MADAGASCAR

INVESTMENT CLIMATE STATEMENT

2015

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Executive Summary

Madagascar is an island located in the western Indian Ocean. In 2014, the first democratically elected administration in the last five years – the government of President Hery Rajaonarimampianina – assumed power. The President has emphasized the importance of combating corruption and improving the business and investment climate, citing private sector led growth as the engine for the future economic development of Madagascar. The government is currently engaged in a number of efforts to improve the country's investment climate, including through reform of the existing regulatory framework.

Despite these efforts, attracting foreign direct investment has remained a challenge due to persistent corruption, lack of resources, and the government's inability to properly enforce regulations. The lack of infrastructure, particularly in the areas of transportation and provision of electricity, makes investing a challenge.

The most attractive industries for U.S. investment include the extractive industries, light manufacturing in the apparel sector, construction, energy, agribusiness, and tourism. The extractive industries, particularly the mining sector, have been the largest driver of economic growth over the past few years, and a number of deposits have been identified for future commercial development - including iron ore, ilmenite, graphite, coal, and rare earths. The eventual development of these projects will present opportunities for U.S. suppliers of machinery and power generation equipment. Meanwhile, activity in the country's nascent petroleum industry is also expected to pick up, as a number of existing international oil companies are expected to commence exploratory drilling and the government hopes to hold bid rounds on its remaining two hundred plus oil exploration blocks later in the year.

The recent reinstatement of duty free access to the United States market for Madagascar under the African Growth and Opportunity Act has already led to growth in the apparel manufacturing sector. The continuation of these benefits, particularly if the U.S. Congress extends the legislation beyond its current September end date, is expected to facilitate renewed investment and growth in this sector as well.

As the government moves to implement its recently completed five year development plan, it will seek public-private partnerships with private industry, in addition to traditional donor aid, in order to rehabilitate and extend its dilapidated infrastructure. This may also present opportunities for U.S. investment, in particular if the government succeeds in its efforts to reform the management of the state-owned water and electric utility, which currently maintains a monopoly on the transport and distribution of electricity. Improving the viability of this utility, which is currently insolvent and unable to pay its suppliers, would render it a more attractive partner for foreign investors in the energy sector.

In the year since coming to power, the current administration has initiated a number of reform projects and efforts to improve the business and investment climate. As of yet, there has not been much in terms of concrete results, and the primary recipient of foreign investment has continued to be the mining sector.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

The current administration of President Hery Rajaonarimampianina came into office after democratic elections in late 2013, ending five years of rule by an unelected coup regime that was largely characterized by corruption and rent seeking. Since coming into office, the new administration has emphasized the importance of combating corruption and improving the business and investment climate, citing private sector led growth as the engine for its future economic development. The President and his administration have repeatedly underlined the importance of attracting foreign direct investment (FDI), and this commitment is enshrined both in the government's official policy document, the General Policy for the State, as well as in its National Program for Development (NDP), which prioritizes the country's development objectives in the short to medium term.

Although the government is welcoming towards foreign investment, much work remains, as the country faces many impediments that make investing in Madagascar a challenge. These include weakness in the judicial system and banking sector, the high cost and low reliability of electricity, entrenched corruption at all levels of government, limited road, rail and port infrastructure, and the high cost of air transportation.

Nevertheless, the new government inherited a difficult situation, as the economy stagnated, poverty increased, and social outcomes worsened considerably under the coup regime. In recognition of Madagascar's return to constitutional order, many international donor countries that had rescinded or curtailed their development aid to Madagascar, including the United States, resumed cooperation in 2014. Beginning in January 2015, Madagascar resumed duty free exports to the United States under the African Growth and Opportunity Act (AGOA) following the reinstatement of its eligibility by President Obama in recognition of the country's return to political pluralism.

The legislative framework governing investment in Madagascar does not discriminate against foreign investors, nor does it prohibit, limit, or condition foreign investments. Any natural person or legal entity, Malagasy or foreign, is free to invest in Madagascar, in accordance with the laws and regulations in force, and national treatment is not denied to foreign investors in any sector. 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.

Other Investment Policy Reviews

At the request of the government, the United Nations Conference on Trade and Development (UNCTAD) has initiated an Investment Policy Review for Madagascar in 2015. A team from UNCTAD was in the country in January to conduct preliminary surveys, and a National Workshop for further elaboration of the review is planned for July. The local partners for the review are the Ministry of Industry and Private Sector Development and the Economic Development Board of Madagascar (EDBM).

Additionally, the World Trade Organization (WTO) is scheduled to conduct an Investment Policy Review in the context of its next Trade Policy Review for Madagascar in July 2015. The last WTO Trade Policy Review for Madagascar dates to 2008.

The Organization for Economic Cooperation and Development (OECD) has not yet conducted an Investment Policy Review for Madagascar.

Laws/Regulations of Foreign Direct Investment

The major laws affecting foreign investment include: the Law on Investments (Law 2007-036), the Law on Free Zone Companies (Law 2007-037), the Law on Large Scale Mining Investments (Law 2001-031, modified by Law 2005-022), the Petroleum Code (Law 96-108), and the Law on Commercial Enterprises (Law 2003-036).

In addition to the freedom of investment and equality of treatment for foreign and national investors, Madagascar's Investment Law (2007-036) includes articles on the protection of patent rights and protections against expropriation, freedom to transfer funds abroad without prior authorization, and a stability clause guaranteeing investor privileges from future legal or regulatory measures. The law also establishes the Economic Development Board of Madagascar (EDBM) as a one-stop shop for receiving, processing, and delivering the required administrative documents to speed up the approval of all investment projects. The EDBM has significantly streamlined the process for establishing a business in Madagascar, though some investors continue to report delays. The EDBM has a website in English that can be found at the following link: http://www.edbm.gov.mg/.

There is no legal requirement that nationals own shares of foreign investment, nor any restriction on 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.

Although the judicial system is independent, and the government has no right to interfere in its proceedings, some foreign investors have complained that the courts abdicate their responsibility and do not rule on the substance of tax appeals, but rather dismiss cases based on technicalities. Harassment by tax collectors assessing extraneous taxes is a frequently cited complaint by many investors.

Industrial Promotion

The Law on Free Zone Companies (Law 2007-037), promulgated in January 2008, establishes an Export Processing Zone (EPZ) regime to incentivize investment in three 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 EPZ regime provides certain tax advantages and incentives to EPZ companies, to include: temporary tax exemptions of two to fifteen years (depending on the category of enterprise); no VAT or customs duties on imports of raw materials; no registration taxes; no customs tax on exported goods; income tax on expatriation not exceeding 30 percent of the taxable basis; and free access to foreign currency deposited in the company's foreign currency bank account. These incentives are conditioned upon a performance guarantee, stipulating that 95 percent of an EPZ company's output will be exported.

The EPZ regime has succeeded in facilitating an increase in activity in a number of sectors, particularly the apparel and textile sector, but also agribusiness, packaging, services, and information technology, among others. 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 return of AGOA benefits in January has already led to growth in the apparel sector, and the local trade association of EPZ companies has indicated that AGOA could further stimulate job growth in the apparel industry numbering in the hundreds of thousands.

In a similar vein, the Law on Large Scale Mining Investments (Law 2001-031, modified by Law 2005-022) establishes a special regime in terms of currency exchange, taxes, customs duties, and legal protections to large investments in the mining sector of approximately USD 25 million or more - including attractive royalty and taxation rates designed to incentivize not only investment in the mining sector, but also local transformation of the mined substances. These incentives include fixed tax rates on corporate profits of 25 percent, compared to 35 percent in the general tax regime, which fall to 10 percent when products are processed locally. The Law on Large Scale Mining Investments has encouraged growth in the mining sector, which has been the biggest driver of GDP growth in recent years (at 2.1 percent in 2013), represented principally by two large international operations consisting of the first and second largest single foreign direct investments in the country.

Within the government's NDP, which prioritizes the country's development needs and objectives for the medium term, there is a Presidential Emergency Program (PUP - after its initials in French), which identifies the critical focus areas for development in the immediate term, i.e. within the next two years - in order to reverse negative trends in social and economic indicators of the last five years. The following sectors are included in the PUP: electricity (rehabilitation of existing thermal plants and augmentation of production capacity through new installations, as well as improving transmission and distribution capacities), infrastructure (construction and rehabilitation of highways, ports, airports, irrigation networks, and hydro-electric and hydro-agricultural dams), and energy and mining, among others.

Although these sectors have been identified as priorities, the detailed implementation plan for the PUP remains under development. The government will seek public-private partnerships in order to carry out this development in addition to traditional donor aid, and is concurrently developing a legislative framework to incentivize such partnerships.

The GOM is also currently in the process of updating legislation dealing with the petroleum and mining sectors, with the stated goal of rendering these sectors more attractive to foreign investment. The revision process has been consultative, and the government has sought feedback from those investors already established in the country. The goal is to pass the new legislation this year. A more attractive legislative framework for the petroleum sector, the government hopes, will increase interest in an eventual tender for the country's remaining oil exploration blocks, which it also expects to hold later this year.

Limits on Foreign Control

In general, no limit is set for foreign ownership or control. The Investment Law (Law 2007-036) stipulates that investors, foreign or Malagasy, are free to hold up to 100 percent of shares or stock on the company in which they carry out their activities. Investment in certain sectors is subject to specific regulations, but national treatment is not denied to any foreign investor even in these sectors.

Privatization Program

Madagascar's privatization program was established in 1996 through legislation calling for state divestment in public enterprises (Law 96-011). The government subsequently identified for privatization over fifty public enterprises in various sectors, including: agriculture, petroleum, mining, transport, and telecommunications, among others. Partially through support provided by the World Bank from 2003 to 2010, the government privatized a number of these firms through tender processes, including two large enterprises: Hasyma, a cotton plantation, and Telma, a telecommunications company. Foreign investors were allowed to participate in these tenders.

However, a number of the large state-owned enterprises that were also identified for divestment as part of the World Bank project were never privatized, including the national airline Air Madagascar and SIRAMA, a sugar cane plantation and processing plant (though as of writing, negotiations for the purchase of the latter appear to have gained traction). There is much public resistance to continued privatization of the remaining large state-owned firms, in particular the airline and the water and electric utility. As such, the privatization program has subsequently stalled and there is no announced timeline for further privatizations.

A Privatization Trust Fund was established in 1996 in order to manage the government's minority shares in formerly state-owned enterprises for eventual sale to private investors. Currently, the trust fund is preparing to auction off the state's existing minority shares in Telma, as well as in the numerous firms that emerged from the break up and privatization of SOLIMA, the former national downstream petroleum company. However, by legislation (Law 2003-051) sales of these shares by the Privatization Trust Fund are restricted to Malagasy citizens and/or corporations with the majority of their shares held by Malagasy nationals, in an effort to increase domestic shareholding.

Screening of FDI

Although investors must apply for permission to invest, there are no government-imposed conditions to receive such permission, such as location in a specific geographical area, specific percentage of local content or local equity, substitution for imports, export requirements or targets - except for EPZ companies or technology transfer. The GOM does not generally screen investments, except in particular sectors, including banking, insurance, mining, oil and gas, telecommunications, medical, paramedical and pharmaceutical activities, which have specific licensing and permitting requirements that often include approval of investment plans. Even in these sectors, foreign investors are not denied national treatment. Foreign investors must first establish a company in Madagascar according to Malagasy law before commencing operations.

The EDBM is the one-stop shop for processing applications to establish a new company, and though there is no distinction made with regard to a managing agent's nationality or residence in registering companies, at least one of the company's managing agents must reside in Madagascar within three months of the company's registration. EDBM processes all the necessary applications, to include applications for: visas, certification of EPZ status, authorization for land ownership, tax identification numbers, and licenses, permits, and authorizations when required by industry specific regulations.

The notional timeline for EDBM to process an application is twenty calendar days from receipt of the completed application, though some foreign investors have complained about far lengthier delays. A number of private businesses also offer new investors more detailed assistance in gathering all required documents and putting together their applications.

Competition Law

The Law on Competition (Law 2005-020) assigns the Ministry of Commerce and Consumption the overall responsibility for ensuring fair competition. The law also calls for the creation of an independent National Council of Competition that would rule on cases brought before it relating to unfair competition. Despite the adoption of the law, the Council of Competition has yet to be established. The current Minister of Commerce, appointed in January, has indicated that its creation is a high priority.

Investment Trends

According to the World Bank, inflows of foreign direct investment in 2014 were estimated at USD 360 million, which is below the average of the last five years. This reflects, in part, the completion of the construction phases of the country's major mining projects as well as the near absence of new investments. In the last five years, foreign investment flowed largely into the extractive industries, particularly mining, as well as agribusiness.

The government's numerous efforts to improve the business and investment climates have born little fruit as of yet, though the return of trade benefits under AGOA are expected to facilitate more foreign investment, particularly if the U.S. Congress extends the legislation beyond its current September 2015 end date.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	133 of 175	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	163 of 189	doingbusiness.org/rankings
Global Innovation Index	2014	124 of 143	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	USD 440	data.worldbank.org/indicator/NY.GNP.PCAP.CD

Millennium Challenge Corporation Country Scorecard

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 per capita gross national income (GNI) or USD 4,125 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/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015.

2. Conversion and Transfer Policies

Foreign Exchange

While some foreign exchange controls exist, they are not especially restrictive. There are repatriation requirements for export earnings, and some specific capital controls, but Madagascar abides by the IMF's Article VIII statutory framework, which prohibits direct government limitation on foreign exchange use and availability. Investment Law (2007-036) provides foreign and local investors the freedom to freely transfer abroad without prior authorization. When delays occur in conversion or funds transfer, they are due to temporary shortages of foreign currency on hand.

Such a foreign currency shortage was experienced throughout 2014 and into 2015, with investors complaining of month-long delays to fulfill dollar orders to pay their suppliers. In response, the government tightened its repatriation requirements for local exporters from 6 months to up to 90 days. These requirements stipulate that a certain percentage of foreign currency export earnings be sold to the Interbank Currency Market (MID), comprised of the 11 commercial banks resident in Madagascar as well as the Central Bank. Despite this measure, the dollar shortage continues to be felt.

The market determines the exchange rate, with daily fluctuations in the exchange rate. The Central Bank reserves the right to intervene in the foreign exchange market to avoid abrupt variations in the exchange rate. According to some sources, throughout 2014, the Central Bank has propped up the published exchange rate, based on the weighted average of transactions in the official market, via near instantaneous round-trip transactions at the end of the day at rates that differ from the daily average up to that point. This has led to a divergence between the official published rate and the market rate, with all foreign currency transactions above 4 thousand Euros required to go through the MID at the published rate, while transactions under that threshold adhere to a lower rate.

Remittance Policies

There are no restrictions on converting or transferring funds associated with foreign investment, including remittances of investment capital, earnings, loan repayments, and lease payments.

There are no plans to change remittance policies that have tightened or relaxed access to foreign exchange for investment remittances. There is no limitation on the inflow or outflow of funds for remittances of profits, debt service, capital, and returns on intellectual property.

Madagascar uses exchange rate policy to counter underlying currency market pressures and keep commodity prices stable.

Madagascar is not a member of a Financial Action Task Force-style regional body, but has observer status in the Eastern and Southern Africa Anti-Money Laundering Group.

3. Expropriation and Compensation

Investment Law (2007-036) provides foreign and local investors protection against nationalization, expropriation, and requisition, with the exception of public interest cases as established by regulation (Ordinance 62-023). Such cases require official proclamation by the government of the public interest of a proposed project, to include infrastructure works, establishment of natural reserves, or military sites, among others, requiring expropriation of private property. In these cases, the investor is to be granted a fair and prior compensation according to the market value of expropriated interests.

There are no recent cases of expropriation actions by the government of Madagascar, though as reported in local and international media, there were attempts by the previous de facto coup regime to expropriate oil blocks belonging to an international oil company in 2010. The company and the ruling regime resolved this case without resorting to expropriation.

Aside from the above, there have been no government actions or shifts in government policy occurring in the last five years that would indicate possible expropriations in the foreseeable future.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Madagascar's legal system is based on French civil law, and its provisions contain protections for private property rights. Local commercial law consists largely of the Code of Commerce and annexed laws, which are reportedly applied in a non-discriminatory manner.

Madagascar is a member state to the International Centre for the Settlement of Investment Disputes (ICSID Convention) and under the Investment Law (2007-036), disputes between foreign investors and the State are handled through arbitrage proceedings administered by this institution. If the foreign investor is the initiator of the proceedings, he or she may also choose to submit the dispute to the Commerce Tribunal, the competent Malagasy jurisdiction. However, the Malagasy judicial system is slow and complex and has a reputation for opacity, corruption, and executive influence. A poll conducted by the national statistics agency, INSTAT, in summer 2014 found that 45.5 percent of the Malagasy population has no confidence in the judicial system, compared to 35 percent for the government and 34 percent for the police.

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.

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, both international and domestic, and to lessen reliance on a court system that is, at a minimum, overburdened. As a result, many private contracts now include arbitration clauses, which allow the CAMM to mediate eventual disputes. However, despite its existence since 2000, the CAMM had only mediated a total of eight cases as of the end of 2014, according to local media reports.

As a signatory to the convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention), Madagascar also accepts international arbitration as means of resolving investment disputes. Based on the obligation of the New York convention, domestic courts should recognize and be willing to enforce foreign arbitral awards. International arbitration is also accepted as a means of settling commercial disputes between private parties.

Madagascar has also been a member of the Multilateral Investment Guarantee Agency (MIGA) since 1989.

Bankruptcy

Madagascar has a bankruptcy law (2003-042). According to the latest World Bank Doing Business report, creditors have the right to initiate insolvency proceedings only when seeking liquidation of the debtor, but not when seeking reorganization.

In reorganization proceedings, all creditors have the right to vote on the reorganization plan, not just those whose rights are modified or affected by the plan. Creditors are not divided into classes for the purpose of voting on the reorganization plan. Dissenting creditors are not required to receive as much under the reorganization plan as they would have under liquidation.

Creditors have the right to object to a decision of the court to approve or reject claims against the debtor brought by the creditor itself or by other creditors. The insolvency framework does not afford creditors the right to participate in the selection of an insolvency representative, to approve the sale of substantial assets of the debtor, nor to access information about the insolvency proceedings.

Law 2003-042 removed bankruptcy offenses from the Penal Code, but maintained them in the bankruptcy law itself. Bankruptcy offenses are punishable by fines and imprisonment, depending on the nature of the offense - ranging from simple, to negligent, to fraudulent bankruptcy, though the associated prison sentences were softened with respect to the insolvency framework previously in place.

Investment Disputes

Over the past 10 years, there have been no major investment disputes involving a U.S. person, aside from the aforementioned attempt to expropriate oil blocks from an international oil company, which had substantial U.S. investment. The company initiated a request for arbitration through the Paris-based International Chamber of Commerce, but eventually negotiated an out-of-court resolution with the authorities at that time – the de facto coup regime.

International Arbitration

Madagascar has no bilateral investment treaty or free trade agreement with the United States, though it is a signatory to treaties that allow alternative disputes mechanisms such as international arbitration.

The Malagasy Arbitration and Mediation Center (CAMM), a domestic arbitration body, was established in 2000 as an alternative dispute resolution mechanism. See above and below.

ICSID Convention and New York Convention

Madagascar is a member state to the International Centre for the Settlement of Investment Disputes (ICSID Convention) and a signatory to the convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York convention).

Duration of Dispute Resolution

According to the Economic Development Board of Madagascar and the International Finance Corporation, the average time to obtain a judicial settlement of an investment or commercial dispute is 841 days.

The principal problems related to the resolution of disputes through litigation within local courts are: the excessive length of the procedures, corruption and a lack of transparency, and inadequate training of judges. In addition, the average costs associated with judicial resolution average to

42 percent of what was at stake in the dispute, according to these same organizations. Slowness and corruption are also encountered during the subsequent enforcement of the court decision or arbitration award.

According to the Malagasy Arbitration and Mediation Center (CAMM), the average duration of disputes arbitrated through this alternative mechanism is seven months, with a minimum of two months and a maximum of 23 months.

As a signatory to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, Madagascar's courts do recognize the enforcement of international arbitration awards, with their enforcement the exclusive jurisdiction of the Antananarivo Court of Appeals.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

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 output. There is no requirement that investors purchase from local sources, 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 to receive such permission. Investors are not required to disclose proprietary information to the government as part of the regulatory approval process.

Investment Incentives

Madagascar extends certain incentives for investment, outlined in domestic legislation, particularly in the Export Processing Zones and in the mining sector. See above under "Industrial Promotion" for a description of these investment incentives.

Research and Development

U.S. and other foreign firms are eligible to participate in government-financed and/or subsidized research and development programs according to Malagasy law. Despite the relative paucity of such programs, U.S. entities have participated in projects in the health, education, and agricultural sectors.

Performance Requirements

The Malagasy government does not, in general, mandate local employment. However, the government does require that priority for hiring be given to Malagasy workers with similar skills and qualifications in the mining sector, under the provisions of the Law on Large Scale Mining Investments (Law 2001-031, modified by Law 2005-022). In all other sectors, the Investment

Law (2007-036) provides that companies are free to hire or fire specialized expatriate employees as it sees fit for the good operation of its business.

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

There are no government-imposed conditions on permission to invest, and Madagascar's tariffs adhere to WTO guidelines.

Data Storage

The government does not follow forced localization.

Regulation of the local IT sector is embryonic, and there are no requirements for foreign IT providers to turn over source code and/or provide access to surveillance (backdoors into hardware and software or turn over keys for encryption).

There are no current mechanisms to enforce any rules on maintaining a certain amount of data storage within the country. The IT Industry Association (GOTICOM) is actively working with the relevant authorities on updating the legislative and regulatory framework governing the sector.

6. Right to Private Ownership and Establishment

Foreign and domestic private entities have the right to establish and own business enterprises and engage in all forms of remunerative activity per the Investment Law (2007-036).

7. Protection of Property Rights

Real Property

Upon independence, Madagascar continued the land tenure policies of the French colonial administration, with the presumption of state ownership of all land and the central government being the sole provider of legitimate land titles. However, due to length and cost of the procedures for registering land, together with the remoteness of the authorities, customary practices for recognition of property rights prevailed at the local level. Recognition of property rights at this local level entailed the use of non-uniform, handwritten titles.

In 2005, with the support of a Millennium Challenge Corporation Compact, the government embarked on a land reform project to simplify the registration process and to reconcile the existing formal and informal land titles. The reform reversed the presumption of state ownership of land and introduced private ownership, while at the same time decentralizing land registration and recognizing/formalizing the existing local customs for social recognition of property rights.

This reform process was interrupted by the 2009 political crisis, leaving the country only with approximately ten percent of its existing land plots with formal title.

The majority of land ownership disputes are resolved at the local level without recourse to judicial proceedings. The small percentage of disputes that rise to the court system remain bogged down due to the complexity of the cases and the lack of clear evidence of ownership, and even when determinations are made, they are often not adequately enforced.

The Investment Law (2007-036) provides foreign investors authorization to acquire real estate property through lease with a maximum, renewable duration of 99 years, so long as the property is solely and continuously used to carry out commercial activity. The law specifically prohibits the acquisition of land by foreign investors for resale in its original state, or for resale after development.

Banks and insurance companies use mortgages and liens on commercial property to guarantee loans.

Since coming to power in 2014, the new democratically elected government has re-initiated the land reform process with an aim to completing the process interrupted in 2009. Later this year, a new national land policy will be adopted.

Intellectual Property Rights

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). These offices are financially autonomous bodies, despite their close collaboration with the Ministry of Industry, Ministry of Commerce, and Ministry of Culture and Handicrafts, all of which lack the financial resources to contribute to their operating budgets.

Protection of intellectual property rights is uneven. Officially, authorities protect against infringement, but in reality, enforcement capacity is quite limited due to resource constraints, weakness of the judicial system, and a lack of awareness of intellectual property rights among consumers. These constraints have led some international investors to experience difficulties enforcing their rights.

Major brands are generally respected, but pirated copies of DVDs, CDs, electronic equipment and spare parts are sold openly. Some television stations regularly show pirated copies of first-run U.S. and European movies. Additional products subject to counterfeiting include foodstuffs, clothing items, mobile phones, cigarettes, and cosmetics, among others. Many of these products are imported.

The Ministry of Commerce seizes counterfeit goods found in the market during unannounced inspections. These products are exclusively incinerated at the cost of the faulty party, though figures or statistics concerning these raids are not made publicly available, and the Ministry also suffers from insufficient resources.

Madagascar recently became a signatory to the WIPO Copyright and Performance and Phonogram Treaties, acceding to both in November 2014 and entering them into force in February 2015.

Currently, a draft bill to modernize intellectual property protections is under examination by the Ministry of Justice prior to its submission to the Parliament later this year. The reforms would incorporate The Hague (international registration of industrial designs), and Lisbon (protection of origin appellation and international registration) agreements, as well as other international treaty classifications in the matter of patents, design and industrial models, and brands and figurative elements into the legislative framework.

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

Resources for Rights Holders

Any issue on IPs could be referred to:

Salvador Molina
Economic Officer
261 33 443 2158
MolinaS2@state.gov

Country/Economy resources:
* AmCham, Madagascar: www.amcham-mada.mg
* Public list of local lawyers: http://barreau-de-madagascar.org/page/le-tableau-de-l-ordre

8. Transparency of the Regulatory System

Bureaucracy and inconsistency in the application of regulations hinder investment and can lead to corrupt practices. Though existing legislation attempts to establish clear rules of the game, a lack of enforcement and a shortage of resources and capacity have led some international investors to experience unfair competition from unscrupulous actors. Others complain of a lack of transparency in government regulatory decisions.

The National Council on Competition instituted under the law no. 2005-020 (Law on Competition) of 17 October 2005, which would have responsibility to hear cases of unfair competition, has not yet been established, though it remains a priority for the current Minister of Commerce.

Tax, labor, environment, health, and safety standards are generally not used to impede foreign investment, though as mentioned above, 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 generally not published in draft form for public comment, and the only opportunity for comment is usually at the parliamentary level. However, the current government has developed a track record over the last year of seeking comment on proposed laws and regulations from a limited pool of stakeholders. The general public, however, is as a whole not typically included in these consultations.

9. Efficient Capital Markets and Portfolio Investment

There is no stock exchange in Madagascar, and plans to create one were scuttled while they were still in the analysis and study phase by the 2009 political crisis.

Banks are free to support the flow of resources in the product and factors markets, and credit is usually allocated on market terms. However, the banking sector is relatively small, with only approximately USD 1 billion in total credit, making access to credit expensive, particularly for small and medium enterprises. Although the banking sector comprises 80 percent of the financial system, it only offers basic savings and credit products to a select clientele. At the end of 2013, the top fifteen borrowers represented 65 percent of the total credit exposure. Additionally, credit tends to be of short to medium term in nature, and there is no corporate or municipal debt market in the country.

Money and Banking System, Hostile Takeovers

Madagascar's financial sector is comprised of 11 commercial banks, all of which are subsidiaries of foreign banks, mostly based in Mauritius, France and mainland Africa. The top four banks account for more than 86 percent of assets and deposits. Only 6 percent of the population has a bank account, so the vast majority of the banking clientele is represented by corporate or professional entities. The banking sector enjoys relatively high liquidity, with an approximately 60 percent ratio of liquid assets to short term liabilities at the end of December 2013.

The sector is stable despite a relatively large non-performing loans ratio of 13.8 percent of total loans, and a complete lack of deposit insurance. Nevertheless, the sector remains profitable, with a return on equity of approximately 30 percent.

The overall assets of all banks are estimated at USD 2.6 billion with the largest bank boasting approximately USD 700 million of total assets.

Madagascar has had an autonomous Central Bank since 1973, though the level of executive influence over the bank increased during the period of coup governance.

In order to establish a bank account, foreigners must have established residency status.

There is currently no regulatory framework governing hostile take-overs.

10. Competition from State-Owned Enterprises

Private enterprises are for the most part allowed to compete with state-owned enterprises (SOEs) under the same terms and conditions with respect to access to markets, credit, and other business operations. SOEs purchase and supply goods from and to the private sector. There are no reports of discrimination in favor of SOEs in regards to government contracts, although certain SOEs maintain monopolies, namely the national airline and water and electric utility.

The government does not maintain a uniform definition for SOEs. Instead, it differentiates between three categories of public enterprise: those whose capital is wholly owned by the State, those with significant State shareholding, and those with minor State shareholding. Two major SOEs operate in the sectors of Travel - the National Malagasy Air Transport Company (Air Madagascar - over 90 percent State share-holding), and Energy & Mining - the State owned water and electric utility (JIRAMA - 100 percent State share-holding). Other SOEs with significant shareholding by the State include a forestry company (FANALAMANGA), a chrome mining company (KRAOMA), and a real estate company (SEIMAD).

The Treasury, within the Ministry of Finance, maintains a list of the fifty SOEs on its website, including those enterprises in which the State has only a minority shareholding: http://www.tresorpublic.mg/?page_id=214&content=temp&type=statistique.

The percentage of funds allocated to research and development by the major SOEs is generally insignificant to non-existent. No sovereign wealth fund (SWF) or asset management bureau (AMB) exists in the country, aside from the Privatization Trust Fund established in 1996, whose sole function is to manage the State's minority shares in privatized enterprises in preparation for their auction to the local private sector. (See above under "Privatization Program.")

The law requires major SOEs to publish annual reports and to submit their books to independent audit, but these are not available to the public and it is reported that some of the major SOEs have not been audited in years.

SOEs are, in theory, subject to hard budget constraints under the annual budget and finance law approved by the national parliament. In practice, the major SOEs, in particular the national airline and electric and water utility, are a consistent drain on the national budget as the State is repeatedly forced to subsidize their losses.

OECD Guidelines on Corporate Governance of SOEs

There is currently no specific structure of corporate governance specified for SOEs, though the government is currently in the process of establishing one (see below). Generally, the supervising Ministry appoints the SOE’s CEO through a decree adopted by the Cabinet on the basis of a nomination. The senior management of the SOE currently reports to the relevant line Minister, though the SOEs also have Boards of Directors. The allocation of seats on these boards has reportedly been politically motivated, with privilege given to well-connected actors. There have also been widespread reports of political interference in the operation of SOEs.

In September 2014, the government passed a Law on State Participation in Commercial Enterprises (Law 2014-014), which established a structure for corporate governance of commercial enterprises with majority or significant State shareholding. The goal of the legislation is to limit the role of the State to that of a shareholder, while minimizing political interference in the operations of the SOEs. The legislation's provisions include, among others, a stipulation that the sole representative of the State for the purpose of managing its participation as shareholder is the Treasury, under instructions from the Minister of Finance. This latter will also be responsible for recruiting senior management for enterprises with wholly owned or majority State shareholding, while all other members of the government are prohibited from sitting on the Board of Directors.

Existing SOEs were given six months to bring their governance structures into conformity with the legislation. Although the deadline was in March, the Cabinet only recently adopted an implementation decree for the above legislation in May.

Improving the governance of SOEs has long been a condition of multilateral donor institutions such as the World Bank and the International Monetary Fund.

Sovereign Wealth Funds

No sovereign wealth fund (SWF) or asset management bureau (AMB) exists in the country, aside from the Privatization Trust Fund established in 1996, whose sole function is to manage the State's minority shares in privatized enterprises in preparation for their auction to the local private sector.

All of the Privatization Trust Fund's investments are domestic, given that the shares it holds are the remaining minority shares of the State resulting from the privatization of earlier state-owned companies. The fund adopts a passive role as a portfolio investor, and does not take an active role in the management of the assets in which it holds shares.

11. Corporate Social Responsibility

There is a lack of general awareness of corporate social responsibility (CSR) among producers and consumers, but several large, formal sector companies, particularly those with foreign investment, apply CSR principles. Public opinion is favorable regarding those firms who pursue CSR.

The government enforces labor, employment rights, and consumer and environmental protections in part through periodic inspections, though a lack of resources and capacity, as well as continued corruption at lower levels impedes the effectiveness of this enforcement. Nevertheless, the government does not waive these requirements in order to attract foreign investment, except for some particular exemptions to its labor code provided to EPZ companies.

Many companies with foreign investment, particularly from western countries, adhere to international standards in these areas through their participation in voluntary certification schemes, such as the Worldwide Responsible Accredited Production (WRAP) principles in the apparel sector. There is also a vibrant NGO and Civil Society sector, particularly regarding environmental issues, but it too suffers from a lack of resources and capacity outside of the international organizations.

OECD Guidelines for Multinational Enterprises

Although Madagascar is not an adherent to the OECD Guidelines for Multinational Enterprises and its major multinational enterprises do not follow officially or formally the OECD Guidelines, there is consciousness to adopt good practices in large firms, particularly those that are subsidiaries or partners of multinational firms.

12. Political Violence

Although Madagascar has a history of coups and political instability, it does not have a significant history of political violence. There were occasional demonstrations and strikes in the urban areas, but most of these were monitored and resolved without incident. Some isolated incidents of violence occurred in 2014 but there was no widespread civil unrest.

December 2014 saw the most unrest in the urban areas. In the southwestern city of Morandava, employees of a sugar factory clashed with security forces, looted and burned down the facility after a month-long strike resulting from a labor dispute with the factory's Chinese managers. Local media reported up to seven deaths and approximately USD 80 million in damages from the incident. The same month also saw the looting and burning of the local branch office of the state-owned electric and water utility in Toamasina, the country's principal port city on the east coast. Local media reported one death and seven seriously injured as the result of clashes between security forces and the demonstrators, who were allegedly dissatisfied with load shedding and poor service delivery from the utility.

Meanwhile, cattle rustling has been an increasing problem in the rural south of the country, leaving hundreds of civilians and security forces dead in recent years. The government deployed a series of security operations to restore order over the past few years, with limited success.

13. Corruption

Among the 175 countries surveyed by Transparency International, Madagascar is ranked 133rd in 2014 with a score of 33. The situation has slightly improved since 2013 when the country scored 28 and ranked 127th.

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, but are most pervasive in the following areas: judiciary, police, tax, customs, land, trade, mining, industry, environment, education, and health.

The new government has maintained the anti-corruption stance it adopted when coming to power in early 2014 and has even strengthened it with the appointment of a new Prime Minister in early 2015 with a firm zero-tolerance approach on the issue. Despite the strengthened rhetoric, however, significant, concrete results have yet to materialize.

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. Transparency International has an office in the country and has operated here since 2002.

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, while U.S. firms are prohibited from engaging in such behavior by the Foreign Corrupt Practices Act.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

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

Resources to Report Corruption

The BIANCO (Independent Bureau Anti-Corruption) is responsible for combatting corruption.
Mr. Jean Louis ANDRIAMIFIDY
General Manager
BIANCO
Villa "La Piscine", Ambohibao, Antananarivo, Madagascar, P.O. Box 399
+261 20 22 489 79; +261 20 22 489 93
contact@bianco-mg.mg
www.boanco-mg.org

A watchdog organization:
Mr. Dominique RAKOTOMALALA
Chairman
Transparency International Initiative, Madagascar
Lot II M 98 B (2e étage) - Antsakaviro, 101 Antananarivo, Madagascar
+261 20 22 653 57
transparency.org@moov.mg
www.transparency-madagascar.org

14. Bilateral Investment Agreements

Madagascar does not have a free trade agreement with the United States. 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. The United States does have an agreement on the development of trade and investment relations with the Common Market for Eastern and Southern Africa (COMESA), in which Madagascar is a member, signed in 2001.

According to U.N. Conference on Trade and Development (UNCTAD), Madagascar has concluded bilateral investment agreements with Belgium, Canada, China, France, Germany, Mauritius, Norway, Sweden, and Switzerland.

Bilateral Taxation Treaties

Madagascar has also signed double taxation treaties with France and Mauritius.

15. OPIC and Other Investment Insurance Programs

On March 31, 1998, the Overseas Private Investment Cooperation (OPIC) and Madagascar signed a bilateral Investment Incentive Agreement, which updated the previous agreement signed in 1963. Additionally, OPIC and Madagascar concluded two memoranda of understanding in 2004 pledging cooperation in attracting U.S. investment in several sectors, including telecommunications and information technology, agribusiness, mining, energy, and tourism. Currently, there is one active OPIC project in the country, a USD 11.6 million insurance facility for the revitalization and operation of a grain mill signed in 2011.

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, though the availability of skilled labor is much more limited. Nevertheless, the quality of Madagascar's unskilled labor is high and is frequently touted by private investors as primary attraction for the country.

The World Bank estimated the level of unemployment in 2014 at 3.6 percent, though the National Statistics Institute (INSTAT) estimates the rate at a slightly higher 3.8 percent. Although the overall unemployment rate might appear low, this figure reflects the more pressing problem of underemployment, which INSTAT estimated to be as high as 10 percent in 2014. According to the International Labor Organization (ILO), three quarters of the unemployed are under thirty years of age. Eighty percent of the work force is engaged in the informal sector, mainly in the commercial and the agricultural trades, according to INSTAT.

The Labor Law (2003-044) differentiates between firings and lay-offs, and allows employers to adjust employment in light of fluctuating market conditions with the payment of a severance. In general, these payments are calculated at ten days of salary per full year of employment, and are capped at six months of salary.

In March, the monthly minimum wage increased to approximately USD 49 for non-agricultural workers and to approximately USD 50 for agricultural workers.

The government does not mandate hiring of local nationals, except in the mining sector, in which large investment projects are required to give preference to nationals given equal skills and qualifications.

The law provides that public and private sector workers may establish and join labor unions of their choice without prior authorization or excessive requirements. Civil servants and maritime workers, however, have separate labor codes, while essential workers, including police, military, and firefighters, may not form unions. The law provides that unions operate independently from government and political parties, and this is generally respected.

Labor protections under export processing zone (EPZ) companies are slightly different from the general labor code, as EPZ labor contracts may differ in terms of duration, restrictions on the employment of women during night shifts, and the amount of overtime permitted.

The labor law establishes labor dispute mechanisms, which proceed progressively from internal negotiation to outside mediation from the Ministry of Labor to arbitration or legal settlement through the competent court.

The law provides workers in the private sector, except for seafarers, the right to bargain collectively. According to union representatives, collective bargaining rights are more readily exercised and respected in larger international firms, such as in the telecommunications and banking sectors, while being more difficult to exercise in EPZs and smaller local companies, where employees are reluctant to make demands due to fear of reprisal.

A major strike that posed investment risk occurred at a Chinese managed sugar factory in the southwestern city of Morandava in December 2014, ultimately leading to clashes with security forces and the looting and burning of the facility.

International labor rights are recognized in domestic labor law (Law 2003-044), with provisions to ensure freedom of association; the prohibition of forced labor, child labor, employment discrimination; and the establishment of minimum wages, as well as weekly work hours.

The government is also charged with setting occupational safety and health standards for workers and workplaces, but penalties for noncompliance are not defined in the labor code, which only requires an inspection before a company can open. The Ministry of Labor is responsible for enforcing the minimum wage and working conditions, but a lack of personnel and resources limits this enforcement. The National Fund for Social Welfare, the country's social security agency, also conducts inspections and publishes reports on workplace conditions, occupational health hazards, and workplace accident trends, though these inspections are also limited by a lack of resources.

There is no enforcement in the large informal sector, and violations of wage, overtime, or occupational safety and health standards are common in the informal sector and in domestic work. EPZ companies in general respect labor laws, as many foreign importers require good working conditions in compliance with local law before signing contracts with EPZ companies.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

The Law 2007-037 of January 14, 2008 regulates Export Processing Zones (EPZ) companies in Madagascar. The incentives provided by the EPZ legislation are described above under Industrial Promotion. These incentives are extended both to foreign and local investors without discrimination.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

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

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	**Year**	**Amount**	**Year**	**Amount**	
Host Country Gross Domestic Product (GDP) ($M USD)	2014	10,637	2014	11,188	www.worldbank.org/en/country
Foreign Direct Investment	**Host Country Statistical source***		**USG or international statistical source**		**USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other**
U.S. FDI in partner country ($M USD, stock positions)	2013	183	2011	150	UNCTAD
Host country's FDI in the United States ($M USD, stock positions)	N/A	N/A	2012	0	UNCTAD
Total inbound stock of FDI as % host GDP	2013	60.8%	2011	49.6%	UNCTAD

Table 3: Sources and Destination of FDI

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations *(US Dollars, Millions)*					
Inward Direct Investment			**Outward Direct Investment**		
Total Inward	6,473	100%	Total Outward	20	100%
Canada	1,400	21.6%	South Africa	20	100%
UK	1,098	17.0%			
France	925	14.3%			
Mauritius	811	12.5%			
Japan	640	9.9%			
"0" reflects amounts rounded to +/- USD 500,000.					

Source: IMF Coordinated Direct Investment Survey

Table 4: Sources of Portfolio Investment

Portfolio Investment Assets								
Top Five Partners (Millions, US Dollars)								
Total			**Equity Securities**			**Total Debt Securities**		
All Countries	13.2	100%	All Countries	13.2	100%	All Countries	0	100%
France	9.0	68.0%	France	9.0	68.0%			
Netherlands	2.0	15.4%	Netherlands	2.0	15.4%			
Kenya	2.0	15.4%	Kenya	2.0	15.4%			
China	0.1	0.9%	China	0.1	0.9%			

Source: IMF Coordinated Portfolio Investment Survey

19. Contact for More Information

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