of fees to be furnished to client

(1) The scale of fees set out in the First Schedule is a minimum scale and shall be charged by Architects and Quantity Surveyors and the provisions set out in such Schedule shall apply to such charges.

(2) Architects and Quantity Surveyors shall forward to clients, at the outset of an engagement, a copy of such scale of fees.

## PART II

### DISCIPLINARY PROCEEDINGS

#### 10. The Board may institute inquiry

The conduct of any member may be considered by the Board in its own right or on the recommendation of the Malawi Institute of Architects or the Surveyors Institute of Malawi on behalf of any person feeling aggrieved by reason of alleged unprofessional conduct or misconduct on the part of any member.

#### 11. Complaints

The Board may require the complainant to file further particulars of any of the matters complained of and may require the complaint or any part thereof to be verified by affidavit.

#### 12. Explanation in answer to complaint

The Board may call upon the member whose conduct is complained of or is under investigation, to file within ten days thereafter explanation in answer to the complaint and may require such explanation to be verified by affidavit.

#### 13. Power to subpoena member

The Board may summon before it any member against whom any complaint has been lodged or whose conduct may appear to the Board to require investigation and may call upon him to produce any document, contract, contract book, paper, drawing, specification, quantities or other writing in his possession or under his control in any way relating to or concerning the complaint or matter under investigation and shall hear any relevant evidence and inspect any relevant documents which the complainant or the party complained against may desire to adduce.

#### 14. Appearance of accused member

The member against whom the complaint is made shall have the right to appear before the Board and to be heard either personally or through his legal practitioner and may call such evidence and produce such documents as may be relevant.

#### 15. Non-appearance

Should such member not appear within a reasonable period as the Board may determine and not file an explanation the inquiry may be proceeded with forthwith.

16. Evidence on oath

At any inquiry held under these Rules, all verbal evidence shall be taken on oath.

17. Penal provision

(1) The Board, after having enquired into the alleged misconduct of any member, may—

- (a) take no further action; or
- (b) caution the member; or
- (c) suspend the member; or
- (d) strike out the name of the member from the register; or
- (e) impose such a fine as the Board may determine.

(2) The Board shall publish in the Gazette the name of a member who has been suspended or stricken out of the register.

FIRST SCHEDULE r. 9

SCALE OF PROFESSIONAL CHARGES

A. ARCHITECTS

1. Application of this part

This part provides for scales of fees including other provisions related thereto which shall apply to any work done and services rendered by architects.

2. Appointment of Architects

The client and the architect shall discuss the appointment of the architect and conclude a Standard Form of Agreement for the appointment of an architect. Such Agreement shall specify in Schedules thereto the information to be supplied by the client, services to be provided by the architect fees and expenses and appointment of consultants specialists and site staff.

STANDARD FORM OF AGREEMENT FOR THE APPOINTMENT

OF AN ARCHITECT

NOTES ON USE AND COMPLETION

The Standard Form of Agreement consists of a set of documents which, taken together, should enable Architect and Client to express formally and unequivocally the agreement reached between them; the completed memorandum will signify common understanding and acceptance. It is in the interests of both parties that the Agreement fully reflects their intentions and requirements.

These notes briefly describe the function and format of the documents and indicate the way they are best completed. In all cases the Schedules will be used as a basis for discussion, and in most instances the Architect will complete the documents to record the agreements reached with the Client. Wherever possible, the details of appointment should be agreed in sufficient detail for the Memorandum of Agreement to be signed at the outset by both parties.

If the agreed professional services need to be revised subsequently, the best way to do this is to record the variation in a formal amending letter which will then become part of the Agreement. Attempts by the parties to amend the Agreement itself could lead to confusion and misunderstanding.

#### THE MEMORANDUM OF AGREEMENT

##### Use

The Memorandum identifies the parties, states their intentions, and defines the nature, scope and cost of the professional services to be provided.

The Memorandum is signed by both parties.

#### THE CONDITIONS

##### Completion

The conditions are plainly worded, and should be regarded as standard. They begin with definitions, and are in four parts.

Part One: is common to all commissions, and relates to the law of the contract; the obligations of the parties; assignments and sub-contracting; payment; suspension, resumption and termination; copy-right; and dispute resolution.

Part Two: relates specifically to matters concerning the design of building projects during work stages A—H.

Part Three: relates specifically to matters concerning the administration of the building contract and inspection of the works during work stages J—L.

Part Four: relates specifically to the appointment of consultants and specialists where the Architect is lead consultant.

##### Amendments

Amendments to the conditions are undesirable; if it is absolutely necessary to alter or delete anything, each agreed amendment should be initialled and dated by both parties. Proposed amendments may need to be referred to legal and insurance advisers.

## THE SCHEDULES

### Use

There are four schedules—

Schedule One: identifies the information to be supplied by the Client;

Schedule Two: identifies the services to be provided by the Architect;

Schedule Three: sets out the way payment for the services is calculated, charged and paid;

Schedule Four: is used where the Client accepts a recommendation to appoint consultants, specialists and site staff.

### Completion

The Schedules are used to help identify the client's requirements and match these with the professional services to be provided by the Architect. They will form the basis for discussion and will be completed by the Architect to record agreement on the information to be supplied by the Client (Schedule One), the complement of professional services to be provided by the Architect (Schedule Two), and the anticipated fees and charges arising and their method of payment (Schedule Three). Where consultants, specialists and site staff are to be appointed, Schedule Four will also be used.

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## MEMORANDUM OF AGREEMENT

### BETWEEN

#### Parties

(1) .....

of .....(the Client)

(2) .....

of ..... (the Architect)

Recitals

A. The Client intends to proceed with:

.....

..... (the Project)

The Project relates to the land and/or buildings at:

.....

..... (the Site)

B. The Client wishes to appoint the Architect for the Project and the Architect has agreed to accept such appointment upon and subject to the terms set out in this Agreement.

It is agreed that:

1. The Client hereby appoints the Architect and the Architect hereby accepts appointment for the Project.

2. This Appointment is made and accepted on the Conditions of Appointment and Schedules attached hereto.

3. The Architect shall provide the services specified in Schedule Two.

4. The Client shall pay the Architect the fees and expenses and disbursements specified in Schedule Three.

5. No action or proceedings for any breach of Agreement shall be commenced against the Architect after the expiry of ..... years from completion of the Architect's services, or, where the services specific to building projects Stages K-L are provided by the Architect, from the date of practical completion of the Project.

6.1 The Architect's liability for loss or damage shall be limited to such sum as the Architect ought reasonably to pay having regard to his responsibility for the same on the basis that all other consultants, specialists, and the contractor shall, where appointed, be deemed to have provided to the Client contractual undertakings in respect of their services and shall be deemed to have paid to the Client such contribution as may be appropriate having regard to the extent of their responsibility for such loss or damage.

6.2 The liability of the Architect for any loss or damage arising out of any action or proceedings referred to in clause 5 shall, notwithstanding the provisions of clause 6.1, in any event be limited to a sum not exceeding K.....

6.3 For the avoidance of doubt the Architect's liability shall never exceed the lower of the sum calculated in accordance with clause 6.1 above and the sum provided for in clause 6.2.

Dated ..... , 20.....

As WITNESS the hands of the parties the day and year first before written.

.....  
(the Client)

(the Architect)

### MEMORANDUM OF AGREEMENT

(Alternative version for execution as a deed under the Laws of Malawi)

### BETWEEN

#### Parties

(1) .....

of .....(the Client)

(2) .....

of ..... (the Architect)

#### Recitals

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6.3 For the avoidance of doubt the Architect's liability shall never exceed the lower of the sum calculated in accordance with clause 6.1 above and the sum provided for in clause 6.2.

Dated ..... 20 .....

As WITNESS the hands of the parties the day and year first before written.

.....  
(the Client)

(the Architect)

## DEFINITIONS

### Appointment

The agreement between the Client and the Architect for the Project as set out in the Standard Form of Agreement documents.

### Architect

The Party specified as Architect in the Memorandum of Agreement.

### Budget

The sum the Client proposes to spend on the Project inclusive of—

- (a) professional fees;
- (b) disbursements;
- (c) statutory charges;
- (c) the Construction Budget;

but excluding—

- (a) site acquisition costs;
- (b) client's legal and in-house expenses; and
- (c) any surtax thereon.

Client

The party specified as Client in the Memorandum of Agreement.

Client's requirement

The objectives which the Client wishes to achieve in the Project including functional requirements, environmental standards, life span, and levels of quality.

Collateral agreement

An agreement between the Architect and a third party existing in parallel with the agreement between the Architect and the Client. Sometimes known as a collateral warranty or a duty of care agreement.

Construction budget

The sum the Client proposes to spend on the construction of the Project.

Contract documents

The documents forming the building contract between the Client and a contractor, usually comprising of contract, drawings, specifications and bills of quantities or schedules of rates.

Lead consultant

The consultant given the authority and responsibility by the Client to coordinate and integrate the services of the other consultants.

Procurement method

The method by which the building project is to be achieved, determining—

- (a) the relations between the Client, the design team and the construction team;
- (b) the methods of financing and management; and
- (c) the form of construction contract.

#### Project

As specified in the Memorandum of Agreement.

#### Services

The services to be provided by the Architect as specified in Schedule Two.

#### Site

As specified in the Memorandum of Agreement.

#### Site staff

Staff appointed by either Architect or Client to provide inspection of the works on behalf of the Client.

#### Specialist

A person or firm, other than the consultants, appointed to provide expertise, skill and care, involving design, in the supply or manufacture of goods, materials or components or in the construction of parts of the Project.

#### Timetable

The timetable for the completion of the services showing inter alia and points and/or dates during the course of the carrying out of the services at which the Architect shall seek the authority of the Client before proceeding further with the services.

#### Total construction cost

The cost as certified by the Architect of all works including site works executed under the Architect's direction and control.

It shall include—

(a) the cost of all works designed by consultants and coordinated by the Architect irrespective of whether such work is carried out under separate building contracts for which the Architect may not be responsible. The Architect shall be informed of the cost of any such contract;

(b) the actual or estimated cost of any work executed which is excluded from the contract and which is otherwise designed by the Architect;

(c) the cost of built-in furniture and equipment. Where the cost of any special equipment is excluded from the total construction cost the Architect may charge additionally for work in connexion with such items; and

(d) the cost estimated by the Architect of any material, labour or carriage supplied by a Client who is not the contractor.

It shall exclude—

(a) the design fees of any Specialists for work on which otherwise consultants would have been employed. Where such fees are not known the Architect will estimate a reduction from the total construction cost.

Where the Client is the contractor, a statement of the ascertained gross cost of the works may be used in calculating the total construction cost of the works. In the absence of such a statement the Architect's own estimate shall be used. In both the statement of the ascertained gross cost and an Architect's estimate there shall be included an allowance for the contractor's profit and overheads.

Work stages

Stages into which the process of designing projects and administering building contracts may be divided in accordance with the RIBA's model Plan of Work for design team operation.

Works

The works to be carried out by the construction contractor as described in the contract documents; the place where those works are carried out.

SCHEDULE ONE

INFORMATION TO BE SUPPLIED BY THE CLIENT

PART I

ALL COMMISSIONS

The information to be supplied by the Client under conditions 1.3.2 and 1.3.3 shall specifically include—

Client's requirements

Budget

Timetable

Other matters:

## PART II

COMMISSIONS WHERE SERVICES AS SPECIFIED TO THE DESIGN OF BUILDING PROJECTS, WORKS

STAGES A-H

Where this part applies, the further information to be supplied by the Client shall specifically include:

Matters relating to the site and any buildings thereon including—

- (a) ownership and interests;
- (b) boundaries;
- (c) easements and restrictive and other covenants;
- (d) other legal constraints;
- (e) planning consents obtained and applied for;
- (f) measured surveys;
- (g) explorations; and
- (h) any requirements to conform to client systems/working methods.

Further matters relating to Clients' requirements including—

- (a) schedule of accommodation; and
- (b) general level of quality of specification.

Other matters:

## PART III

COMMISSIONS WHERE SERVICES TO CONTRACT

ADMINISTRATION AND INSPECTION OF THE WORKS, WORK

STAGES J—L

Where this part applies, information to be supplied by the Client shall specifically include:

As referred to in the Memorandum of Agreement dated between and (parties to initial)

CONDITIONS OF APPOINTMENT

## PART I

### CONDITIONS COMMON TO ALL

#### 1.1 Governing law/interpretation

1.1.1 The applicant of the appointment shall be governed by the laws of Malawi.

1.1.2 The conditions headings and side notes are for the convenience of the parties to this Agreement only and do not affect its interpretation.

#### 1.2 Architect's obligations

##### Duty of care

1.2.1 The Architect shall in providing the services exercise reasonable skill and care in conformity with the normal standards of the Architect's profession.

##### Architect's authority

1.2.2 The Architect shall act on behalf of the Client in the matters set out or necessarily implied in the appointment.

1.2.3 The Architect shall at those points and/or dates referred to in the timetable obtain the authority of the Client before proceeding with the services.

##### No alteration to services

1.2.4 The Architect shall make no material alteration to or addition to or omission from the services without the knowledge and consent of the Client except in case of emergency when the Architect shall inform the Client without delay.

##### Variations

1.2.5 The Architect shall inform the Client upon its becoming apparent that there is any incompatibility between any of the Client's requirements; or between the Client's requirements, the budget and timetable; or any need to vary any part of them.

1.2.6 The Architect shall inform the Client upon its becoming apparent that the Services and/or the fees and/or any other part of the Appointment and/or any information or approvals need to be varied. The Architect shall confirm in writing any agreement reached.

#### 1.3 Client's obligations

##### Client's representatives

1.3.1 The Client shall name the person who shall exercise the powers of the Client under the appointment and through whom all instructions to the Architect shall be given.

## Information

1.3.2 The Client shall provide to the Architect the information specified in Schedule One.

1.3.3 The Client shall provide to the Architect such further information as the Architect shall reasonably and necessarily request for the performance of the services: all such information to be provided free of charge and at such times as shall permit the Architect to comply with the timetable.

1.3.4 The Client accepts that the Architect will rely on the accuracy, sufficiency and consistency of the information supplied by the Client.

1.3.5 The Client shall advise the Architect of the relative priorities of the Client's requirements, the budget and the timetable and shall inform the Architect of any variations to any of them.

## Decisions and approvals

1.3.6 The Client shall give such decisions and approvals as are necessary for the performance of the services and at such times as to enable the Architect to comply with the timetable.

## Architect does not warrant

1.3.7 The Client acknowledges that the Architect does not warrant the work or products of others nor warrants that the services will or can be completed in accordance with the timetable.

## 1.4 Assignment and sub-contracting

### Assignment

1.4.1 Neither the Architect nor the Client shall assign the whole or any part of the benefit or in any way transfer the obligation of the appointment without the consent in writing of the other.

### Sub-contracting

1.4.2 The Architect shall not sub-contract any of the services without the consent of the Client, which consent shall not be unreasonably withheld.

## 1.5 Payment

### Payment

1.5.1 Payment for the services shall be calculated, charged and paid as set out in Schedule Three.

### Percentage fees

1.5.2 Where payment is stated in Schedule Three that fees and/or expenses are payable on a percentage basis, then, unless any other basis has been agreed between the Architect and the Client and confirmed by the Architect to the Client in writing, the fees and/or expenses shall be based on the

total construction cost of the works. On the issue of the final certificate under the building contract the fees and/or expenses shall be calculated on the actual total construction cost.

1.5.3 The following bases shall be used for the calculation of percentage fees based on the total construction cost until that cost has been ascertained—

- (a) until tenders are obtained—the cost estimate;
- (b) after tenders have been obtained—the lowest acceptable tender; and
- (c) after the contract is let—the contract sum.

#### Revised rates

1.5.4 Unless otherwise stated in Schedule Three, time rates and mileage rates for vehicles shall be revised every twelve months from the date of the appointment.

#### Fee variation

1.5.5 Where any change is made to the architect's services, the procurement method, the Client's requirements, the budget, or the timetable, or where the Architect consents to enter into any Collateral Agreement the form or beneficiary of which had not been agreed by the Architect the date of the appointment, the fees specified in Schedule Three shall be varied.

#### Very lump sum

1.5.6 Where fees and/or expenses are specified in Schedule Three to be a lump sum, that lump sum shall also be varied in accordance with the provisions of Schedule Three.

#### Additional fees

1.5.7 Where the Architect is involved in extra work and/or expenses for which the Architect is not otherwise remunerated caused by—

- (a) the Clients variations to complete work or services;
- (b) the examination and/or negotiation of notices, applications or claims under a building contract; and
- (c) delay or for any other reason beyond the Architect's control; the Architect shall be entitled to additional fees calculated on a time basis.

1.5.8 Where fees and/or expenses are varied under conditions 1.2.6, 1.5.4, 1.5.5 and/or 1.5.6 where additional fees are payable under conditions 1.5.7, the additional or varied fees and/or expenses shall be stated by the Architect in writing.

#### Incomplete services

1.5.9 Where the Architect carries out only part of services specified in Schedule Two, fees shall be calculated as described in Schedule Three for—

- (a) completed work stage (Schedule Two);
- (b) completed service (Schedule Two);
- (c) completed part (Timetable, Schedule One),

and for the balance of any of the above the fees shall be on the basis of the Architect's estimate of the percentage of completion.

#### Expenses and disbursement

1.5.10 The client shall pay the expenses specified in Schedule Three. Expenses other than those specified shall be charged with the prior authorization of the Client.

1.5.11 The client shall reimburse the Architect as specified in Schedule Three for any disbursements made on the Client's behalf.

#### Records Maintenance

1.5.12 The Architect shall maintain records of expenses and of disbursements and shall make these available to the Client on reasonable request.

#### Instalments

1.5.13 All payments due under the appointment shall be made in Schedule Three. Where no such basis is specified, payments shall be made monthly on the basis of the Architect's estimate of percentage of completion of the services.

#### Payment

1.5.14 Payment shall become due to the Architect on submission of the Architect's account.

#### No set-off

1.5.15 The Client may not withhold or reduce any sum payable to the Architect under the appointment by reason of claims or alleged claims against the Architect. All rights of set-off which the client may otherwise exercise in common law are hereby expressly excluded.

#### Disputed accounts

1.5.16 If any item or part of an item of any account is disputed or subject to question by the Client, the payment by the Client of the remainder of that account shall not be withheld on those grounds.

#### Interest on outstanding accounts

1.5.17 Any sums remaining unpaid at the expiry of twenty-eight days, from the date of submission of an account shall bear interest thereafter, such as to accrue from day to day at the rate specified in Schedule Three.

#### Payment on suspension or termination

1.5.18 On suspension or termination of the appointment the Architect shall be paid, fees for all services provided to that time calculated as incomplete services, and to expenses and disbursements reasonably incurred to that time.

1.5.19 During any period of suspension the Architect shall be reimbursed by the client for the expenses, disbursements and other costs reasonably incurred as a result of the suspension.

1.5.20 On the resumption of the suspended service within six months, fees paid prior to resumption shall be regarded solely as payments on account of the total fee.

1.5.21 Where the appointment is suspended or terminated by the Client or suspended or terminated by the Architect on account of a breach of the appointment by the Client, the Architect shall be paid by the Client for all expenses and other costs necessarily incurred as a result of any suspension and any resumption or termination.

#### Surtax

1.5.22 All fees, expenses and disbursements under the appointment are exclusive of surtax. Any surtax on the Architect's services shall be paid by the client.

### 1.6 Suspension, resumption and termination

#### Services impracticable

1.6.1 The Architect shall give reasonable notice in writing to the Client of any circumstances which make it impracticable for the Architect to carry out any of the services in accordance with the timetable.

#### Suspension

1.6.2 The client may suspend the performance of any or all of the services by giving reasonable notice in writing to the Architect.

#### Resumption

1.6.3 In the event of the Client's being in default of payments of any fees, expenses and/or disbursements, the Architect may suspend the performance of any or all of the services on giving of notice in writing to the Client.

#### Termination

1.6.4 If the Architect has not been given instructions to resume any suspended services within six months from the date of suspension, the Architect shall request in writing such instructions. If written instruction have not been received within twenty-eight days of the date of such request the Architect shall have the right to treat the appointment as terminated.

1.6.5 The appointment may be terminated by either party on the expiry of reasonable notice in writing.

#### Architect's death or incapacity

1.6.6 Should the Architect through death or incapacity be unable to provide the services, the appointment shall thereby be terminated.

#### Accrued rights

1.6.7 Termination of the appointment shall be without prejudice to the accrued rights and remedies of either party.

#### 1.7 Copyright

##### Copyright

1.7.1 Copyright in all documents and drawings prepared by the Architect and in any work executed from those documents and drawings shall remain the property of the Architect.

#### 1.8 Dispute resolution

##### Arbitration

1.8.1 Any difference or dispute arising out of the appointment shall be referred by either of the parties to arbitration by a person to be agreed between the parties or, failing agreement within fourteen days after either party has given the other a written request to concur in the appointment of an arbitrator, a person to be nominated at the request of either party by the Malawi Institute of Architects provided that in a difference or dispute arising out of the conditions relating to copyright the arbitrator shall, unless otherwise agreed, be an Architect.

##### Opinion

1.8.2 Any difference or dispute arising from the appointment may be referred to the Malawi Institute of Architects for an opinion provided that—

- (a) the opinion is sought on a joint statement of undisputed facts; and
- (b) the parties agree to be bound by the opinion.

##### Negotiation

1.8.3 The parties shall attempt to settle any dispute by negotiation and no procedure shall be commenced under condition 1.8.1 until the expiry of twenty-eight days after notification has been given in writing by one to the other of a difference or dispute.

1.8.4 Nothing herein shall prevent the parties agreeing to settle any difference or dispute arising out of the appointment without recourse to arbitration.

## PART II

### CONDITIONS SPECIFIC TO DESIGN OF BUILDING PROJECTS STAGES A-H

#### 2.1 Architect's obligations

##### Architect's authority

2.1.1 The Architect shall, where specified in the timetable, obtain the authority of the Client before initiating any work stage and shall confirm that authority in writing.

##### Procurement method

2.1.2 The Architect shall advise on the options for the Procurement Method for the Project.

##### No alteration to design

2.1.3 The Architect shall make no material alteration, addition to or omission from the approved design without the knowledge and consent of the client and shall confirm such consent in writing.

#### 2.2 Client's obligations

##### Statutory requirements

2.2.1 The Client shall instruct the making of applications for planning permission and approval and other statutory requirements and application for consents by freeholders and all others having an interest in the project and shall pay any statutory charges and any fees, expenses and disbursements in respect of such applications.

2.2.2 The Client shall have informed the Architect prior to the date of the appointment whether any third party will acquire or is likely to acquire an interest in the whole or any part of the project.

##### Collateral agreements

2.2.3 The Client shall not require the Architect to enter into any Collateral Agreement with a third party which imposes greater obligations or liabilities on the Architect than does the appointment.

##### Procurement method

2.2.4 The Client shall confirm the Procurement Method for the project.

## 2.3 Copyright

2.3.1 Notwithstanding the provisions of condition 1.7.1, the Client shall be entitled to reproduce the Architect's design by proceeding to execute the project provided that—

- (a) the entitlement applies only to the site or part of the site to which the design relates;
- (b) the Architect has completed a scheme design or;
- (c) has provided detail design and production information; and
- (d) any fees, expenses and disbursements due to the Architect have been paid.

This entitlement shall also apply to the maintenance repair and/ or renewal of the works.

2.3.2 Where the Architect has not completed a scheme design, the Client shall not reproduce the design by proceeding to execute the project without consent of the Architect.

2.3.3 Where the services are limited to making and negotiating planning applications, the Client may not reproduce the Architect's design without the Architect's consent, which consent shall not be unreasonably withheld, and payment of any additional fees.

2.3.4 The Architect shall not be liable for the consequences of any use of any information or designs prepared by the Architect except for the purposes for which they were provided.

## PART III

### CONDITIONS SPECIFIC TO CONTRACT ADMINISTRATION AND INSPECTION OF THE WORKS STAGES J-L

#### 3.1 Architect's obligation

##### Visits to works

3.1.1 The Architect shall in providing the services specified in Stages K and L of Schedule Two make such visits to the works as the Architect at the date of the appointment reasonably expected to be necessary. The Architect shall confirm such expectation in writing.

##### Variations to visits to works

3.1.2 The Architect shall on its becoming apparent that the expectation of the visits to the works needs to be varied, inform the Client in writing of his recommendations and any consequential variation in fees.

##### More frequent visits to works

3.1.3 The Architect shall whether the Client requires more frequent visits to the works than that specified by the Architect in condition 3.1 inform the Client of any consequential variation in fees. The Architect shall confirm in writing any agreement reached.

### Alteration to design only in emergency

3.1.4 The Architect may in an emergency make an alteration, addition or omission without the Client's knowledge and consent but shall inform the Client without delay and shall confirm that in writing. Otherwise, the Architect shall make no material alteration or addition to or omission from the approved design during construction without the knowledge and consent of the Client, and the Architect shall confirm such consent in writing.

### 3.2 Client's obligations

#### Contractor

3.2.1 The Client shall employ a Contractor under a separate agreement to undertake construction or other works relating to the project.

#### Responsibilities of contractor

3.2.2 The Client shall hold the Contractor and not the Architect responsible for the contractor's management and operational methods and for the proper carrying out and completion of the works and for health and safety provisions on the site.

#### Products and materials

3.2.3 The Client shall hold the Contractor and not the Architect responsible for the proper installation and incorporation of all products and materials into the works.

#### Collateral Agreement

3.2.4 The Client shall, where the Architect consents to, enter into a Collateral Agreement with a third party in respect of the project, procure that the Contractor is equally bound.

#### Instructions

3.2.5 The Client shall only issue instructions to the Contractor through the Architect, and the Client shall not hold the Architect responsible for any instructions issued other than through the Architect.

### 3.3 Site Staff

3.3.1 The Architect shall recommend the appointment of such staff to the Client if in his opinion such appointments are necessary to provide the services specified in K-L 04-08 of Schedule Two.

3.3.2 The Architect shall confirm in writing to the Client the site staff to be appointed, their disciplines, the expected duration of their employment, the party to appoint them and the party to pay, and the method of recovery of payment to them.

3.3.3 All site staff shall be under the direction and control of the Architect.

## PART IV

### CONDITIONS SPECIFIC TO APPOINTMENT OF CONSULTANTS AND SPECIALISTS WHERE ARCHITECT IS LEAD CONSULTANT

#### 4.1 Consultants

##### Nominations

4.1.1 The Architects shall identify professional services which require appointment of consultants. Such consultants may be nominated at any time by either the Client or the Architect subject to acceptance by each party.

##### Appointment

4.1.2 The Client shall appoint and pay the nominated consultants.

4.1.3 The consultants to be appointed at the date of the appointment and the services to be provided by them shall be confirmed in writing by the Architect to the Client.

##### Collateral Agreement

4.1.4 The Client shall, where the Architect consents to, enter into a Collateral Agreement with a third party in respect of the project, procure that all consultants are equally bound.

##### Lead consultant

4.1.5 The Client shall appoint and give authority to the Architect as Lead Consultant in relation to all consultants however employed. The Architect shall be the medium of all communication and instruction between the Client and the consultants however employed. The Architect shall co-ordinate and integrate into the overall design the services of the consultants, require reports from the consultants.

4.1.6 The Client shall procure that the provisions of condition 4.1.5 above are incorporated into the conditions of appointment of all consultants however employed and shall provide a copy of such conditions of appointment to the Architect.

##### Responsibilities of consultants

4.1.7 The Client shall hold each consultant however appointed and not the Architect responsible for the competence and performance of the services to be performed by the consultant and for the general inspection of the execution of the work designed by the consultant.

##### Responsibilities of Architects

4.1.8 Nothing in this part shall affect any responsibility of the Architect for issuing instructions under the building contract in relation to work designed by a consultant.

## 4.2 Specialists

### Nominations

4.2.1 A specialist who is to be employed directly by the Client or indirectly through a contractor to design any part of the works may be nominated by either the Architect or the Client subject to acceptance by each party.

### Appointment

4.2.2 The specialists to be appointed at the date of the appointment and the services to be provided by them shall be those confirmed in writing by the Architect to the Client.

### Collateral Agreement

4.2.3 The Client shall, where the Architect consents to, enter into a Collateral Agreement with a third party in respect of the project, procure that all specialists are equally bound.

### Co-ordination and Integration

4.2.4 The Client shall give the authority to the Architect to co-ordinate and integrate the services of all specialists into the overall design and the Architect shall be responsible for such coordination and integration.

### Responsibility of specialists

4.2.5 The Client shall hold any specialist and not the Architect responsible for the products and material supplied by the specialist and for the competence, proper execution and performance of the work with which such specialists are entrusted.

## SCHEDULE TWO

### SERVICES TO BE PROVIDED BY ARCHITECT

#### 1. Design Skills

1.01 Provide interior design services.

1.02 Advise on the selection of furniture and fittings.

1.03 Design furniture and fittings.

1.04 Inspect the making-up of furnishings.

1.05 Advise on works of special quality, e.g. shop fittings.

1.06 Prepare information for installation of works of special quality.

1.07 Inspect installation of works of special quality.

- 1.08 Advise on commissioning or selection.
- 1.09 Prepare information for installation of works of art.
- 1.10 Inspect installation of works of art.
- 1.11 Provide industrial design services.
- 1.12 Develop a building system or components for mass production.
- 1.13 Examine and advise on existing building systems.
- 1.14 Monitor testing of prototypes, mock-ups or models of building systems.
- 1.15 Provide town planning and urban design services.
- 1.16 Provide landscape design services.
- 1.17 Provide graphic design services.
- 1.18 Provide exhibition design.
- 1.19 Provide presentation material design services.
- 1.20 Provide perspective and other illustrations.
- 1.21 Provide photographic record services.
- 1.22 .....

## 2. Consultancy Services

- 2.01 Provide services as a consultant Architect on a regular or intermittent basis.
- 2.02 Consult statutory authorities.
- 2.03 Provide information in connexion with local authority, government and other grants.
- 2.04 Make applications for local authority, government and other grants.
- 2.05 Conduct negotiations for local authority, government and other grants.
- 2.06 Make submission to non-statutory bodies.
- 2.07 Provide information to advisory bodies.
- 2.08 Negotiate with advisory bodies.
- 2.09 Advise on rights including easements and responsibilities on owners and lessees.

2.10 Provide information on rights including easements and responsibilities of owners and lessees.

2.11 Negotiate rights including easements.

2.12 Provide services in connexion with party wall negotiations.

2.13 Provide services in connexion with planning appeals and/or enquiries.

2.14 Advise on the use of energy in new or existing buildings.

2.15 Carry out life cycle analysis of proposed or existing buildings to determine their likely cost in use.

2.16 Provide services in connexion with environmental studies.

2.17 Act as coordinator in health and safety matters.

2.18 Prepare, settle proofs, attend conferences and give evidence.

2.19 Acts as witness as to fact.

2.20 Acts as expert witness.

2.21 Act as arbitrator.

2.22 Provide project management services.

2.23 .....

### 3. Building/Services

3.01 Advise on suitability and selection of sites.

3.02 Make measured surveys, take levels and prepare plans of sites.

3.03 Arrange for investigations on soil condition of sites.

3.04 Advise on suitability and selection of buildings.

3.05 Make measured surveys and prepare drawings of existing buildings.

3.06 Inspect and prepare report and schedule of condition of existing buildings.

3.07 Inspect and prepare report and schedule of delapidations.

3.08 Prepare estimates for the replacements and reinstatement of buildings and plant.

3.09 Prepare, submit, negotiate claims following damage by fire and other causes.

- 3.10 Investigate and advise on means of escape in existing buildings.
- 3.11 Investigate and advise on change of use in existing buildings.
- 3.12 Investigate and report on building failures.
- 3.13 Arrange for and inspect exploratory work by contractors and specialists in connexion with building failures.
- 3.14 Prepare a layout for the development of the site.
- 3.15 Prepare a layout for a greater area than that which is to be developed immediately.
- 3.16 Prepare development plans for a site or a large building or complex buildings.
- 3.17 Prepare drawings and specification of materials for the construction of estate roads and sewers.
- 3.18 Make structural surveys and report on the structural elements of buildings.
- 3.19 Investigate and advise on floor loadings in existing buildings.
- 3.20 Investigate and advise on Sound Insulation in existing buildings.
- 3.21 Investigate and advise on fire protection and alarms in existing buildings.
- 3.22 Investigate and advise on security systems in existing buildings.
- 3.23 Inspect and prepare a valuation report for mortgage or other purpose.
- 3.24 .....

4. All Commissions

- 4.01 Obtain the Client’s Requirements, Budget and Timetable.
- 4.02 Advise on the need for and the scope for consultant’s services and the conditions of their appointment.
- 4.03 Arrange for and assist in the selection of other consultants.

As referred to in the Memorandum of Agreement dated between and (parties to initial)

SCHEDULE TWO

SERVICES SPECIFIC TO BUILDING PROJECTS

STAGES

A—B Inception and Feasibility

01 Obtain information about the site from the Client.

02 Visit the site and carry out an initial appraisal.

03 Assist the Client in preparation of Client's requirements.

04 Advise the Client on methods of procuring construction.

05 Advise on the need for specialist contractors, sub-contractors and suppliers to design and execute parts of the works.

06 Prepare proposals and make application for outline planning permission.

07 Carry out such studies as may be necessary to determine the feasibility of the Client's requirements.

08 Review with the Client alternative design and construction approaches and cost implications.

09 Advise on the need to obtain planning permission, approvals under Building Acts and/or Regulations and other statutory requirements.

10 Develop the Client's requirements.

11 Advise on environmental impact and prepare report.

12 .....

Work Stages are specified by circling the stage letters.

Basic Services indicated by boxed areas are specified unless struck out.

Additional Services are specified by circling the relevant numbered items.

### C. Outline Proposals

01 Analyse the Client's requirements; prepare outline proposals.

02 Provide information to discuss proposals with and incorporate output of other consultants.

03 Provide information to other consultants for the preparation of an approximation of construction cost.

03A Prepare an approximation of construction cost.

04 Submit outline proposals and approximation of construction cost for the Client's preliminary approval.

05 Propose procedure for cost planning and control.

06 Provide information to others for cost planning and control throughout the project.

06A Operate the procedure for cost planning and control throughout the project.

07 Prepare and keep updated a client's running expenditure plan for the project.

08 Prepare special presentation drawings, brochures, models or technical information for use by the Client or others.

09 Carry out negotiations with tenants or others identified by the client.

10 .....

#### D. Scheme Design

01 Develop scheme design from approved outline proposals.

02 Provide information to, discuss proposals with and incorporate input of other consultants in scheme design.

03 Provide information to other consultants for their preparation of cost estimate.

03A Prepare cost estimate.

04 Prepare preliminary timetable for construction.

05 Consult with planning authorities.

06 Consult with building control authorities.

07 Consult with fire authorities.

08 Consult with environmental authorities.

09 Consult with licensing authorities.

10 Consult with statutory undertakers.

11 Prepare an application for full planning permission.

12 Submit scheme design showing spatial arrangements, materials and appearance, together with cost estimate, for the Client's approval.

13 Consult with tenants or others identified by the Client.

14 Conduct exceptional negotiations with planning authorities.

15 Submit an application for full planning permission.

16 Prepare multiple applications for full planning permission.

- 17 Submit multiple applications for full planning permission.
- 18 Make revisions to scheme design to deal with requirements of planning authorities.
- 19 Revise planning application.
- 20 Resubmit planning application.
- 21 Carry out special constructional research for the project including design of prototypes, mock-ups or models.
- 22 Monitor testing of prototypes, mock-ups or models, etc.
- 23 .....

E. Detail Design

- 01 Develop detail design from approved scheme design.
- 02 Provide information to, discuss proposals with and incorporate input of other consultants into detail design.
- 03 Provide information to other consultants for their preparation of cost estimate.
- 03A Revise cost estimate.
- 04 Prepare applications for approvals under Building Acts and/or other statutory requirements.
- 04A Prepare building notice under Building Acts and/or Regulations.
- 05 Agree form of building contract and explain the client's obligations thereunder.
- 06 Obtain the Client's approval of the type of construction, quality of materials and standard of workmanship.
- 07 Apply for approvals under Building Acts and/or Regulations and other statutory requirements.
- 07A Give building notice under Building Acts and/or Regulations.
- 08 Negotiate if necessary over Building Acts and/or Regulations and other statutory requirements and revise production information.
- 09 Conduct exceptional negotiations for approvals by statutory authorities.
- 10 Negotiate waivers or relaxations under Building Acts and/or Regulations and other statutory requirements.
- 11 .....

F-G Production, Information and Bills of Quantities

01 Prepare production drawings.

02 Prepare specification.

03 Provide information for the preparation of bills of quantities and/or schedules of works.

03A Prepare schedule of rates and/or quantities and/or schedule of works for tendering purposes.

04 Provide information to, discuss proposals with and incorporate input of other consultants into production information.

05 Coordinate production information.

06 Provide information to other consultants for their revision of cost estimate. 06A Revise cost estimate.

07 Revise timetable for construction.

08 Prepare other production information.

09 Submit plans for proposed building works for approval of landlords, funders, free-holders, tenants or others as requested by the Client.

10 .....

H. Tender Action

01 Advise on and obtain the Client's approval to a list of tenderers for the building contract.

02 Invite tenders.

03 Appraise and report on tenders with other consultants.

03A Appraise and report on tenders.

04 Assist other consultants in negotiating with a tenderer.

04A Negotiate with a tenderer.

05 Assist other consultants in negotiating a price with a contractor.

05A Negotiate with tenderer.

06 Select a contractor by other means.

07 Revise production information to adjust tender sum.

08 Arrange for other contracts to be let prior to the main building contract.

09 .....

#### J. Project Planning

01 Advise the Client on the appointment of the contractor and of the responsibilities of the parties and the Architect under the building contract.

02 Prepare the building contract and arrange for it to be signed.

03 Provide production information as required by the building contract.

04 Provide services in connexion with demolitions.

05 Arrange for other contracts to be let subsequent to the commencement of the building contract.

06 .....

#### K-L Operation on Site and Completion

01 Administer the terms of the building contract.

02 Conduct meetings with the contractor to review progress.

03 Provide information to other consultants for the preparation of financial reports to the Client.

03A Prepare financial reports for the Client.

04 Generally inspect materials delivered to the site.

05 As appropriate instruct sample taking and carrying out tests of materials, components, techniques and workmanship and examine the conduct and results of such tests whether on or off site.

06 As appropriate instruct the opening up of completed work to determine that it is generally in accordance with the contract document.

07 As appropriate visit the sites of the extraction and fabrication and assembly of materials and components to inspect such materials and workmanship before delivery to site.

08 At intervals appropriate to the stage of construction visit the works to inspect the progress and quality of the works and to determine that they are being executed generally in accordance with the contractor document.

09 Direct and control the activities of site staff.

10 Provide drawings showing the building and the main lines of drainage.

- 11 Arrange for drawings of building services installations to be provided.
- 12 Give general advice on maintenance.
- 13 Administer the terms of other contracts.
- 14 Monitor the progress of the works against the contractor's programme and report to the Client.
- 15 Prepare valuations of the work carried out and completed.
- 16 Provide specially prepared drawings or a building as built.
- 17 Prepare drawings for conveyancing purposes.
- 18 Compile maintenance and operational manual.
- 19 Incorporate information prepared by other maintenance manuals.
- 20 Prepare a programme for the maintenance of a building.
- 21 Arrange maintenance contracts.
- 22 .....

SCHEDULE THREE

FEES AND EXPENSES

(Surtax, where applicable, is charged on all fees and expenses)

1. Fees

2. Time Rates: The rates for the services to be charged on a time basis shall be calculated as follows:

Time rates shall be revised from time to time as shall be advised.

3. Expenses: The following expenses shall be charged by the Architect—

- (a) at cost ..... mileage rates where applicable shall be.
- (b) cost plus ..... % .....
- (c) a lump sum of K ..... and shall be revised each year on;
- (d) additional percentage fee of ..... % .....

4. Disbursements: For disbursements made under condition 1.5.11 the Architect shall charge:

at cost plus ..... % other .....

5. Instalments: Fees and expenses shall be paid by instalments in accordance with the following programme.

6. Site Staff: For site staff (under conditions 3.3.1 and 3.3.2) appointed and paid by the architect, the Architect shall be reimbursed as follows:

(a) on a time basis, or .....

(b) on annual salary cost plus ..... % (salaries to be stated where appropriate).

7. Interest on Overdue Accounts: The interest rate payable under condition 1.5.17 shall be:

other ..... or ..... % over ..... (measure of base rate)

As referred to the memorandum of agreement dated ..... between ..... and .....  
(parties to initial)

#### SCHEDULE FOUR

##### APPOINTMENT OF CONSULTANTS, SPECIALISTS AND SITE STAFF

Consultants: (under conditions 4.1.2 and 4.1.3).

ServicesExtent of services to be defined in appointing letter or other document—to be copied to the Architect.\*Name, address (where known)

Specialists: (under conditions 4.2.2)

ServicesExtent of services to be defined in appointing letter or other document—to be copied to the Architect.\* Name, address (where known) To be appointed—

(a) directly by Client;

(b) indirectly by contractor.

Site Staff: (under conditions 3.3.2)

Description Duration No. of staff By whom appointed and paid As referred to the Memorandum of Agreement dated ..... between ..... and ..... (parties to initial)

##### TABLE 1—NEW WORKS

##### ESTIMATED OR ACTUAL CONSTRUCTION COST

ClassUp

to

K500,000K500,000

to

K1,250,000K1,250,000

to

K3,000,000K3,000,000

to

K5,000,000K5,000,000

to

K8,000,000K8,000,000

to

K12,000,000over

K12,000,00016.5%6.2%5.9%5.6%5.3%5.0%4.7%27.0%6.7%6.4%6.1%5.8%5.5%5.2%37.7%7.35%7.0%6.6%6.25%5.9%5.55%48.4%8.0%7.6%7.2%6.8%6.4%6.0%59.0%8.55%8.1%7.65%7.2%6.75%6.3%

TABLE 2—WORKS TO EXISTING BUILDINGS

ESTIMATED OR ACTUAL CONSTRUCTION COST

ClassUp

to

K100,000K100,000

to

K350,000K350,000

to

K800,000K800,000

to

K1,500,000over

1,500,000111.5%10.6%9.7%8.75%7.85%212.4%11.45%10.45%9.5%8.5%313.0%12.00%11.00%10.00%9.00%413.75%12.75%11.75%10.75%9.75%514.5%13.5%12.5%11.5%10.5%

K

TABLE 3—CLASSIFICATION OF BUILDINGS

CLASS 1Warehouses and storage sheds

Single storey car parks

Single storey shopsCLASS 2Factories and workshops (speculative)

Transport garages

Multi-storey car parks

Multi-storey office blocks (speculative)

Community Halls

Dormitory HostelsCLASS 3Purpose built factories and workshops

Supermarkets and banks

Purposes built offices

Branch libraries

Ambulance and fire stations, bus station, Post Office

Primary Schools

Estate housing

Sports centres, squash courts and swimming pools

Clinics and homes for the elderly

Police Stations and PrisonsCLASS 4Department stores

Shopping centres

Breweries and food processing units

Telecom and computer accommodations

Civic centres, concert halls

Churches and crematoria

Hotels

Secondary schools and University buildings

Museums and art galleries, libraries

General Hospital complexes and surgeries  
CLASS 5 Recording studios

Theatres

High courts

University laboratories

Teaching hospitals and hospital laboratories

Dental surgeries

Homes for individual clients

Telecommunications buildings

## B. QUANTITY SURVEYORS

### PART 1—GENERAL CONDITIONS OF ENGAGEMENT

1. The fees are in all cases exclusive of travelling, subsistence and other disbursements, copying of documents and printing, typing, duplicating, postage, telegrams, telephones, facsimiles, telexes, courier services, etc., all of which are chargeable in addition at net cost. The fees and disbursements are also exclusive of surtax.

2. The scale of fees are overall and are based upon the inclusion of all provisional and prime cost items.

3. When work is executed wholly or in part with old materials, or where material, labour or carriage is provided by the client, fees shall be calculated as if the works had been executed throughout by a contractor and with new material.

4. If the works are substantially varied at any stage or are subject to exceptional delays or if the quantity surveyor is involved in an excessive amount of abortive work, then the fees shall be adjusted by agreement between the client and the quantity surveyor.

5. Fees are to be calculated on the total final cost of the works. In the event of no tender being accepted, fees are to be calculated upon the basis of the lowest original bona fide tender received. In the event of no tender being received, the fees are to be calculated upon a reasonable valuation of the work based upon the original bills of quantities. A "bona-fide tender" shall mean a tender submitted in good faith without major errors or computation and not subsequently withdrawn by the tenderer.

6. Payment shall become due on the completion of the relevant stage or service except that fees for surveying works in progress may become due on a periodical basis to be agreed between the client and the quantity surveyor.

7. Should the fees and disbursements remain unpaid after a period of three months, they shall attract an interest charge compatible with interest charged by the commercial banks on overdraft facilities.

8. In the event of a project being deferred or abandoned or the services of the quantity surveyor be terminated at any stage, the fees chargeable shall be a proportion of the normal scale of fees.

9. Should a commission which has been deferred or abandoned or terminated be resumed without significant change within a period of two years, any fee paid in accordance with the normal scale of fees shall be considered as payment on account towards the total fees calculated on the final value.

10. In the event of the resumption of the project, the quantity surveyor shall be entitled to receive a disruption charge to be agreed with the client but there shall be no claim for loss of profit and/or expenses incurred for services which are no longer required.

11. Should a commission be reinstated after a period of two years but with significant change, the commission shall be deemed to be a new one and fees shall be in accordance with the normal scale of fees.

12. Copyright in bill of quantities and other documents prepared by the quantity surveyor is reserved to the quantity surveyor unless otherwise agreed.

13. The scale of fees set out hereafter shall in all cases be the minimum to be charged by a registered quantity surveyor, unless otherwise agreed by the Board.

#### SCALE 1—NORMAL SERVICES

1. Preliminary consultations, preparing preliminary estimates, preparing bills of quantities, examining tenders and reporting thereon surveying works in progress and for preparing and issuing valuations for payment certificates, preparing cost reports, preparing and agreeing final accounts—

fee 3%

2. Payment of fees shall be apportioned as follows—

(a) preliminary consultations, preparing preliminary estimates 5% (b) preparing bills of quantities, examining tenders and reporting thereon 50% (c) surveying works in progress and preparing cost reports 35% (d) preparing and agreeing final accounts 10%

#### SCALE 2—MECHANICAL AND ELECTRICAL WORKS

1. Where bills of quantities are prepared by the quantity surveyor for air conditioning, heating, ventilating, electrical services, lifts or escalators, a fee in addition to Scale 1 shall become due, the fee to be calculated on the contract price of such services, excluding contingencies and builders work in connection with such services.

2. Preliminary consultations, preparing preliminary estimates, preparing bills of quantities, examining tenders and reporting thereon, surveying works in progress and preparing and issuing valuations for payment certificates, preparing cost reports, preparing and agreeing final accounts—

fee 2.5%

3. Payment of these additional fees shall be apportioned as Scale 1.

#### SCALE 3—HOUSING SCHEMES

1. Where bills of quantities are prepared for housing schemes consisting of not less than three distinct domestic buildings being a repetition of one type and erected at the same time and locality from the same contract documents and bills of quantities, the scale of fees for each unit shall be as follows—

Preliminary consultations, preparing preliminary estimates, preparing bills of quantities, examining and reporting thereon—

(a) fee for the first three identical houses 1.65% (b) fee for four to thirteen identical houses 0.50% (c) for each of the subsequent identical houses 0.25%

2. Payment of these fees shall be apportioned as follows—

(a) preliminary consultations, preparing preliminary estimates 10% (b) preparing bills of quantities, examining tenders and thereon 90%

3. Surveying works in progress for and preparing and issuing valuations for payment certificates, preparing cost reports, preparing and agreeing final accounts—

fee 10%

4. Payment of these fees shall be apportioned as follows—

(a) surveying works in progress and preparing cost reports 80% (b) preparing and agreeing final accounts 20%

5. All works or portions of the works measured shall be charged as Scale 1.

#### SCALE 4—REPETITIVE WORK

1. The fee for normal services for each original design (other than housing) on the same contract and on the same site shall be charged as Scale 1.

2. For each repetition of design on the same contract and on the same site the fee shall be 35% of Scale 1.

3. The fee for normal services for each original design (other than housing) on a different contract and/or a different site shall be charged as Scale 1.

4. For each repetition of design on a different contract and/or a different site, the fee shall be 40% of Scale 1.

5. All works or portions of the works measured shall be charged as in Scale 1.

6. Payment of fees shall be apportioned as in Scale 1.

#### SCALE 5—PROVISIONAL BILLS OF QUANTITIES

1. This scale is for use on wholly provisional bills of quantities, giving a reasonably close forecast of the cost of the works, and will be contingent upon their being replaced by the normal firm bills of quantities, based on remeasurement to be prepared by the same quantity surveyor.

2. Preliminary consultations, preparing preliminary estimates, preparing provisional bills of quantities, examining tenderers and reporting thereon, surveying works in progress, including remeasurement, for and preparing and issuing valuations, for payment certificates, preparing cost reports, preparing and agreeing final accounts.

Fee to be 115 per cent of Scale 1 calculated on the total cost of the works.

3. Payment of fees shall be apportioned as follows—

(a) preliminary consultations, preparing preliminary estimates 5% (b) preparing provisional bills of quantities, examining tenders and reporting thereon 35% (c) surveying works in progress, remeasurement, preparing cost reports 50% (d) preparing and agreeing final accounts 10%

#### SCALE 6—CIVIL ENGINEERING WORKS

1. This fee scale applies to contracts which are wholly of a civil engineering nature and which are based upon tender documents prepared in accordance with a recognized standard method of measurement for civil engineering works.

2. Preliminary consultations, preparing preliminary estimates, preparing provisional bills of quantities, surveying works in progress, remeasurement, preparing cost reports, preparing and agreeing final accounts.

Fees to be 70 per cent of Scale 1 calculated on the total final cost of the works.

3. Payment of fees shall be apportioned as in Scale 5.

#### SCALE 7—ALTERATION WORKS

1. Preparing preliminary estimates, preparing bills of quantities, surveying works in progress for preparing and issuing valuations for certificates, preparing cost reports, preparing and agreeing final accounts—

fee to be as in Scale 1 plus an additional 2.0 per cent of the value of measured works of alterations, demolitions, redecoration and associated minor repairs.

2. This scale is also applicable to those sections of a contract which are works of alterations, demolitions, and associated minor repairs.

3. Payment of fees shall be apportioned as in Scale 1.

#### SCALE 8—COST REIMBURSEMENT CONTRACTS

1. Preliminary consultations, preparing preliminary estimates, negotiating and compiling contracts, including specialists and/or sub-contractors, auditing time sheets, delivery notes, invoices, etc., checking rates of wages and costs of materials, preparing progressive statements of accounts, making check measurements of the principal materials used in the works for comparison with invoices, preparing cost reports and, preparing the final account—

fee of 115 per cent of Scale 1 calculated on the total final cost of the works.

2. Payment of these fees shall be apportioned as follows—

(a) preliminary consultations, preparing preliminary estimates 5% (b) negotiating and compiling contracts 25% (c) surveying works in progress and preparing cost reports 60% (d) preparing and agreeing final accounts 10%

#### SCALE 9—OTHER SERVICES

##### 1. Preparing Estimates

Preliminary consultations, preparing preliminary estimates, providing cost advice including technical and economic investigation and appraisal of a project to enable a client to decide whether and in what form to proceed, the fee, in addition to any other fee chargeable, shall be based upon the time involved.

##### 2. Providing Cost Planning Services

When requested, on an elemental cost basis on measurement, a charge of 0.5 per cent in addition to Scale 1 or, alternatively, based upon the time involved.

##### 3. Pricing Bills of Quantities

Providing an estimate comparable with tenders, a fee in addition to Scale 1 or 0.5 per cent shall be charged.

##### 4. Negotiating and Agreeing a Contract Price

Negotiating and pricing bills of quantities, a fee of 0.5 per cent shall be charged.

##### 5. Checking Contractors Orders for Materials

Checking bills of entry for duty-free customs purposes, a fee of 1.25 per cent in addition to Scale 1 shall be charged.

#### 6. Preparing Schedules of Materials

A fee of 5.0 per cent of the current market value of materials shall be charged.

#### 7. Providing Project Management Services

A charge to be agreed between the client and the quantity surveyor.

#### 8. Valuation of Property

Preparing of valuations of buildings and other property for the assessment of taxation, fire insurance, expropriation and similar purposes, the fee shall be as follows—

fee 0.50%

#### 9. Reduction of Tender

When cost planning services have not been provided by the quantity surveyor and if a tender, when received, is to be reduced before acceptance, fees are to be calculated upon the amount of the unreduced tender. A fee chargeable for preparing bills of reduction shall be calculated as follows—

2.0 per cent upon gross amount of omissions requiring measurement or abstraction from original dimension sheets;

3.0 per cent upon the gross amount of additions requiring measurement; and

0.5 per cent upon the gross amount of remaining additions.

#### 10. Providing Post Contract Services Only

Where a quantity surveyor is appointed to carry out post contract services only and did not prepare the bills of quantities, a fee of 1.5 per cent in addition to Scale 1, in a proportion to a scale which is applicable to post contract work, shall be charged.

#### 11. Additional Services

Providing additional services such as those arising as a result of the termination of a contract before completion, liquidation, fire damage to buildings, arbitration, litigation, feasibility studies, life cycle costing and all similar services, the charge shall be based upon the time involved.

### SCALE 10—TIME CHARGES

1. Time charges for services rendered by quantity surveying staff shall be as laid down by the Surveyors Institute of Malawi and approved by the Board.

SECOND SCHEDULE

FORM 1

THE ARCHITECTS AND QUANTITY SURVEYORS ACT

Form of application to be used in making application for registration under sections 25 and 28 of the Act

SECTION A

TO: THE REGISTRAR

BOARD OF ARCHITECTS AND QUANTITY SURVEYORS

PRIVATE BAG 316

LILONGWE 3.

(All information to be printed in block letters)

Surname .....

First names .....

Title (Dr., Mr., Mrs. or Miss) .....

University and/or professional degrees and/or qualifications  
.....

.....

.....

Postal address .....

Location of office .....

Date of birth .....

Nationality .....

Nationality at birth (if different from above) .....

I, the undersigned, hereby apply to have my name as given above entered in the register of Architects and/or Quantity Surveyors.

I am a member of the following professional bodies—

(1) .....

(2) .....

I enclose photocopies of my certificates.

I enclose a remittance of fifty Kwacha.

SECTION B

NOTES:

1. This section should be completed by the proposer and the supporter both of whom should have good knowledge of the applicant’s technical duties. They should be satisfied that the information given by the applicant is correct.

2. The proposer and the supporter should both be either registered Architects or registered Quantity Surveyors.

PROPOSER

I, .....

full names/academic/professional qualifications

of .....

address, organization and position held

from my personal knowledge of the applicant, support this application

.....

Signature

SUPPORTER

I, .....

full names/academic/professional qualifications

of .....

address, organization and position held

from my personal knowledge of the applicant, support this application.

.....

Signature

I hereby solemnly and sincerely declare that the foregoing statements are true in every respect and that I have read the Act and the Rules and understand that, if registered, I shall be bound thereby and by any amendments thereto so long as my name remains on the register.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declarations Act (Cap: 4:07).

Declared at ..... on this ..... day of ....., 20.....

By .....

Signature of applicant

Before me .....

Commissioner for Oaths, Magistrate, etc.

FORM 2

THE ARCHITECTS AND QUANTITY SURVEYORS ACT

Form of application to be used in making application for registration under sections 26 and 29 of the Act

SECTION A

TO: THE REGISTRAR

BOARD OF ARCHITECTS AND QUANTITY SURVEYORS

PRIVATE BAG 316

LILONGWE 3.

(All information to be printed in block letters)

Surname .....

First names .....

Title (Dr., Mr., Mrs., Miss) .....

University and/or professional degrees and/or qualifications.

.....

.....

Postal address .....

Location of office .....

Date of Birth .....

Nationality .....

Nationality at birth (if different from above) .....

I, the undersigned, hereby apply to have my name as given above entered in the register of Graduate Architects or Graduate Quantity Surveyors.

I am a member of .....

.....

I have passed the following examinations .....

.....

.....

**SECTION B**

**NOTES:**

1. This section should be completed by the proposer and the supporter both of whom should have good knowledge of the applicant's technical duties. They should be satisfied that the information given by the applicant is correct.

2. The proposer and the supporter should both be either Registered Architects or Registered Quantity Surveyors.

**PROPOSER**

I, .....

names/academic/professional qualifications

of .....

address, organization and position held

from my personal knowledge of the applicant, support this application.

.....

Signature

**SUPPORTER**

I, .....

full names/academic/professional qualifications

of .....

address, organization and position held

from my personal knowledge of the applicant, support this application.

.....

Signature

I am employed as .....

.....

.....

I am not employed in any other capacity other than as stated above nor am I associated with any other firm, business, trade office or association other than as mentioned above or in my Professional Record Sheet. Neither my professional nor general conduct has been such as to debar me from membership of any professional body or institution.

I enclose a remittance of K50.

I hereby solemnly declare that the foregoing statement and those contained in the attached Professional Record Sheet are true in every respect and that I have read the Act and the Rules and understand that, if registered, I shall be bound thereby and by any amendments thereto so long as my name remains in the register.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declarations Act (Cap. 4:07).

Declared at .....

By .....

Signature of applicant

Before me .....

Commissioner for Oaths, Magistrate, etc.

this ..... day of ....., 20.....

(Read notes at foot prior to completion) (On back of Form No. 2)

PROFESSIONAL RECORD SHEET

Surname ..... First names .....

Period School, Technical College or University Certificate on leaving

EMPLOYMENT

Period Name and address of employers In what capacity Nature of work performed

.....

Signature of Applicant

Date ....., 20.....

NOTES:

The information entered above must be in the applicant's own handwriting.

Particulars of employment must be fully stated.

FORM 3

ARCHITECTS AND QUANTITY SURVEYORS ACT

Form of application to be used in making application for registration under sections 27 and 30

SECTION A

TO: THE REGISTRAR

BOARD OF ARCHITECTS AND QUANTITY SURVEYORS

PRIVATE BAG 316

LILONGWE 3

Surname .....

First names .....

Date of birth .....

Nationality .....

Nationality at birth (if different from above) .....

Postal address .....

Present employer and address .....

.....

Class of Registration applied for: Architectural Technician/Quantity Surveying Technician.

(Delete whichever is not applicable)

Have you previously applied for registration? Yes/No.

If yes, please indicate class and date .....

.....

What was the result of the application? .....

.....

SECTION B

NOTES:

1. This section should be completed by the proposer and the supporter both of whom should have good knowledge of the applicant's technical duties. They should be satisfied that the information given by the applicant is correct.

2. The proposer and the supporter should both be either registered architects or registered quantity surveyors or architectural technicians or quantity surveying technicians or persons holding senior positions in the organization in which the applicant has worked or is working.

PROPOSER

I, .....

full names I academic I professional qualifications

of .....

address, organization and position held

from my personal knowledge of the applicant, support this application

.....

Signature

SUPPORTER

I, .....

full names I academic I professional qualifications

of .....

address, organization and position held

from my personal knowledge of the applicant, support this application.

.....

Signature

SECTION C

NOTES:

(a) To be completed by the applicant.

(b) In this section the proposer and the supporter are required to sign only those particulars of which they have personal knowledge.

(c) The applicant must enclose certified copies of documents as evidence of the technical qualifications relevant to the application.

1. GENERAL EDUCATION

From (Month/Year)ToSchools attended

2. TECHNICAL EDUCATION

(Indicate whether Full Time (FT), Day Release (DR), or Evening (E)).

From/To (Months and Year)CollegeFT DR/EBrief details Subjects studied

I am employed as .....

.....

.....

I am not employed in any other capacity other than as stated above nor am I associated with any other firm, business, trade office or association other than as mentioned above. Neither my professional nor general conduct has been such as to debar me from membership of any professional body or institution.

I enclose a remittance of K50.

I hereby solemnly and sincerely declare that the following statements are true in every respect and I understand that, if registered, I shall be bound by the provisions of the Act and by any amendments made thereto so long as my name remains on the Register.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affirmations and Declarations Act (Cap. 4:07).

Declared at ..... on this ..... day of ....., 20.....

.....

Signature of Applicant

Before me .....

Commissioner for Oaths, Magistrate, etc.

FORM 4

(LOGO)

MALAWI GOVERNMENT

This is to certify that

.....

has been registered as

.....

In terms of the Architects and Quantity Surveyors Act (Cap. 53:02)

..... day of ....., 20 .....

.....

Chairman

.....

Registrar

ARCHITECTS AND QUANTITY SURVEYORS (ANNUAL FEES) REGULATIONS

under s. 41

G.N. 36/1996

17/1998

71/1998

26/1999

1. Citation

These Regulations may be cited as the Architects and Quantity Surveyors (Annual Fees) Regulations.

2. Annual fees

The annual fees set out in the Schedule hereto shall be payable on 1st April in each year by persons registered under the Act respectively specified in the Schedule.

SCHEDULE reg. 2 G.N. 36/1996, 17/1998, 71/1998, 26/1999

Kt(a)Architect and Quantity Surveyors1,50000(b)Graduate Architects and Graduate Quantity Surveyors90000(c)Architectural Technicians and Quantity Surveying Technicians45000

NOTE: Failure to pay the annual fees within three months shall lead to automatic deregistration.

## ARCHITECTS AND QUANTITY SURVEYORS (REGISTRATION FEES) REGULATIONS

under s. 41

G.N. 35/1996

16/1998

25/1999

1. Citation

These Regulations may be cited as the Architects and Quantity Surveyors (Registration Fees) Regulations.

2. Registration fees

(1) The registration fees payable to the Board shall be as follows— G.N. 35/1996, 16/1998, 25/1999

Kt (a) upon application for registration as an Architect or a Quantity Surveyor1,00000 (b) upon application for registration as a Graduate Architect, a Graduate Quantity Surveyor, an Architectural Technician or a Quantity Surveying Technician50000(2) The registration fees payable to the Board by applicants who are foreign consultants shall beUS\$50000

## ARCHITECTS AND QUANTITY SURVEYORS (PRACTISING AS A LIMITED LIABILITY COMPANY) RULES

under s. 15

G.N. 25/2000

1. Citation

These Rules may be cited as the Architects and Quantity Surveyors (Practising as a Limited Liability Company) Rules.

2. Conditions for practising as a limited liability company

Any person registered under the Act may practise as a limited liability company upon the following conditions—

(a) the majority of the directors of the company shall be either Architects or Quantity Surveyors;

(b) the day to day management of the company shall be under the charge of the directors who are either Architects or Quantity Surveyors;

(c) the company shall be required to take up professional indemnity insurance cover which the Board considers to be adequate; and

(d) the company shall be required to comply with the provisions of the Companies Act (Cap. 46:03).