Madagascar

RISK & COMPLIANCE REPORT

DATE: March 2018

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Executive Summary	
Sanctions:	None
FAFT list of AML Deficient Countries	No
Higher Risk Areas:	Non - Compliance with FATF 40 + 9 Recommendations Weakness in Government Legislation to combat Money Laundering Not on EU White list equivalent jurisdictions Corruption Index (Transparency International & W.G.I.) World Governance Indicators (Average Score) Failed States Index (Political Issues)(Average Score)

Major Investment Areas:

Agriculture - products:

coffee, vanilla, sugarcane, cloves, cocoa, rice, cassava (tapioca), beans, bananas, peanuts; livestock products

Industries:

meat processing, seafood, soap, breweries, tanneries, sugar, textiles, glassware, cement, automobile assembly plant, paper, petroleum, tourism

Exports - commodities:

coffee, vanilla, shellfish, sugar, cotton cloth, clothing, chromite, petroleum products

Exports - partners:

France 23.1%, China 6.5%, US 6.5%, Singapore 5.8%, Canada 5.4%, India 5.3%, Germany 5.3%, Indonesia 5.2%, South Africa 4.4% (2012)

Imports - commodities:

capital goods, petroleum, consumer goods, food

Imports - partners:

China 17.2%, France 12.1%, South Africa 5.3%, Bahrain 5.1%, India 5%, Mauritius 4.7%, Kuwait 4.4% (2012)

Investment Restrictions:

Officially, the de facto government of Madagascar (GOM) welcomes foreign investment. However, political turmoil, weakness in the judicial system and the banking sector, the high cost and low quality of electric power, corruption, a lack of transparency in decision-making, limited road, rail and port infrastructure, and the high cost of air transport make investing in Madagascar a challenge.

There is no law or regulation authorizing private firms to adopt articles of incorporation or association that limit or prohibit foreign investment, participation or control. Furthermore, there is no official or private practice to restrict foreign investment, participation, or control of domestic enterprises. There is no mandatory screening of foreign investment, and there is no discrimination against foreign investors at the time of the initial investment or after the investment is made, such as through special tax treatment, access to licenses, approvals, or procurement. There are no sectors/matters in which foreign investors are denied national treatment.

Contents

Section 1 - Background

Formerly an independent kingdom, Madagascar became a French colony in 1896 but regained independence in 1960. During 1992-93, free presidential and National Assembly elections were held ending 17 years of single-party rule. In 1997, in the second presidential race, Didier RATSIRAKA, the leader during the 1970s and 1980s, was returned to the presidency. The 2001 presidential election was contested between the followers of Didier RATSIRAKA and Marc RAVALOMANANA, nearly causing secession of half of the country. In April 2002, the High Constitutional Court announced RAVALOMANANA the winner. RAVALOMANANA achieved a second term following a landslide victory in the generally free and fair presidential elections of 2006. In early 2009, protests over increasing restrictions on opposition press and activities resulted in RAVALOMANANA handing over power to the military, which then conferred the presidency on the mayor of Antananarivo, Andry RAJOELINA, in what amounted to a coup d'etat. Numerous attempts have been made by regional and international organizations to resolve the subsequent political gridlock by forming a power-sharing government. Madagascar's independent electoral commission and the UN originally planned to hold a presidential election in early May 2013, but postponed the election until late July 2013, due to logistical delays.

Section 2 - Anti – Money Laundering / Terrorist Financing

FATF status

Madagascar is not on the FATF List of Countries that have been identified as having strategic AML deficiencies

Compliance with FATF Recommendations

Madagascar has not yet undertaken a Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards.

US Department of State Money Laundering assessment (INCSR)

Madagascar was deemed a 'Monotor' Jurisdiction by the US Department of State 2016 International Narcotics Control Strategy Report (INCSR).

Key Findings from the report are as follows: -

Perceived Risks:

Madagascar is neither a regional financial center nor a major source country for drug trafficking; however, Madagascar's inadequately monitored 3,000 miles of coastline leave the country vulnerable to smuggling and associated money laundering. Criminal proceeds laundered in Madagascar derive mostly from domestic criminal activity, not generally related to the narcotics trade. The major sources of laundered proceeds in 2015 are tax evasion, tax appropriation, and customs fraud. Illegal mining and mineral resources smuggling, illegal logging, public corruption, and foreign currency smuggling are also areas of concern.

The deterioration in the rule of law initiated by the leaders of the 2009 coup d'état continues to facilitate trafficking of natural resources (rosewood, gold, precious stones) and persons as well as foster corruption throughout society (tax evasion, smuggling of goods, etc.). The current president was democratically elected in December 2013, and since then has publicly and privately proclaimed an emphasis on combatting corruption. The government has not successfully prosecuted any anti-corruption cases aside from low level individuals. The smuggling of gold, gemstones (predominantly to the Gulf), and protected flora and fauna (predominantly to Asia) generates funds that are laundered through the financial system or through informal channels into which the government has limited reach. There is a significant black market for smuggled or stolen consumer goods, especially in port cities. Trade-based money laundering occurs in Madagascar, involving both customs fraud and contraband.

Members of the former regime profited from, facilitated, and even directed criminal activity and money laundering. Media reports that they continue to do so.

Offshore banks and international business companies are permitted in Madagascar. Along with domestic banks and credit institutions, offshore banks are required to request authorization to operate from the Financial and Banking Supervision Committee, which is affiliated with the Central Bank.

DO FINANCIAL INSTITUTIONS ENGAGE IN CURRENCY TRANSACTIONS RELATED TO INTERNATIONAL NARCOTICS TRAFFICKING THAT INCLUDE SIGNIFICANT AMOUNTS OF US CURRENCY; CURRENCY DERIVED FROM ILLEGAL SALES IN THE U.S.; OR ILLEGAL DRUG SALES THAT OTHERWISE SIGNIFICANTLY AFFECT THE U.S.: NO

CRIMINALIZATION OF MONEY LAUNDERING:
"All serious crimes" approach or "list" approach to predicate crimes: All serious crimes
Are legal persons covered: criminally: YES civilly: YES

KNOW-YOUR-CUSTOMER (KYC) RULES:
Enhanced due diligence procedures for PEPs: Foreign: YES Domestic: YES
KYC covered entities: Banks

REPORTING REQUIREMENTS:
Number of STRs received and time frame: 152: January 1 - November 19, 2015
Number of CTRs received and time frame: Not applicable
STR covered entities: Banks, financial intermediaries and advisors, money changers, casinos and gaming establishments, real estate dealers, postal services, insurance companies, mutual fund companies, and stockbrokers

MONEY LAUNDERING CRIMINAL PROSECUTIONS/CONVICTIONS:
Prosecutions: 7 in 2015
Convictions: 3 in 2015

RECORDS EXCHANGE MECHANISM:
With U.S.: MLAT: NO Other mechanism: YES
With other governments/jurisdictions: YES

Madagascar is not a member of a FATF-style regional body (FSRB).

ENFORCEMENT AND IMPLEMENTATION ISSUES AND COMMENTS:

Law N° 2014-005 (effective July 2014) provides the courts the ability to freeze assets without prior notice based upon credible suspicions of involvement in money laundering, trafficking, illicit or terrorist activities, and extends a requirement for banks to record and report to the authorities transactions suspected to relate to the financing of terrorism. Additionally, the law allows the Malagasy Financial Intelligence Service (SAMIFIN), Madagascar's financial intelligence unit, to immediately block transactions from accounts suspected of association with terrorism.

While the police sometimes investigate crimes related to money laundering and other financial crimes, they lack necessary training and expertise. Moreover, the judicial system does not have the sophistication, resources, or political will to successfully prosecute most money laundering offenses.

Underground finance and informal value transfer systems should be recognized and investigated. Madagascar should train police and customs authorities to proactively recognize money laundering at the street level and at the ports of entry. Additionally, prosecutors should be trained to manage complex financial crime and money laundering cases. Madagascar should pursue membership in an FSRB.

Current Weaknesses in Government Legislation (2013 INCRS Comparative Tables):

According to the US State Department, Madagascar does not conform with regard to the following government legislation: -

Record Large Transactions - By law or regulation, banks are required to maintain records of large transactions in currency or other monetary instruments.

Arrangements for Asset Sharing - By law, regulation or bilateral agreement, the jurisdiction permits sharing of seized assets with third party jurisdictions that assisted in the conduct of the underlying investigation.

Ability to freeze assets without delay - The government has an independent national system and mechanism for freezing terrorist assets in a timely manner (including but not limited to bank accounts, other financial assets, airplanes, autos, residences, and/or other property belonging to terrorists or terrorist organizations)

Criminalised Financing of Terrorism - The jurisdiction has criminalized the provision of material support to terrorists and/or terrorist organizations.

Reports Suspected Terrorist Financing - By law or regulation, banks and/or other covered entities are required to record and report transactions suspected to relate to the financing of terrorists, terrorist groups or terrorist activities to designated authorities.

EU White list of Equivalent Jurisdictions

Madagascar is not currently on the EU White list of Equivalent Jurisdictions

World Governance indicators

To view historic Governance Indicators Ctrl + Click here and then select country

Failed States Index

To view Failed States Index Ctrl + Click here

Offshore Financial Centre

Madagascar is not considered to be an Offshore Financial Centre

Reports

US State Dept Narcotics Report

No report available

US State Dept Trafficking in Persons Report 2016 (introduction):

Madagascar is classified a Tier 2 country - a country whose government does not fully comply with the Trafficking Victims Protection Act's minimum standards, but is making significant efforts to bring themselves into compliance with those standards.

Madagascar is a source country for men, women, and children subjected to forced labor and women and children subjected to sex trafficking. Malagasy children, mostly from rural and coastal regions, and from impoverished families in urban areas, are exploited in prostitution, domestic servitude, and forced labor in mining, fishing, and agriculture across the country. Most child sex trafficking occurs with the involvement of family members, but tourist operators, taxi drivers, and local adults in prostitution also facilitate this crime. Informal employment agencies recruit child domestic workers who are subsequently subjected to forced labor. Some children are fraudulently recruited for work in Antananarivo as waitresses and masseuses before being exploited in prostitution. Reports suggest child sexual exploitation is most prevalent in tourist destinations and surrounding formal and informal mining sites. Previous reports indicated prostitution of boys was becoming more prevalent. Malagasy men exploit child sex trafficking victims, while most child sex tourists are French and Italian nationals, and to a lesser extent, other Westerners and Comorians.

It is estimated that thousands of Malagasy women are employed as domestic workers in Lebanon, Kuwait, and Saudi Arabia; these women circumvent a 2013 ban on work in Gulf countries by transiting Mauritius, Kenya, Comoros, and South Africa. Many of the women migrating are illiterate and vulnerable to fraud and abuse by recruitment agencies and employers. Reports suggest Malagasy men in the Middle East also endure forced labor in the service and construction sectors. Malagasy women are sent by persons acting as informal placement agents to China with falsified identity cards and exploited in forced labor and sold as brides. Malagasy men were subjected to forced labor aboard Chinese-flagged fishing vessels in South Africa's territorial waters in the previous reporting period, and increasingly are subjected to domestic servitude in China. NGOs previously reported government officials' complicity in obtaining falsified national identity cards, which facilitates the sexual exploitation of children for commercial sex in Madagascar and the domestic servitude of Malagasy women abroad. Past reports indicated public officials purchase sexual services from children in Antananarivo and Nosy Be, primary child sex tourism destinations. Police encourage financial arrangements between victims and their offenders, rather than pursuing charges; this perpetuates impunity.

The Government of Madagascar does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. It formally established the National Office to Combat Trafficking, and its members met several times during the reporting period. The government did not take adequate measures to operationalize its five-year national action plan, which came into effect in 2015, or allocate sufficient funding to support the effective work of the national office. Although the government reported 10 convictions in 2015, a slight increase from six in 2014, authorities reported only eight trafficking-related investigations, a significant decrease from 187 cases investigated the previous year. It continued to lack formal procedures to proactively identify trafficking victims among vulnerable populations and did not systematically provide services. Although the government began to draft a bilateral agreement with Saudi Arabia in 2015, it did not make tangible progress with other destination country governments on protection and legal remedies for exploited Malagasy workers.

Latest US State Dept Terrorism Report - 2009

Despite several steps taken in 2008 to counter terrorism, progress stalled in 2009 due to a political crisis that weakened government operations. Following an unconstitutional change of government in March, the United States had limited engagement with the de facto authorities, who did demonstrate a willingness to cooperate in law enforcement matters, however. The government budget suffered due to a suspension of foreign aid programs, negatively affecting public investment throughout the island.

To combat terrorist threats, the government previously created the Central Counterterrorism Service within the Ministry of Interior to work with INTERPOL and to provide information within the framework of regional and international cooperation. It also created a special counterterrorism branch within the Central Intelligence Service. These entities continued to function during the year, but did not fulfill their full roles.

The Financial Intelligence Unit (SAMIFIN) launched in June 2008 to combat money laundering, including terrorist finance, remained nominally operational, but its work was seriously limited by budget constraints.

Although the Malagasy government took steps to create a coast guard to improve maritime security and border control in 2008, no further progress was made in 2009, and the coast guard was not yet operational. Parliament was disbanded after the March coup, so no action was taken on a draft 2008 bill that would have implemented the provisions of several universal counterterrorism instruments, including UN Security Council Resolution 1373.

Political unrest and limited resources severely constrained Madagascar's ability to confront a potential terrorist threat. The Malagasy authorities lacked the capacity to effectively monitor suspect organizations, control suspicious financial transactions, identify terrorist suspects, and control the movement of people and goods across its borders.

International Sanctions

None applicable

Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	24
World Governance Indicator – Control of Corruption	16

Corruption and Government Transparency - Report by US State Department

In 2012, Transparency International ranked Madagascar 118th out of 175 countries surveyed with a score of 32/100 on the Corruption Perception Index (CPI), indicating a severe corruption problem. While giving or accepting a bribe is a criminal act and is subject to trial by court, complicated administrative procedures introduce delays and uncertainties increasing possibilities for corruption. Corruption is most pervasive in the following areas: judiciary, police, tax, customs, land, trade, mining, industry, environment, education, and health. The Independent Anti-Corruption Bureau (BIANCO) is the agency formally responsible for combating corruption, and Transparency International has an office in the country. Corruption at high levels exists in nearly all sectors.

Smuggling of precious stones, hardwood, and animals increasingly drains Madagascar's natural resources and breeds criminality. In April 2010, the de facto regime adopted a decree to prohibit all exports of rosewood and precious timber. Despite this ban, containers of rosewood continue to be shipped. In September 2011, the de facto regime decided to include rosewood in Annex III of the Convention on International Trade in Endangered Species (CITES).

Madagascar created a Financial Intelligence Unit (SAMIFIN) in mid-2008 to carry out research and financial analysis related to money laundering. In 2012, SAMIFIN received 61 suspicious transaction reports and referred 23 cases to public prosecutors.

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

Section 3 - Economy

Agriculture, including fishing and forestry, is a mainstay of the economy, accounting for more than one-fourth of GDP and employing roughly 80% of the population. Deforestation and erosion, aggravated by the use of firewood as the primary source of fuel, are serious concerns.

After discarding socialist economic policies in the mid-1990s, Madagascar followed a World Bank- and IMF-led policy of privatization and liberalization until the onset of a political crisis, which lasted from 2009 to 2013. The free market strategy had placed the country on a slow and steady growth path from an extremely low starting point. Exports of apparel boomed after gaining duty-free access to the US in 2000; however, Madagascar's failure to comply with the requirements of the African Growth and Opportunity Act (AGOA) led to the termination of the country's duty-free access in January 2010, a sharp fall in textile production, and a loss of more than 100,000 jobs.

Madagascar regained AGOA access in January 2015 following the democratic election of a new president the previous year. In November 2015, the International Monetary Fund (IMF) approved a Rapid Credit Facility to Madagascar worth about $42.1 million to help the government meet its balance of payments needs. The IMF also approved a staff monitoring program to guide policy implementation and indicated that Madagascar must demonstrate the capability to sustain reforms to qualify for future requests for a credit facility.

Agriculture - products:

coffee, vanilla, sugarcane, cloves, cocoa, rice, cassava (manioc, tapioca), beans, bananas, peanuts; livestock products

Industries:

meat processing, seafood, soap, beer, leather, sugar, textiles, glassware, cement, automobile assembly plant, paper, petroleum, tourism, mining

Exports - commodities:

coffee, vanilla, shellfish, sugar, cotton cloth, clothing, chromite, petroleum products

Exports - partners:

France 15.2%, US 12.7%, China 7.1%, South Africa 5.9%, Japan 5.5%, Netherlands 5.4%, Germany 5.1%, Belgium 5%, India 4.4% (2015)

Imports - commodities:

capital goods, petroleum, consumer goods, food

Imports - partners:

China 24.8%, France 10.3%, Bahrain 5.6%, India 5.5%, Kuwait 4.5%, Mauritius 4.5%, South Africa 4.3% (2015)

Banking

Madagascar has relatively rudimentary financial markets and a very low rate of bank penetration. High interest rates, stringent requirements for collateral and guarantees, limited competition among banks, and reluctance to finance foreign trade or working capital even when secured by letters of credit make financing very expensive and difficult to access. The difficulty of increasing working capital through bank borrowing is a severe constraint on local firm's ability to expand. Banks maintain that many prospective borrowers lack reliable and transparent balance sheets and that long-term financing is difficult because they lack a long-term deposit policy. A substantial portion of domestic credit is effectively extended to the public sector because banks invest surplus funds in largely risk-free government treasury bills (bons de trésor). Only well- known and significant operators can get credit in Madagascar. The credit granted is mainly for the purchase of traditional agricultural products such as vanilla, coffee, and cloves. In case of pre-financing by foreign importers, local exporters still have to pay high interest rates to their banks. Generally speaking, the financing possibilities that are available to local firms are quite limited.

Section 4 - Investment Climate

Summary

Madagascar is an island nation located in the western Indian Ocean. In 2014, the first elected administration since 2009 assumed power. Since his election, the President has emphasized the importance of attracting foreign investment, citing private sector-led growth as the engine for the future economic development of Madagascar. To this end, the government has promised to undertake a number of revisions to update the legislative framework governing the business and investment environment.

Despite these intentions, attracting foreign direct investment has remained a challenge due to persistent corruption at all levels of government, a lack of resources, and the government's difficulty enforcing regulations. A severe lack of infrastructure, particularly in the areas of transportation and provision of electricity, also creates challenges. Though there is no formal discrimination against foreign investors, foreign companies are frequently the target of harassment by tax authorities and are often subject to nuisance suits regarding questionable tax assessments and labor law violations.

Extractive industries, particularly the mining sector, have been the largest driver of economic growth over the past few years, though the current slump in global demand for commodities has slowed activity in this sector over the past year. Nevertheless, 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 may present opportunities for U.S. suppliers of machinery and power generation equipment. Madagascar also has approximately 250 plus available oil exploration blocks, which it intends to auction off after passage of its revised petroleum legislation, planned for later this year.

Over the past year, the sectors that have attracted the most new foreign direct investment have been the services industry (call centers, focusing primarily on the francophone market) and light manufacturing in the apparel industry. Madagascar's eligibility for duty free access to the United States under the African Growth and Opportunity Act was reinstated in June 2014, and the extension by the U.S. Congress of the AGOA legislation for a further ten years in July 2015 has prompted further investment in the Malagasy apparel sector. Malagasy exporters under AGOA have begun to diversify from apparel to include other products, such as accessories and handicrafts.

Other sectors that are potentially attractive for U.S. investors include energy, construction, agribusiness, fisheries and aquaculture, and tourism. The government recently passed legislation establishing the first ever regulatory framework for public-private partnerships, and it will seek foreign investment to rehabilitate and extend its dilapidated infrastructure in accordance with its five-year National Development Plan.

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.

Despite presenting challenges to investment akin to those encountered in many other developing countries, Madagascar remains a country of vast resources and potential.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2015	123 of 168	https://www.transparency.org/country/#MDG
World Bank's Doing Business Report "Ease of Doing Business"	2015	164 of 189	doingbusiness.org/rankings
Global Innovation Index	2015	0.11 of 1.00	globalinnovationindex.org/content/page/data-analysis
U.S. FDI in partner country ($M USD, stock positions)	2014	$183.5	Madagascar Central Bank
World Bank GNI per capita	2014	$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, produces scorecards for countries with a per capita gross national income (GNI) of $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.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

The current administration of President Hery Rajaonarimampianina came into office after 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 improving the business and investment climate, citing private sector led growth as the engine for 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, which prioritizes the country's development objectives in the short to medium term.

Although the administration is welcoming in its attitude towards foreign investment, there are many impediments that make investing in Madagascar a challenge. These include weakness of the judicial system and banking sector, the high cost and low reliability of electricity, limited road, rail and port infrastructure, and the high cost of air transportation. Additionally, despite repeated pronouncements on the importance of combatting corruption, the administration has made little concrete progress in this field, and corruption continues to be deeply entrenched in all levels of government. Though there is no formal discrimination against foreign investors, foreign companies are frequently the target of harassment by tax authorities and are often subject to nuisance suits regarding questionable tax assessments, labor law violations and other matters.

Foreign share-holding in the telecommunications sector is capped at 66 percent of shares. Aside from this limitation, 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

The World Trade Organization (WTO) conducted an Investment Policy Review in the context of its last Trade Policy Review for Madagascar in July 2015. It is available at the following link: https://www.wto.org/english/tratop_e/tpr_e/tp418_e.htm.

At the request of the government, the United Nations Conference on Trade and Development (UNCTAD) also conducted an Investment Policy Review for Madagascar in October 2015. It too is available, in French, at the following link: http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=1384.

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

Laws/Regulations on Foreign Direct Investment

The major laws affecting foreign direct 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). A new law on Public Private Partnerships (Law 2015-039) was adopted in December 2015, establishing the first ever legal framework for public private partnerships in Madagascar, to include partnerships under the Build, Operate, Transfer (BOT) model and variants thereof.

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, freedom to transfer funds abroad without prior authorization, protections against expropriation and a stability clause guaranteeing investor privileges from future legal or regulatory measures. There is no legal requirement that nationals own shares of foreign investment (aside from the cap in the telecommunications sector), nor any restriction on the mobility of foreign investors.

The regime for visas, residence, and work permits is neither discriminatory nor excessively onerous. The Law on Free Zone Companies establishes a separate regime for companies exporting 95 percent or more of their production, as does the Law on Large Scale Mining Investments for companies invested in the mining sector above a certain dollar value threshold.

The government is in the process of updating its legislation pertaining to the mining and upstream petroleum industries and has a timeline for passage of the new legislation in the May-July 2016 parliamentary session. One of the stated objectives for these revisions is to make the legislative frameworks governing these sectors more attractive to foreign investment. Additionally, the government is developing new legislation on Special Economic Zones. This legislation will differ from the existing Law on Free Zone Companies by focusing on infrastructure and service provision incentives within specified geographic areas rather than on fiscal incentives for particular companies as in the existing legislation. The parliament is also expected to vote on this law during the May-July 2016 session.

The judicial system is nominally independent, though widely regarded as prone to corruption and subject to influence from the executive and other actors. Some foreign investors have complained that the courts abdicate their responsibility and do not rule on the substance of appeals, but rather dismiss cases based on technicalities.

Business Registration

The Economic Development Board of Madagascar (EDBM) is the one-stop shop for receiving, processing, and delivering the required administrative documents for establishment of all investment projects. The EDBM also certifies eligibility for companies to benefit from the special regime for Free Zone Companies and grants authorization for foreign investors to acquire land (though land lease titles must still be granted by the Ministry of Land Management). For other necessary authorizations, licenses and permits, the EDBM acts as the interface between the investor and the various agencies and institutions, though these agencies and institutions retain decision-making authority. The EDBM has significantly streamlined the process for establishing a business in Madagascar, and EDBM leadership is clearly dedicated to improving the investor experience in Madagascar. Nevertheless, 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/. Online business registration is in development, though it is not currently operational. According to the Director of EDBM, the delay in setting up online business registration is the result of coordination challenges between the EDBM and the various agencies and institutions that play a role in establishing investments.

The agencies and institutions with which a new foreign investor must register vary by sector, but at minimum these include the Tax Administration, the National Statistics Agency (INSTAT), and the Ministry of Justice, which maintains the register of companies formally operating in Madagascar. Foreign investors will also require work permits and residence permits, which the EDBM also facilitates. The nominal timeline for business registration is within 3-5 days. Since the creation of the EDBM, processing of residence and work permits has been streamlined, though these can still take from 2 weeks to 3 months.

Madagascar does not officially define micro, small and/or medium-sized enterprises, and does not extend any special services or preferences to facilitate investment by such smaller enterprises.

Industrial Promotion

The government incentivizes investment in manufacturing for export through its Law on Free Zone Companies (see section 15) and in the mining sector through its Law on Large Scale Mining Investments. English translations of these laws are posted on the EDBM website.

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 $25 million or more. These include attractive royalty and taxation rates designed to incentivize not only investment in the mining sector, but also local transformation of the mined substances. Tax rates on corporate profits are fixed at 25 percent, compared to 35 percent in the general tax regime, and fall to 10 percent if processing is done locally.

Limits on Foreign Control and Right to Private Ownership and Establishment

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 in the company in which they carry out their activities. The one exception is the telecommunications industry, where there is a cap on foreign shareholding of 66 percent. Investment in certain sectors is subject to specific regulations, including licensing requirements in the banking, insurance, mining, petroleum, telecommunications, medical, and pharmaceutical industries. However, national treatment is not denied to any foreign investor even in these sectors.

Privatization Program

Madagascar initiated a privatization program in 1996 and subsequently identified over fifty public enterprises for privatization. The targeted sectors included: agriculture, downstream petroleum, mining, transport, and telecommunications, among others. From 2003 to 2010, the government successfully privatized a number of firms through public tender processes, including a large cotton plantation and a telecommunications firm. Foreign investors were allowed to participate in these tenders. However, the privatization program stalled in 2010 and remains on hold with no timeline in place for further privatizations. The government continues to own shares in approximately 50 companies, and there is much public resistance to privatization of the remaining large state-owned enterprises, particularly the national airline and monopoly water and electric utility. Resumption of the privatization program will be contingent on the political will to overcome this resistance.

Screening of FDI

The government does not screen or approve investments, though some sectors (noted above) have specific licensing and permitting requirements that often include approval of investment plans.

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 called for the creation of an independent National Council of Competition (NCC) to rule on cases brought before it relating to unfair competition, including concentration of market share with potential adverse effects on competition. Despite passage of the Competition Law in 2005, this council was established only in September 2015.

2. Conversion and Transfer Policies

Foreign Exchange

Madagascar subscribes to the IMF's Article VIII statutory framework, which prohibits direct government limitation on foreign exchange use and availability. While some foreign exchange and specific capital controls exist, they are not especially restrictive. There are repatriation requirements for export earnings, which must be sold to the Interbank Currency Market (MID), comprised of the 10 commercial banks resident in Madagascar as well as the Central Bank, within 30 days of payment settlement. Investment Law (2007-036) provides foreign and local investors the freedom to freely transfer abroad without prior authorization, and there are no restrictions on converting or transferring funds associated with a foreign investment. When delays occur in conversion or funds transfer, they are due to temporary shortages of foreign currency on hand.

The exchange rate is market determined and fluctuates daily. The Central Bank reserves the right to intervene in the foreign exchange market to avoid abrupt variations in the exchange rate. Throughout 2014, the Central Bank 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 differed from the daily average up to that point. This led to divergences between the official published rate and the market rate, though the practice was halted in September 2015 at the behest of the IMF. Since the abandonment of this practice, the local currency has stabilized against the dollar.

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 legal parallel market for investors to remit. There is no stock market and the government does not emit dollar-denominated bonds. However, there is also 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 concerning foreign investors.

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.

The following courts in each of the country’s six provinces have standing to hear intellectual property cases: the Commercial Courts in Antananarivo, Tamatave, Mahajanga, and Diego Suarez and the Courts of First Instance in Fianarantsoa and Tulear. Claims of unfair labor practices are heard by specialized Labor Courts. The Malagasy judicial system is slow and complex and has a reputation for opacity, corruption, and executive influence.

Madagascar is a member state to the International Center 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.

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 a 2010 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. Madagascar has been involved in three investment disputes with German and Mauritian entities mediated by ICSID. The first two, in 1982 and 1994, were resolved between the parties before recourse to an arbitral award, while the third, lodged in 2013, has yet to result in an arbitral award.

International Arbitration

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

Madagascar has no bilateral investment treaty or free trade agreement with the United States.

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. The CAMM mediated eight cases in 2014 and four cases in 2015.

ICSID Convention and New York Convention

Madagascar is a party to both the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) and the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Madagascar ratified the ICSID in 1966 and the New York Convention in 1962.

Duration of Dispute Resolution – Local Courts

According to a workshop held by EDBM and the International Finance Corporation in 2015, the average duration to obtain a resolution of an investment/commercial dispute in the local court system was 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 the CAMM, the local alternate dispute resolution mechanism. Slowness and corruption are also encountered during the subsequent enforcement of the court decision or arbitration award.

The average duration of arbitration cases handled by the CAMM over the last two years is one and a half months for arbitrations and five and a half months for mediations, according to representatives from the institution.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

According to the Ministry of Commerce, the government has not notified the WTO of any measures that are inconsistent with the requirements of the WTO's Trade Related Investment Measures (TRIMs) obligations.

Investment Incentives

Madagascar extends certain incentives for investment, outlined in domestic legislation and regulations, particularly under the Free Zone Company regime and in the mining sector under the Law for Large Scale Mining Investments. See above under "Industrial Promotion" and below under "Free zones" for a description of these investment incentives. Free Zone companies operate under relaxed labor regulations, particularly regarding overtime provisions, and some allege that this results in abuses (also see Section 15 – Labor).

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. In all other sectors, the Investment Law 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.

There are no government-imposed conditions on permission to invest, and Madagascar's tariffs adhere to WTO guidelines. There are no requirements in place regarding the use of local content in goods or technology.

The only performance requirements in place are those that mandate foreign investors have a company representative resident in Madagascar within three months of company creation, and that authorization for access to land is contingent upon commencement of the business activity within six months of receiving the lease title. Additionally, in order to maintain eligibility for the Free Zone regime, companies must continue to meet the requirement to export 95 percent of their output.

Data Storage

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. 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.

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 existing formal and informal property rights. The reform reversed the presumption of state ownership of land and decentralized land registration. Occupied land lacking formal title is no longer considered part of the state domain, and the inhabitants occupying these plots now have recourse to formalize their ownership. The state domain has shrunk considerably, now consisting only of land formally titled to the state and untitled, unoccupied land. Despite the initiation of this reform, which was interrupted by the political crisis from 2009-2013, only between 5-10 percent of all land currently has formal title, though the current administration is continuing efforts to formalize property rights.

The Investment Law (2007-036) provides foreign investors authorization to acquire real estate property through leases with a maximum, renewable duration of 99 years, so long as the property is solely and continuously used to carry out commercial activity. Foreigners cannot directly own land, and the law specifically prohibits the acquisition of land by foreign investors for resale in its original state, or for resale after development. Foreigners can be leased land from the state domain, or can acquire formally titled land from private third parties.

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.

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 foreign companies to experience difficulties enforcing their rights.

Major brands are generally respected, but pirated copies of DVDs, CDs, software and spare parts are sold openly. Additional products subject to counterfeiting include foodstuffs, clothing items, mobile phones, cigarettes, and cosmetics, among others. Most of these products are imported. The Ministry of Commerce also notes significant imports of counterfeited TV sets and audio equipment. Though the Commerce Ministry has seized counterfeit goods found in the markets during unannounced inspections in the past, these raids are infrequent due to a lack of resources. The government does not maintain statistics on seizures.

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.

A draft bill to modernize intellectual property protections has been under development, and is expected to be presented to the parliament in the May-July 2016 session. 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 can be referred to:

Paul Harrison
Chief, Political-Economic Section
U.S. Embassy Antananarivo
Lot 207 A, Point Liberty, Andranoro, Antehiroka
105 Antananarivo, Madagascar
+261 33 443 2408
HarrisonPQ@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

7. Transparency of the Regulatory System

Bureaucracy and inconsistency in the application of regulations hinder investment and can lead to corrupt practices. Though the existing legislation attempts to establish clear rules of the game, corruption, 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, was only recently established in November 2015. Though it is now operational, its effectiveness in enforcing competition rules cannot yet be evaluated.

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, and foreign companies report being targeted for frivolous tax assessments and nuisance suits pertaining to alleged violations of such regulations. 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. Traditionally, only the annual budget and finance law is open for comment from the private sector, but the current government has also sought comment on proposed laws and regulations in specific areas from a limited pool of stakeholders. These include proposed laws on public private partnerships, and the mining and upstream petroleum industries. The general public, however, is as a whole not typically included in these consultations.

Companies in Madagascar use an accounting framework, *Plan Comptable 2005*, which is compatible with International Accounting Standard/International Financial Reporting Standard norms.

8. 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. Malagasy citizens and/or companies based in Madagascar, whether foreign or locally owned, are allowed to purchase government bonds. Foreign investors are also allowed to purchase corporate stocks and bonds, but these are only infrequently advertised for sale.

Banks are free to support the flow of resources in the product and factors markets, and credit is allocated on market terms. However, the banking sector is relatively small, 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 short to medium term in nature, and there is no corporate or municipal debt market in the country, aside from the irregular and infrequent sales of corporate stocks and bonds.

Money and Banking System, Hostile Takeovers

Madagascar's financial sector is comprised of 10 commercial banks, all of which are subsidiaries of foreign banks, mostly based in Mauritius, France and mainland Africa. The total assets of the banking sector as a whole were approximately $2.2 billion in 2015, and the top four banks accounted for approximately 87 percent of the overall assets. 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. The non-performing loans ratio decreased to 10.6 percent of total loans in 2015, down from 13.8 percent in 2014. Nevertheless, the sector remains profitable, with a return on equity of approximately 30 percent.

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. Currently, a draft revision to the Central Bank legislation is awaiting approval by the cabinet before submission to the parliament in the May-July 2016 session. The revision will guarantee increased autonomy for the Central Bank and will gradually reduce the maximum limit of statutory advances extendable to the government from the current 15 percent of the prior year’s fiscal revenues to nearly zero percent.

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

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

9. Competition from State-Owned Enterprises

The state has shares in fifty-three companies in a wide range of sectors to include: tourism, downstream petroleum distribution, telecommunications, agribusiness, insurance, fisheries, transportation, real estate, mining, and energy. Of these, ten enterprises are wholly owned by the government, including the managing company of the country’s largest port and the monopoly electric and water utility. An additional ten enterprises have majority share-holding by the state, including the national airline, with 89 percent state ownership. The total capitalization of the ten wholly-owned enterprises was estimated at $70.5 billion in 2014,

including $52 billion for the electric and water utility. Complete figures on numbers of people employed by state-owned enterprises (SOE) were not available. The Directorate General of the Treasury within the Ministry of Finance maintains a list of companies with state share-holding on its website:
http://www.tresorpublic.mg/?page_id=214&content=temp&type=statistique.

State-owned enterprises purchase from and supply goods and services to the private sector. There are no reports of discrimination in favor of SOEs in regards to government contracts, taxation, or material advantage. However, certain SOEs maintain monopolies and are regularly subsidized by the state, namely the national airline and water and electric utility. In theory, SOEs are 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 absorb their losses. The percentage of funds allocated to research and development by the major SOEs is generally insignificant to non-existent.

OECD Guidelines on Corporate Governance of SOEs

In September 2014, Law 2014-014 on State Participation in Commercial Enterprises was enacted, and a subsequent implementation decree was adopted by the Cabinet in May 2015. This legislation and accompanying regulations stipulate that enterprises with whole or majority state shareholding are to be managed by: a General Assembly, the deliberative body composed of shareholders; an Administrative Board, the leadership element with seats allocated proportionally according to shareholding; and a General Directorate, the executive element. The state's participation as a shareholder in these enterprises is to be managed solely by the Director General of Treasury, under instructions from the Minister of Finance, and no other government representatives are allowed to participate on the Administrative Boards. In companies where the state is sole or majority shareholder, the Treasury is to recruit senior leadership to serve on the General Directorate. Line ministries, according to this reform, are limited to overseeing the General Policy of the State within the respective sectors and are prohibited from direct interference in the management of the SOEs.

The goal of the above reform was to limit the role of the state in SOEs to that of shareholder, while minimizing political interference in the operations of these enterprises, which has historically been rife. Previously, line ministries appointed senior leadership through government decree, and allocation of seats on the Administrative Boards was subject to political and other considerations. Although some progress has been made since enactment of the reform, with some SOEs making efforts to reorganize their corporate governance structures to suit the provisions of the law, the reform is far from complete. Line ministries continue to exert considerable influence over the management of these companies. 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 or asset management bureau exists in the country, though a Privatization Trust Fund was established in 1996. The sole function of this trust fund is to manage the state's minority shares in privatized enterprises in preparation for their auction to the local private sector. The trust fund currently manages $20 million in assets.

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.

10. Responsible Business Conduct

Most large, formal sector companies, particularly those with foreign investment, apply corporate social responsibility (CSR) principles. These firms are not required to make public disclosure of their CSR policies, though most do publicize their efforts. Public opinion is favorable regarding those firms who pursue CSR.

There is no national framework for the promotion of responsible business conduct. The government enforces labor, employment rights, and consumer and environmental protections in part through periodic inspections. Social and environmental impact mitigation measures for investment projects are also monitored regularly through the existing environmental and social impact assessment framework. However, a lack of resources and capacity impedes the effectiveness of this enforcement. Nevertheless, the government does not waive requirements in order to attract foreign investment, except for some particular exemptions to its labor code provided to Free Zone companies having to do with overtime restrictions.

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. Additional local associations, such as the Association for Free Zone Exporting Companies (GEFP – after its initials in French), which currently encompasses about half of all Free Zone certified companies, impose their own requirements for adherence to local and international standards as conditions for membership.

There is also a vibrant NGO and Civil Society sector, particularly regarding environmental, labor and population issues, but it too suffers from a lack of resources and capacity outside of the international organizations. These organizations are generally able to do their work freely.

The government participates in the Extractive Industries Transparency Initiative (EITI). The country was reinstated as an EITI candidate country in 2014 after a suspension following the 2009 coup d'état. However, the government has fallen behind on its contributions to the initiative and the EITI National Secretariat has recently had to rely on external contributions to fund its operations.

11. Political Violence

Although Madagascar has a history of coups and political instability, it does not have a significant history of political violence. There have been occasional demonstrations and strikes in the urban areas over the past few years, but most of these were monitored and resolved without incident. The last incidents of politically motivated violence of some scale occurred during the 2009 coup d'état, when security forces opened fire on demonstrators. A number of installations belonging to TIKO, the agribusiness group owned by the then President Marc Ravalomanana, were destroyed in actions during and immediately following the coup. Since then, there have been some isolated incidents of violence but no widespread civil unrest.

In December 2014, employees of a sugar factory in the western city of Morondava clashed with security forces and subsequently 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 $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 Tamatave, 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 become an increasing problem in the rural south of the country over the past few years. Armed bandits have become increasingly organized and brazen, launching raids resulting in the thefts of thousands of heads of cattle while inflicting wanton violence, leaving hundreds of civilians and security forces dead. The situation has prompted the deployment of successive security force operations that have resulted in limited success. The last of these operations concluded in December 2015, and a new special anti-cattle-rustling unit has since been created. The problem has persisted, and the new unit has already been engaged in armed clashes with bands of cattle-rustlers. The unrest, however, does not appear to be motivated by anything other than plunder, and is likely to remain localized to the rural southern regions of the country.

12. Corruption

Among the 168 countries surveyed by Transparency International in 2015, Madagascar ranked 123rd with a score of 28/100.

Giving or accepting a bribe is a criminal act and is subject to trial by court. Nevertheless, a lack of enforcement of existing legislation opens the door to widespread corruption. High levels of corruption exist in all sectors, but are most pervasive in the following areas: judiciary, police, tax, customs, land, trade, mining, industry, environment, education, and health.

The current government has continually emphasized the importance of combatting corruption, and began work in 2015 on a 10-year National Anti-Corruption Strategy. Despite the strengthened rhetoric, however, significant, concrete results have yet to materialize. High profile traffickers of rosewood and other natural resources, rumored to have high-level government connections, continued to escape prosecution in 2015. There continues to be a widespread perception of impunity for the well-connected.

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. Both of these institutions are hindered by inadequate resources. 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, most foreign companies have oriented 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.

Although U.S. firms have reported low level corruption as an almost daily nuisance, they have not, to date, identified corruption as a specific obstacle to FDI.

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, BP 399 - 101 Antananarivo, Madagascar
+261 20 22 489 79; +261 20 22 489 93
contact@bianco-mg.org
www.boanco-mg.org

A watchdog organization:

Mr. Frederic Lesne
Executive Director
Transparency International Initiative, Madagascar
Lot IVD 20 Rue Dr. Zamenhoff (1er etage), Behoririka, 101 Antananarivo, Madagascar
+261 34 96 418 79
contact@transparency.mg

13. Bilateral Investment Agreements

Bilateral Taxation Treaties

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 the U.N. Conference on Trade and Development (UNCTAD), Madagascar has concluded bilateral investment agreements with Belgium, China, France, Germany, Mauritius, Norway, Sweden, and Switzerland. It has other Investment Agreements with the European Union and COMESA.

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

14. Foreign Trade Zones/Free Ports/Trade Facilitation

The Free Zone regime, established by the Law on Free Zone Companies enacted in 2008, was further clarified by an implementing decree adopted only in March 2015. The regime is applicable to companies that export 95 percent of their production and that operate in specific categories of activities. These include: enterprises engaged in manufacturing as categorized by the United Nations International Standard Industrial Classification (ISIC); enterprises engaged in intensive basic production in agriculture, livestock and fisheries resources, and service enterprises active in specific fields, including telemarketing and telecommunications. The Free Zone regime provides fiscal and other advantages, to include: exemptions from corporate income tax for up to five years and a 10 percent corporate income tax liability thereafter, exemptions from customs and export duties and taxes, and automatic reimbursement of VAT.

These incentives are extended both to foreign and local investors without discrimination. There is currently no legislation establishing geographic Free Trade Zones in Madagascar, though the government hopes to pass such legislation in the next parliamentary session from May-July 2016.

15. 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	$10,674	2014	$10,590	www.worldbank.org/en/country
Foreign Direct Investment	**Host Country Statistical source**		**USG or international statistical source**		**USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other**
U.S. FDI in partner country ($M USD, stock positions)	2014	$183.5	2011	$150	UNCTAD
Host country's FDI in the United States ($M USD, stock positions)	N/A	N/A	N/A	N/A	N/A

Total inbound stock of FDI as % host GDP	2014	60.5%	2011	49%	UNCTAD

Table 3: Sources and Destination of FDI

Madagascar is not included in the IMF CDIS data. The following figures come from the Central Bank which makes an annual survey on FDI along with the National Statistics Institute (INSTAT). The latest available statistics are as of 2013. There are no figures for outward direct investment from Madagascar.

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	554.9	100%	Total Outward	Amount	100%
Mauritius	342.1	61.6%	N/A	N/A	N/A
France	100.2	18.1%	N/A	N/A	N/A
USA	16.4	2.9%	N/A	N/A	N/A
UK	9.0	1.6%	N/A	N/A	N/A
"0" reflects amounts rounded to +/- USD 500,000.					

Table 4: Sources of Portfolio Investment

There are no data available regarding foreign portfolio investment in Madagascar. Foreigners are prohibited from purchasing internal debt securities and Treasury bills (though Malagasy companies with foreign ownership are not subject to this restriction). The absence of a domestic stock market also inhibits foreign investment in Malagasy companies, though foreigners are not prohibited from purchasing corporate shares or bonds on the infrequent occasions when they are advertised for sale.

Section 5 - Government

Chiefs of State and Cabinet Members:

For the current list of Chief of State and Cabinet Members, please access the following - Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments

Legal system:

civil law system based on the old French civil code and customary law in matters of marriage, family, and obligation

International organization participation:

ACP, AfDB, AU (suspended), CD, COMESA, EITI (candidate country), FAO, G-77, IAEA, IBRD, ICAO, ICC (national committees), ICRM, IDA, IFAD, IFC, IFRCS, ILO, IMF, IMO, InOC, Interpol, IOC, IOM, ISO (correspondent), ITSO, ITU, ITUC (NGOs), MIGA, NAM, OIF (suspended), OPCW, PCA, SADC (suspended), UN, UNCTAD, UNESCO, UNHCR, UNIDO, UNWTO, UPU, WCO, WFTU (NGOs), WHO, WIPO, WMO, WTO

Section 6 - Tax

Exchange control

There are no restrictions on converting or transferring funds associated with foreign investment, including remittances of investment capital, earnings, loan repayments, lease payments into a freely usable currency and at a legal market clearing rate.

Treaty and non-treaty withholding tax rates

Madagascar has concluded 2 tax treaties

Methodology and Sources

Section 1 - General Background Report and Map

(Source: CIA World Factbook)

Section 2 - Anti – Money Laundering / Terrorist Financing

	Lower Risk	Medium Risk	Higher Risk
FATF List of Countries identified with strategic AML deficiencies	Not Listed	AML Deficient but Committed	High Risk
Compliance with FATF 40 + 9 recommendations	>69% Compliant or Fully Compliant	35 – 69% Compliant or Fully Compliant	<35% Compliant or Fully Compliant
US Dept of State Money Laundering assessment (INCSR)	Monitored	Concern	Primary Concern
INCSR - Weakness in Government Legislation	<2	2-4	5-20
US Sec of State supporter of / Safe Haven for International Terrorism	No	Safe Haven for Terrorism	State Supporter of Terrorism
EU White list equivalent jurisdictions	Yes		No
International Sanctions UN Sanctions / US Sanctions / EU Sanctions	None	Arab League / Other	UN , EU or US
Corruption Index (Transparency International) Control of corruption (WGI) Global Advice Network	>69%	35 – 69%	<35%
World government Indicators (Average)	>69%	35 – 69%	<35%
Failed States Index (Average)	>69%	35 – 69%	<35%
Offshore Finance Centre	No		Yes

Section 3 - Economy

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: CIA World Factbook)

Section 4 - Foreign Investment

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: US State Department)

Section 5 - Government

Names of Government Ministers and general information on political matters.

(Source: CIA World Factbook / https://www.cia.gov/library/publications/world-leaders-1/index.html)

Section 6 - Tax

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: OECD Global Forum on Transparency and Exchange of Information for Tax Purposes PKF International)

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