

Malawi

RISK & COMPLIANCE REPORT

DATE: March 2018

Executive Summary - Malawi	
Sanctions:	None
FATF list of AML Deficient Countries	No
Higher Risk Areas:	Not on EU White list equivalent jurisdictions Corruption Index (Transparency International & W.G.I.) Failed States Index (Political Issues)(Average Score)
Medium Risk Areas:	Non - Compliance with FATF 40 + 9 Recommendations World Governance Indicators (Average Score)
<p>Major Investment Areas:</p> <p>Agriculture - products: tobacco, sugarcane, cotton, tea, corn, potatoes, cassava (tapioca), sorghum, pulses, groundnuts, Macadamia nuts; cattle, goats</p> <p>Industries: tobacco, tea, sugar, sawmill products, cement, consumer goods</p> <p>Exports - commodities: tobacco 53%, tea, sugar, cotton, coffee, peanuts, wood products, apparel</p> <p>Exports - partners: Canada 9.8%, Zimbabwe 9.5%, Germany 6.7%, South Africa 6.3%, Russia 6%, US 5.7%, Egypt 5.3% (2012)</p> <p>Imports - commodities: food, petroleum products, semi-manufactures, consumer goods, transportation equipment</p> <p>Imports - partners: South Africa 26.5%, China 16.2%, Zambia 9.1%, India 8.5%, Tanzania 5.5%, US 4.1% (2012)</p>	
Investment Restrictions:	

The government encourages both domestic and foreign investment in most sectors of the economy without restrictions on ownership, size of investment, source of funds, or the destination of the final product. There is no government screening of foreign investment in Malawi. Apart from the privatization program, the government's overall economic and industrial policy does not have discriminatory effects on foreign investors. 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 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.

There are some restrictions to land ownership by foreigners.

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Section 1 - Background

Established in 1891, the British protectorate of Nyasaland became the independent nation of Malawi in 1964. After three decades of one-party rule under President Hastings Kamuzu BANDA the country held multiparty elections in 1994, under a provisional constitution that came into full effect the following year. President Bingu wa MUTHARIKA, elected in May 2004 after a failed attempt by the previous president to amend the constitution to permit another term, struggled to assert his authority against his predecessor and subsequently started his own party, the Democratic Progressive Party (DPP) in 2005. MUTHARIKA was reelected to a second term in May 2009. As president, he oversaw some economic improvement in his first term, but was accused of economic mismanagement and poor governance in his second term. He died abruptly in April 2012 and was succeeded by his vice president, Joyce BANDA. Population growth, increasing pressure on agricultural lands, corruption, and the spread of HIV/AIDS pose major problems for Malawi.



Section 2 - Anti – Money Laundering / Terrorist Financing

FATF status

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

Compliance with FATF Recommendations

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in Malawi was undertaken by the Financial Action Task Force (FATF) in 2008. According to that Evaluation, Malawi was deemed Compliant for 4 and Largely Compliant for 13 of the FATF 40 + 9 Recommendations. It was Partially Compliant or Non-Compliant for 3 of the 6 Core Recommendations.

Key Findings from latest Mutual Evaluation Report (2008):

The biggest crime challenge facing Malawi at present is the production and trade in Cannabis Sativa (Indian Hemp). Cannabis Sativa is extensively cultivated in the remotest parts of the country and it's production is steadily increasing. It is reported that the trade is worth millions of dollars. It's unlikely the situation can be reversed in the short term. Anecdotal evidence indicates that Malawi is a transshipment point for other forms of narcotics trafficking, due to its porous borders. Very little is known about the proceeds generated or laundered from the trade in Cannabis sativa.

Law enforcement agencies have paid a great deal of attention to human trafficking. Malawi was recently commended on its efforts in this regard in a report published by the United States Department of State. Billboards along streets and highways of towns in Malawi were evidence of these efforts.

Aside from drug trafficking, the highest levels of cases under investigation are for armed robbery of vehicles, fraud and corruption.

Although Malawi has not experienced a terrorist attack, the porous borders pose a threat to Malawi. Discussions with the authorities revealed that in 2003 individuals allegedly linked to Al-Qaeda were located in Malawi and deported. The authorities did provide valuable assistance to the United States government in a terrorism related case. It involved five Al-Qaeda suspects, all foreign nationals who were arrested in Blantyre in a joint operation between the governments of America and Malawi. They were suspected of financing terrorism through a charitable organization. The suspects were extradited into the hands of the American authorities. This does in some way indicate the kind of effort the authorities in Malawi could provide in implementing the terrorism financing provisions of the ML & TF Act.

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

Key Findings from the report are as follows: -

Perceived Risks:

Malawi is not a regional financial center. The main source of illegal profits in Malawi derives from public corruption. Malawi is currently addressing a major corruption scandal popularly known as "Cashgate" centering on the looting of government accounts by public officials through fraudulent transactions in the government's computerized payments system. High ranking officials, including a former Minister of Justice, a former budget director, and a former Defense Force chief have been indicted in the scheme. The Financial Intelligence Unit (FIU) Monitoring and Analysis Manager was arrested in August 2015 and charged with money laundering, misuse of office, and breach of confidentiality as part of the same investigation.

Another significant source of illicit funds is the production and trade of cannabis sativa (Indian hemp), which is cultivated in some remote areas of the country. Anecdotal evidence indicates Malawi is a transshipment point for other forms of narcotics. Human trafficking, vehicle hijacking, wildlife trafficking, and fraud are also areas of concern.

Smuggling and the laundering of funds are exacerbated by porous borders with Mozambique, Zambia, and Tanzania. There are indications of trade-based money laundering, mostly through over- and under-invoicing. There are also cases of goods smuggled across the border; it is believed contraband smuggling generates proceeds that could be laundered through the financial system. Some of the trade-based money laundering is reportedly linked to Pakistan and India. Money/value transfer systems, such as hawala, are a concern. Malawi has a cash-based economy and there are usually few paper trails to follow in financial investigations.

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, microfinance institutions, leasing and finance companies, lawyers, legal practitioners, notaries, casinos and other gaming entities, real estate agents, trust and company service providers, foreign exchange bureaus, accountants, auditors, dealers in precious metals and stones, safe custody services, buyers and sellers of gold bullion, stock brokers, and the stock exchange

REPORTING REQUIREMENTS:

Number of STRs received and time frame: 89: November 1, 2014 - October 31, 2015
Number of CTRs received and time frame: 2,173,706: November 1, 2014- October 31, 2015
STR covered entities: Banks, foreign exchange bureaus, microfinance institutions, money transmitting firms, discount houses, insurance companies, real estate agencies, casinos, accountants, lawyers, dealers in precious metals and stones, capital markets

MONEY LAUNDERING CRIMINAL PROSECUTIONS/CONVICTIONS:

Prosecutions: 36 in 2015
Convictions: 11 in 2015

RECORDS EXCHANGE MECHANISM:

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

Malawi is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), a FATF-style regional body.

ENFORCEMENT AND IMPLEMENTATION ISSUES AND COMMENTS:

Although the Government of Malawi has enacted AML/CFT legislation and implementing regulations, the development of institutional capacity and mechanisms is still lacking. In 2013, the FIU drafted revisions to the Money Laundering Act that, if adopted, would empower the FIU to investigate and prosecute cases and ensure greater funding for its operations; however, in 2015 the proposal remained under review within the Ministry of Justice.

Not all of the entities responsible for conducting customer due diligence are complying with the law. Authorities believe a deficient national identification system makes it difficult for financial institutions to require a standard form of identification. Due to a low 1 million Malawi kwacha (approximately \$1,370) threshold for reporting transactions to the FIU, it becomes inundated with reports without adequate resources to analyze them.

Malawi's first successful prosecutions and convictions for money laundering, in October 2014, came against suspects implicated in the "Cashgate" corruption scandal. This experience has underscored, but also begun to result in Malawi rectifying, authorities' lack of capacity and investigative and prosecutorial expertise. In light of this experience, an area of particular concern is the courts and judges' understanding of the scope and application of the relevant laws and technical modalities of how money laundering can occur.

The Government of Malawi should pass the proposed revisions to the Money Laundering Act. Malawi also should work toward full implementation of its AML/CFT legislation.

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

According to the US State Department, Malawi conforms with regard to all government legislation required to combat money laundering.

EU White list of Equivalent Jurisdictions

Malawi 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

Malawi is not considered to be an Offshore Financial Centre

US State Dept Narcotics Report

No report available

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

Malawi 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.

Malawi is a source country for men, women, and children subjected to forced labor and sex trafficking. To a lesser extent, it is a destination country for men, women, and children from Zambia, Mozambique, the Great Lakes region, and the Horn of Africa who are subjected to labor and sex trafficking, and a transit country for people from these countries exploited in South Africa. Most Malawian trafficking victims are exploited within the country, generally transported from the southern part of the country to the central and northern regions for forced labor in agriculture (predominantly the tobacco industry), goat and cattle herding, and brickmaking. Many cases of child labor external to the family involve fraudulent recruitment and physical or sexual abuse, indicative of forced labor. Traffickers—primarily facilitators or brothel owners—typically lure children from their families in rural areas under pretenses of employment opportunities, clothing, or lodging for which they are sometimes charged exorbitant fees, resulting in prostitution coerced through debts. Traffickers subject teenage boys to forced labor on farms and young girls to sexual exploitation in nightclubs or bars. Children are also subjected to forced labor in begging, small businesses, and potentially in the fishing industry; in past years, some were coerced to commit crimes. Adult tenant farmers are also vulnerable to exploitation, as they incur debts to landowners and may not receive payment during poor harvests. Malawian victims of sex and labor trafficking have been identified in Mozambique, South Africa, Zambia, and Tanzania. Reports from previous years suggest young girls are drugged, gang-raped, and exploited in commercial sex. Some girls recruited for domestic service are instead forced to marry and subsequently subjected to child sex trafficking by their “husbands.”

The Government of Malawi does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Authorities retained anti-trafficking training in the police academy curricula and worked with foreign governments to repatriate 23 trafficking victims during the year. The government enacted the anti-trafficking legislation passed in the previous reporting period but did not use it to prosecute traffickers in 2015. Delays in enacting and training officials on the new anti-trafficking law inhibited its full enforcement until late in the year, resulting in an ineffective deterrence. Although Malawian authorities reported more than twice as many trafficking convictions in 2015 (58) compared with 2014 (25), the administered punishments were uneven with some receiving weak and poorly deterring sentences. The government identified approximately 197 trafficking victims, a decrease from 242 the previous year, but it did refer approximately 150 potential victims for protective services in 2015; it referred 100 in 2014. It continued to lack standardized procedures to effectively identify victims and provide them adequate protection and to rely

on international organizations and NGOs to fund and implement most anti-trafficking programs.

US State Dept Terrorism Report

No report available

International Sanctions

None applicable

Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	31
World Governance Indicator – Control of Corruption	24

Corruption is rife in Malawi and poses serious compliance risks to businesses investing in the country. All sectors of the economy suffer from widespread corruption, and large networks of clientelism and patronage exist. In addition, extensive bureaucracy and red tape provide a fertile environment for facilitation payments and bribery. Companies contend with corruption and bribery in almost all operations, from obtaining licenses to bidding on public contracts. Malawi has a comprehensive anti-corruption legal framework, yet enforcement is poor and officials sometimes engage in corruption with impunity. The Penal Code and the Corrupt Practices Act criminalize active and passive bribery, extortion and abuse of office, among other offenses, in both the public and the private sectors. Gifts are also criminalized, yet the practice is widespread. **Information provided by GAN Integrity.**

US State Department:

The Corrupt Practices Act (No.18 of 1995), under Section 4(1) establishes the Anti-Corruption Bureau (ACB). The Director and the Deputy Director of the Bureau are both appointed by the President subject to confirmation by the Public Appointments Committee of Parliament. The Bureau began full operations in 1998. On April 16, 2004 the Corrupt Practices Act was amended giving the ACB increased powers to carry out its work of controlling corruption in Malawi. The definition of corruption was widened to include, among other things, offences for abuse of office and possession of unexplained wealth.

As a result of the amendment, 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 for protection of "whistleblowers," which was absent in the original law.

The ACB has a legal mandate of preventing corruption in Malawi. It is therefore given the function of taking a lead in the fight against corruption.

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 (\$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; their prosecution is underway.

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.

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 Bureau has embarked on a program to assist 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" and deals with corruption issues within the private sector. The civil society organizations also formed their own institution called "Civil Society Action Against Corruption" to deal with corruption within the civil society. 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. Malawi's Penal Code prohibits bribery. Giving or receiving a bribe—whether to or from a Malawian or foreign official—is a crime under Malawi's penal code.

ACB co-operates with other anti-corruption bureaus in the region.

Corruption and Government Transparency - Report by Global Security

Political Climate

Despite being one of the least developed countries in the world, Malawi has experienced substantial economic growth in recent years, with GDP growth rates around 7% since 2008. However, GDP per capita has hardly changed over the past 10 years. The economy is heavily reliant on agriculture with tobacco being the main export. Inflation rates have also steadily declined and the country has completed its three-year Poverty Reduction and Growth Facility (PRGF), meeting almost all targets.

Democratic elections have been held regularly in Malawi since 1994, when the one-party rule of President Banda came to an end. Today, the country enjoys political stability, while the state retains a monopoly on the use of force and a general framework for good governance is in place. President Bingu Wa Mutharika was elected for a second term in office in May 2009. Since his first term, he has made the fight against corruption a top priority of the government. This priority led him to leave the United Democratic Front (UDF) party through which he was elected in order to form a new party, the Democratic Progressive Party (DPP). He left the UDF due to the party's opposition to his anti-corruption campaign. However, his government has not been free from political corruption and the opposition and civil society groups have criticised the anti-corruption campaign for being biased, as it mostly targets political opponents. During Mutharika's first time in office several former ministers and senior UDF party officials were arrested on corruption charges and, in April 2008, former Minister of Education Sam Mpasu was sentenced to six years imprisonment for accepting bribes. In February 2009, former President Muluzi was arrested by Malawi's Anti-Corruption Bureau charged for allegedly diverting money meant for development projects into his

private account. The arrest made UDF accuse the government of launching a witch hunt. The trial began in March 2011, but was adjourned shortly after due to the poor health of Muluzi.

Malawian society remains highly affected by corruption and, according to EISA 2007, the Malawian government is estimated to lose more than MWK 22 million a year to corruption. Petty, political and grand corruption is widespread. The government launched the National Anti-Corruption Strategy in 2009, with a broad approach to dealing with corruption. The Anti-Corruption Bureau (ACB) lacks the necessary support, giving rise to allegations that there is a lack of political will to fight corruption. The ACB has achieved 60 corruption convictions since 2004, according to Freedom House 2010. More and more sources agree that the anti-corruption campaign is genuine, but what they all agree upon is that a system of political patronage and that accessing personal wealth through politics continue.

Nevertheless, since President Mutharika took office in 2004, many corrupt figures from the former government of Bakili Muluzi have been prosecuted and, according to Afrobarometer 2008, 60% of Malawians believe that the government is fighting corruption well. Moreover, according to the Transparency International Global Corruption Report 2008, corruption in Malawi has not had a negative impact on the public's perception of government institutions. Despite this perception, however, it is generally perceived among Malawians that the level of corruption is pervasive and increasing. According to Afrobarometer 2007, approximately 9% of the Malawian population has personally experienced corruption. However, data from a World Bank Governance and Corruption Baseline Survey 2006 of households and companies indicates that 90% of citizens believe corruption is a serious problem for the country's development and as much as 70% believe the problem worsened over the previous decade. Moreover, although the judiciary operates relatively independently, its meagre resources are overstretched and abuse of office and corruption continue to increase. According to the World Bank Governance and Corruption Baseline Survey 2006, the courts receive lower ratings from citizens than from companies. Some political actors within the government do not accept the independent status of the judiciary or the legislature, and civil society in Malawi is very weak.

Business and Corruption

Malawi belongs to a group of the world's least developed countries and thus faces many problems. The country is heavily dependent on donor funding to support the national budget and as a contribution to foreign exchange. In 2007, net external development aid to the country reached USD 735 million. Business development is marked by macroeconomic instability, which has resulted in private companies mainly operating in the informal sector.

Some sources indicate that corruption, traditionally a major problem for doing business in Malawi, has become less of a problem in recent years. The previous World Bank & IFC Enterprise Surveys 2006 reported that almost half of the companies surveyed considered corruption in Malawi to be a major constraint for operating a business, while more than 35% of companies reported paying bribes in order to 'get things done'. However, the World Bank & IFC Enterprise Surveys 2009 reports that only 12.8% of the companies surveyed now perceive corruption as a major constraint for doing business and 10.8% indicate that they expect to pay bribes to 'get things done'. The World Economic Forum Global Competitiveness Report 2010-2011 paints a similar picture. Corruption has dropped down on

the list of obstacles that companies face, as business executives perceive corruption as the fifth most problematic factor for doing business in Malawi. Surveyed business executives give the level of diversion of public funds to companies, individuals or groups due to corruption a score of 3.9 on a 7-point scale (1 being 'very common' and 7 being 'never occurs'). This change in perception might be influenced by the establishment of the Business Action Against Corruption (BAAC) initiative and the drafting of a Business Code of Conduct in 2006. The BAAC was established in Malawi as a joint initiative between the business community and representatives of government, civil society and donor agencies as well as the media - see 'Private Anti-Corruption Initiatives' in the Initiatives section to read more about the BAAC.

Companies should note that although trade is in the process of being liberalised and import and export licences are only required for a few products, Malawi still has some competition and market restrictions.

Regulatory Environment

In general, bureaucracy in Malawi is considered to be fairly cumbersome. Companies frequently complain about officials that demand facilitation payments and about rules and regulations that are applied selectively and discriminatorily. Decision-making in connection with the business and investment approval process is neither transparent nor based purely on merit, and the US Department of State 2011 states that the process suffers from delays and red tape. The fact that almost every official document or licence requires an official stamp and has an economic value attached to it has created a regulatory environment conducive to corrupt practices. However, positive developments have been made, including the establishment of regulatory authorities in the energy and communication sectors. According to the World Bank & IFC Doing Business 2011, it takes an average of 39 days to start a company, and there is data indicating that a company spends an average of 157 hours a year on paying taxes, although the total tax rate is competitive. Just 9% of companies surveyed by the World Bank & IFC Enterprise Surveys 2009 identified licensing and permits as a major constraint on doing business.

According to the World Bank Governance and Corruption Baseline Survey 2006 conducted among households and companies, more than a third of the companies surveyed were generally dissatisfied with the legal and regulatory environment in the country, and 32% believed that laws and regulations have become less predictable over the past several years. Moreover, 50% of companies surveyed report having difficulty obtaining information about the laws and regulations affecting their company. Inconsistent availability and slow processing of temporary employment permits has also been a problem for some foreign investors. However, the access to information on regulations might have improved, as business executives surveyed in the World Economic Forum Global Competitiveness Report 2010-2011 indicate that Malawi offers competitive business advantages in relation to the ease of obtaining information about changes in government policies and regulations affecting their industries as well as when complying with administrative requirements (permits, regulations, reporting) issued by the government.

The Malawi Investment Promotion Agency (MIPA - [link is unstable](#)) functions as a one-stop centre with a purpose to facilitate investment in Malawi. MIPA proposes identification of partners for joint ventures and the agency's website offers information about investment procedures and legislation as well as costs of transportation and public utilities. Application

forms for documents such as investment certificates and business residence permits can be downloaded from the website.

The US Department of State 2011 reports that Malawi has legislation that recognises property rights and both acquiring and disposing of property are facilitated and protected in the law. Nevertheless, Malawi's legal system functions very slowly and the cost of enforcing a claim appears counter-productive as reported by the World Bank & IFC Doing Business 2011. However, according to the US Department of State 2011, the processing of commercial court cases has improved in recent years and the commercial courts are now working efficiently. Besides that, a mediation process has been established to promote agreements between parties before court proceedings start. Despite the improvements in the legal system, enforcement of court judgments is still a problem in Malawi. According to US Department of State 2011, only 57% of the court decisions had been enforced by mid-December 2010. Malawi is a member of the International Centre for Settlement of Investment Disputes (ICSID), and thus accepts binding international arbitration of investment disputes between foreign investors and the state as long as provisions for such recourse have been specified in a written contract. Access the Lexadin World Law Guide for a collection of legislation in Malawi.

Section 3 - Economy

Landlocked Malawi ranks among the world's most densely populated and least developed countries. The country's economic performance has historically been constrained by policy inconsistency, macroeconomic instability, limited connectivity to the region and the world, and poor health and education outcomes that limit labour productivity. The economy is predominately agricultural with about 80% of the population living in rural areas. Agriculture accounts for about one-third of GDP and 90% of export revenues. The performance of the tobacco sector is key to short-term growth as tobacco accounts for more than half of exports.

The economy depends on substantial inflows of economic assistance from the IMF, the World Bank, and individual donor nations. In 2006, Malawi was approved for relief under the Heavily Indebted Poor Countries program. Between 2005 and 2009 Malawi's government exhibited improved financial discipline under the guidance of Finance Minister Goodall GONDWE and signed a three-year IMF Poverty Reduction and Growth Facility worth \$56 million. The government announced infrastructure projects that could yield improvements, such as a new oil pipeline for better fuel access, and the potential for a waterway link through Mozambican rivers to the ocean for better transportation options.

Since 2009, however, Malawi has experienced some setbacks, including a general shortage of foreign exchange, which has damaged its ability to pay for imports, and fuel shortages that hinder transportation and productivity. In October 2013, the African Development Bank, the IMF, several European countries, and the US indefinitely froze \$150 million in direct budgetary support in response to a high level corruption scandal, called "Cashgate," citing a lack of trust in the government's financial management system and civil service. Most of the frozen donor funds — which accounted for 40% of the budget — have been channelled through non-governmental organizations in the country. The government has failed to address barriers to investment such as unreliable power, water shortages, poor telecommunications infrastructure, and the high costs of services. Investment had fallen continuously for several years, but rose 4 percentage points in 2014 to 17% of GDP.

The government faces many challenges, including developing a market economy, improving educational facilities, addressing environmental problems, dealing with HIV/AIDS, and satisfying foreign donors on anti-corruption efforts.

Agriculture - products:

tobacco, sugarcane, cotton, tea, corn, potatoes, cassava (manioc, tapioca), sorghum, pulses, groundnuts, Macadamia nuts; cattle, goats

Industries:

tobacco, tea, sugar, sawmill products, cement, consumer goods

Exports - commodities:

tobacco 53%, tea, sugar, cotton, coffee, peanuts, wood products, apparel (2010 est.)

Exports - partners:

Belgium 15.8%, Zimbabwe 12%, India 6.9%, South Africa 6.2%, US 6%, Russia 5.6%, Germany 4.6% (2015)

Imports - commodities:

food, petroleum products, semi-manufactures, consumer goods, transportation equipment

Imports - partners:

South Africa 26.4%, China 16.7%, India 12%, Zambia 10.3%, Tanzania 6% (2015)

Banking

Malawi has a sound banking sector, overseen and well regulated by the Reserve Bank of Malawi -- its central bank. There are ten full-service commercial banks: First Merchant Bank Limited (FMB); Indebank; National Bank of Malawi (NBM); Standard Bank (SB); Ecobank; New Building Society Bank; Malawi Savings Bank; Nedbank; Opportunity International Bank of Malawi (OIBM) and First Discount Merchant Bank (FDMB). Other financial institutions are: Indefinance; Investment and Development Fund of Malawi (INDEFUND); Finance Corporation of Malawi (Fincom); Leasing and Finance Company of Malawi (LFC); the New Building Society (NBS); the Malawi Rural Finance Company (MRFC), Continental Discount House, and First Discount House.

NBM and SB have dominated Malawi's commercial banking sector for the past 33 years. Malawi's four largest banks (NBM, FMB, SB, and NBS) command 90% of the market, with a total capitalization of \$459 million.

The structure of the Malawi banking sector changed significantly in 2001 with the privatization of the Standard Bank (SB). Standard Bank of South Africa completed its purchase of 60% of SB in December 2001 as part of the privatization program. The conglomerate Press Corporation Limited (PCL), in which the government holds a 49% stake, sold out of SB but increased its holdings in rival National Bank of Malawi (NBM). PCL now owns 50.1% of NBM.

Malawi neither has nor requires depositor insurance, but the RBM enforces strict safeguards and capital requirements. The RBM has strict reporting guidelines on capital adequacy, liquidity ratio, etc. International accounting standards adopted by the Society of Accountants in Malawi (SOCAM) apply to banks. Bank financial statements are in compliance with these standards, and are audited by internationally recognized firms including KPMG, Peat Marwick and Deloitte.

Stock Exchange

The Companies Act, the Capital Market Development Act (1990), and the Capital Market Development Regulations (1992) provide the legislative and regulatory framework for investment in Malawi. The attendant legal, regulatory and accounting systems are transparent and consistent with international norms. These acts govern the Malawi Stock Exchange (MSE).

Stockbrokers Malawi Limited (SML) is the major registered stockbroker in Malawi. Other brokerage firms are Continental Discount House, First Discount House and Trust Securities Limited. The MSE is regulated by the Stock Exchange Commission.

SML runs a secondary market in government securities, and both local and foreign investors have equal access to the purchase of these securities.

The MSE is still in a nascent stage, and hostile takeovers have not yet occurred. Apart from the restrictions under the privatization program, there are no specific measures taken by private firms 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. The Competition and Fair Trading Act does not cover the day-to-day trading on the MSE, but regulates mergers, acquisitions, and takeovers that are of national interest.

Section 4 - Investment Climate

Executive Summary

The Malawian government is eager to attract foreign direct investment. The Malawi Investment and Trade Center's One Stop Center offers assistance on how to navigate relevant regulations and procedures. In general, there are adequate legal instruments to protect investors. Foreign investors are generally accorded national treatment.

Sugar cane production and processing, legumes, livestock production, dairy farming, oil seed processing, irrigation farming, and large scale commercial agriculture have the highest priority for investment in the agricultural sector. Independent power producers, particularly for hydropower and other renewable power sources, are encouraged.

Health science research projects need to be approved by the National Health Sciences Research Committee, which charges a 10% fee for its services.

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. Scarcity of skilled and semi-skilled labor is another serious impediment to business in Malawi and is most acute in occupational categories that include accountants and financial management personnel, economists, engineers, lawyers, IT, and medical/health personnel.

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 but slow.

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 continue to impede the business and investment approval process.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions Index	2014	112 of 167	http://www.transparency.org/cpi2015
World "Ease of Doing Business" Rank	2015	141 of 189	http://www.doingbusiness.org/rankings
Global Innovation Index	2015	98 of 141	https://www.globalinnovationindex.org

U.S. FDI in partner country (\$M USD, stock positions)	2014	-5	http://bea.gov/
World Bank GNI per capita	2014	\$250	http://data.worldbank.org/country/malawi

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 annual 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

Malawi is eager to receive foreign investment and foreign investors are generally granted national treatment. The Malawi constitution protects investment irrespective of nationality. 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 April 2016. These trade policy reviews have informed development co-operation and assistance to Malawi.

Laws/Regulations on Foreign Direct Investment

There are a few legal restrictions on foreign investment based on environmental, health, biosafety, and national security concerns. Affected sectors 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. Additionally, retail operations in rural areas are limited to only Malawian citizens, although enforcement is weak.

While not discriminatory to foreign investors, investments in Malawi require multiple bureaucratic processes, which may include obtaining a business license, a tax registration number, and a land use permit. These procedures can be time consuming, particularly when it comes to land permits, and may constitute an impediment to investment. Investors may also face bureaucratic hurdles in obtaining temporary employment permits (TEPs) and business residency permits (BRPs).

Business Registration

To facilitate the process of starting a business, the Malawi Investment and Trade Center (MITC) operates a One Stop Center. It offers assistance to foreign and domestic investors of all sizes on how to navigate relevant regulations and procedures. It hosts representatives of the Registrar General, the Malawi Revenue Authority, the Department of Immigration, and the Ministry of Lands, Housing, and Urban Development. MITC's main website (www.mitc.mw) and trade portal (trade.mitc.mw) provide information about sectors and projects targeted for investment.

In addition to MITC's One Stop Center, business registration can theoretically be done online at <http://www.registrargeneral.gov.mw/>. However, there are known problems with accessing the website and delays in acquiring a user name. To operate in Malawi, in addition to registering the company with the Registrar General, companies also need to register with the Malawi Revenue Authority and often with the Ministry or regulatory body overseeing their sector of activity (for example, construction companies, both foreign and domestic, need to register with the National Construction Industry Council of Malawi).

The government affiliated Small and Medium Enterprise Development Institute (SMEDI) offers training, assistance in access to finance, market linkages, and mentorship opportunities to domestic SMEs.

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) identifies a number of sectors as priority growth areas. In 2014, the government compiled an investment projects compendium which identified investment opportunities in agriculture, mining, tourism, energy, and transport infrastructure. MITC's website also lists investment opportunities by sector.

Sugar cane production and processing, legumes, livestock production, dairy farming, oil seed processing, irrigation farming, and large scale commercial agriculture have the highest priority for investment 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 the Geological Survey Department is making efforts to produce geophysical and geological maps of Malawi.

Limits on Foreign Control and Right to Private Ownership and Establishment

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. Under the government's privatization program, participation of an individual foreign portfolio investor is limited to a maximum of 10% of any class or category of security and the maximum total foreign investment in any portfolio is 49%. During the privatization of government assets, 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. While this is not a legal requirement, for at least one large

mining project, the Government of Malawi asked for and obtained a 15% equity share during licensing negotiations. Under a revised Land Bill currently being considered by parliament, foreign citizens will no longer be able to own land freehold; all foreign held land would be lease-hold for terms up to 50 years, and potentially longer.

Privatization Program

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 privatization bids.

Privatization efforts currently focus 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.

In 2013, the government sold a 49% share of the bankrupt national air carrier Air Malawi to Ethiopian Airlines, which resumed operations under the Malawian Airlines name. The Government of Malawi has officially announced plans to sell its remaining 51% equity share in the airline in the future but no date has been set. In 2015, the Government of Malawi sold a controlling interest in the Malawi Savings Bank and the government's residual equity in IndeBank. Both foreign and domestic investors were invited to submit bids for these banks. The bidding was considered transparent and one of the banks drew offers from foreign investors, but equity in both banks was ultimately sold to domestic investors.

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 investment capital over \$50,000 must be registered with the Reserve Bank of Malawi (RBM, www.rbm.mw) through any commercial bank in Malawi.

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 2013, the institution has overseen 26 applications for merger and acquisition and dismantled five cartels. 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) Court.

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 spur economic growth.

Commercial banks may operate as forex dealers. Investors have access to forex with no legal limitation, 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. The Malawi Kwacha depreciated over 40% in 2015. Exchange rate fluctuations coincide with agricultural cycles, particularly the tobacco selling season of April through August. Foreign exchange is available throughout the year and Malawi's official foreign exchange reserves currently are sufficient to cover more than two months of imports.

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. While there are no legal restrictions, in recent years there have been some instances of banks lacking sufficient foreign exchange to conduct all remittances immediately.

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 monitored country.

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. Measures that carry expropriation effects are occasionally imposed, including export bans for key commodities. These restrictions applied equally to foreign and domestic investors.

The government can employ land acquisition procedures set forth in the Land Acquisition Act of 1971. According to this Act, the government must justify its acquisition as being in the public interest and must pay fair market value for the land. If the private landowner objects to the level of compensation, he may obtain an independent assessment of the land value. According to the Act, however, such cases may not be challenged in court; the Ministry of Lands, Housing, and Urban Development remains the final judge. Ongoing discussions

regarding new land related bills currently before parliament have created some uncertainty regarding land ownership by non-Malawians.

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.. Heavy caseloads and staffing limitations, however, mean that legal remedies can take a long time to achieve. There has been little overt government interference in the court system.

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

All bankruptcies are governed by the courts under the provision of the consolidated Insolvency Act of 2016. The Act encourages alternatives to bankruptcy such as receivership and reorganization and gives secured creditors – rank-ordered based upon investment registration dates – priority over other creditors. Monetary judgments are usually made in the investor's currency. Cross border provisions of the Insolvency Act are modeled after United Nations Commission on International Trade Law model laws.

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. Malawi's current president is a former arbitrator for ICSID.

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 – Local Courts

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. Health science research projects need to be approved by the National Health Sciences Research Committee. The body charges a filing fee in addition to a 10% fee from approved research 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.

The process to obtain employment permits can sometimes discourage investors. Expatriate employees (of both domestic and foreign businesses) who reside and work in Malawi must obtain temporary employment permits (TEPs). The "Policy Statement and New Guidelines for The Issuance and Renewal of [Expatriate] Employment Permits" of 1998 states 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 TEPs take significantly longer and face significant bureaucratic delays as files are not digitized and TEPs are approved by a high-level committee that does not meet regularly. In recent years, several TEP applications have faced extended delays when individuals involved have had disputes with politically-connected individuals. The 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. Protection of Property Rights

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.).

Real Property

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. Government has presented bills to parliament which would 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. The land bills presented would also convert freehold land owned by non-Malawian persons or corporate bodies which are majority owned by non-Malawians to leasehold land unless owners acquire Malawian citizenship within three years of the commencement of the Act.

Currently record keeping for registering land ownership is centralized and inefficient. Efforts are underway to computerize the recordkeeping and to decentralize it 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 (MIGA), 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), administers the 1989 Copyright Act which protects copyrights and "neighboring" rights in Malawi. Led by COSOMA, intellectual property rights enforcement agencies commemorate World IP Day in April. 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

U.S. Embassy
Economic and Commercial Section
40/24 Kenyatta Dr.
Lilongwe, Malawi
+265-1-773-166
LilongweECON@state.gov

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

7. Transparency of the Regulatory System

The government continues to undertake various reforms to ensure that no tax, labor, environment, health, safety, or other laws distort or impede investment either foreign or domestic. To increase transparency in the mining sector, Malawi applied for and was

granted EITI candidate status. Procedural delays 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. The government sets minimum prices for many crops including tobacco, cotton, and maize. 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. The Ministry of Industry and Trade currently requires export permits for 10 categories of goods, including the staple food crops of maize and rice.

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 Government Printer. As they are set by associations with closed membership, the rule-making 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. 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. Parliamentary rules do, however, permit fast-tracking bills to avoid this step.

8. 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 and is governed by the Companies Act, Capital Market Development Act (1990), Capital Market Development Regulations (1992) as amended in 2013, and the Securities Act (2010).

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 credit given high rates of inflation in recent years. 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. In 2014, there were eleven full-service commercial banks. 2015 saw two mergers and one creation, bringing the number to ten. Post mergers, the three largest banks -- National Bank of Malawi, Standard Bank, and FDH Bank -- collectively command almost 70% of all banking deposits. In 2014, Malawi's banks' total aggregate assets reached MWK 785 billion (\$1.1 billion).

The Competition and Fair Trading Act does not cover the day-to-day trading on the MSE, but regulates mergers, acquisitions, and takeovers.

9. 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 from the Office of the President and Cabinet, but Government does not publish the 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.

Some SOEs perform public service functions, some are commercial in nature, and some are a mixture of both. All are subject to government regulations that apply to other government departments including on employment and procurement procedures, though some variations apply. All SOEs are required by law to produce annual reports, but do not always do so on time. Commercial SOEs are required to be audited by independent professional audit firms. Non-commercial SOEs should be audited by either the Auditor General or professional audit firms depending on availability of financial resources to pay for the audit.

Private and public enterprises freely compete on the same terms and conditions for access to markets, credit, and other business opportunities, although in practice personal relationships can influence decisions heavily. There are exceptions 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.

In March 2016, the Government of Malawi clarified its dividend and surplus policy, requiring profit-making SOEs to pay 40% of dividends to the national treasury. 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.

Also important to note is that the government is the major consumer in the Malawian economy, but frequently fails to pay its bills, goes into arrears, and occasionally pays in zero-coupon bonds payable one to three years after issuance, presenting a significant challenge to sellers in the in-country market.

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 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 typically appointed by the president to be directors. Boards usually 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.

10. Responsible Business Conduct

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. There are no

established laws or 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. 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, and minimum wages. The Government of Malawi lacks the resources to meaningfully enforce environmental, consumer, and labor related laws and regulations. There is no history of provisions of environmental, social, or labor laws being waived to attract investment. There is no history of the government factoring responsible business conduct policies or practices into its procurement decisions.

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.

11. Political Violence

Malawi has been largely free of political violence since gaining independence in 1964. Presidential and parliamentary elections in 2009 and 2014 were peaceful, with no significant incidences of violence. 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 and Tanzania in recent years. Tanzania and Malawi are currently trying to resolve a border dispute over the north eastern portion of Lake Malawi.

12. 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 and conflicts of interest, however, remain rampant and 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. In 2015, a deputy director of the ACB was murdered likely due to his affiliation with the corruption fighting body.

The law provides for criminal penalties for corruption by officials. There are regular reports of government corruption at all levels of government. Notably, 2013 saw the revelation of a massive 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. More than 70 individuals were arrested including a former minister and the commander and deputy commander of the military. As of March 2016, all ten defendants whose cases have come to an end have been found guilty. Many more cases remain to be prosecuted.

Companies are encouraged to participate in the fight against corruption. 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 (CSOs) 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.

Forty-eight categories of public officers – including all levels of officials from the president and members of parliament, down to specific categories of civil servants, including traffic police and immigration officers – are required to declare their assets and business interests. The paper declarations are accessible to the public upon request.

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. The government has also signed on to the Extractive Industries Transparency Initiative (EITI) and EITI’s International Board has designated Malawi as a candidate country.

Resources to Report Corruption

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13. 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 with Italy, Libya, Netherlands, and Zimbabwe. Malawi does not have a bilateral investment treaty 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.

14. Foreign Trade Zones/Free Ports/Trade Facilitation

Malawi is a beneficiary of the African Growth and Opportunity Act (AGOA), a U.S. trade preference program.

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 March 2016, 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.

15. 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)	2014	\$4,257	2014	4,258	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	Data not available	2014	-5.0	http://bea.gov/international/factsheet/
Host country's FDI in the United States (\$M USD, stock positions)	2014	Data not available	2014	0.0	http://bea.gov/international/factsheet/
Total inbound stock of FDI as % host GDP	2014	Data not available	2014	N/A	N/A

* Malawi National Statistical Office (<http://www.nsomalawi.mw/>)

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:

mixed legal system of English common law and customary law; judicial review of legislative acts in the Supreme Court of Appeal

International organization participation:

ACP, AfDB, AU, C, CD, COMESA, FAO, G-77, IAEA, IBRD, ICAO, ICRM, IDA, IFAD, IFC, IFRCs, ILO, IMF, IMO, Interpol, IOC, IPU, ISO (correspondent), ITSO, ITU, ITUC (NGOs), MIGA, MINURSO, MONUSCO, NAM, OPCW, SADC, UN, UNAMID, UNCTAD, UNESCO, UNIDO, UNOCI, UNWTO, UPU, WCO, WFTU (NGOs), WHO, WIPO, WMO, WTO

Section 6 - Tax

Exchange control

For further information - <http://www.rbm.mw/>

Treaty and non-treaty withholding tax rates

For further information - <http://www.rbm.mw/>

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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