



MALAWI
INVESTMENT CLIMATE STATEMENT
2015

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Executive Summary

Malawi is open to foreign direct investment. In general there are adequate legal instruments to protect investors and such investors are accorded national treatment. Malawi's constitution prohibits deprivation of an individual's property without due compensation. There is an established mediation process to promote agreements between parties in disputes before court proceedings start. Both foreign and domestic investors have access to Malawi's legal system, which functions fairly well and is generally unbiased. All investors have the right to establish, acquire, and dispose of interests in business enterprises. Foreigners require a business residence permit (BRP) to carry out any business activity in Malawi. Government continues to undertake various reforms to ensure that no tax, labor, environment, health and safety or other laws distort or impede investment. However, procedural delays and red tape continue to impede the business and investment approval process. Malawi has been largely free of political violence since gaining independence in 1964. Although divisions do exist, Malawi has no significant tribal, religious, regional, ethnic, or racial tensions that could be expected to lead to violent confrontation. Although progress has been made addressing the issue of corruption, it continues to be viewed as a major obstacle to doing business in Malawi. There have been serious allegations of corruption, which is perceived to be particularly endemic in the following sectors: police, immigration, road traffic, tax administration, traditional leaders, and government procurement.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

Malawi is open to foreign investment and foreign investors are generally granted national treatment. The Malawi constitution protects investment irrespective of ownership. The government encourages both domestic and foreign investment in most sectors of the economy without major restrictions on ownership, size of investment, source of funds, or the destination of the final product.

Other Investment Policy Reviews

The World Trade Organization (WTO) conducts periodic Trade Policy Reviews of Malawi. The last one was conducted in 2010. These trade policy reviews have informed future co-operation and assistance to Malawi.

Laws/Regulations of Foreign Direct Investment

Restrictions on foreign investment are few and are based on environmental, health, and national security concerns. Affected items are firearms and ammunition; chemical and biological weapons; explosives; and manufacturing involving hazardous waste treatment/disposal or radioactive material. Since industrial licensing in Malawi applies to both domestic and foreign investment, and is only restricted to a short list of products, it does not limit competition, protect domestic interests, or discriminate against foreign investors at any stage of investment. Restrictions are mostly in the form of regulations affecting trade (foreign exchange, taxes, etc.) and apply equally to domestic and foreign investors.

While not discriminatory to foreign investors, investments in Malawi require multiple bureaucratic processes, which may include licensing and land use permissions that can be time consuming and may constitute an impediment to investment. Despite the generally favorable attitude to foreign investment, investors face many challenges in terms of starting a business. These include difficulties in obtaining temporary employment permits (TEPs) and business residency permits (BRPs).

The Malawi Investment and Trade Center (MITC), www.mitc.mw, provides information on its website about sectors and projects targeted for investment. One of MITC's core functions is to help potential investors – both foreign and domestic – navigate relevant regulations and procedures.

Industrial Promotion

The government's overall economic and industrial policy does not have discriminatory effects on foreign investors. The Malawi Growth and Development Strategy for 2011-2016 (known as MGDS II) identify a number of sectors as priority growth areas. FDI is particularly encouraged in Agriculture, Mining, Tourism, Energy and Transport Infrastructure. Sugar cane production and processing, legumes, livestock production and dairy farming, irrigation farming, and large scale commercial agriculture have the highest priority in the agricultural sector. Independent power producers, particularly for hydropower and other renewable power sources, are encouraged. Government is also calling for the private sector (both local and foreign) to develop the tourism sector. Private sector-led mineral exploration is also promoted and results from a nation-wide resource mapping project to define Malawi's mineral resources are expected to become available soon.

The 2014 Compendium of Investment Projects, available on the MITC website at www.mitc.mw, showcases 118 projects in which the government welcomes foreign or domestic investment.

Limits on Foreign Control

There are some limitations on foreign control. One restriction in the mining industry is that small-scale prospecting and mining operations are reserved for Malawians and foreigners who have resided in Malawi for a minimum of four years. Malawi Stock Exchange regulations limit participation of an individual foreign portfolio investor to a maximum of 10% of any class or category of security under the program and limit maximum total foreign investment in any portfolio to 49%. Malawian nationals are offered preferential treatment, including discounted share prices and subsidized credit. Subsidized credit carries a precondition that the shares or assets be retained for at least two years.

Privatization Program

Malawi has privatized 66 formerly state-owned enterprises (SOE's). Malawi has about 60 remaining state-owned enterprises that are involved in commercial operations particularly in the public utilities sector, agriculture, housing, finance, education and aviation. All investors, irrespective of ethnic group or source of capital (foreign or local) may participate in the

privatization program, which today focuses on public-private partnerships and attracting strategic investors rather than outright privatization. These are handled by the Public Private Partnership Commission (www.pppc.mw), formed in 2013 to succeed the former Privatization Commission, which the 2010 Public Private Partnership Act and 2011 Public Private Partnership Policy rendered obsolete.

Screening of FDI

There is no government policy to screen foreign direct investment. However, Foreign Direct Investment (FDI) needs to be registered with the Malawi Investment and Trade Center (MITC, www.mitc.mw) and the investment capital must be registered with the Reserve Bank of Malawi (RBM, www.rbm.mw) through any commercial bank in Malawi. The minimum investment qualifying is USD 50,000.00.

Competition Law

The Malawi Competition and Fair Trading Act of 1998 (CFTA) only became fully operational when the Competition and Fair Trading Commission (CFTC, www.cftc.mw) was established in 2005. Since its 1998 passage, the CFTA has governed the review and determinations on over a dozen mergers and acquisitions and cases of alleged abuse of a dominant position by an enterprise. The CFTC's role is to encourage competition in the economy, to regulate and monitor monopolies and concentrations of economic power, to protect consumer welfare and to ensure the best possible fair market conditions. So far no mergers or acquisitions have been disapproved. CFTC decisions may be appealed, first to the Board and subsequently to the Commercial (High) Courts.

Investment Trends

Malawi is one of the least developed and most densely populated countries in the world. Its economy is based on agriculture, which accounts for about 30% of GDP and more than 80% of export revenues. Small shareholder agriculture is the source of income for more than 80% of the population. Malawi's economy depends on substantial inflows of foreign aid from the IMF, the World Bank, the UN system, and individual donor nations.

FDI into Malawi ranged from 1% to 3% of GDP between 2009 and 2013 (the latest figures available). The prospect for future FDI is bright following recent policy changes that include liberalization of the exchange rate regime (floating the currency), the relaxing somewhat of government control of prices for utility services such as water and electricity, introducing an automatic pricing system for petroleum products, and establishing the One Stop Service Center for investors at the Malawi Investment and Trade Center (www.mitc.mw). President Mutharika emphasizes the role of private sector-led growth in Malawi's economic development, and has urged his government to take tangible actions to attract investors and promote trade.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	110 of 175	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	164 of 189	doingbusiness.org/rankings
Global Innovation Index	2014	113 of 143	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	USD 255	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) of 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/documents/reports/reference-2013001142401-fy14-guide-to-the-indicators.pdf>.

2. Conversion and Transfer Policies**Foreign Exchange**

Government policy seeks to ensure the availability of foreign exchange for business transactions and remittances in order to attract investors and catalyze economic growth. Commercial banks may operate as forex dealers. Investors have free access to forex, both to pay for imports and to transfer financial payments abroad. Specifically, there are no licensing requirements to import forex and full repatriation of profits, dividends, investment capital, and interest and principal payments for international loans is permitted. The Malawi Kwacha (MWK) is convertible into major world currencies such as the U.S. Dollar, British Pound, Euro, Japanese Yen, Chinese Yuan, and South African Rand, as well as key regional and trading partners' currencies.

Since May 7, 2012, the value of the local currency, the MWK, has floated freely against major world currencies. Historically, under the previous fixed exchange rate regime, the availability of foreign exchange followed the agricultural cycle: it was plentiful from April to September and scarce from October to March. As a result, investors and traders experienced extended periods without access to foreign exchange; these shortages limited payments to suppliers and constrained investors' ability to remit earnings. Today, these same market forces drive pricing of the local currency, making the value of the Malawi Kwacha (MWK) extremely volatile. In 2013

and 2014, the MWK was stronger against major world currencies from approximately April to September and weaker from approximately October to March, ranging from about MWK 350 for every USD 1.00 to over MK 525 every USD 1.00. This extreme volatility can complicate businesses' planning as the local currency value of their bills for imported raw materials can vary dramatically over just a few months' time, making cash flow management challenging. Still, in 2013 and 2014, foreign exchange was available throughout the year and Malawi's official foreign exchange reserves remained above two months of import cover.

Remittance Policies

There are no restrictions on remittance of foreign investment funds (including capital, profits, loan repayments and lease repayments) as long as the capital and loans were obtained from foreign sources and registered with the Reserve Bank of Malawi (RBM, www.rbm.mw). The terms and conditions of international loans, management contracts, licensing and royalty arrangements, and similar transfers require initial RBM approval. The RBM grants approval according to prevailing international standards; subsequent remittances do not require further approval. All commercial banks are authorized by the RBM to approve remittances, and approvals are fairly automatic as long as the applicant's accounts have been audited and sufficient foreign exchange is available. In practice, foreign exchange availability can be limited and periodically remittances cannot be made immediately. This has become less common since May 2012, when value of the local currency began to float against major world currencies.

The 2006 Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act established an autonomous Financial Intelligence Unit (FIU, www.fiumalawi.gov.mw) to combat money laundering and terrorist financing. The FIU is responsible for analyzing disclosures from financial institutions and referring actionable cases to competent authorities such as the Malawi Police Service and the Anti-Corruption Bureau. The FIU is also mandated to monitor compliance by reporting institutions. The 2015 International Narcotics Control Strategy Report lists Malawi as another country monitored.

3. Expropriation and Compensation

Malawi's constitution prohibits deprivation of an individual's property without due compensation. There are effective laws that protect both local and foreign investment. The likelihood of direct expropriations has been low since the repeal of the Forfeiture Act in 1992. Measures that carry expropriation effects are occasionally imposed. For example, in both 2008 and early 2012 the government imposed export bans on maize. Furthermore, the government unilaterally revoked the licenses of all private maize traders in the country, who were then required to reapply for new licenses. These restrictions applied equally to foreign and domestic investors. Although public tenders for the sale of shares of state-owned enterprises often require local participation, foreign investors tend to dominate the shareholding of large Malawi Stock Exchange-listed companies requiring significant technical and financial resources. There are about a dozen such companies.

4. Dispute Settlement

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

Both foreign and domestic investors have access to Malawi's legal system, which functions fairly well and is generally unbiased. There has been little overt government interference in the court system. Heavy caseloads and staffing limitations, however, mean that legal remedies can take a long time to achieve.

Malawi has written commercial laws which codify Common Law and that include laws that govern the acquisition, disposition, recording and protection of all property rights as well as intellectual property rights. The Sale-Of-Goods Act, the Hire-Purchase Act, the Competition Fair Trading Act, and the Companies Act cover commercial practices.

The judiciary derives its procedures from English Common Law. By local standards, the Commercial Courts work reasonably efficiently, with dedicated judges and their own registries. There is an established mediation process to promote agreements between parties in disputes before court proceedings start. Enforcement of judgments can be slow.

The court system in Malawi accepts and enforces foreign court judgments that are registered locally in accordance with established legal procedure. There are reciprocal agreements among Commonwealth countries to enforce judgments without this registration obligation. There is no such agreement between Malawi and the United States, but judgments involving the two countries can still be enforced if the judgment is registered appropriately in Malawi.

Bankruptcy

Bankruptcy is governed by the Bankruptcy Law, based on Common Law. Under the Bankruptcy Law, secured creditors—rank-ordered based upon investment registration dates—have first priority in recovering money. Bankruptcy is criminalized. Monetary judgments are usually made in the investor's currency. However, the immediate availability of foreign exchange is dependent upon supply, which varies on a seasonal basis and was chronically low from 2009-2012.

Investment Disputes

Since 1996, there have been no major investment disputes involving U.S. companies.

International Arbitration

Malawi is a member of the International Center for Settlement of Investment Disputes (ICSID), accepting binding international arbitration of investment disputes between foreign investors and the state.

ICSID Convention and New York Convention

Malawi has ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). It is not a signatory to the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention).

Duration of Dispute Resolution

Malawi's courts suffer from long backlogs. The Commercial Courts are no exception. Resolution of commercial cases generally takes many months and often years. It can be difficult to enforce judgments.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

Malawi is not in compliance with World Trade Organization (WTO) Trade Related Investment Measures (TRIMs) notification requirements.

Investment Incentives

The Malawi Government offers a wide range of tax and non-tax incentives which apply equally to domestic and foreign investors. These incentives apply to several sectors including manufacturing, agriculture, mining and others relating to businesses in general. Customs and excise tax incentives are provided on raw materials, machinery and equipment in a number of sectors. Specific incentives tend to vary from year to year. A detailed list of investment incentives can be found at the Malawi Investment and Trade Center (MITC) website: www.mitc.mw.

Generally speaking, the incentives offered to investors are applied consistently, but many companies complain about long delays in accessing the accrued benefits, especially those that require investors to spend first and claim later. Additionally, firms must negotiate their eligibility for these incentives with the responsible government entities. Some companies complain that this amounts to an undue burden, particularly because when the law changes, old incentive agreements are not automatically grandfathered in but must be renegotiated on a case-by-case basis. In all of these areas, foreign investors are generally accorded the same treatment as nationals.

Research and Development

U.S. and other foreign firms are able to participate in government- and donor-financed and/or subsidized research and development programs.

Performance Requirements

Malawi does not set performance requirements for establishing, maintaining or expanding an investment, nor does it place requirements on source of financing, or geographic location. There

is a requirement that at least two Malawian residents be appointed directors of companies registered in Malawi.

Visas do not inhibit investors, but the need for employment permits sometimes can. Expatriate employees (of both domestic and foreign businesses) who reside and work in Malawi must obtain temporary employment permits (TEPs). In some instances, TEPs have been very difficult to obtain. Government policy on TEPs has been unchanged since a “Policy Statement and New Guidelines for The Issuance and Renewal of [Expatriate] Employment Permits” was issued in November 1998. The guidelines state that investors may employ expatriate personnel in areas where there is a shortage of “suitable and qualified” Malawians. The policy provides for two types of TEPs:

- Those for “key posts” (defined as positions of “strategic importance” in business operations) which are granted for the lifespan of the organization.
- Those for “time posts” (defined as positions with contracts of three-year duration or less) which are granted for three-year periods and renewable once.

The policy underscores the government’s desire to make TEPs readily available to expatriates, and mandates that processing times for TEP applications shall not exceed 40 working days. In practice these guidelines have been applied inconsistently and the criteria against which cases are considered is not always clear, leading to delays and considerable uncertainty for both employers and employees.

Data Storage

Embassy Lilongwe is not aware of any forced localization policies.

6. Right to Private Ownership and Establishment

The government encourages both domestic and foreign investors to establish and own business enterprises in most sectors of the economy. All investors have the right to establish, acquire, and dispose of interests in business enterprises. The following information is required to register and incorporate a company: name of the company, authorized share capital, registered office, location of account books, address of the company secretary, and the names of directors and shareholders. There is a requirement that at least two Malawian residents be appointed directors.

Foreigners require a business residence permit (BRP) to carry out any business activity in Malawi. The government issues BRPs to foreign nationals who own/operate businesses. BRPs are issued for five-year periods and are renewable. Permanent Residence Permits (PRPs) are issued to foreign spouses who reside permanently in Malawi, and to owners/operators of businesses who reside in Malawi for periods in excess of ten years. PRP holders cannot work as employees. Malawi’s immigration laws governing BRPs and PRPs have been revised. There are three categories of residence permits based on the amount of investment, the status of applicant (investor, retiree, student, or spouse of a Malawian citizen) and the period of the business assignment. The maximum number of resident permits per organization is five positions, with the actual number allowed depending on the amount of investment. In practice the issuance of BRPs has been applied inconsistently and the criteria against which cases are considered is not always clear, leading to delays and considerable uncertainty.

There are some restrictions to land ownership by foreigners. Sale of land to foreigners is approved only after no Malawian has shown interest to match the price offered by the foreigner. However, land acquired as part of a business establishment is not subject to this rule. Acquiring land remains one of the challenges potential investors (both foreign and domestic) face.

7. Protection of Property Rights

Real Property

Malawi has laws that govern the acquisition, disposition, recording and protection of all property rights (land, buildings, etc.) as well as intellectual property rights (copyrights, patents, trademarks, etc.).

Efforts to improve land tenure have been underway for more than 15 years. At present most land is under customary land tenure with occupants holding no legally binding title. More than half of arable land is untitled. More than 10 years ago, Government developed draft legislation to convert customary land tenure to leasehold title so that those currently using that land can have legal rights to the land. This would enable them to use such land as collateral for acquiring financing to develop the land and/or to finance other business ventures. However, traditional leaders are against this development as it will limit their power over land allocation. A stalemate has resulted.

Government has been preparing for these new developments and already started training people to be engaged as land surveyors and registrars at the local government level. Currently record keeping for registering land ownership is centralized and inefficient. Efforts are underway to computerize the recordkeeping and to decentralize to the district councils.

Intellectual Property Rights

Malawi recognizes the importance of intellectual property protection and enforcement but lacks the capacity to do so. The Registrar General administers the Patent and Trademarks Act of 1948, which protects industrial intellectual property rights in Malawi. A public registry of patents and patent licenses is kept. Patents must be registered. Trademarks are registered publicly following advertisement and a period of no objection.

The government has signed and adheres to bilateral and multilateral investment guarantee treaties and key agreements on intellectual property rights. Malawi is a member of the convention establishing the Multilateral Investment Guarantee Agency, the World Intellectual Property Organization (WIPO), the Berne Convention, and the Universal Copyright Convention. Malawi is not listed in USTR's Special 301 Report, or in the Notorious Markets Report.

Enforcement of intellectual property rights is inadequate. However, general awareness of the importance of protecting intellectual property in all forms (copyrights, trademarks, patents, trade secrets, and others) has improved. The Copyright Society of Malawi (COSOMA), established in 1992, administers the 1989 Copyright Act which protects copyrights and "neighboring" rights in Malawi. Led by COSOMA, intellectual property rights enforcement agencies commemorated World IP Day on April 26 for each of the past three years. Although the commemoration has

focused primarily on copyrights, it has nonetheless helped to promote awareness of the importance of protection of intellectual property rights.

WTO rules allow Malawi (as a less developed country) to delay full implementation of the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement until 2021. The Ministry of Industry and Trade is working with COSOMA, the Registrar General, and the Africa Regional Intellectual Property Organization (ARIPO) to align relevant domestic legislation with the WTO TRIPs agreement. An intellectual property rights policy which would modernize and harmonize related laws and regulations has been drafted, but has not been presented to the Cabinet for approval. In practice, the policy's approval is a prerequisite for the government to proceed to make the changes to the legal framework to align with TRIPs and modernize Malawi's intellectual property protection regime.

While enforcement officials routinely seize counterfeit goods and goods suspected to be counterfeit, Malawi does not have a systematic approach to tracking and reporting on such seizures and no reliable estimates of the number of seizures, type or value of goods seized, or related information are available.

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

Embassy point of contact:

U.S. Embassy Lilongwe, Economic Section, Tel. +265-1-773-166

- Until May 2015: Economic and Commercial Officer Heather Dresser, DresserHL@state.gov
- After August 2015: Economic and Commercial Officer Holly Waeger Monster, MonsterHW@state.gov
- 2015: Economic and Commercial Specialist Priston Msiska, MsiskaPA@state.gov

A list of local attorneys is available at: <http://lilongwe.usembassy.gov/service15.html>

8. Transparency of the Regulatory System

Malawi's industrial and trade reform program—including rationalization of the tax system, liberalization of the foreign exchange regime, and the elimination of trade and industrial licenses for several items and businesses—has produced written guidelines intended to increase government use of transparent and effective policies to foster competition. Government continues to undertake various reforms to ensure that no tax, labor, environment, health and safety or other laws distort or impede investment. However, procedural delays and red tape continue to impede the business and investment environment.

While market prices for goods are generally not controlled, prices of most agricultural goods such as maize and state-provided utilities are regulated. In recent years the government has announced minimum prices for tobacco, cotton and maize which buyers have been obliged to offer, under threat of the loss of their buyers' licenses. Buyers have complained of a lack of

transparency in the setting of these prices. Government has instituted automatic pricing mechanisms for fuel and electricity prices. The Ministry of Industry and Trade retains the legal authority to ban the import or export of any good at any time. While this power is seldom used, it can constitute a risk to investors intending to import or export as part of their business.

Certain industry associations have sectorial rule-making power that amounts to regulatory power. Some of these associations have set regulations that require the use of local labor, local contractors, or other means to achieve localization or skills transfer to Malawians. Such rules are printed in the Government Gazette, available from the offices of the Government Printer. As they are set by associations with closed membership, the rulemaking process is not always transparent to foreign firms that have not yet entered the Malawi market, but are considering doing so.

There have been positive steps toward increasing regulatory transparency and improving the foreign investment environment. For example, reforms have shortened the turnaround time for government decisions on applications for construction permits and property registration. The government is moving ahead with its privatization of Air Malawi, the loss making national airline in which Ethiopian Airlines acquired a 49% stake in 2013, with additional shares in the new Malawian Airlines to be offered to the public soon. In early 2015, government embarked on the sale of a controlling interest in Malawi Savings Bank and government's residual equity in IndeBank. Both foreign and domestic investors were invited to submit bids for these banks.

Almost all proposed laws, regulations, and policies are subject to public consultation before they are submitted to Cabinet and Parliament. However, sometimes the public notice of such consultations is not issued in a timely manner, with the effect that only insiders are aware of and able to plan to attend the meetings. Sometimes there is an opportunity to submit written comment rather than or in addition to attending a meeting, but this is not always the case. Parliamentary procedure calls for draft bills to be debated in relevant committees before being presented on the floor for a vote. This procedure is followed more often than not.

9. Efficient Capital Markets and Portfolio Investment

The Malawi government recognizes the importance of foreign portfolio investment and has made efforts to provide for a platform for such investment through the establishment of a Malawi Stock Exchange (MSE, www.mse.co.mw). MSE hosts about a dozen listed companies. Most of these companies are local and a few are regional. The demand and supply of shares for existing listed companies is limited. However, demand for newly listed companies has always exceeded the shares on offer.

The MSE is regulated by the Reserve Bank of Malawi. The Companies Act, Capital Market Development Act (1990), and Capital Market Development Regulations (1992) as amended in 2013 provide the legislative and regulatory framework for portfolio investment in Malawi. Together with the Securities Act (2010), these acts govern the MSE.

Foreign investors can buy and sell shares at the stock market without any restrictions. Trading in shares can either be direct or through any one of the four established brokers. Apart from the restrictions under the privatization program (prohibiting 100% foreign ownership), there are no specific measures taken by private firms or government to restrict foreign investment or

participation. Foreign investors tend to be the dominant shareholders in large MSE-listed companies requiring significant technical and financial resources. There is a secondary market in government securities, and both local and foreign investors have equal access to purchase these securities.

Liquidity for stock market participation is not a major problem as the private sector in Malawi has a variety of credit instruments. Credit is generally allocated on market terms. The main problem is the cost of such credit finance. Foreign investors may utilize domestic credit, but proceeds from investments made using local resources are not remittable.

Money and Banking System, Hostile Takeovers

Malawi has a generally sound banking sector, overseen and regulated by the Reserve Bank of Malawi—the central bank. There are about a dozen full-service commercial banks. Malawi's four largest banks (National Bank of Malawi, First Merchant Bank, Standard Bank, and New Building Society Bank) command 90% of the market, with a total capitalization of over USD 2 billion.

The Competition and Fair Trading Act does not cover the day-to-day trading on the MSE, but regulates mergers, acquisitions, and takeovers. The MSE is still in a nascent stage and hostile takeovers have not yet occurred.

10. Competition from State-Owned Enterprises

Malawi has over 60 State-Owned Enterprises (SOEs) scattered across many industries/sectors including agriculture and agribusiness, education, construction, energy, finance, health, information and communication, media, and services. A list of these enterprises is available at the Office of the President and Cabinet, but Government does not publish such a list in the media or online, nor can it be purchased from the Government Printer. These enterprises are defined by the level of support that they require from government in order to operate, that is, those that are listed as fully funded, partially funded, and fully commercial. Government is sometimes required to bail out commercially-run SOEs when they have incurred losses.

Not all SOEs perform public function mandates. Malawi has a mixed bag system of SOEs where some SOEs are purely performing a public good function; others are commercial, and the rest both. All SOEs are subject to government regulations that apply to other government departments including employment and on procurement procedures, though some variations apply to some. All SOEs are required by law to produce annual reports, but do not always do so. These are not always audited by independent professional audit firms despite the legal requirement to do so.

Private and public enterprises freely compete on the same terms and conditions for access to markets, credit and other business opportunities. There are exceptions, however, for some public works assignments where public enterprises tend to be given special preference by government. There have been several instances in the past where public enterprises such as the Agricultural Development and Marketing Corporation (ADMARC) and the Small-holder Farmers Fertilizer Revolving Fund (SFFRF) have been awarded contracts to distribute subsidized agricultural

inputs without competing with private sector enterprises. These SOEs also access cheap financing from government, acquiring an advantage over private companies in the agricultural sector. There are no set rules or criteria on such exceptions—the government tends to decide (often capriciously) on a case by case basis. In general SOEs tend to get a bigger share of government contracts than privately-owned enterprises.

SOEs in the agriculture, education and health sectors spend more on research and development than local private sector players and they are seen as doing so for the public good rather than for profit. Because local firms tend to be capital-constrained and because highly-skilled labor (such as research scientists and engineers) is scarce, there is not a strong tradition of private sector-led research and development in Malawi. This can affect Government perceptions of foreign firms' research and development activities.

SOEs are subject to the same taxes, including value added tax, as their private sector counterparts. However, capital acquisition (motor vehicles, equipment and machinery) is not subject to the same taxes. SOEs, particularly non-profit SOEs, also enjoy preferential access to land compared to private sector competitors. For example, a government-run agricultural college or research institution would likely find it easier to acquire neighboring land for expansion as compared to a private college.

SOEs are not subject to hard budget constraints under the law. Those that make profits are subject to periodic and sometimes unpredictable calls to pay dividends to the Treasury; loss-making SOEs are rarely called upon to repay debts they have incurred. SOEs that issue credit, such as (but not limited to) the SFFRF, often refrain from collecting against outstanding debts. Private enterprises complain that these features distort Malawi's markets.

OECD Guidelines on Corporate Governance of SOEs

Malawi's SOEs are not required to adhere to the OECD Guidelines on Corporate Governance of SOEs. Corporate governance for most SOEs follows the terms of the relevant Malawi law that established the entity. All State Owned Enterprises (SOEs) report to a line ministry and to the Department of Statutory Corporations in the Office of President and Cabinet, but also have a Chairperson and Board of Directors. The boards are composed of politicians and professionals as directors. All such boards also have senior government officials representing government departments as ex-officio/non-voting members. The participation of members of the government as ex-officio/non-voting members on these boards, and of politicians as directors, creates a perceived and/or real conflict of interest.

Sovereign Wealth Funds

Malawi does not have a Sovereign Wealth Fund or Asset Management Bureau.

11. Corporate Social Responsibility

There is a well-developed sense of corporate social responsibility in Malawi and most corporate entities make a point to publicize such activities in the local media. Large domestic companies and international enterprises tend to be more active and generous than small domestic

companies. There are no established laws and regulations governing Corporate Social Responsibility (CSR), nor does the government formally direct CSR to particular sectors.

There are laws governing protection of the environment and waste disposal for producers and consumers. Enforcement of these regulations is inadequate. Government expects all enterprises to follow all laws of Malawi regarding employment and compensation. Malawi has a number of labor laws governing employment, work environment, industrial safety, age limits, hours of work, minimum wages, and many others. There is no history of provisions of environmental, social, and labor laws being waived to attract investment.

Government has enacted accounting standards that conform to international standards that the corporate sector is expected to adhere to. Executive compensations are not defined. All MSE-listed companies are required by law to publish their annual audited accounts in the local newspapers. Listed companies are also required to publicly declare their profits, dividends to be paid out, planned takeovers (or major portfolio investments in or out of the company) and all relevant information that shareholders need to make informed decisions. They are also required to announce their annual shareholders meetings in the newspapers.

OECD Guidelines for Multinational Enterprises

Malawi does not require that enterprises follow the OECD Guidelines for Multinational Enterprises, nor does it require that companies follow the United Nations Guiding Principles on Business and Human Rights.

12. Political Violence

Malawi has been largely free of political violence since gaining independence in 1964. Apart from the disarming of the Malawi Young Pioneers, a paramilitary group active during Malawi's 1994 transition to democracy, incidents of violence have been few. Sporadic violence occurred in the run-up and immediately following the 2004 elections. Presidential and parliamentary elections in 2009 and 2014 were peaceful, with no significant incidences of violence. In July 2011, nationwide demonstrations over economic and political governance turned violent and 20 Malawians died in the civil unrest that ensued. There was a peaceful transition of power after President Bingu wa Mutharika's death to his Vice President, Joyce Banda, who was not a member of Mutharika's ruling party at the time of his death in April 2012. President Peter Mutharika's May 2014 election marked the first electoral victory by a candidate not belonging to the incumbent party since 1994. International observers from the EU characterized the 2014 presidential, parliamentary, and local government elections as generally "peaceful, free, transparent, and credible."

Although divisions do exist, Malawi has no significant tribal, religious, regional, ethnic, or racial tensions that could be expected to lead to violent confrontation. Incidents of labor unrest occasionally occur, but these are usually non-violent. There are no nascent insurrections or other politically motivated activities of major concern to investors. However there have been some political tensions with neighboring Mozambique, Zambia, and Tanzania in recent times. Tanzania and Malawi are currently trying to resolve a border dispute over the North Eastern portion of Lake Malawi.

13. Corruption

Malawi law prohibits bribery. Giving or receiving a bribe—whether to or from a Malawian or foreign official—is a crime under Malawi’s penal code. Public sector corruption, including bribery of public officials, remains a major challenge for firms operating in Malawi.

The Corrupt Practices Act established the Anti-Corruption Bureau (ACB) with a mandate of preventing corruption in Malawi. The ACB Director and Deputy Director are both appointed by the President, subject to confirmation by the Public Appointments Committee of Parliament. ACB began full operations in 1998, and in 2004 the Corrupt Practices Act was amended to give ACB additional powers. The definition of corruption was widened to include, among other things, offences for abuse of office and possession of unexplained wealth. The Act provides for the investigation of cases not only for corruption but for other offences that come to light during the course of investigating corruption. The Act also provides protection for “whistleblowers.” Malawi’s ACB cooperates with other anti-corruption bureaus in the region and beyond.

The law provides for criminal penalties for corruption by officials. There were numerous reports of government corruption at the national and local level during the reporting period. Beginning in September 2013, a national corruption scandal known as “Cashgate,” involving the theft of at least 20 billion MWK (then USD 49 million) through fraudulent transactions using the government’s automated payments system, gained significant attention among the government, donors and civil society. Although the fraudulent transactions began as early as 2010, they peaked in the middle of the year, according to investigators. More than 70 individuals were arrested. As of March 2015, eight suspects’ cases had been brought to trial and four cases concluded. All four cases resulted in convictions.

Malawi recognizes that the fight against corruption cannot be won without the involvement of all. Thus, companies are encouraged to participate in the fight. The ACB encourages institutions to develop and implement Corruption Prevention Policy frameworks as a way of mainstreaming anticorruption initiatives into their operations. Many companies have signed up to the anti-corruption campaign. The business sector has its own anti-corruption campaign drive called “Business Action against Corruption” that deals with corruption issues within the private sector. Civil society organizations also formed their own institution called “Civil Society Action against Corruption” to deal with corruption within civil society. Few CSOs investigate corruption issues in Malawi.

A new law intended to deter public sector corruption was passed in late 2013 and became effective in mid-2014. The Public Officers (declaration of assets, liabilities, and business interests) Act requires 48 categories of public officers – from the president, members of parliament and from senior officials down to specific categories of civil servants, including traffic police and immigration officers – to declare their assets and business interests. The declarations are meant to be accessible to the public upon request. Implementation of this new law is in early stages.

Although progress has been made in addressing the issue, corruption continues to be viewed as a major obstacle to doing business in Malawi. There have been serious allegations of corruption,

which is perceived to be particularly endemic in the following sectors: police, immigration, road traffic, tax administration, traditional leaders, and government procurement.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Malawi signed and ratified the UN Anticorruption Convention. Malawi subscribes to the provisions of the OECD Anti-bribery Convention, though it is not yet a signatory to the Convention.

Resources to Report Corruption

Mr. Lucas Kondowe
Director General
Anti-Corruption Bureau
Mulanje House, P.O. Box 2437, Lilongwe, Malawi
Tel: +265-1-772-107
Fax: +265-1-770-108
E-mail: lkondowe@acbmw.com
Website: <http://www.acbmw.com>

14. Bilateral Investment Agreements

Malawi's policy is to negotiate bilateral investment treaties with countries whose nationals opt to invest in Malawi. Malawi has signed investment agreements Italy, Libya, Netherlands and Zimbabwe. Bilateral investment agreements have also been initialed with Brazil, China, Germany, India and the OPEC Fund for International Development. Malawi does not have a bilateral investment treaty nor a Free Trade Agreement with the United States.

Malawi acceded to the Multilateral Investment Guarantee Agency (MIGA) in 1985/86. Malawi has not renewed several investment treaties that lapsed after 1986 since MIGA provides mechanisms for the settlement of investment disputes.

Bilateral Taxation Treaties

Malawi and the United States do not have a bilateral tax treaty. Investments, and income derived from them, are subject to applicable taxes in both jurisdictions.

15. OPIC and Other Investment Insurance Programs

Malawi has had an OPIC investment guarantee agreement since 1967. In August 1999, the U.S. Export-Import Bank included Malawi under its Africa Short-term Export Credit Insurance Program.

16. Labor

The Government of Malawi estimates that more than half of the population is of working age. Unskilled labor is plentiful. Skilled and semi-skilled labor is scarce. Occupational categories

with skills shortages include accountants and related personnel, economists, engineers, primary and secondary school teachers, lawyers, and medical/health personnel. The University of Malawi provides bachelors and masters degrees in economics, engineering, medicine, education, agriculture and administration. The Malawi College of Accountancy teaches accounting. Chancellor College, part of the University of Malawi system, operates the country's law school. In early 1999, the government established the Technical, Entrepreneurial and Vocational Education and Training Authority (TEVETA) program to address technical skills shortages in industry. Progress has been slow.

The Labor Relations Act (LRA), enacted in 1997, governs labor-relations management in Malawi. The Act allows strikes and lockouts for registered workers and employers after dispute settlement procedures in collective agreements and conciliation have failed. As trade union rights have existed only since the transition to multiparty democracy in 1994, industrial relations are still evolving. Employers, labor unions, and the government lack sufficient knowledge of their legitimate roles in labor relations/disputes.

Workers have the legal right to form and join trade unions. Twenty-nine unions are registered. Union membership is low, however, given the small percentage of the work force in the formal sector, the lack of awareness of worker rights and benefits, and a resistance on the part of many employees to join unions. Only 18% of people employed in the formal sector belong to unions. Unions may form or join federations and have the right to affiliate with, and participate in, the affairs of international workers' organizations. Despite the enactment of the Gender Equality Act in 2013, discrimination against women remains pervasive as they continue to have lower literacy and education levels and less access to employment opportunities than men. Children in Malawi continue to engage in the worst forms of child labor, including on tobacco farms. While the government is a signatory to the ILO Convention protecting worker rights, mechanisms for enforcing the provisions of the convention are weak. There are serious manpower shortages at the Ministry of Labor, resulting in very few labor-standards inspections. There was no new legislation enacted during the reporting period.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

Legislation for the establishment of export processing zones (EPZs) came into force in 1995. All companies engaged exclusively in manufacture for export may apply for EPZ status. As of April 2015, thirteen companies were operating under the EPZ scheme. Almost all of these are foreign owned companies, though the law does not discriminate on ownership.

The government accords EPZ status only to firms (foreign or domestic) that produce exclusively for export. A Manufacturing under Bond (MUB) scheme offers slightly less attractive incentives to companies that export some, but not all, of their products. Most investors prefer to operate under the EPZ arrangement.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

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

Economic Data	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) (\$M USD)	2013	4,526	2013	3,705	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	data not available	2013	-5.0	BEA data available 3/19/14 at http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Host country's FDI in the United States (\$M USD, stock positions)	2013	data not available	2013	0.0	BEA data available 3/19/14 at http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Total inbound stock of FDI as % host GDP	2013	2.6%	2013	data not available	Malawi Government Annual Economic Reports, www.finance.gov.mw , and Malawi National Statistics Office, http://www.nsomalawi.mw/national-accounts (2013 GDP data published online in Malawi Kwacha only)

*Malawi National Statistics Office and Malawi Government Annual Economic Reports. Please note: the wide fluctuation in the value of the Malawi Kwacha during 2013 resulted in a significant discrepancy in Malawi National Statistics Office and World Bank figures for Malawi's estimated 2013 GDP when converted into U.S. dollars.

Table 3: Sources and Destination of FDI

IMF Coordinated Direct Investment Survey data is not available for Malawi. Both the Reserve Bank of Malawi (www.rbm.mw) and the Malawi Investment and Trade Center (www.mitc.mw) maintain records on the value and composition of FDI in Malawi. Neither the RBM nor MITC, however, currently capture actual FDI figures.

Table 4: Sources of Portfolio Investment

IMF Coordinated Portfolio Investment Survey data is not available for Malawi. Both the Reserve Bank of Malawi (www.rbm.mw) and the Malawi Investment and Trade Center (www.mitc.mw) maintain records on the value and composition of FDI in Malawi. Neither the RBM nor MITC, however, currently capture actual FDI figures.

19. Contact for More Information

Mr. Priston Msiska
Economic and Commercial Specialist
U.S. Embassy, Lilongwe, Malawi
+265-1-773-166 x3253
MsiskaPA@state.gov