

Ref. No. New

Draft: Malaŵi Institute of Human Resource Management Bill, 2019

(Subject to Change)

Author: Ministry of Justice

November, 2020

MALAŴI INSTITUTE OF HUMAN RESOURCE MANAGEMENT BILL, 2019

MEMORANDUM

This Bill seeks to provide for the establishment of the Malaŵi Institute of Human Resource Management (hereinafter referred to as the “Institute”) and for the conduct and management thereof. It also makes provision for qualifications and application for membership to the Institute. The Institute will be responsible for the regulation, promotion and development of the profession of human resources management in Malaŵi.

The Institute will not only regulate individuals practicing the profession of human resources management in Malaŵi, but also represent their professional welfare. In this regard, the Institute will register and subsequently issue practising licences to all individuals that will be practicing profession of human resources management in Malaŵi. The Institute will regulate human resources management practitioners and those engaged in disciplines allied to human resources management. It is expected that the Institute will promote stronger ties among its members and the further adoption of best practices among the human resources management practitioners. Lastly, the Institute will also coordinate and advise human resource management training institutions in Malaŵi.

The origins of the Bill come from an observation made by the Institute of People Management (Malaŵi) that, despite the existence of a number of employment related legal frameworks such as the Employment Act (Cap. 55:01); Labour Relations Act (Cap. 54:01); Public Service Act (Cap. 1:03); among others, there is no professional body to regulate the profession of human resource management in Malaŵi. In response to that gap, the human resource management professionals established the Institute of People Management in Malaŵi, in 1984 and registered it under the Trustees Incorporation Act (Cap. 5:03) as an Association, just as an interim measure to enable it to regulate the human resource management profession in Malaŵi.

Just like the Institute of People Management, the Government also noted the gap in the existing legal framework in relation to regulation of human resource practitioners in Malaŵi. In response, the Government directed for the establishment of the Public Sector Human Resource Managers Association (the “Association”) in 2010. Consequently, the Association was established as a body corporate with its membership drawn from practising human resource professionals in the public sector institutions only excluding the private sector human resource management professionals.

It is envisaged, that the establishment of the Institute as a statutory body will give it the necessary legal mandate to regulate the human resource management profession both in the public and private sectors.

The Bill has ten Parts—

Part I makes provision for preliminary matters namely; short title, commencement and the interpretation of certain words and terms used in the Bill.

Part II of the Bill establishes the Institute as a body corporate and provides for its functions and powers. Part II also makes for the provision of the Malaŵi Institute of Human Resources Management which shall be a representative body of the members registered under this Act and shall deliberate and vote on matters which have been referred to it by the Board.

Part III makes provision for the administration of the Institute by providing for the establishment of the divisions and branches of the Institute. It provides for the composition and functions of these divisions and branches. It also provides for the remuneration of the office-bearers of these bodies. The Secretariat of the Institute will be headed by a Registrar of the Institute.

Part IV establishes the Registration Committee of the Institute which will be responsible for the registration of members and the issuance of practicing licences.

Part V provides for registration of human resources management practitioners, classification of the categories of practice and the regulation of the practice of Human resources management. The Part also provides for the procedure of registration of the members to the various categories of membership.

Part VI makes provision for matters relating to discipline of the members of the Institute. It therefore establishes the Disciplinary Committee of the Board to inquire into any complaint or allegation against any member or organ of the Institute and report its findings to the Board. It also provides for the powers of the Disciplinary Committee and matters relating to a Code of ethics for members of the Institute.

Part VII compliments Part VI and provides for the various offences relating to the profession of human resources management.

Part VIII contains financial provisions relating to, among others, funds of the Institute, books of accounts, audits and reports.

Part IX provides for miscellaneous provisions. It provides for, among others, the powers of the Minister to make Regulations.

ARRANGEMENT OF SECTIONS

SECTION

PART I PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II THE MALAŴI INSTITUTE OF HUMAN RESOURCE MANAGEMENT

3. Establishment of Malaŵi Institute of Human Resource Management
4. Board of the Institute
5. Election to the Board
6. Tenure and vacancy
7. Functions of the Institute
8. Powers of the Institute
9. Committees of the Board
10. Meetings of the Institute
11. Declaration of interest

PART III ADMINISTRATION

12. Branches of the Institute
13. Secretariat
14. Inspectors
15. Non-compliance with an inspector
16. Remuneration
17. Limitation of personal liability
18. Custody and use of common seal

PART IV THE REGISTRATION COMMITTEE

19. Registration Committee
20. Tenure and vacancy
21. Functions of the Registration Committee
22. Meetings of the Registration Committee
23. Committees of the Registration Committee
24. Remuneration and allowances

PART V
REGISTRATION, CLASSIFICATION AND PRACTICE

25. Registration as a prerequisite for practice
26. Registers of members
27. Applications for registration
28. Registration as a fellow
29. Registration as a chartered human resources management practitioner
30. Registration as an associate human resources management practitioner
31. Registration as a trainee human resources management practitioner
32. Registration as a student member
33. Registration as a trainee human resources management practitioner
34. Registration of corporate members
35. Cancellation of registration
36. Suspension of registration
37. Striking off name from register
38. Representation to Registration Committee and appeal
39. Restoration of membership
40. Human resources management qualifying examination
41. Registration of qualified foreign human resources management practitioners and firms
42. Selection and registration of mentors
43. Correction of registers
44. Non-eligibility for registration
45. Honorary fellows
46. Certificates, membership cards and stamps

PART VI
DISCIPLINE

47. Disciplinary Committee
48. Powers of Disciplinary Committee
49. Proceedings of Disciplinary Committee
50. Professional misconduct
51. Application of rules of natural justice
52. Report of proceedings
53. Code of ethics

PART VII
OFFENCES

54. Unlawful practice of human resources management
55. Unlawful use of titles or descriptions
56. Employment of non-registered persons
57. Fraudulent entries and copies

58. Liability of partners in a firm

**PART VIII
FINANCIAL PROVISIONS**

59. Funds of the Institute
60. Investment powers
61. Borrowing powers
62. Annual budgets
63. Books of accounts, audits and reports

**PART IX
MISCELLANEOUS**

64. Confidentiality
65. Oath of secrecy
66. Annual and other reports
67. Human resources management appointments
68. Regulations
69. Rules

**PART X
DISSOLUTION AND TRANSITIONAL CLAUSES**

70. Dissolution of Institute of People Management of Malawi
71. Transitional provision
72. Legal proceedings
73. Transfer of assets, funds, liabilities, etc
74. Transfer of employees

A BILL

entitled

An Act to establish the Malaŵi Institute of Human Resource Management as the authority of the profession of human resource management for qualifications, registration and discipline; establishment of the Registration Committee; to provide for the regulation, registration, promotion and development of the profession of human resource management in Malaŵi; and to provide for matters connected therewith and incidental thereto

ENACTED by the Parliament of Malaŵi as follows—

PART I
PRELIMINARY

- Short title and commencement **1.** This Act may be cited as the Malaŵi Institute of Human Resource Management Act, 2019, and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.
- Interpretation **2.** In this Act, unless the context otherwise requires—
“accredited educational institution” means any university, institute, college or school of human resources management or other educational establishment accredited, on the recommendation of the Institute, by the National Institute for Higher Education in accordance with the National Institute for Higher Education Act;
- Cap 30:12 “approved employment” means employment which is within the prescribed human resources management work or activity constituting the practice of human resources management under this Act or of any other work or activity required under this Act or any other written law, to be done or performed by a person registered under this Act;
- “Board” means the Executive Board of Directors of the Institute provided for under section 4;
- “chartered human resources management practitioner” means a natural person registered under this Act as such under section 29;
- “corporate member” means a legal person or a division thereof accorded such membership under section 34;
- “Current Register” means the part of the Register of registered members as designated under section 26 (6)(b);

“Disciplinary Committee” means the Disciplinary Committee of the Institute constituted under section 47;

“financial year” means the period commencing on the date of commencement of this Act and ending on the following 30th June, and thereafter the period of twelve months from 1st July of one year to 30th June of the following year;

“fit and proper person” means a person of good character, who is not an undischarged bankrupt and has not been convicted of an offence involving fraud and dishonesty;

“good standing” means someone who has passed objective test;

“human resources management” means all employee life cycle events, including but not limited to employee resourcing, onboarding services, training and development, reward and benefits administration, employee relations, performance management and any other activity concerned with the harnessing of employee’s knowledge, skills and experiences to maximize productivity at the workplace;

“human resources management appointments” means appointments required under section 65 of this Act to be taken by persons registered under this Act;

“Institute” means the Malaŵi Institute of Human Resources Management established under section 7;

“Main Register” means the part of the Register of Registered Members designated as Main Register under section 26 (6)(a);

“mentor” means a person selected and registered by the Board for the purpose of mentoring graduate human resources management practitioners in accordance with section 42;

“prescribed human resources management work or activity” means any human resources management work or activity prescribed as the practice of human resources management pursuant to section 26 (8) of this Act and includes any other work or activity required under this Act, or under any other written law, to be done or performed by a person registered under this Act;

“profession” means the profession of human resource management;

“register” means a register of members of the profession of human resources management as the case may be, maintained by the Board pursuant to section 26;

“registered member” means a person registered under this Act;

“Registrar” means the chief executive officer of the Institute, as designated under section 13;

“Registration Committee” means the Registration Committee provided for under section 19; and

“trainee human resource management practitioner” means a person registered as a trainee human resources management practitioner under section 32.

PART II

THE MALAŴI INSTITUTE OF HUMAN RESOURCES MANAGEMENT

Establishment of Malaŵi Institute of Human Resources

3. There is hereby established an Institute to be known as the Malaŵi Institute of Human Resource Management (in this Act, referred to as the “Institute”) which shall be—

- (a) a body corporate, with perpetual succession and a common seal; and
- (b) capable of doing all things and acts which may lawfully be done or performed by a body corporate.

Board of Institute

4.— (1) There is hereby established the Board of the Institute which shall be responsible for the management and control of the affairs of the Institute.

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

- (a) President and other five members elected under section 5;
- (b) chairperson of the Registration Committee appointed under section 19;

(c) the Chief Executive Officer of the National Council for Higher Education or his representatives; and

(d) the Secretary for Human Resources Management and Development.

(3) Any person who—

(a) is an undischarged bankrupt;

(b) has been convicted of an offence crime involving dishonesty or moral turpitude;

(c) becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member; or

(d) is a Member of Parliament, Minister or Deputy Minister or Councillor, shall be disqualified from being appointed to, or from continuing to hold office, as a member of the Board.

(4) The Chief Executive Officer shall be the secretary to the Board.

Election to Board **5.**— (1) The Institute shall, at an annual general meeting, elect, among members of the Institute, the President and five other persons to hold office on the Board.

(2) A President of the Board shall provide leadership and strategic direction of the Institute and shall preside over any meeting of the Board.

(3) A quorum for any meeting of the Board shall be formed by the presence of two-thirds of its membership.

(4) In the absence of the President, the members present and forming a quorum shall elect from among their number, a person to preside over that meeting.

(5) A person shall only be eligible to be elected as a member of the Board if he is a registered member of the Institute.

Tenure and vacancy **6.**— (1) The term of office of any member, other than a member appointed under section 4 (2) (c) and (d), shall be two years and shall be eligible for re-election for one further term.

(2) When making election under section 5 after the expiry of the two years, regard shall be made to the need to maintain a reasonable degree of continuity in the membership of the Board, so that at least one third of the elected members shall be re-elected for the next term of office.

(3) A vacancy on the Board shall occur, if a member—

- (a) dies;
- (b) is adjudged or declared bankrupt;
- (c) is convicted and sentenced for an offence against any written law involving dishonesty or moral turpitude;
- (d) fails, without good and justifiable reasons, to attend three consecutive meetings of the Board of which he had notice;
- (e) is certified by a medical practitioner to be incapacitated by reason of physical or mental disability;
- (f) resigns in accordance with subsection (4);
- (g) if a situation arises that if the person was not appointed, would have disqualified him from being appointed as a member of the Board.

(4) A member of the Board elected or appointed into office under this Act may at any time resign his office by giving one month written notice to the Institute.

(5) A member elected or appointed into office under this Act may be removed by the Institute on any of the following grounds—

- (a) misconduct that brings the office of the member into disrepute;
- (b) incompetence in the execution of the functions of his office as a member of the Institute;
- (c) in circumstances where the member is compromised to the extent that his ability to impartially and effectively exercise the duties of his office is seriously in question.

(6) A vacancy in the membership of the shall be filled by the appointment of a new member by the Institute.

(7) A person appointed to fill a vacancy shall serve for the remainder of the term of office but no person may be appointed to fill a vacancy of the remainder of a term of office where the remainder of the term is less than six months.

(8) The period served by a person appointed under subsection (6) shall not be regarded as a term for the purposes of subsection (1).

(9) A vacancy in the membership of the Institute shall not affect its decisions, the performance of its functions or the exercise of its powers under this Act or any other written law.

Functions of the
Institute

7.— (1) The Institute shall be the sole authority for regulation of the profession of human resources management in Malaŵi.

(2) Notwithstanding the generality of subsection (1), the functions of the Institute are to—

- (a) promote the general advancement of the profession of human resources management in Malaŵi;
- (b) prescribe the standards of knowledge and skill for members of the profession of human resources management;
- (c) facilitate the continuing acquisition of knowledge by members of the profession of human resources management;
- (d) conduct professional examinations for the registration of human resources management practitioners;
- (e) award certificates corresponding to the level of qualification acquired;
- (f) prescribe rules for minimum standards of the human resources management;
- (g) maintain a register of members of the Institute;
- (h) maintain a register of mentors of the Institute qualified to supervise and conduct the post-graduate training and

examinations of human resources management practitioners in Malawi;

- (i) prescribe, from time to time, principles of conduct and ethics to be followed by persons registered under this Act, in the course of their human resources management practice as provided under this Act, and further to provide for disciplinary measures and penalties to be taken and enforced by the Institute for any infringement of any prescribed principles;
- (j) facilitate the professional development of members of the Institute as may be determined by the Institute;
- (k) determine the academic equivalent of the certificates awarded in respect of professional examinations conducted at the Institute;
- (l) subject to the directions of the Registrar of Financial Institutions, investigate and monitor any matter of public concern caused by, or likely to be caused by, a human resources management product or service and recommend appropriate preventive, rehabilitative or other measures;
- (m) represent, protect and assist human resources management practitioners with regard to their conditions of practice, remuneration or otherwise;
- (n) engage in formal or informal activities designed to foster and extend the study of human resources management, and for the benefit of members of the Institute or other persons interested in the profession of human resources management;
- (o) protect and assist the public in Malaŵi on all matters touching, ancillary or incidental to human resources management;
- (p) conduct research designed to advance the activities of human resources management; and
- (q) do all things as are necessary or incidental to the performance of its functions under this Act or any other written law.

8. The Institute shall have power to—

- (a) exercise disciplinary control over the profession of human resources management in Malaŵi;
- (b) employ administrative or executive staff or agents for the better administration of the affairs of the Institute;
- (c) determine and levy fees of the Institute under this Act;
- (d) make provision for the remuneration and other conditions of service of staff of the Institute, including pensions, gratuities, loans and advances and other superannuation benefits;
- (e) purchase, lease, or otherwise acquire any property, real or personal, for or in connection with the exercise of any of its powers;
- (f) manage, insure, let, sell, alienate, mortgage or otherwise deal with any property of the Institute it may deem necessary or expedient;
- (g) for the furtherance of its objectives, receive donations or gifts of moneys or other property from any person beneficially or as trustee of any trust established for the furtherance of its objects;
- (h) enter into arrangements with human resources management qualifying bodies or authorities outside Malaŵi for the mutual correlation of qualifying standards of competence in human resources management and for the reciprocal acceptance of qualifications;
- (i) prescribe, from time to time, by rules, fees to be paid to the Institute in respect of examinations held or prescribed by the Board for the purposes of this Act;
- (j) prescribe, from time to time, by rules, anything or matter, relating to the qualification of persons for registration, as prescribed under this Act and for which no other prescribing authority is specified;

(k) inspect human resources management firms to ensure compliance with this Act; and

(l) subject to section 7, do or perform any act necessary to or directed towards the furtherance of its objects.

Committees of the Board

9.— (1) For the better carrying into effect of its functions, the Board may establish a number of committees as may be considered necessary to perform such functions and responsibilities as may be determined by the Institute.

(2) A committee may in addition to the Registration Committee consist of either members of the Board only or members of the Board and such other suitably qualified persons other than members of staff of the Institute as the Institute may deem fit.

(3) The Board shall appoint the chairperson and deputy chairperson of each committee from only amongst the members of the Board.

(4) The provisions of this Act relating to the meetings of members of the Board shall apply *mutatis mutandis* to the meetings of its committees.

(5) Every committee shall act in accordance with any directions given to it in writing by the Board of the Commission.

Meetings of the Institute

10.— (1) The Board shall meet for the transaction of business at least once every three months at a place and at a time the President may determine.

(2) An annual general meeting of the Institute shall be called by the President in consultation with the Chief Executive Officer which shall be attended by all registered members of the Institute.

(3) At the annual general meeting, the Institute shall—

(a) receive and consider the report of the President of the Board;

(b) receive and consider statements of audited accounts of the Institute;

(c) appoint auditors of the Institute for the ensuing year;

(d) consider and approve decisions which the Board has referred to it in accordance with the provisions of this Act or regulations made under this Act;

- (e) where the term of the Board has expired, nominate or elect office bearers in accordance with this Act or regulations made under this Act;
- (f) make resolutions on matters affecting the registered members of the Institute; and
- (g) transact any other business the Institute deems fit.

(4) The President shall, upon giving at least a written notice of twenty-one days to the members, convene an ordinary meeting of the Institute.

(5) The President may, on written request of fifty percent or more members of the Board and within seven days of the request, cause an extraordinary meeting of the Institute to be summoned at a place and time as he may appoint to deliberate upon matters specified in the request.

(6) The President, or in his absence, the Vice President shall preside over the meeting of the Institute and in the absence of both the President and the Vice President, the members present and forming a quorum shall elect one of their number, to preside over the meeting of the Institute.

(7) At any meeting of the Institute, half of the membership plus one shall constitute a quorum, and voting on any decisions shall be by simple majority of those present, and the person chairing the meeting shall, where necessary, have a casting vote in addition to his deliberate vote.

(8) Minutes of each meeting of the Institute or a committee shall be kept by the Registrar and shall be confirmed at the subsequent meeting of the Institute or committee, as the case may be.

(9) The Board may co-opt a person to attend a meeting of the Board but that person shall not vote on a matter for decision at the meeting.

(10) Subject to the provisions of this Act, the Institute may make rules to regulate—

- (a) its proceedings and business; or
- (b) the proceedings and business of any of its committees.

Declaration of interest

11.—(1) If a person is present at any meeting of the Institute or of its committee at which any matter for which that person or a member of his immediate family is directly or indirectly interested in a private capacity is the subject of consideration, he shall, as soon as practicable after the commencement of the meeting, fully and frankly disclose that interest and shall not, unless the Institute otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board ceases to be a member, if that member has an interest in a matter before the Board and—

(a) fails to disclose the interest; or

(b) participates in the deliberations of the matter.

PART III ADMINISTRATION

Branches of the Institute

12.— (1) There shall be Branches of the Institute as may be determined and approved by the Institute.

(2) The Branches shall be created taking into consideration among other grounds, the number of members of the Institute resident in the geographical regions of the country.

Secretariat

13.— (1) There shall be a secretariat of the Institute which shall be headed by a Chief Executive Officer, who shall be a fellow or a chartered human resources management practitioner.

(2) A person shall not be appointed as Chief Executive Officer, unless he—

(a) possesses a minimum qualification of a master's degree or its equivalent obtained subsequent to a bachelor's degree obtained from a recognized and reputable educational institution;

(b) has proven and shown demonstrable expertise and experience in executive management and administration, or

in a field relevant to the functions and responsibilities of the Institute; and

(c) does not hold and has not held in the past a political office.

(3) The Chief Executive Officer shall be responsible for the day-to-day administration and management of the affairs of the Institute and in all matters shall, at all times, be subject to the directions of the Institute.

(4) The Chief Executive Officer shall be appointed by the Board on a performance-based contract for a period of three years, which may be renewed once, and on any terms and conditions as the Board shall determine.

(5) The Chief Executive Officer may, with prior approval of the Board, appoint other employees of the secretariat as may, from time to time, be required for the carrying out of the functions of the Institute, on terms and conditions as the Institute shall determine.

Inspectors

14.— (1) The Chief Executive Officer shall, with prior approval of the Institute, appoint inspectors on terms and conditions determined by the Institute, with the function of checking compliance with the provisions of this Act.

(2) The Institute shall provide an inspector with an identification certificate which shall be *prima facie* evidence of his appointment.

(3) An inspector shall, in performance of the functions under this Act—

(a) possess an identification certificate referred to under subsection (2); and

(b) on request, show the identification certificate to any person.

(4) An inspector may, for the purpose of enforcing this Act, at any reasonable time, without prior notice, and on the authority of a search warrant, enter into any premises that the inspector has reasonable grounds to believe that it is being used by a person registered under this Act to commit an offence or act contrary to the provisions of this Act, and may—

(a) search the premises;

- (b) search any person on the premises if there are reasonable grounds to believe that the person has possession of an article, document or record that has a bearing on the investigation, except that the person shall not be searched by a person of the opposite sex;
- (c) take extracts from, or any copies from any book, document or record that is on the premises and that has a bearing on the investigation;
- (d) demand the production of, and inspect, relevant certificates; and
- (e) make any inquiries as may be necessary in order to ascertain whether this Act or any other written law on which there is an investigation is being complied with.

(5) An inspector shall submit to the Institute, through the Chief Executive Officer, a written report and any other information relating to an inspection for the information or action by the Institute, as the case may be.

Non-compliance
with an inspector

15. A person who—

- (a) delays or obstructs an inspector in the performance of the inspector’s duties and functions under this Act;
- (b) refuses to give an inspector reasonable assistance as he may require for the purpose of exercising the inspector’s functions; and
- (c) gives an inspector false or misleading information in response to an inquiry made by the inspector,

commits an offence and shall be liable, upon conviction, to a fine K5,000,000 and to imprisonment for two years.

Allowances

16. Members of the Board, branches and committees of the Institute shall be paid allowances or other benefits from the funds of the Institute as the Institute may, from time to time, approve.

Limitation of
personal liability

17. A member of the Institute or an employee of the secretariat shall not be personally liable for any action taken by him in good faith in that capacity and while duly authorized by the Institute.

Custody and use
of common seal

18.— (1) The common seal of the Institute shall be authenticated by the signatures of the President, or of the person for the time being performing the functions of President, and of one other designated member of the Institute for that purpose.

(2) Any document purporting to be sealed with the common seal and so authenticated shall be admissible in evidence before any court or tribunal as true in relation to the particulars stated therein.

(3) The Institute may use a wafer or rubber stamp in lieu of an embossed seal until the time when it procures an embossed seal.

(4) The common seal of the Institute shall be kept and used in a manner prescribed by the Institute.

PART IV THE REGISTRATION COMMITTEE

Registration
Committee

19.— (1) There shall be a Registration Committee (hereinafter referred to as the “Registration Committee of the Board”) of the Institute which shall be responsible for the registration and regulation of qualifications of the classes of membership of the Institute.

(2) The Registration Committee shall consist of four fellows or chartered human resources management practitioners, an examiner and a lecturer in human resources management from an Institute of higher learning appointed by the Board:

Provided that the Board may co-opt any person or with necessary expertise to address matters being handled by the Committee in discharging its mandate, but shall not have a voting power.

(3) The Board shall appoint a chairperson of the Registration Committee.

(4) The Registration Council shall report to the Board.

Tenure and
vacancy

20.— (1) A member of the Registration Committee shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

(2) Whenever the office of a member falls vacant before the expiration of the period for which the member was appointed, the Institute shall,

subject to the provisions of section 19, fill the vacancy for the remainder of the term:

Provided that if the remaining period is less than six months, the vacancy may not be filled until the expiry of the period.

(3) Any person who—

- (a) is an undischarged bankrupt;
- (b) has been convicted of an offence and sentenced to a custodial sentence without the option of a fine;
- (c) becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member; or
- (d) is a Member of Parliament, Minister or Deputy Minister or Councillor,

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

Functions of the
Registration
Committee

21.— (1) Except as otherwise provided for in this Act, the Registration Committee shall—

- (a) establish educational standards and qualifications for the profession of human resources management in Malaŵi;
- (b) recommend to the National Council for Higher Education as established under the National Council for Higher Education Act, universities, colleges and institutions, programmes to be accredited for the award of a qualification in human resources management;
- (c) prescribe, by rules, syllabi of subjects for examinations to be set and held by the Registration Committee, from time to time;
- (d) set and hold, from time to time, qualifying examinations for admission to the profession of human resources management in Malaŵi and for registration under this Act;
- (e) set and hold, from time to time, any other examinations, oral or written, as the Institute deems necessary for the purposes of this Act;

Cap. 30:12

- (f) issue certificates to candidates who are successful in examinations conducted by the Board for the purposes of this Act; and
- (g) register human resources management practitioners and students of any of the classes prescribed under this Act.

Meetings of
Registration
Committee

22.— (1) The Registration Committee shall meet at least once every quarter, at a place and at a time as the chairperson may determine, for the transaction of its business.

(2) The chairperson shall, upon giving a written notice of at least a fourteen days to the members, convene an ordinary meeting of the Registration Committee.

(3) The chairperson may, on a special written request signed by not less than three members, call for a special meeting of the Registration Committee to be held within seven days after the receipt of such request of the request, at a time and place as he may determine.

(4) The chairperson, or in his absence, the vice chairperson shall preside over the meeting of the Registration Committee.

(5) In the absence of both the chairperson and the vice chairperson, the members present and forming a quorum shall elect one of their number, to preside over the meeting of the Registration Committee.

(6) At any meeting of the Registration Committee, half of the membership plus one shall constitute a quorum, and voting on any decisions shall be by simple majority of those present, and the person chairing the meeting shall, where necessary, have a casting vote in addition to his deliberate vote.

Committees of
the Registration
Council

23.— (1) The Registration Committee may establish sub-committees for the purpose of delegating to them, any functions that it considers necessary, subject to this Act.

(2) The Registration Committee shall determine the procedure of a sub-committee of the Registration Committee.

Allowances

24. Members of the Registration Committee shall be paid allowances or other benefits as the Board may determine.

PART V
REGISTRATION, CLASSIFICATION AND PRACTICE

Registration as a prerequisite for practice

25.— (1) Save where this Act otherwise provides, a person shall not engage in the practice of human resources management in Malaŵi, or hold himself out as being entitled so to do, unless he is registered under this Act.

(2) A person who engages in the practice of human resources management in contravention of subsection (1) commits an offence.

Registers of members

26.— (1) The Registration Committee shall, for the purposes of this Act, keep and maintain, in a prescribed form, registers of its members according to their classes and categories.

(2) The registers shall be in the custody and under the control of the Registrar and shall be kept at the offices of the Institute or at any other place in Malaŵi that the Registration Committee may direct.

(3) The Registrar shall perform all duties in connection with the registers as may be prescribed, and, in this regard, he shall be under the control of the Registration Committee.

(4) The registers referred to in subsection (1) shall, at all reasonable times, be open to inspection by—

(a) public officers in the course of their duties; and

(b) members of the public, upon payment of a prescribed fee.

(5) Every person registered under this Act shall, before 1st January, of each year, pay an annual subscription fee, as the Registration Committee may prescribe, from time to time.

(6) The registers of members referred to under subsection (1) shall each be kept and maintained in two parts, as follows—

(a) Part I which shall be designated as the “Main Register” and in which shall be registered every person, whether resident in Malaŵi or not, who is registered under this Act to practice human resources management and whose registration has not been cancelled under this Act; and

(b) Part II which shall be designated as the “Current Register” and in which shall be registered every person who—

- (i) is resident in Malaŵi;
- (ii) is registered in the Main Register;
- (iii) has paid the annual subscription fee; and
- (iv) has, in the preceding year, earned adequate Continued Professional Development points, in accordance with this Act.

(7) The Registrar shall, once in every year and as soon as may be convenient after 1st January, publish in the *Gazette* and print media the names, addresses, qualifications, date of registration and other particulars of all persons registered in the Current Register.

(8) For the purposes of registration—

(a) “class of membership” means—

- (i) a fellow;
- (ii) a chartered human resources management practitioner;
- (iii) an associate human resources management practitioner;
- (iv) a graduate human resources management practitioner;
- (v) a trainee human resources management practitioner; and
- (vi) (ix) any other class or category as determined by the Institute;

(b) “practice of human resources management” means any service or work, the adequate performance of which requires—

- (i) human resources management education, training, and experience in the application of special knowledge of human resources management to any services or work as consultation, investigation,

planning, design, and design coordination of human resources management work and systems; and

- (ii) other professional services as may be necessary to the planning, progress and completion of any human resources management services;

Applications for registration

27.— (1) A person who holds a minimum qualification prescribed by the Registration Committee and satisfies any other condition that the Registration Committee may determine may, on payment of a prescribed fee, apply for registration under this Act to the Registration Committee.

(2) An application for membership of the Institute shall be in writing and shall be accompanied with—

- (a) details of his name, address, current employer and occupation;
- (b) evidence of his qualification;
- (c) evidence that he is a citizen of the Republic of Malaŵi;
- (d) category of membership in which he intends to belong;
- (e) passport size photo; and
- (f) any other information which the Institute may prescribe.

(3) The Registration Committee shall, on the successful registration of a person under this section, issue the person with a registration certificate specifying the category of membership.

Registration as a fellow

28. A person shall make an application to the Registration Committee for registration as a fellow, if, at the time of his application, he—

- (a) is engaged in a senior position of responsibility in the profession of human resources management, academic field or human resources management research of a nature approved by the Registration Committee;
- (b) satisfies the Registration Committee that the person has passed the final associateship examination of the Institute;

- (c) has been a member of the Institute for a period of not less than ten years from the date of qualification as a member of the Institute;
- (d) has made significant contributions to Human resources management as determined by the Board;
- (e) has actively participated in the continuing professional development of the Institute; and
- (f) has satisfied any other condition determined by the Committee.

Registration as a chartered human resources

29.— (1) A person shall make an application to the Registration Committee for registration as a chartered human resources management practitioner if, he has—

- (a) passed the qualifying examination of an Malaŵi Institute of Human Resources Management in a country approved by the Registration Committee;
- (b) in consequence of an examination, obtained from an accredited educational institution, a human resources management degree or other qualifying certificate which the Registration Committee considers acceptable for registration;
- (c) for a prescribed period, been registered as a graduate human resources management practitioner under this Act, and has complied with all the conditions attaching to his registration as a graduate human resources management practitioner; and
- (d) passed the appropriate human resources management qualifying examination.

(2) Where the person has not complied with subsection (1)(a), but has, in consequence of an examination, obtained a degree or other qualifying certificate from an educational institution which is not an accredited one, the Registration Committee, if it is of the opinion that the degree or qualifying certificate is academically equivalent to a degree or qualifying certificate of an accredited educational institution and is acceptable for registration, may, in the case of that person, waive the requirements of subsection (1) (a).

(3) Where the person—

- (a) has complied with subsection (1)(a) or in whose case, the Registration Committee has waived compliance therewith, pursuant to subsection (2); and
- (b) shows, to the satisfaction of the Registration Committee, that, since obtaining his degree or qualifying certificate, he has been engaged in active practice as a human resources management practitioner for a period of not less than three years,

the Registration Committee may, in the case of that person, waive the requirements of subsection (1) (c).

(4) If the Registration Committee is satisfied that the applicant has complied with all of the relevant requirements of this section, save the requirements that have, in the applicant's case, been waived by the Registration Committee pursuant to subsections (2) or (3), it shall direct the Registrar to register the said applicant as a chartered human resources management practitioner.

Registration as
an associate
human resource
management
practitioner

30.— (1) A person shall make an application for registration to the Registration Committee as an associate human resource management practitioner under this Act, if, at the time of his application, he—

- (a) has complied with the requirements of section 31(1);
- (b) is engaged in work of a technical nature and has been in a position of responsibility for at least five years; and
- (c) can satisfy the Registration Committee, through the submission of a project report and through an interview that he has acquired a standard of technical proficiency and responsibility considered satisfactory by the Registration Committee, but falls short of meeting the requirements for registration as a chartered human resource management practitioner.

(2) The provisions of section 31(1), (2) and (3) shall apply, *mutatis mutandis*, to every application made under this section.

(3) The Registration Committee may, from time to time, prescribe further conditions attaching to registration as an associate human resource management practitioner.

(4) Where the Registration Committee is satisfied that the applicant has complied with all of the relevant requirements of this section, save the requirements that have, in the applicant's case, been waived by the Registration Committee pursuant to subsections (2) or (3), it shall direct the Chief Executive Officer to register the said applicant as an associate human resource management practitioner.

Registration as a
graduate human
resource
management
practitioner

31.— (1) A person shall make application for registration to the Registration Committee as a graduate human resource management practitioner under this Act, if he has complied with requirements as prescribed by the Registration Committee, from time to time.

(2) Where the Registration Committee is satisfied that an applicant has complied with all of the relevant requirements as prescribed under this section, save such as have, in the applicant's case, been waived by the Registration Committee, it shall direct the Registrar to register the said applicant as a graduate human resources management practitioner.

(3) A graduate human resource management practitioner registered pursuant to this section shall be entitled to practice human resource management, as a human resource management practitioner in training, by agreement with, and under the supervision or control, of a registered mentor who is registered as such under this Act.

(4) The Registration Committee shall prescribe the period of training required for graduate human resource management practitioners pursuant to subsection (3).

(5) The Registration Committee may, from time to time, prescribe further conditions attaching to registration as a graduate human resource management practitioner.

(6) An agreement made between a graduate human resource management practitioner and a registered mentor for the purposes of this section shall be in writing and in a form approved by the Registration Committee and shall be executed by the parties thereto in triplicate and delivered to the Registrar by the registered mentor concerned for noting in the register of graduate human resource management practitioner.

(7) Any failure to deliver the agreement executed in accordance with subsection (6) to the Chief Executive Officer within two months after its execution shall render the agreement void.

(8) The Chief Executive Officer shall retain a copy of the executed agreement and without undue delay, cause the other copies, duly endorsed by him, to be delivered to the parties thereto.

(9) A registered mentor shall, not earlier than 1st October and not later than 31st December of each year, make, in the prescribed form, a report to the Registration Committee on the progress and quality of the work of each graduate human resource management practitioner in training under his supervision or control.

Registration as a
trainee human
resource
management
practitioner

32.— (1) A person shall make an application to the Registration Committee for registration as a trainee human resource management practitioner under this Act, if he—

- (a) has obtained a diploma in human resource management or other relevant qualifications from an accredited educational institution which the Registration Committee considers acceptable for registration; and
- (b) subsequent to his qualifying for a diploma or certificate, he is undergoing practical training from an approved employment or an accredited educational institution as a trainee human resource management practitioner.

(2) Where the Registration Committee is satisfied that the applicant has complied with all the relevant requirements of this section, it shall direct the Chief Executive Officer to register the applicant as a trainee human resource management practitioner.

corporate
members

33. A statutory corporation, a company, an association, a partnership or other body, division, department or section which is—

- (a) directly engaged in human resource management activities;
or
- (b) professionally interested in human resource management in Malaŵi,

shall register with the Board and may be admitted as a corporate member.

Cancellation of
registration

34.— (1) The Registration Committee shall cancel the registration under this Act where—

- (a) it has reasonable grounds to believe that the registration was obtained by fraud, misrepresentation or concealment of a material fact;
- (b) the member is convicted of an offence under this Act or regulations made under the Act;
- (c) the member is convicted of an offence involving fraud or dishonesty;
- (d) the member has lost the qualification on the basis of which the registration was made;
- (e) the member is sentenced to a term of imprisonment without an option of a fine;
- (f) in case of a corporate member, the member has been wound up or has had its license revoked by the Registrar of Financial Institutions.

(2) The Registration Committee shall before cancelling a registration, give the affected person—

- (a) notice, specifying the grounds, for thirty days of the Registration Committee's intention to cancel the registration; and
- (b) an opportunity to make a representation to the Registration Committee.

(3) The Registration Committee may before cancelling a registration, suspend the affected member for a period, not exceeding six months, and on terms and conditions that the Registration Committee may determine.

(4) Where the Registration Committee cancels a registration, the name of the person whose registration has been cancelled shall be removed from the register of members and may only be restored on conditions prescribed by the Committee and on the payment of the prescribed fee.

Suspension of
registration

35. The Registration Committee may suspend the registration of a member of the Institute where—

- (a) an offence in relation to the member is being investigated;
- (b) allegations of misconduct have been made against the member;
- (c) false declaration was made in an application for registration as a member of the Institute; or
- (d) the member contravenes a provision of this Act.

Striking off name from register

36.— (1) The Registration Committee may strike off the name of a person from the register if the Registration Committee is satisfied that that person—

- (a) is unfit to practice the profession of human resources management because that person has been found guilty of professional misconduct;
- (b) has failed to pay the prescribed fees for a period determined by the Registration Committee; or
- (c) has been disqualified under this Act.

(2) A person whose name has been struck off the register may have the name restored if the Registration Committee is satisfied that that person has subsequently become a fit and proper person to practice the profession of human resources management.

(3) Subject to subsection (2), a person whose name has been struck off the register shall have the name restored upon payment of the prescribed fee.

(4) The name of a member shall not be struck off the register of the Institute for professional misconduct unless the Disciplinary Committee has made a report to the Registration Committee that the member concerned is liable for professional misconduct after due inquiry.

Representation to Registration Committee and appeal

37.— (1) The membership of a member shall not be suspended or terminated unless the Registration Committee has given the member at least thirty days' notice in writing of the intention of the Registration Committee to suspend or cancel the membership and has provided the member with an opportunity to make a representation to the Registration Committee.

(2) A person dissatisfied with a decision of the Registration Committee may appeal to the High Court.

Restoration of membership

38. The Registration Committee may review a decision to strike off the name of a member from the register under section 23 for the purposes of restoring the membership of that member, if the member—

- (a) discharges all outstanding financial obligations and pays any penalties levied against the member by the Registration Committee; or
- (b) successfully appeals against the decision to strike off the name from the register.

Human resources
management
qualifying
examination

39.— (1) The Board shall from time to time set, arrange and hold a human resources management qualifying examination for the purposes of registration under this Act.

(2) A person who intends to apply for registration under this Act, shall, before making the application, physically present himself to the Registration Committee as a candidate for the human resources management qualifying examination.

(3) The Registration Committee may, in its discretion, arrange the human resources management qualifying examination into two or more separate parts, according to examination subjects, and may provide separate dates or times for the holding of examinations in such separate parts, and may further provide that the parts be independent of, or be interdependent upon, each other.

(4) In cases where the parts of a human resources management qualifying examination are independent of each other, a candidate shall not be deemed to have successfully passed an examination unless and until he has passed the examination in all parts, which taken together, would constitute successfully passing the examination in every part or subject into which the human resources management qualifying examination has been so divided by the Registration Committee.

(5) The human resources management qualifying examination may be in a form of written or oral examination, or both.

Registration of
qualified foreign
human resources
management
practitioners and
firms

40.— (1) The Board may register a person or firm, who is not a citizen of Malaŵi, as a member in any class of membership subject to satisfaction of the requirements for that class under this Act.

(2) Where a person intends to be registered under this section, he shall, in the minimum, submit to the Institute the following information in support of the application—

- (a) certified copies of academic and professional certificates;
- (b) certified copy of his passport and visa, where applicable; and
- (c) any other information as the Committee may consider appropriate.

(3) The person or firm referred to in subsection (1) shall not, unless the person or firm is registered under this Act, practice as or be employed in any class under this Act, offer or carry out human resources management services, be engaged as an agent of, or hold out to be, a human resources management professional or human resources management organization in Malawi.

(4) An immigration officer shall not, without the approval of the Registration Committee, issue an employment or other permit to a person on the basis that he intends to practice, or be employed, in any class of membership under this Act in Malawi.

(5) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine of K10,000,000 and imprisonment for five years.

Selection and
registration of
mentors

41.— (1) The Registration Committee may, from time to time, select as mentors, such fellows or chartered human resources management practitioners registered under this Act as appear in the opinion of the Registration Committee to possess the qualifications and experience necessary for the training and supervision of graduate human resources management practitioners.

(2) The fellows or chartered human resources management practitioners selected by the Registration Committee shall be subject to the approval of the Institute and upon the Institute's approval shall be registered as registered mentors.

(3) Registration of a person in the register of registered mentors shall in no way affect or alter his registration in their relevant registers, whether as fellow or chartered human resources management practitioner.

(4) The Institute may, on recommendation by the Registration Committee, at any time, cancel the registration of any fellow or chartered human resources management practitioner in the register of registered mentors.

Correction of registers

42.— (1) The Chief Executive Officer may, with the prior approval of the Registration Committee, make any necessary alteration or correction in any register in relation to any entry therein.

(2) The Chief Executive Officer shall remove from any register the name of any member—

(a) who has died; or

(b) whose entry was incorrectly or fraudulently made, and the Registration Committee has directed that the name be removed therein.

(3) The Chief Executive Officer may, with the consent, in writing, of the person concerned, remove from any register, the name of any person who has ceased to practice human resources management in Malaŵi.

(4) Any name removed from a register pursuant to subsection (3) shall, at the request in writing of the person concerned and subject to the approval of the Registration Committee, be reinstated in the said register.

Non-eligibility for registration

43.— (1) A person shall not be eligible for registration under this Act if he has been—

(a) convicted by a competent court of law of an offence and given a custodial sentence without an option of a fine;

(b) adjudged or otherwise declared to be of unsound mind under any law in force in Malaŵi or any country;

(c) declared an undischarged bankrupt; or

(d) found guilty of professional misconduct by the Disciplinary Committee.

(2) A body corporate shall not be eligible for registration, if it has been declared insolvent under a written law in Malaŵi or elsewhere.

Honorary fellows

44.— (1) Subject to subsection (2), the Registration Committee may register a person as an honorary fellow of the Institute.

Certificates,
membership
cards and
stamps

(2) The Registration Committee shall determine conditions under which honorary fellowship may be conferred on a person.

45.— (1) The Registration Committee shall issue to a person or firm registered under this Act, a certificate of registration and, in the cases of a fellow and chartered human resources management practitioner, a fellow's stamp and chartered human resources management practitioner's stamp, respectively, in a prescribed form.

(2) The Registration Committee shall, in addition to the certificate of registration, which shall signify the registration of the holder in the Main Register, issue to every registered member at the beginning of each year and upon payment of his annual subscription fee, a practicing certificate and a membership card that shall be valid up to 31st December of that year.

(3) The certificate of registration and the membership card shall signify the registration of the holder in the Current Register and the certificate shall at all times be displayed at the holder's place of practice.

(4) A practicing certificate shall be renewed annually in the prescribed manner upon payment of a prescribed fee.

(5) A holder of a certificate issued under this section shall notify the Board any change in particulars relating to the holder within fourteen days of the change.

(6) A person or a body corporate without a valid practicing certificate commits an offence, if they—

- (a) carry on the practice of human resources management in Malaŵi as stipulated in section 26(8);
- (b) accept any appointment for which registration is required as stipulated in section 65;
- (c) teach, practice, or offer their services or hold themselves out as being qualified professionals or professional body in human resources management;
- (d) adopt, use or exhibit a title of any class or category of any professional registered under this Act or any of the applicable corresponding post-nominal abbreviations, as prescribed under this Act; or

- (e) do anything likely to lead persons to infer that they are a registered under this Act.

(7) The Registration Committee shall put in place a system for monitoring the activities of all members registered under this Act such that at the end of each year, members shall be assessed for eligibility for practicing certificates in the following year, and the monitored activities shall include participation in continued professional development programmes and functions as prescribed by Registration Committee.

(8) A certificate of registration or practicing certificate issued in accordance with this section shall be cancelled by the Registration Committee where—

- (a) it is proved to the satisfaction of the Registration Committee that the registration was obtained through fraud, misrepresentation or concealment of material facts;
- (b) the holder ceases to be a member;
- (c) the holder has been found guilty of professional misconduct under this Act; or
- (d) circumstances arise which, in the opinion of the Registration Committee, disqualify the holder from membership.

(9) Before the cancellation, the Registration Committee shall give the holder, a notice of fourteen days of the intention to cancel the certificate and shall require the holder to show cause, if any, why the certificate should not be cancelled.

(10) The Registration Committee may, before the cancellation, suspend a member for a period not exceeding ninety days on terms and conditions the Registration Committee may determine.

(11) A member whose certificate has been cancelled in accordance with subsection (8) shall be deregistered and have their name removed from both registers.

PART VI DISCIPLINE

Disciplinary
Committee

46.— (1) There is hereby established a Disciplinary Committee of the Institute which shall consist of—

- (a) a chairperson, who shall be appointed by the Institute from among the members of the Board;
- (b) two registered members, who shall be registered fellows or chartered human resources management practitioners, appointed by the Institute;
- (c) a legal practitioner nominated by the Malaŵi Law Society and approved by Institute; and
- (d) one person of good standing in society and who is not registrable under this Act.

(2) A member of the Disciplinary Committee shall hold office for a term of two years and may, on expiry of the term, be re-elected for one further term.

Powers of
Disciplinary
Committee

47.— (1) The Disciplinary Committee shall have the power to inquire into the conduct of any member of the Institute in accordance with the provisions of this Part.

Cap 18:01

(2) The provisions of sections 10, 11, 12 and 13 of the Commissions of Inquiry Act shall apply, *mutatis mutandis*, to an inquiry under this Part, as though the Disciplinary Committee were a Commission appointed under that Act, save that the member into whose conduct the inquiry is being conducted, shall not be entitled to their expenses incurred for the purpose of attending the inquiry.

Proceedings of
Disciplinary
Committee

48.— (1) Where the Institute has reasonable grounds to believe, whether as a result of a complaint laid before the Institute or on its own volition, that any member registered under this Act, in the course of his professional work—

- (a) knowingly and habitually engages in practices which are dishonest or fraudulent;
- (b) has contravened the provisions of this Act;
- (c) commits professional misconduct defined under section 50 of this Act; or

- (d) is liable to a professional misconduct or conduct which in relation to their professional practice is unbecoming of a member;
- (e) has failed, within a reasonable time, to comply with any requirement or condition imposed upon him by the Board in its ruling on an inquiry into his professional conduct under this Act;
- (f) has, notwithstanding his suspension pursuant to this Act, engaged in the practice of human resources management contrary to the terms and conditions of his suspension; or
- (g) has, within the previous year, been convicted of criminal offence involving dishonest or fraud;

it may direct the chairperson of the Disciplinary Committee, in writing, to convene a meeting of the Disciplinary Committee to conduct an inquiry.

(2) Upon receipt from the Board of the direction in writing referred to in subsection (1), the chairperson to the Disciplinary Committee shall, as soon as is practicable, by notice in writing to the members of the Disciplinary Committee, convene a meeting of the Committee on a date not earlier than one month, or later than three months, after the date of the said notice, for the purpose of conducting an inquiry into the matters of complaint in the direction contained in the written notice.

(3) The quorum of a Disciplinary Committee shall be three members.

(4) In any disciplinary hearing the Institute may request the Attorney General to nominate a legally qualified person to assist the Disciplinary Hearing Committee in the proceedings of the hearing.

(5) The chairperson or, in his absence, the person appointed by members present at that particular meeting, shall preside over at any meeting of the Disciplinary Committee.

(6) All proceedings of the Disciplinary Committee shall be held *in camera*.

(7) A decision of the Disciplinary Committee shall be by a simple majority of votes of members present and voting.

(8) The Disciplinary Committee may, in the conduct of each inquiry, determine its own procedure.

Professional misconduct

49. A member registered under this Act commits professional misconduct if, in the course of his practice, the member—

- (a) unlawfully discloses or uses to his own advantage or to the advantage of another member, any information acquired in his practice of the profession of human resources management;
- (b) contravenes a provision of this Act or Regulations made under this Act;
- (c) engages in conduct that is dishonest, fraudulent or deceitful;
- (d) charges for professional work, fees other than those stipulated in the scales approved by the Institute;
- (e) fails to report his clients' interest, fails to disclose, or knowingly conceals from the client misstatements or facts known to himself and disclosure of which is necessary for the reports not to mislead;
- (f) engages in conduct that is prejudicial to the profession of human resources management or is likely to bring it into disrepute; or
- (g) breaches the Code of Conduct, or aids or abets another member to breach or disregard the Code of Conduct.

Application of rules of natural justice

50. The Disciplinary Committee shall, before taking any disciplinary action, observe the rules of natural justice and accord a member who is a subject of a disciplinary action, a right to be heard.

Report of proceedings

51.— (1) The Disciplinary Committee shall, within fourteen days of a close of an inquiry, produce a report which shall contain the determination of the hearing.

(2) The report of the Disciplinary Committee shall be copied to the Board.

(3) Where the Disciplinary Committee finds a member guilty of misconduct, the Committee may impose the following penalties—

- (a) order the de-registration of the member from the register;
- (b) suspend the member for a period of not exceeding one year;
- (c) censure the member;
- (d) caution the member;
- (e) a fine to be paid by the member as may be prescribed by the Committee;
- (f) order the member to pay to the Institute or any other party to the proceedings, any costs of, or incidental to the proceedings; or
- (g) order the member to pay any party to the proceedings or any person, as restitution, the amount of loss caused by the member's misconduct.

(5) A member who is aggrieved by a decision of the disciplinary Committee within fourteen days of receipt of the decision appeal to the Board for review.

(6) The Board shall consider the report and make a decision thereon within fourteen days of the receipt.

(7) The decision of the Board under subsection (6) is subject to review by the High Court where an aggrieved person lodges an application to the High Court within fourteen days of the receipt of the decision.

Code of conduct **52.**— (1) The Minister shall, by regulations and on the recommendation of the Institute, develop a code of conduct regulating all human resources management activities and exercising control over its members.

(2) Failure by any member to conform to the code of conduct shall constitute professional misconduct resulting in such a member being liable to disciplinary action.

PART VII — OFFENCES

Unlawful practice of human resources management	<p>53. Save where this Act otherwise provides, a person or firm who or which is not registered under this Act, and who or which, in Malaŵi—</p> <p style="margin-left: 40px;">(a) engages, or purports to engage, in the practice of human resources management;</p> <p style="margin-left: 40px;">(b) holds themselves out as being entitled to engage in the practice of human resources management; or</p> <p style="margin-left: 40px;">(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 or body corporate registered under this Act,</p> <p>commits an offence and shall be liable upon conviction to a fine of K25,000,000 and to imprisonment for ten years.</p>
Unlawful use of titles or descriptions	<p>54. A person who, in relation to himself or to any business which he owns, manages or controls, uses or assumes any title or description attached to a profession of human resources management under this Act or who uses or assumes any applicable abbreviation of the title or description, without being registered under this Act, commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for five years.</p>
Employment of non-registered persons	<p>55.— (1) A person or body corporate, who, without the prior written consent of the Institute employs any person not registered under this Act to do or perform the practice of human resources management commits an offence and shall be liable, upon conviction, to a fine of K15,000,000 and to imprisonment for seven years.</p> <p style="margin-left: 40px;">(2) Where an offence under subsection (1) is committed by a body corporate, every concerned director and manager in the firm shall be deemed to have committed the offence unless the director or manager proves that the offence was committed without his knowledge or consent.</p> <p style="margin-left: 40px;">(3) Any person not registered under this Act, who, while in the employment of any other person or body corporate, knowingly, in the course of his employment, does or performs any prescribed Human resources management work or activity, commits an offence and shall be liable, upon conviction, to a fine of K10,000,000 and to imprisonment for five years.</p>
Fraudulent entries and copies	<p>56. A person who knowingly or fraudulently makes or utters, or causes, or permits to be made or utter—</p>

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

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

commits an offence and shall be liable, upon conviction, to a fine of K15,000,000 and to imprisonment for seven years.

Liability of partners in a firm

57- (1) Where a firm does any act which if done by an individual would be an offence under this Part, every partner in that firm shall be deemed to have committed the offence unless he proves that the offence was committed without his knowledge or consent.

(2) A person who commits an offence under subsection (1) shall be liable, upon conviction, to a fine of K5,000,000 and to imprisonment for two years.

PART VIII FINANCIAL PROVISIONS

Funds of the Institute

58. The funds of the Institute shall consist of—

(a) moneys or other property payable to or vesting in the Institute whether in the course of the exercise of its powers or functions or otherwise;

(b) moneys, fees or other property payable to or vesting in the Institute pursuant to this Act or a written law; and

(c) donations, grants or gifts.

Investment powers

59. The Institute shall have powers to invest any moneys which are not immediately required for its objects or the performance of its functions.

Borrowing powers

60. The Institute may, subject to the International Accounting Standards, borrow temporarily, by way of overdraft or otherwise, such sums as it may require for meeting its obligations or discharging its functions under this Act.

Annual budgets

61. The Institute shall, in relation to each financial year, submit for approval to the annual general meeting both capital and income and expenditure budgets.

Books of accounts, audits and reports

62.— (1) The Institute shall cause to be shall cause to be—

- (a) maintained a bank account at such a bank as the Board may direct;
- (b) kept proper books of accounts and other records in relation to all moneys or other property vested, received or otherwise obtained, and of all moneys expended or other property sold or otherwise disposed of by the Institute.

(2) The accounts of the Institute shall be audited annually by professional auditors appointed by the Institute in liaison with the Auditor General and in accordance with International Auditing Standards.

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

(4) The Institute shall, as soon as is practicable, but not later than three months after the end of each financial year, submit to the Minister, an annual report of its work, operations and audited accounts who shall lay the report in Parliament.

PART IX MISCELLANEOUS

Confidentiality **63.** A member of the Board, employee or agent of the Institute shall not publish or disclose to any entity, other than in the course of the entity's duties, the contents of any document, communication or information which has come to the person's knowledge in the course of his duties under this Act.

Oath of secrecy **64.** A member of the Board, employee or agent of the Institute, shall sign an oath of secrecy upon being appointed to the Institute or being engaged by the Institute, as the case may be.

Annual and other reports **65.—** (1) The Board shall within one month after the receipt of the audit report, submit an annual report, approved by the members of the Institute at an annual general meeting, to the Minister covering the activities and operations of the Institute for the year to which the report relates.

(2) The annual report shall include an audit report.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall also submit to the Minister any other reports which the Minister may require in writing.

Human
resources
management
appointments

66.— (1) Where a written law requires the holders of an office to have the roles and responsibilities related to human resources management as stipulated under this Act, then that office shall be filled by a person who has been registered under this Act.

(2) For the purposes of this Part, “registered member”, unless the Institute directs otherwise, means a member registered in accordance with the class of membership under section 26(8).

Regulations

67.— (1) The Minister may, on the recommendation of the Institute, make regulations, prescribing anything which by the provisions of this Act may be prescribed for the better enforcement of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may prescribe—

- (a) the standards of practice for members of the Institute;
- (b) the rights, privileges and obligations of the categories and classes of membership;
- (c) the forms of the registers, books, applications, notices, licences, certificates, documents and records required to be kept and maintained, for the purposes of this Act;
- (d) the manner of keeping the accounts of the Institute and the rendering of reports thereon;
- (e) the fees to be charged in respect of anything required to be done or any applications made or certificates, licences or permits issued under this Act;
- (f) any other matter as the membership may determine; and
- (g) any other matters as may be deemed by the Institute as being necessary for the proper conduct and regulation of the affairs of the profession in accordance with the Act.

(3) Notwithstanding the provisions of section 21(e) of the General Interpretation Act, the Minister may, in regulations made under this Act,

Cap. 1:01

prescribe a fine of up to K25,000,000 and imprisonment for ten years, for an offence committed in contravention of the regulations.

Rules

68.— (1) In the exercise of its functions under this Act, the Board may make such rules as are necessary for the better carrying out of the provisions of this Act.

(2) The Board shall publish in the Gazette the rules made under this Act.

(3) The Board shall, within twenty-eight days of the publication of the rules in the *Gazette*, inform the public, through the print and electronic media, of the publication of the rules.

PART X

DISSOLUTION AND TRANSITIONAL CLAUSES

Dissolution of
IPMM

69. Subject to subsection (2), the Registered Trustees of the Institute of People Management –Malawi incorporated on...by Certificate number shall be dissolved by a resolution of the Board IPMM on a date to be determined by the Board.

Transitional
provisions

70. Any certificate, approval, or permission issued or granted in accordance with the dissolved Institute shall, unless otherwise expressly provided for in this Act or in any other written law, continue to be in force and be deemed to have been issued or granted by the Institute herein.

Legal
proceedings

71. Any legal proceedings commenced immediately before the coming into force of this Act by or against the dissolved Institute shall be deemed to have been commenced by or against the Institute established under this Act.

Transfer of
assets, funds,
liabilities, etc.

72.—(1) All property, funds and assets which immediately before the commencement of this Act were vested in the dissolved Institute shall, on the commencement of this Act, and without further assurance, be deemed to have vested in or to have been acquired by or on behalf of the Institute established under this Act, subject to all interests, liabilities, charges, obligations and trusts affecting such property, funds and assets.

(2) Except as otherwise provided in subsection (1), in relation to property, funds and assets, all debts, obligations, liabilities, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the dissolved Institute shall, on the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Institute

established under this Act, and shall become enforceable by or against the Institute to the same extent as they were enforceable by or against the dissolved Institute .

Transfer of
employees

73. All persons who, immediately before the commencement of this Act, were employed by the dissolved Institute, on the commencement of this Act, be deemed to have been transferred to the employment of the Institute, established under this Act, on terms and conditions of service not less favourable than the terms and conditions of service with the dissolved Institute and, for the purpose of determining their rights thereunder, their services shall be regarded as being continuous from the time they were employed by the dissolved Institute.

TRANSITION FOR COMPLIANCE – time frame for members to comply

OBJECTS AND REASONS

The object of this Bill is to provide for a new piece of legislation that regulates the profession of human resource management in Malaŵi by establishing the Malaŵi Institute of Human Resource Management as the body for the regulation and control of the profession of human resources management in Malaŵi.

KALEKENI KAPHALE, SC
Attorney General