Executive Summary

Madagascar's investment climate shifted significantly in the first half of 2014, and further improvements appear likely if favorable political changes continue. With the establishment of a credibly-elected government, the Malagasy private sector and potential foreign investors expect the investment climate to improve. Despite the current optimism and interest, however, numerous troubling issues remain, including: weakness in the judicial system and the banking sector; the high cost and low quality of electric power; corruption; a lack of transparency in decision-making; limited road, rail and port infrastructure; and the high cost of air transport.

The country has no law or regulation prohibiting foreign investment, participation or control; no restrictions on converting or transferring funds associated with foreign investment; and no recent cases of expropriation actions by the government. Madagascar's legal system, based on French civil law, contains adequate protections for private property rights, and the government accepts binding international arbitration of investment disputes between foreign investors and the state.

There is no requirement that investors purchase from local sources, or export a certain percentage of output (except in Export Processing Zones, where the requirement is 95 percent), or only have access to foreign exchange in relation to their exports, and no requirements on domestic ownership of shares. Secured interests in property are recognized, but not entirely enforced in the country. A prohibition on land ownership by foreigners impedes access to real property, and the entire issue remains highly controversial and problematic on a cultural level despite legal advances. Madagascar is a member of the World Intellectual Property Organization (WIPO) and is a signatory to the WTO TRIPS agreement.

Investors complain of a lack of transparency in government regulatory decisions, with some in the mining and petroleum sectors encountering difficulty and/or delays in obtaining necessary operating permits under the former coup regime as a result of these irregularities.
In spite of the general underdevelopment of the banking system, banks are free to support the flow of resources in the product and factors markets. Madagascar has concluded bilateral investment agreements with a number of countries, and has expressed interest in negotiating such a treaty with the United States.

While giving or accepting a bribe is a criminal act and is subject to trial by court, complicated administrative procedures introduce delays and uncertainties, increasing possibilities for corruption. High levels of corruption exist in nearly all sectors.

Madagascar has a significant pool of available labor, with relatively stable private sector wages that are below those in most competitor countries.

The largest foreign direct investment in Madagascar is in the mining sector, although FDI increases in 2012 resulted more from increases in bank capital holdings and new loans for telecommunications companies.

1. Openness To, and Restrictions Upon, Foreign Investment

Madagascar's investment climate shifted significantly in the first half of 2014, and further improvements appear likely if favorable political changes continue. The country held internationally recognized presidential and legislative elections in December 2013, inaugurating a new President on January 25, 2014. The President appointed a new Prime Minister on April 16 and a new Cabinet April 18. These democratic changes put an end to the five-year rule of a de facto government that had taken power in a March 2009 coup d'état.

Under the coup regime's rule, the economy stagnated, poverty increased, and social outcomes worsened. Most recent figures show estimated inflation at 5.8%. In mid-February 2014, the International Monetary Fund (IMF) estimated that Madagascar's economy experienced 2.4 percent real GDP growth in 2013. Almost all of that growth was driven by the international mining sector, which grew by an estimated 110% in 2013; most of the population therefore became much poorer despite the slight increase in growth.

Since January 2010, the loss of duty free exports to the United States under the African Growth and Opportunity Act (AGOA) led to the closure of at least 40 apparel and textile firms, the unemployment of an estimated 100,000 workers, and the loss of millions of USD in export revenues and in foreign investment. The closures impacted around 50,000 additional workers. Before 2009, the garment sector was Madagascar's top export industry, with 45% of the export market. In 2014, it had dropped to 25% of exports.

Following the coup, the USG terminated the Millennium Challenge Account (MCA) program and AGOA eligibility, as the country no longer met the criteria regarding rule of law, good governance, and political pluralism. The World Bank recharacterized its operations in Madagascar under Operation Policy OP 7.30 for dealing with de facto governments, and stopped processing fund withdrawal requests except those dealing with nutrition, HIV/AIDS, food security, and environmental protection. In five years, effective disbursed external aid dropped by half, from USD 758.5 million in 2007 to USD 387.8 million in 2012. Despite attempts by the de facto administration to attract investment, few foreign investors showed interest as of 2013, according to the Economic Development Board of Madagascar (EDBM).

Now, with the establishment of a credibly-elected government, the Malagasy private sector and potential foreign investors expect the investment climate to improve. The new situation offers an opportunity for Madagascar to strengthen democratic institutions, improve respect for human rights, combat corruption, and rebuild its economy. Indeed, these and other commitments – to include improving fiscal transparency, and fostering a climate conducive to business and investment – were clearly listed as policy priorities in the new government's General Policy, released on May 10, 2014.

The World Bank has since regularized its operations in Madagascar, and on June 18, 2014, the International Monetary Fund announced its approval of a USD 47 million Rapid Credit Facility for Madagascar, in support of economic and structural policies and measures to restore macroeconomic stability, provide a favorable environment in support of inclusive growth and poverty reduction, and to strengthen the capacity of the Malagasy government. Additionally, on June 26, 2014, the United States announced Madagascar's re-eligibility for trade benefits under AGOA, effective immediately. Re-eligibility for AGOA is projected to reignite growth in the textile industry and increase exports to the United States.

Despite the current optimism and interest, however, numerous troubling issues remain. Weakness in the judicial system and the banking sector, the high cost and low quality of electric power, corruption, lack of transparency in decision-making, limited road, rail and port infrastructure, and the high cost of air transport make investing in Madagascar a challenge. Presently, growth is driven mostly by the mining sector, which is projected to grow at 74.5% in 2014. Madagascar was accepted as an Extractive Industries Transparency Initiative (EITI) candidate country in February 2008, but was suspended following the coup. However, it continued to issue reconciliation reports during the political crisis, and was reinstated as an EITI candidate on June 6, 2014.

The country has no law or regulation limiting or prohibiting foreign investment, participation or control. Furthermore, there is no official or private practice to restrict foreign investment, participation, or control of domestic enterprises. There is no mandatory screening of foreign investment, and there is no discrimination against foreign investors at the time of the initial investment or after the investment is made, such as through special tax treatment, access to licenses, approvals, or procurement. There are no sectors/matters in which foreign investors are denied national treatment. There is no legal requirement that nationals own shares of foreign investment. Finally, there is no direct quantitative capital control (inflows and outflows), but the Government of Madagascar (GOM) has a unit called SAMIFIN tasked with investigating money laundering and other financial crimes.

Table 1: Summary of several indices and rankings

Measure	**Year**	**Index/Ranking**	**Website**
TI Corruption Index	2013	28/100 score 127 out of 177 countries	http://www.transparency.org/cpi2013/results
Heritage Economic Freedom	2014	79 out of 186 countries	http://www.heritage.org/index/country/madagascar
World Bank Doing Business	2015	163 out of 185 countries	http://www.doingbusiness.org/data/exploreeconomies/madagascar
World Bank GNI per capita	2013	440	http://databank.worldbank.org/data/download/GNIPC.pdf

The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a 2012 per capita gross national income (GNI) or $4,085 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here: http://www.mcc.gov/pages/selection/scorecards. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: http://www.mcc.gov/documents/reports/reference-2013001142401-fy14-guide-to-the-indicators.pdf

2. Conversion and Transfer Policies

In 1998, the GOM lifted all restrictions on current payment and transfers and accepted the obligations of Article VIII of the IMF articles of Agreement, which provides for the complete elimination of exchange controls. There are no restrictions on converting or transferring funds associated with foreign investment, including remittances of investment capital, earnings, loan repayments, lease payments into a freely usable currency and at a legal market clearing rate. There are no plans to change remittance policies that have tightened or relaxed access to foreign exchange for investment remittances. When delays occur in conversion or funds transfer, they are due to temporary shortages of foreign currency on hand. There is no limitation on the inflow or outflow of funds for remittances of profits, debt service, capital, and returns on intellectual property or imported inputs. There are no surrender requirements for profits earned overseas.

Exporters and foreign investors may maintain bank accounts in foreign currencies. Madagascar uses exchange rate policy to counter underlying currency market pressures and keep commodity prices stable. The average daily exchange rate in 2013 was 2,206 Ariary per one USD.

3. Expropriation and Compensation

There are no recent cases of expropriation actions by the GOM. There are no laws that force local ownership.

4. Dispute Settlement

Madagascar's legal system is based on French civil law, and its provisions contain adequate protections for private property rights. Malagasy commercial law consists largely of the Code of Commerce and annexed laws, which are reportedly applied in a non-discriminatory manner. Madagascar has a written bankruptcy law, created in 1996 and currently included in the Code of Commerce. The Malagasy judicial system is slow and complex and has a reputation for opacity and corruption. In the past, U.S. assistance has supported the development of alternative dispute resolution systems to provide more rapid, more transparent, and less costly resolution of commercial disputes.

Under the privatization law, the GOM accepts binding international arbitration of investment disputes between foreign investors and the state. The courts, in theory, recognize and enforce foreign arbitral awards, and international arbitration is accepted as a means for settling investment disputes between private parties. The Malagasy Arbitration and Mediation Center (known by its French acronym, CAMM) was created in 2000 as a private organization to promote and facilitate the use of arbitration to resolve commercial disputes and to lessen reliance on a court system that is, at a minimum, overburdened. As a result, many private contracts now include arbitration clauses.

Madagascar is a signatory to the International Center for the Settlement of Investment Disputes (ICSID) Convention, as well as the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Madagascar has been a member of the Multilateral Investment Guarantee Agency (MIGA) since 1989.

5. Performance Requirements/Incentives

As a signatory of the WTO Agreement, Madagascar is bound by the WTO TRIMS (Trade Related Investment Measures). Performance requirements are not imposed as conditions for establishing or maintaining investments, except in the Export Processing Zones (EPZ) regime. To qualify for EPZ investment incentives, firms must export 95 percent of their output. Foreign or local investors can benefit from EPZ tax exemptions, provided their projects fall into the following categories: (1) investment in export-oriented manufacturing industries; (2) development or management of industrial free zones; or (3) provision of services to EPZ companies. The EDBM is in charge of companies' approval for EPZ status, and it has to deliver an eligibility certificate within 20 days of deposit of file.

The EPZ law, approved in December 2007, granted the following advantages and tax incentives to EPZ companies: (1) 15 years tax exemption; (2) no VAT or customs duties on imports of raw materials; (3) no registration taxes; (4) no customs tax on exported goods; (5) income tax on expatriation not exceeding 30 percent of the taxable basis; and (6) free access to foreign currency deposited in the company's foreign currency bank account.

There is no requirement restricting the mobility of foreign investors. The regime for visas, residence, and work permits is neither discriminatory nor excessively onerous. Since the creation of the EDBM, processing of residence and work permits has been streamlined.

There is no requirement that investors purchase from local sources, or export a certain percentage of output (except for EPZ companies), or only have access to foreign exchange in relation to their exports. There is no requirement that nationals own shares of foreign companies, that the share of foreign equity is reduced over time, or that technology is transferred on certain terms. Although investors must apply for permission to invest, there are no government-imposed conditions (such as location in a specific geographical area, specific percentage of local content or local equity, substitution for imports, export requirements or targets, employment of host country nationals, or technology transfer) to receive such permission. Investors are not required to disclose proprietary information to the government as part of the regulatory approval process. U.S. and other foreign firms are eligible to participate in government-financed and/or subsidized research and development programs according to Malagasy law. There are officially no discriminatory or preferential export or import policies that would affect foreign investors, nor discriminatory tariff or non-tariff barriers.

In April 2011 and again in January 2013, the coup regime rejected market-based economic principles by imposing a fixed retail price on fuel distributors. President Hery Rajaonarimampianina has committed publicly to address the issue of fuel price subsidies over time as part of a commitment in exchange for medium-term aid from the International Monetary Fund.

6. Right to Private Ownership and Establishment

Foreign and domestic private entities may establish and own business enterprises and engage in all forms of remunerative activity. They may freely establish, acquire, and dispose of interests in business enterprises. The government remains a minority shareholder in some privatized companies, such as in the Malagasy Telecommunications Company (Telma), and continues to own Air Madagascar, but competitive equality is the official standard applied to all private enterprises with respect to access to markets, credit, and other business operations such as licenses and supplies.

7. Protection of Property Rights

Secured interests in property are recognized, but not entirely enforced in the country. Banks and insurance companies use mortgages on commercial property to guarantee loans.

A prohibition on land ownership by foreigners impedes access to real property, and the entire issue remains highly controversial and problematic on a cultural level despite legal advances. A system of long-term leases—up to 99 years—was established in 2008 following the adoption of investment law 2007-036 to address the issue, but there have been long delays and few successes so far in the approval of land leases for foreigners. The new investment law grants land and property to certain companies registered in Madagascar; EDBM fixes the conditions for these grants, and issues authorization documents. In addition, the Millennium Challenge Account improved the land rights process, prior to early termination of the program in late 2009 due to the political crisis.

Protection of intellectual property rights is uneven. Two government offices share responsibility for the protection of intellectual property rights: the Malagasy Office for Industrial Property (OMAPI) and the Malagasy Copyright Office (OMDA). Officially, authorities protect against infringement, but in reality, enforcement capacity is quite limited due to resource constraints, absence of political will, and weakness of the judicial system. Major brands are generally respected, but pirated copies of movie DVDs, music CDs and tapes, electronic equipment and spare parts are sold openly. Some television stations regularly show pirated copies of first-run U.S. and European movies. Madagascar is a member of the World Intellectual Property Organization (WIPO) and is a signatory to the WTO TRIPS agreement on trade related aspects of intellectual property, but it has not yet signed the WIPO Internet treaties.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at www.wipo.int/directory/en/.

Embassy point of contact: Salvador Molina molinas2@state.gov

Local lawyers list: http://www.antananarivo.usembassy.gov/emergency.html

8. Transparency of the Regulatory System

Excessive complexities and inconsistently applied regulations impede investment and can be a breeding ground for corrupt practices. Investors complain of a lack of transparency in government regulatory decisions. Although regulation can impede start-up in particular industries, the normal business registration process has been streamlined by EDBM and generally takes less than two weeks.

Some investors, especially in the mining and petroleum sectors, encountered difficulty and/or delays in obtaining necessary operating permits under the former coup regime, as a result of irregularities in the regulatory system. Ambatovy, a USD 7 billion laterite nickel mining project that represents the largest foreign direct investment in Madagascar, faced significant obstacles and political interference before obtaining an operating permit from the de facto government in 2013. The new government has not yet had time to develop a track record on this issue.

Tax, labor, environment, health, and safety standards are generally not used to impede foreign investment. Bureaucratic procedures and red tape are often sources of corruption. There are no informal regulatory processes managed by non-governmental organizations or private sector associations. Proposed laws and regulations are not published in draft form for public comment. The only opportunity for comment on proposed laws and regulations is at the parliamentary level.

Accounting systems are transparent and consistent with international norms, and there are no private sector and/or government/authority efforts to restrict foreign participation in industry standard-setting consortia or organizations.

9. Efficient Capital Markets and Portfolio Investment

In spite of the general underdevelopment of the banking system, banks are free to support the flow of resources in the product and factors markets. The assets of the country's largest bank total an estimated USD 400 million. Credit is usually allocated on market terms, and the private sector/foreign investors can obtain credit on the local market. However, many EPZ companies use the services of banks in neighboring Mauritius, where the sector is more developed.

Malagasy law establishes an effective regulatory system to encourage and facilitate portfolio investment. There are no cross-shareholding arrangements used by private firms to restrict foreign investment through mergers and acquisitions. There are no visible private sector and/or government efforts to restrict foreign participation in industry or foreign control of domestic enterprises.

10. Competition from State-Owned Enterprises (SOEs)

Private enterprises are allowed to compete with public enterprises under the same terms and conditions with respect to access to markets, credit, and other business operations, such as licenses and supplies. The main SOEs are the National Malagasy Air Transport Company (Air Madagascar) and the Malagasy Water and Energy Company (Jiro Sy Rano Malagasy, or JIRAMA). SOEs have boards of directors for which seats are specifically allocated to senior government officials, private operators, or politically affiliated individuals.

No sovereign wealth fund (SWF) or asset management bureau (AMB) exists in the country.

The law requires SOEs to publish annual reports and to submit their books to independent audit.

11. Corporate Social Responsibility

There is a lack of general awareness of corporate social responsibility (CSR) among producers and consumers, but CSR principles are applied by several large, formal-sector companies. Although those companies do not follow the OECD Guidelines for Multinational Enterprises, public opinion is favorable regarding those firms who pursue CSR.

12. Political Violence

Minor and isolated incidents of political violence occurred in 2013, but no major civil unrest (though some had predicted it in connection with the elections). Street demonstrations were forbidden by the de facto regime, but opposition political gatherings were permitted indoors. Cattle rustlers attacked some polling stations on election day, stealing voting materials and causing the death of at least one person. At various times during the year, small improvised explosive devices detonated in the capital, but caused only superficial damage. However, on January 25, 2014, date of the Presidential swearing-in ceremony, a grenade blast killed 3 people and injured around 40 persons.

Public safety remains fairly adequate, although petty crimes increased during the economic and political crisis beginning in 2009. Standard warnings to guard against street crime and theft from vehicles and to minimize or avoid nighttime road travel apply, particularly in rural areas.

Madagascar, being an island, has no belligerent neighbors.

13. Corruption

In 2013, Transparency International ranked Madagascar 127th out of 177 countries surveyed, with a score of 28/100 on the Corruption Perception Index (CPI)—indicating a severe corruption problem. While giving or accepting a bribe is a criminal act and is subject to trial by court, complicated administrative procedures introduce delays and uncertainties, increasing possibilities for corruption. High levels of corruption exist in nearly all sectors. The change of government in 2014 is not expected to alleviate this problem without targeted, across-the-board action by the new administration; it is too early to know whether the government will take the necessary steps, and whether they will be effective. Corruption is most pervasive in the following areas: judiciary, police, tax, customs, land, trade, mining, industry, environment, education, and health.

The Independent Anti-Corruption Bureau (BIANCO) is the agency formally responsible for combating corruption. Madagascar also created a Financial Intelligence Unit (SAMIFIN) in mid-2008 to carry out research and financial analysis related to money laundering. In 2013, SAMIFIN, received 137 suspicious transaction reports and referred 44 to public prosecutors. Transparency International has an office in the country and has operated here since 2002.

Madagascar signed and ratified the UN Anticorruption Convention and the African Union Convention against Corruption. It has not yet signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Many members of the de facto government were allegedly involved in smuggling of precious stones, hardwood, and animals, a practice that increasingly drains Madagascar's natural resources and breeds criminality. In April 2010, the former de facto regime adopted a decree to prohibit all exports of rosewood and precious timber, and in September 2011, the former de facto regime decided to include rosewood in Annex III of the Convention on International Trade in Endangered Species (CITES). Despite these restrictions, rosewood logs have continued to leave the country on a daily basis.

There is no requirement for companies to establish internal codes of conduct that, inter alia, prohibit bribery of public officials. However, some foreign companies have begun to orient their internal controls and ethics and compliance programs to prevent bribery.

14. Bilateral Investment Agreements

According to the International Center for the Settlement of Investment Disputes (ICSID) and the U.N. Conference on Trade and Development (UNCTAD), Madagascar has concluded bilateral investment agreements with Belgium, Canada, China, France, Germany, Mauritius, Norway, Sweden, Switzerland, and Thailand. Madagascar has also signed double taxation treaties with France and Mauritius. The Malagasy government previously expressed interest in negotiating a bilateral investment treaty with the United States. Initial discussions began in late 2008, but stalled due to the unconstitutional change of government in March 2009.

15. OPIC and Other Investment Insurance Programs

On March 31, 1998, OPIC and Madagascar signed a bilateral Investment Incentive Agreement, which updated the previous agreement signed in 1963. Madagascar has been a member of the Multilateral Investment Guarantee Agency (MIGA) since 1989.

16. Labor

Madagascar has a significant pool of available labor, due to the combined impacts of unemployment and underemployment. Private sector wages have been relatively stable and are below those in most competitor countries; indeed, this fact, combined with the high quality of much Malagasy labor, may constitute the country's strongest attraction for foreign investors. The minimum wage for the non-agricultural private sector in 2013 was approximately 45 USD per month (100,000 Ariary).

The Constitution and Labor Code grant workers in the private and public sectors the right to establish and join labor unions and to bargain collectively. The National Labor Code and implementing legislation prescribe working conditions, wages, and standards for worksite safety. Madagascar is a member of the International Labor Organization (ILO) and adheres to the ILO convention protecting workers rights.

17. Foreign Trade Zones/Free Ports

The incentives available in the EPZ are described in "Performance Requirements/Incentives." There is no distinction between foreign and domestically owned firms in terms of eligibility for EPZ treatment, which has been granted by the EDBM since December 2007.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

During 2013, Ambatovy continued exploiting and exporting nickel and cobalt. QMM/Rio Tinto temporarily closed its ilmenite mining operation due to security and economic concerns, but reopened after four months. As the two companies are the largest contributors of foreign direct investment in the country, and with the Ambatovy project's investment phase coming to an end in 2012, foreign exchange inflows in the mining sector fell in 2012 as compared to 2011. (2013 statistics have not yet been released.)

FDI increased overall in 2012, however. According to the Central Bank of Madagascar, FDI inflows for 2011 amounted to USD 809 million, and to USD 894 million in 2012. This came primarily because banks increased their capital holdings and had to borrow money from overseas parent companies or from foreign banks, and because telecommunication companies took out major loans from abroad.

TABLE 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source* INSTAT/Madagascar		USG or international statistical source		USG or international Source of data World Bank
Economic Data	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) (*Millions U.S. Dollars)*	2013	10,004	2013	9,880.7	http://www.worldbank.org/en/country

Foreign Direct Investment	Host Country Statistical source* N/A		USG or international statistical source		USG or international Source of data: Bureau of Economic Analysis (BEA), U.S. Department of Commerce
U.S. FDI in partner country (*Millions U.S. Dollars, stock positions)*	2012	N/A	2012	47	(BEA) click selections to reach. • Bureau of Economic Analysis • Balance of Payments and Direct Investment Position Data • U.S. Direct Investment Position Abroad on a Historical-Cost Basis • By Country only (all countries) (Millions of Dollars)
Host country's FDI in the United States (*Millions U.S. Dollars, stock positions)*	2012	N/A	2012	-1	(BEA) click selections to reach • Balance of Payments and Direct Investment Position Data • Foreign Direct Investment Position in the United States on a Historical-Cost Basis • By Country only (all countries) (Millions of Dollars)

TABLE 3: Sources and Destination of FDI
FDI inflows and stocks during the past three years (in billions of USD)

	2009	*2010*	*2011*	*2012*	*2013 (1st semester)*
FDI inflows	1.3	0.8	0.8	0.9	***0.3***
FDI stock	3.9	4.5	5.5	5.9	***n.a.***

Source: Central Bank of Madagascar/INSTAT

TABLE 4: Sources of Portfolio Investment
FDI inflows and stocks by sector (in billions of USD)

	2009	*2010*	*2011*	*2012*
Agriculture	0.017	0.015	0.014	0.018

Fishing and Fish farming	0.021	0.036	0.041	0.057
Manufacture	0.141	0.152	0.225	0.250
Gas, electricity, water production and distribution	0.001	0.001	0.003	0.003
Construction and Public Work	0.171	0.185	0.220	0.203
Commerce and Car Repairs	0.071	0.075	0.094	0.109
Hotels and Restaurants	0.108	0.118	0.123	0.116
Transportation	0.011	0.012	0.014	0.027
Finance	0.140	0.158	0.289	0.592
Real Estate and services to enterprises	0.019	0.023	0.058	0.068
Oil distribution	0.093	0.115	0.123	0.120
Telecommunication	0.188	0.184	0.226	0.310
Others	0.000	0.000	0.000	0.000
Subtotal	***0.980***	***1.074***	***1.430***	1.872
Mining	2.965	3.425	4.024	4.055
Total	**3.945**	**4.499**	**5.454**	5.927

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