

MALAWI INVESTMENT GUIDE

2017/2018



SAVJANI & CO.

S&CO



ABOUT SAVJANI & CO.

Savjani & Co. is one of the largest law firms in Malawi. Based in Blantyre, the country's commercial capital, the firm offers extensive insight into the opportunities and intricacies of Malawi's economic and legal environments.

Savjani & Co. is recognised both for its depth of knowledge of the Malawian market and its international experience and skill level. It has been able to lead in syndicate financing, commercialisation and privatisation of public-enterprises, listing of companies in the Malawi Stock Exchange (and also listing of global depositary receipts

on the London Stock Exchange); bonds; mining; energy and public private partnerships

The firm has an outstanding reputation amongst national and international corporations. It is listed as Malawi's leading law firm by Chambers Global and other reputable law directories.

Chambers Global 2017, once again, ranks the firm Band 1 in General Business Law in Malawi.

“They are [Savjani & Co.] definitely, in my view, the most thorough, most professional law firm in Malawi.”

– Chambers Global 2017

About ALN

Savjani & Co. is a member of ALN. ALN is an alliance of independent top tier African law firms. It is the largest and only grouping of its kind in Africa, with close working relationships across its members and an established network of Best Friends across the continent. ALN's firms are committed to working together to provide extensive coverage and on-the-ground experience. The network has consistently been ranked Band 1 in the Leading Regional Law Firm Networks category, by Chambers Global. For more information on ALN visit www.africalegalnetwork.com.

CONTENTS

OVERVIEW

POLITICAL OVERVIEW	5
ECONOMIC OVERVIEW	5
BILATERAL & MULTILATERAL TREATIES	6
REGULATORY ENVIRONMENT	6

INVESTMENT PROMOTION

INSTITUTES GOVERNING INVESTMENT PROMOTION	9
INVESTMENT INCENTIVES	9

TAX

PERSONAL INCOME TAX	12
CAPITAL GAINS TAX	13
OTHER TAX	13
STAMP & TRANSFER DUTY	14
TRANSFER PRICING & THIN CAPITALISATION	14

DOING BUSINESS

ACCOUNTING PRINCIPLES	16
INDUSTRIAL RELATIONS	16
EXCHANGE CONTROL	17
IMPORTS AND EXPORTS	17
CORRUPTION	17
COMPETITION	18
CONSUMER PROTECTION	19
REAL PROPERTY	19
LEGAL FORMS OF INCORPORATION	19
INTELLECTUAL PROPERTY	20
DISPUTE SETTLEMENT	20

INDUSTRY SECTORS

AGRICULTURE	23
BANKING & FINANCIAL SERVICES	23
ENERGY	24
MANUFACTURING	24
MINING	24
TELECOMMUNICATIONS	25
TOURISM	25

KEY DEVELOPMENTS

ENERGY & INFRASTRUCTURE	27
FINANCIAL SERVICES	27
OTHER DEVELOPMENTS	28

OVERVIEW

GDP

USD 5.433 Billion
(2016 World Bank Data)

 **CAPITAL CITY**
Lilongwe



POPULATION

18.092 Million
(2016 World Bank Data)

AREA: 118,484 KM²

PRESIDENT

Peter Mutharika

CURRENCY

Malawi Kwacha (MWK)

DRIVES ON

The Left

GOVERNMENT

Multi-party Democracy

LANGUAGES

English and Chichewa

TOP LEVEL DOMAIN

.mw

TIMEZONE

GMT + 2

CALLING CODE

+265



POLITICAL OVERVIEW

Malawi is a democratic, multi-party government consisting of executive, legislative and judicial branches. The executive branch includes the President who is both head of state and head of government and is elected every five years. The members of the cabinet are appointed by the President and can be from either inside or outside the legislature. The legislative branch consists of a unicameral National Assembly of 193 members who are elected every five years. The independent judicial branch is based upon the English model and consists of a Supreme Court of Appeal, a High Court, and subordinate Magistrate Courts. In constitutional matters, the High Court sits as a Constitutional Court

with three judges presiding. An appeal from the Constitutional Court lies with the Supreme Court of Appeal with five judges presiding. The High Court also has a Commercial Division. There is also an Industrial Relations Court which is subordinate to the High Court.

There are currently about 40 registered political parties. The Democratic Progressive Party (to which President Peter Mutharika belongs) is the governing party and the People's Party, the Malawi Congress Party and the United Democratic Front act as the main opposition parties in the National Assembly. Suffrage is universal at 18 years of age.



ECONOMIC OVERVIEW

Malawi is among the world's least developed and most densely populated countries. The economy is heavily agriculture-based, with around 80 percent of the population living in rural areas. More than one-third of Malawi's GDP and 90 percent of export revenue comes from agriculture. The economy of Malawi has in the past been dependent on substantial economic aid from the World Bank, the International Monetary Fund and individual nations.

The Government faces challenges in developing a market economy, improving environmental protection, dealing with the rapidly growing HIV/ AIDS problem, improving the education system and satisfying its foreign donors

that it is working to become financially independent.

While challenges remain, Malawi has made great progress over the past years in upgrading conditions for doing business. The Government has introduced an economic recovery plan and has identified sectors in which it wishes to encourage investment, including energy, tourism, mining, agriculture, transport, infrastructure and ICT.



BILATERAL & MULTILATERAL TREATIES

Malawi is a member of many multi-lateral organisations and a signatory to many trade agreements. These include:

- COMESA,
- The Southern African Development Community (SADC),
- The World Trade Organisation (WTO),
- The New Partnership for Africa's Development,
- The World Customs Organisation,

- The African Caribbean Pacific – European Union Partnership Agreement,
- MIGA, and
- International Centre for the Settlement of Investment Disputes.

Malawi is also a beneficiary of the EU's Everything But Arms Initiative and USA's African Growth Opportunity Act initiative.



REGULATORY ENVIRONMENT

The Government encourages both domestic and foreign investment in most sectors of the economy without restrictions on ownership, size of investment, source of funds and destination of final product. Apart from the privatisation program, the Government's overall economic and industrial policy does not have discriminatory effects on foreign investors.

While not discriminatory to foreign investors, investments in Malawi require multiple bureaucratic processes, which may include licensing and land use permission that can be time consuming and may constitute an impediment to investment. Other impediments to investment include high transportation costs, unreliable power and water supplies, cumbersome bureaucracy (especially for imports and exports), difficulty in accessing foreign exchange, lack of skilled labour and Government market interventions.

Malawi has so far privatised over 70 formerly state-owned enterprises. All investors, irrespective of ethnic group or source of capital (foreign or local) may participate in the privatisation program.

In accordance with the Business Licensing Act (BLA), where a business licence holder sells its business premises and wishes to transfer the business licence to the buyer, the buyer is required to make application to the relevant licensing authority under the BLA. It follows that if a Malawian subsidiary of a foreign holding company is the holder of a business licence, and it seeks to transfer its business pursuant to any restructuring of the foreign group of companies under which it falls, it will be required to make application to the relevant licensing authority under the BLA. If a Malawian subsidiary will remain the holder of the licence in Malawi pursuant to restructuring of the foreign group of companies under which it falls, a change of control in the shareholding of the

¹Please take note that the Reserve Bank of Malawi has an informal policy requiring non-resident shareholders (irrespective of nationality) to undertake to invest a minimum of USD50, 000 (brought from outside the country) in the company.

foreign holding company of the Malawian subsidiary will not affect the licence.

Under the BLA, no business licence shall be issued to a “non-Malawian” unless he holds a valid permit under laws relating to immigration, citizenship or refugees and otherwise satisfies the requirements of the said Act. A “non-Malawian” must also provide evidence showing that he/ she is investing in Malawi capital of not less than USD250, 000 brought from outside Malawi.

Although “non-Malawian” is not defined in the BLA, we assume that this refers to a person who is not a citizen of Malawi. “Capital” for the purposes of this requirement means all cash contribution, plant, machinery, equipment, buildings, spare parts, and other business assets other than goodwill which are not consumed in the regular operations of the business and have a life of more than twelve months. Where applicable, on application or renewal of a business licence, the applicant is required to file a statement in addition to any other documents, describing the participation in the management or finances of the business of a Malawian partner. It should be noted that the Act is not clear as to the situation or circumstances in which such participation is required.

Any person who knowingly or recklessly contravenes any of the above requirements in relation to businesses by non-Malawians commits an offence and shall be liable to a fine of approximately USD 10,903 (MWK 8 million) and to imprisonment for five years.

Malawi’s industrial and trade reform program, including rationalisation of the tax system, liberalisation of the foreign exchange regime, and elimination of trade and industrial licences on several items and businesses, has produced written guidelines intended to increase government use of transparent and effective policies to foster competition.

Malawi has legislation that offers adequate protection for property and contractual rights. Malawi’s constitution guarantees the protection of assets of both local and foreign investors. Malawi is a member of the Multilateral Investment Guarantee Agency (MIGA) and the Africa Trade Insurance Agency of the Common Market for Eastern and Southern Africa (COMESA). Malawi is also a signatory to the International Centre for Settlement of Investment Disputes. Malawi has written commercial laws, which codify common law. The Sale of Goods Act, the Hire-Purchase Act, the Competition and Fair Trading Act and the Companies Act cover commercial practices. There is also a written applied insolvency law. Under the Insolvency Act of 2016, secured creditors have first priority in recovering money. Malawi has also recently introduced the Personal Property Security Act (PPSA), whose aim is to eliminate the obstacles and costs associated with traditional methods of securing payment or performance of an obligation. The PPSA regulates the creation and registration of security interests in all personal property with a few specified exceptions.

INVESTMENT PROMOTION

INSTITUTES GOVERNING INVESTMENT PROMOTION

In 2012, the Government passed an Investment and Export Promotion Act, which provides tax benefits to investors and pioneer industries in agriculture, agro-processing, manufacturing, tourism,

fisheries, forestry, mining, etc. Moreover, the Malawi Investment and Trade Centre Limited was incorporated on 2nd December, 2010 to promote and facilitate both domestic and foreign investment.

INVESTMENT INCENTIVES

Malawi offers a wide range of tax incentives aimed to encourage development, enhanced output, foreign exchange earnings and expansion of employment opportunities.

Malawi has introduced some Sectoral Investment Incentives in the mining, energy, tourism and agricultural sectors. Investors may qualify for Export Processing Zones (EPZ) privileges by operating at an approved location and acquiring a licence to manufacture goods under bond.

This requires approval by an appraisal committee. Incentives for establishing operations in an EPZ include:

- no withholding tax on dividends;
- no duty on capital equipment and raw materials;
- no excise tax on the purchases of raw materials and packaging materials made in Malawi; and
- no Value Added Tax (VAT).

Tax measures are reviewed annually in Malawi. In June 2011, the country announced new tax measures. Previously, incentives for establishing operations in an EPZ included zero corporate tax, however, companies will now be subject to standard corporate tax of 30 percent. Previous tax breaks for industrial buildings, plants and machinery granted

to companies under a free trade zone would be reduced to 40 percent from 100 percent.

Incentives for Manufacturing in Bond include:

- export allowance of 12 percent revenue for non-traditional exports;
- transport tax allowance equal to 25 percent of international transport costs, excluding traditional exports;
- no duties on imports of capital equipment used in the manufacture of exports;
- no surtaxes;
- no excise tax or duty on the purchase of raw materials and packaging materials; and
- a timely refund of all duties (duty drawback) on imports of raw materials and packaging materials used in the production of exports.

Companies operating in priority industries, so designated by the Minister of Trade and Industry, are eligible for a tax holiday. The following industries have been designated as priority industries for the purpose of assessment of Income Tax: (i) Agro-processing industry and (ii) Electricity generation, transmission and distribution industries

A person operating in the priority industry must be

a natural person or legal entity, obtain a tax identification personal number and should have either commenced trading or have obtained an investment certificate in accordance with the Investment and Export Promotion Act, 2012. Such person will be granted a provisional investment certificate for priority industry status. The Malawi Revenue Authority ("MRA"), will consider a person for priority industry status where the taxpayer has invested USD30 million or its Kwacha equivalent

in plant and machinery for electricity generation, distribution and transmission. Such person shall be granted a certificate which shall be valid from the date endorsed thereon and shall automatically expire on the date prescribed therein. Priority industry status is valid for any number of years not exceeding ten years. The rate of tax applicable to priority industries in electricity generation, distribution and transmission is zero for the whole period granted.

TAX



PERSONAL INCOME TAX

Only income from a source within or deemed to be within Malawi is subject to tax. Non-residents are only taxed on the portion of their income which arises or is deemed to arise in Malawi. Non-residents are subject to 15 percent withholding tax on income arising in Malawi.

Trading losses may be carried forward for six years, unless derived from manufacturing, mining or agriculture, in which case they may be carried forward without restriction. Capital losses of assets that attracted capital allowances

are fully deductible. Other capital losses may be deducted only against capital gains realised in the same or future years.

New investors in agricultural, agro-industrial and manufacturing are exempt from income tax for a period of one to six years, depending on the area of investment and location of their investment in the country.

Income tax is levied on residents as follows:

No.	Tax	Rate
1	Corporate tax	30%
2	Fringe benefits tax	30%
3	Capital gains	Taxed as ordinary income
4	Dividends	10% (tax withheld at source and is final)
5	Interest	30% of which 20% is withheld (gross at source in many cases)
6	Royalties	30% of which 20% is withheld (gross at source in many cases)
7	Fees	30% of which 20% is withheld (gross at source in many cases)
8	Rents	30% of which 20% is withheld (gross at source in many cases)
9	Foreign companies	35%(or a rate 5 % higher than normal)

Income tax is levied on non-residents as follows:

No.	Tax	Rate
1	Border tax	15% on gross income (tax is withheld at source)
2	Capital Gains	Taxed as ordinary income
3	Dividends	10% (Tax is withheld at source and is final)
4	Interest	15% (Tax is withheld at source and is final)
5	Royalties	15% (Tax is withheld at source and is final)
6	Fees	15% (Tax is withheld at source and is final)
7	Rents	15% (Tax is withheld at source and is final)

CAPITAL GAINS TAX

Capital gains are treated as ordinary income and subject to income tax at the applicable rate. There are a number of exemptions relating mainly to group restructurings, principal residence, transfers between spouses and shares listed on the stock exchange, provided

it had been held for more than one year as well as personal and domestic assets. Non-residents pay border tax at the rate of 15 percent, if not engaged in trade or business in Malawi, through a permanent establishment situated in Malawi.

OTHER TAX

VAT is payable at the rate of 16.5 percent of the value of the goods or services supplied or imported. A 1 percent tax-deductible levy of payroll costs is payable annually to the Technical, Entrepreneurial and Vocational Education and Training Authority. Property taxes are assessed by the local authorities, based on land valuations conducted every five years. Mineral rights duties are charged as royalties on the sale of minerals.

Effective from 1st July 2009, a turnover tax, at a rate of 2 percent, is payable on business income where the annual turnover exceeds approximately USD 2800 (MWK 2 million) but does not exceed approximately USD 8,300 (MWK 6 million). Turnover tax does not apply in respect of rental income, management or training fees, the income of incorporated companies and income subject to withholding tax. A person that qualifies

to pay turnover tax may elect, by writing to the Commissioner, not to be subject to the tax, in which case the normal

provisions of the Taxation Act would apply.

STAMP & TRANSFER DUTY

Stamp duty is charged at nominal or ad valorem rates on a variety of financial instruments and transactions. Fees payable on registration of a company are K50, 000 (approximately USD70) and K100, 000

(approximately USD140) for local company and foreign company, respectively. Stamp duty of 1.5 percent is chargeable on the transfer of real and personal property.

TRANSFER PRICING & THIN CAPITALISATION

Transfer pricing rules were introduced as from 1st July 2009 and the tax authorities have the power to deem profits to have accrued in situations where non-arm's length transfer pricing is believed to exist. The Taxation (Amendment) Act provides that where a person or enterprise incurs or accumulates a debt due from a related or connected party through direct or indirect financing or supply of goods or services, the ratio of debt to equity shall be as prescribed by the Minister in the Gazette. Where the debt to equity exceeds the one prescribed

by the Minister, interest in excess of the proportion of debt to equity shall not be allowed as a deduction. In the mining sector, the debt to equity ratio for a taxpayer's mining project is 3:1 for the first five years and 1.5:1 thereafter. We understand that a proposal has been made (in draft form) for a 3:1 debt to equity ratio to apply in other sectors but this has not yet been gazetted.

We understand that in practice the Malawi Revenue Authority has tried to impose thin cap rules on companies although the debt to equity ratio has not yet been gazetted. They have used the General Anti Avoidance provision contained in the Taxation Act to justify the imposition of these rules.

DOING BUSINESS



ACCOUNTING PRINCIPLES

Malawi has adopted the International Financial Reporting Standards.

Furthermore, all company annual financial statements require audits.



INDUSTRIAL RELATIONS

The Labour Relations Act of Malawi promotes sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and the promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development.

The Employment Act establishes, reinforces, and regulates minimum standards of employment with the purpose of ensuring equity necessary for enhancing industrial peace, accelerate economic growth and social justice and for matters connected therewith and incidental thereto.

The Workers' Compensation Act, provides for compensation for injuries suffered or diseases contracted by workers in the course of their employment or for death resulting from such injuries or diseases; it provides for the establishment and administration of a Workers' Compensation Fund; and it provides for matters connected therewith or incidental thereto.

Expatriate employees (of both domestic and foreign businesses) who reside and work in Malawi must obtain temporary employment permits. Government policy on expatriates is set out in the "Policy Statement and New Guidelines for the Issuance and Renewal of Expatriate Employment Permits" issued

in November 1998, which provides that investors may only employ expatriate personnel in areas where there is a shortage of "suitable and qualified" Malawians. The policy provides for two types of temporary work permits:

- i. those for "key posts" (defined as positions of "strategic importance" in business operations) which are granted for the lifespan of the organisation; and
- ii. those for "time posts" (defined as positions with contracts of two year duration or less) which are granted for three year periods and renewable once.

It must be noted that this policy is followed very loosely and is not always adhered to. The Government issues Business Residence Permits to foreign nationals who own/operate businesses in Malawi. These permits are issued for five year periods and are renewable. Permanent Residence Permits are issued to foreign spouses who reside permanently in Malawi, and to owners/ operators of businesses who reside in Malawi for periods in excess of ten years. The maximum number of resident permits per organisation is five, with the actual number allowed depending on the amount of investment.



EXCHANGE CONTROL

The Reserve Bank of Malawi administers exchange controls in terms of the Exchange Control Act and the Regulations and directives made thereunder. Authorisation is required for all remittances of profits, dividends, interest, royalties and fees. The

mandatory conversion requirement for proceeds of exports is 60 percent though a lower ratio may be permitted on legitimate grounds. Most goods can be freely imported under the open general licence system.

IMPORTS AND EXPORTS

The Malawian economy's demand for processed products, machinery, vehicles and other manufactured products has resulted in the country's imports surpassing the value of its exports. Malawi's total value of imports increased by 17.2 percent between 2015 and 2016. The top three countries from which Malawi imports merchandise are South Africa, China and India.

Tobacco is Malawi's major export product. In 2016 tobacco contributed 55 percent of the total exports. Dried legumes contributed 8.8 percent, followed by sugar with 6.7 percent. Malawi's total exports reduced by 5.4 percent from 2015 to 2016. Malawi's major export destinations are South Africa, Zimbabwe, Mozambique and Belgium



CORRUPTION

Malawi has been highly affected by corruption. Major instances of corruption often involve public procurement, and the offering of lucrative public contracts bends to patronage systems. The World Bank and International Finance Corporation (IFC) Enterprise Surveys 2006 reported that 47 percent of companies consider corruption in Malawi to be a major constraint for operating a business and another 35 percent had to pay bribes to 'get things done'. However, a change in perception of corruption in Malawi occurred, in accordance with the World Bank and

IFC Enterprise Surveys 2014 only 12.8 percent of the companies surveyed perceive corruption as a major constraint for doing business and 10.8 percent indicate that they expect to pay bribes to 'get things done'. 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. 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.

Apart from the ratification of the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption in 2007, the Malawian Government also passed the Corrupt Practices Act in 1995. The Act established the Anti-Corruption Bureau in 1995. Malawi's Penal Code prohibits bribery. Giving or receiving a bribe, whether to or from a Malawian or foreign official, is a crime under section 90 of Malawi's Penal Code.

The Government in an attempt to fight corruption established a National Anti-

Corruption Strategy in January 2009. The strategy has a holistic approach to the fight against corruption in Malawi and its main focus is the development of a National Integrity System. The Financial Crimes Act, 2016 (which replaced the 2006 Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act) established an autonomous Financial Intelligence Authority (FIA) to combat money laundering and terrorist financing. The FIA is responsible for analysing disclosures from financial institutions and referring actionable cases to competent authorities. It is also mandated to monitor compliance by reporting institutions.



COMPETITION

Mergers are required to be notified to the Competition and Fair Trading Commission (the Commission) prior to implementation, if they are likely to substantially lessen competition. The applicable filing fee as contained in the 4th Schedule of the Act is 0.05 percent of combined turnover or total assets, whichever is the higher, of the enterprises proposing to effect the merger or takeover.

The Competition and Fair Trading Act (CFTA) requires that "any person who, whether as a principal or agent" participates in effecting a merger or takeover should apply to the Commission for approval before effecting the proposed merger or takeover where such merger or takeover is likely to result in substantial lessening of competition in any market.

The CFTA appears to require parties to seek approval of the Commission only where such merger or takeover is likely to result in substantial lessening of competition in any market. If a merger is

not notified to the Commission and it is found that such merger is likely to result in substantial lessening of competition, the consequences are extremely severe. Such merger shall have no legal effect and the rights and obligations imposed on the parties to the agreement shall not be legally enforceable. In addition, a principal or agent who carries out a merger without the Commission's authorisation commits an offence and may be imprisoned for a period of up to five years. Alternatively, this principal or agent may be liable for a fine of approximately USD13, 800 (MWK 10 million), or an amount equivalent to the financial gain generated by the offence, if such amount is greater. Such a person is also liable to imprisonment for a period of five years.

The practical application of the CFTA is that it is advisable for all parties wishing to effect a merger or takeover to seek the Commission's prior approval.



CONSUMER PROTECTION

The Consumer Protection Act and the CFTA provide protection for consumers.



REAL PROPERTY

Under Malawi law, citizens, as well as non-citizens and foreign companies, can lease land from the Government or directly from private landowners for investment purposes in accordance with their residential and investment objectives. Citizens and non-citizens can

also purchase land, though in the case of a sale to a non-citizen, the intention to sell has to be advertised in daily newspapers to give citizens the first option to purchase. A new Land Act has recently been enacted and has brought a number of reforms. For instance, freehold title to land shall no longer be granted to any person.



LEGAL FORMS OF INCORPORATION

The principal business entities are:

- i. a company limited by shares where the liability of members is limited to the unpaid amount on shares,
- ii. a company limited by guarantee where the liability of members is limited to the amount undertaken to be contributed, and
- iii. state owned companies, ie. companies controlled by the government

A company may either be private or public. In a private company the number of shareholders is limited to 50, the right of the shareholders to transfer shares is restricted, and the company is prohibited from making invitations to the public for the acquisition of its shares and debentures. A public company can issue shares to the public and has no limit on the number of shareholders it may have.

The registration of a foreign company may be more tedious than registering a local company in terms of information

required. However, after incorporation, neither entity has any significant advantage over the other. There are no regulations in Malawi regulating joint ventures, other than compliance with company law and other applicable law.

A company may be incorporated within one week. The following information is required to register and incorporate a company: name of company, authorised share capital, registered office, location of books of accounts, address of the company secretary and names of directors and shareholders. There are no nationality requirements for directors but at least one of the directors must be resident in Malawi. There are no nationality requirements for shareholders; however, exchange control approval must be obtained before shares can be issued to non-resident shareholders (regardless of nationality). It can take up to a month to obtain this exchange control approval. The exchange control authority also has an informal policy requiring non-resident shareholders to commit to invest a

minimum of USD50, 000 – the exchange control authority does not specify the form in which this investment should be made or how soon after incorporation the investment should be made. There

are also no minimum capitalisation requirements.

INTELLECTUAL PROPERTY

Rights to property, both real and intellectual, are legally protected. The Copyright Society of Malawi, established in 1992, administers the Copyright Act, 1989, which protects copyrights and “neighbouring” rights in Malawi. The Registrar General administers the Patent and Trademarks Act, which protects industrial intellectual property rights in Malawi. A public registry of patents and patent licences is kept.

Patents are registered through an agent. Trademarks are registered publicly following advertisement and a period of no objection. WTO rules allowed Malawi (as a less developed country) to delay full implementation of the Trade-Related Aspects of Intellectual Property Rights - (TRIPs) agreement until 2016. The

Ministry of Trade and Industry (MTI) is the coordinator of WTO issues in Malawi, but unfortunately has limited capacity to effectively track WTO developments. The MTI is working with COSOMA and the Registrar General to align relevant domestic legislation with the WTO TRIPs agreement with technical assistance from the Africa Regional Intellectual Property Organisation.

The Government has signed and adheres to bilateral and multilateral investment guarantee treaties and key agreements on intellectual property rights. Malawi is a member of the convention establishing the Multilateral Investment Guarantee Agency, the World Intellectual Property Organisation, the Berne Convention and the Universal Copyright Convention.

DISPUTE SETTLEMENT

Malawi has an independent judiciary, which derives its procedures from English Common Law. The commercial courts generally work efficiently and there is a fully established mediation process to promote agreements between parties in disputes before court proceedings start.

Although the processing of commercial cases has improved significantly, the enforcement of judgments continues to be a problem. The Commercial Court

has no dedicated enforcement sheriffs. Sheriffs assigned to the High Court, do not accord priority to commercial enforcements.

The court system in Malawi accepts and enforces foreign court judgments that are registered in accordance with established legal procedure. By statute, Malawi recognises judgements of Zimbabwean and Zambian courts. The party in whose favour the judgement is given, must

register such judgement in Malawi. Upon registration, the judgement has the same force and effect in all respects as a judgement of the Malawi court in which it is registered. Further, judgements of superior English and Commonwealth courts may also be registered in the High Court at any time within 12 months after the date of the judgement or such longer period as may be allowed by the High Court. Upon registration, these judgements would have the same effect as if they had been originally given in the court in which they were registered.

In relation to judgements issued in other jurisdictions, the plaintiff can commence an action in Malawi, based on the judgement. The plaintiff must adduce

evidence before the court to prove that the judgement was issued in the relevant jurisdiction. If the court is satisfied, it will issue its own judgement based on the foreign judgement which can then be enforced in Malawi.

Monetary judgments are usually made in the investor's currency. However, the immediate availability of foreign exchange is dependent upon supply, which varies on a seasonal basis. Malawi is a member of the International Centre for Settlement of Investment Disputes, and accepts binding international arbitration of investment disputes between foreign investors and the state if specified in written contract.

INDUSTRY SECTORS



AGRICULTURE

A lush climate and rich soil make Malawi well suited for agriculture, which is central to the country's economy. It employs 64.1 percent of its workforce, makes up 28.3 percent of its GDP and represents about 80 percent of the country's exports. The main staple crop is maize, grown by smallholder farmers mostly at the subsistence level. Production varies, and depending on climate conditions, maize may be imported or exported. Sorghum, millet, pulses, root crops, and fruits are also grown. The fishing industry in respect of Lake Malawi accounts for about 200 000 jobs, but problems of pollution and over-fishing threaten to reduce yields.

Malawi's commercial farming sector is concentrated on large estates in the south and around Lilongwe. Its main product is tobacco, which typically

accounts for between 50 percent and 70 percent of Malawi's export earnings. Formerly held back by government price controls and grower regulations, the liberalisation of the industry in the 1990s has caused a steady increase in profits for growers and a sharp rise in smallholder tobacco production, making Malawi one of the leading tobacco producers in the world.

In 2015, the tobacco export revenue was at USD 435 million. Tea is Malawi's second most important cash crop, and the country is Africa's second largest producer. In 2015, tea accounted for about USD 61.7 million. Sugar is also a big export product and in 2015 it accounted for USD 93.7 million.



BANKING & FINANCIAL SERVICES

Malawi has a sound banking sector, overseen and well regulated by the Reserve Bank of Malawi. There are 10 full service commercial banks with the three largest banks commanding 60 percent of the market. The Malawi Stock Exchange is governed by the Companies Act, the Financial Services Act, 2010 and Securities Act, 2010. The Competition and Fair Trading Act does not cover the day-

to- day trading of the stock exchange but does regulate mergers, acquisitions and takeovers that are of national interest. Stockbrokers Malawi Limited (SML) is the major registered stockbroker in Malawi. SML runs a secondary market in government securities and both local and foreign investors have equal access to the purchase of these securities.

ENERGY

The state-owned Petroleum Control Commission relinquished its monopoly on petroleum imports in May 2000, allowing the private sector to import Malawi's entire fuel requirements. Regulatory functions within the petroleum sector are performed by Malawi Energy Regulatory Authority. Fuel prices are not controlled.

Electricity generation comes mostly from

the 4 hydro-electric power stations on the Shire River. Irregular water flow on the river, especially in the dry season, and problems with silting, however, often make power supply unreliable and particularly damaging to industries. Coal is imported to supplement local production, which because of under-investment, is mined below capacity.

MANUFACTURING

The majority of Malawi's industrial activity (85 percent) comes from manufacturing. Malawian manufacturing is carried out by about 100 companies involved in agricultural processing, textiles, clothing and footwear production. Manufacturing accounts for about 12 percent of Malawi's GDP.

The economic review by the World Bank placed Belgium as the top market for Malawi's exports in 2015 followed by Zimbabwe. Some of Malawi's export markets allow firms to import duty free or quota free if a certain percentage of the local content in the finished product is reached, however, this requirement is rarely satisfied by the manufacturers.

The EU was the major destination for Malawi's exports in 2015. The total exports to the EU region during this period amounted to approximately USD 421.6 million (MWK 303.5 billion). SADC came second with approximately USD 357.7 million (MWK 257.5 billion) and East and Pacific Asia was third with approximately USD 103.6 million (MWK 74.5 billion).

Malawi imported most of her goods from SADC in 2016. The total imports from the SADC region amounted to approximately USD 771.4 million (MWK 555.4 billion). East and Pacific Asia came second with approximately USD 519.9 million (MWK 374.3 billion). Third was Europe with approximately USD 354.2 million (MWK 255 billion).

MINING

Mining remains small-scale and Malawi has no precious metals or oil. Ruby mining, however, began in the mid-1990s, with Malawi being the only source of

rubies in Africa. Malawi also has deposits of bauxite, asbestos, graphite and uranium. Most of the mining and mineral processing operations in Malawi are

privately owned, including the cement plants, the Kayelekera uranium mine, the Mchenga coal mine and the Nyala ruby and sapphire mine. Small-scale and artisanal miners produced aggregates, brick clay, gemstones and lime.

In 2012, sulfuric acid production increased by an estimated 28.6 percent, ornamental stone by 62.4 percent, coal by 28.5 percent, lime by 2.13 percent, limestone for use in the cement industry

by 22 percent and gemstones by 32.6 percent.

After the establishment in 1985 of a government mines department and a national mining agency to explore the feasibility of exploiting various minerals; bauxite and titanium reserves in the south were singled out for development. Although the supporting infrastructure is weak, some foreign investment has “poured” in since.

TELECOMMUNICATIONS

Telecommunications is an underdeveloped sector. According to a 2014 survey by the Malawi Communications Regulatory Authority (MACRA) and the National Statistics Office (NSO), a mere 1 percent of households have landlines and 45 percent of Malawians own cellular phones. Malawi has several Internet Service Providers. The Government established MACRA which has licensed a number cellular phone service providers, four of which are operating

namely, Telekom Networks Malawi, Airtel, Malawi Telecommunications Limited and Access Communications.

TOURISM

Tourism has experienced growth due to Malawi’s tropical climate and scenic landscape, with visitor numbers increasing in recent years. The country had approximately 850, 000 arrivals in 2016. Tourism contributed 3.4% to Malawi’s GDP in 2016. It also contributed approximately 6.2% of total employments (461, 000 jobs). Efforts are being made to expand facilities and boost numbers further.

KEY DEVELOPMENTS

ENERGY & INFRASTRUCTURE

Malawi signs USD 600 million power plant MoU with China's Gezhouba Group Corporation

In late 2015, Malawi signed a memorandum of understanding with China's Gezhouba Group Corporation (CGGC), to develop a coal-fired power plant at Kam'mwamba in the country's Neno region. The 300 MW power plant's cost is estimated to be USD 600 million and is the largest single development project that Malawi has undertaken since it gained independence in 1964. The major financier of the project is Exim Bank of China.

Malawi has continued to benefit from its relationship with China and over the last eight years, China has lent Malawi billions of Kwacha for

implementation of huge infrastructure projects such as the Parliament Building in Lilongwe, the Karonga-Chipita road, University of Science and Technology in Thyolo, Bingu International Conference Centre and the Bingu Stadium in Lilongwe. The signing of this MOU took place just before the 2015 Forum for China- Africa Cooperation (FOCAC), which President Mutharika attended, was held in Johannesburg. FOCAC was started in 2000 to promote China-Africa ties and the 2015 theme was 'Africa-China progressing together: win-win cooperation for common development'.

FINANCIAL SERVICES

The World Bank extends USD 69 million credit to Malawi and IMF's ECF back on track

The World Bank, through its International Development Association (IDA), in 2015 approved a USD 69 million credit to help improve Malawi's road and border post infrastructure, connecting the country to regional trade corridors in southern Africa. The IDA was established in 1960 and provides grants and low to zero-interest loans for projects and programs that boost economic growth and reduce poverty in less developed countries. The funds were provided under the second phase of the Southern Africa Trade and Transport Facilitation Program which aims to ease the movement of goods and people along the North-South Corridor (NSC) and at the key border crossings

in Malawi, while at the same time supporting improvements in road safety and health services.

In March 2016, the International Monetary Fund (IMF) also declared that Malawi was back on track to revive the Extended Credit Facility (ECF) programme with the fund. This has been attributed to good management of domestic finances by the Malawi Government, since September 2015. An ECF is IMF's main tool for medium-term financial support to low income countries like Malawi.

OTHER DEVELOPMENTS

In June 2015, business investors from around the globe met in Lilongwe, Malawi for the **Malawi Investment Forum 2015 (MIF 2015)**, the first of its kind to ever take place in Malawi. The forum focused on Agriculture and Agro-processing, Tourism, Manufacturing, Energy, Mining, Infrastructure and Financial Services in Malawi. Not only did it enable business discussions and networking, but it also facilitated interaction with high level decision makers from government, financial and industrial sectors, as well as Malawi's trade and investment institutions. The forum created an ideal platform for local and foreign investors to interact and strike some business deals.

Throughout 2015, the Malawi Government has continued to woo investors from among other countries, the United Kingdom, Germany, United States of America, Singapore, Latin America and China, into the country. Malawi offers a favourable investment environment for foreign investors and does not impose restrictions on the ownership or location of investment. It welcomes FDI in all sectors of the economy except for those that may pose danger to the health, environment or security of the nation, investors are permitted full remittance of dividends, investment capital on repatriation, interest and principal payments for approved international loans.

The Malawi Communications Regulatory Authority in 2015 issued a 10 year public telecommunications services license to Lacell Private Limited, as part of efforts to boost and increase competition in the information and communications technology sector in Malawi. The mobile phone operator, which lost the bid for a similar license in 2008 after it failed to

meet the necessary criteria, is expected to create a thousand jobs and provide coverage to the rural masses in Malawi. There are already two established mobile phone service providers in Malawi: Airtel Malawi, a subsidiary of Pan-African mobile operator Balti, and TNM, which is owned by Malawian conglomerate - Press Corporation. These two share a market of more than 1.5 million subscribers.

Another company, Celcom, was awarded a mobile operator license in 2011 but has not yet rolled out its services and in 2010, Malawi's telecoms regulator cancelled a license awarded to G-Mobile after the company failed to launch its services within a year.

In January 2016, the Norwegian Government selected four African projects, among them a water purification initiative in Malawi, from which to purchase carbon credits in order to meet its emission targets. The concept here is to trade carbon credits earned by curbing the effects of climate change through mechanisms established under the 1997 Kyoto Protocol. This allows investors in emission reduction projects located in poor nations to earn carbon credits that they can use to offset emissions. According to the New York Times, the carbon market is expected to be one of the world's biggest commodity markets and is looking to be a trillion dollar industry very soon. Selling carbon credits is one of the ways in which Malawi could earn revenue for funding development in the country.

The Malawi Government early this year (2016), launched a Buy Malawi Strategy (BMS), meant to address the country's import bill and close its widening trade deficit in the short to medium

term. According to Malawi's National Statistical Office figures, at the time of the launch, the country was running on a trade deficit of about USD 57.8 million or about nine percent of its Gross Domestic Product (GDP). Exports and imports increased by 159 and 245 percent respectively, between 2009 and 2014, creating the high trade deficit.

The country's Ministry of Industry and Trade stated that the strategy

was aimed at reviving the 2009 Buy Malawi Campaign (BMC), which sought to stimulate consumption of locally produced goods and services and discourage an appetite for imported goods. The BMS, borne out of a wide consultation of a cross-section of technocrats in the public and private sector, the civil society and other development partners, is also expected to enhance the competitiveness of local firms, stimulate local production, and promote industrialization, which is a key priority of the Malawi Growth and Development Strategy (MGDS II).

SOURCES

www.worldbank.org

www.embassymalawi.be

www.ibtimes.com www.mwnation.com www.carbon-pulse.com

www.allafrica.com

www.cnbc africa.com

SAVJANI & CO.

Hannover House

P.O. Box 2790, Blantyre, Malawi

T: +265 182 4555 | F: +265 182 1064

E: savjaniandco@africa-online.net | rpurshotam@savjaniandco.mw

The information contained in this report is of a general nature and is not intended to address the circumstances of any particular individual or entity. While the information is accurate as at date hereof, there can be no guarantee that the information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

