



Doing Business in Malawi: 2014 Country

Commercial Guide for U.S. Companies

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Chapter 1: Doing Business In Malawi

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Market Overview

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- Malawi is one of the poorest nations on earth, with nearly 16 million inhabitants and a population growth rate estimated at approximately 2.8%. Annual per capita Gross National Income (GNI) is less than a dollar a day.
- Agriculture is the major sector in Malawi, accounting for over 30% of GDP.
- The agricultural sector employs nearly half of those in formal employment, and directly or indirectly supports an estimated 85% of the population (including subsistence farming).
- Tobacco, tea, and sugar are Malawi's principal exports, together generating over 80% of export earnings.
- Malawi's industrial base is very small and developing slowly. There are a few plants/factories processing sugar, tea, tobacco, rubber, and other agro-products.
- Malawi has a relatively free investment environment, but poor infrastructure (particularly unreliable electricity and water), high transport costs, and bureaucratic hurdles tend to inhibit investors.
- Malawi has a fairly independent, albeit overburdened, judiciary that derives its procedures from English common law.
- Joyce Banda became President in April 2012 and launched major political, economic, and financial reforms to relieve the political and economic decline that Malawi experienced in of 2010 and 2011. Her government reversed unpopular laws, devalued and floated the exchange rate for the local currency, and introduced an automatic pricing system for petroleum products and utilities.
- In May 2014, Malawi held presidential, parliamentary, and local government elections. Despite logistical challenges on voting day, power transferred peacefully for the fourth time in the young democracy's history with the election of the Democratic People's Party's Peter Mutharika as Malawi's new president.

Trade Statistics

Malawi	2009	2010	2011	2012	2013
Total Exports (USD Million f.o.b)	1268	964	908	1467.4	Data not available
Total Imports(c.i.f)	1995	1671	1687	2589.7	Data not available
U.S. Exports to Malawi (USD million F.A.S)	40.4	37.0	66.0	64.0	54.5
U.S. Imports from Malawi (USD million)	63.3	71.1	64.9	66.0	73.1

Sources: US Census Bureau (<http://www.census.gov/foreign-trade/balance/c7970.html>); IMF, International Financial Statistics; Ministry of Finance, Budget statements; World Bank, Global Development Finance; Reserve Bank of Malawi, Economic reviews.

Market Challenges

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- High transport costs due to Malawi's landlocked position. Transport costs can constitute more than 30% of the country's total import bill.
- Unreliable power and water supplies. Less than 9% of Malawians have access to electricity (1-3% in rural areas).
- Lack of skilled labor.
- Political risk; administrative and regulatory uncertainty. Malawians peacefully transferred power to the Democratic People's Party in 2014 presidential, parliamentary, and local government elections. Regardless of political leadership, the Government of Malawi has often made dramatic changes to key policies and regulations, frequently affecting businesses' profitability.
- Longstanding commercial relationships with South Africa, Malawi's primary supplier of imported goods. Although U.S. products are respected, a lack of historical business ties between the United States and Malawi, together with comparatively high product and transport costs, disadvantages U.S. suppliers.

Market Opportunities

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- U.S. products in significant demand include computers, used clothing, telecommunications equipment, used trucks, and agricultural machinery/equipment.
- In the agricultural sector, poultry represents an area for potential U.S. investment, with day-old chicks in particular demand.
- Investment opportunities exist in mining, power production, and in the agricultural sector, in legumes (such as soya, groundnuts, and pigeon peas), maize and sugarcane.
- While still early in his term, President Mutharika has made very positive statements urging his government to take tangible actions to attract investors and promote trade.

There are around 25 U.S.-affiliated companies doing business in Malawi, including two of the principal processors and exporters of tobacco. Of these U.S.-affiliated companies, approximately one dozen either have financing from American businesses or fulfill distribution roles for them. Malawi does not have an American Chamber of Commerce (AMCHAM).

Market Entry Strategy

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- The Malawi public and business community is familiar with U.S. products.
- Competitive pricing and reliability of supply are critical to enter and stay in the market.
- Most manufacturers distribute their products through wholesalers or agents.

- A U.S. company may market directly through an established importer or agent or by opening an office in Malawi.

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Chapter 2: Political and Economic Environment

For background information on the political and economic environment of the country, please click on the link below to the U.S. Department of State Background Notes.

<http://www.state.gov/r/pa/ei/bgn/7231.htm>

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Using an Agent or Distributor

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Subsidiary or affiliate companies of U.S. organizations operate in several areas, including agro-industry, tobacco, and computers/office equipment. Finding partners or agents and distributors for U.S. products generally is not difficult, with the notable exception of technically advanced products requiring substantial local support capabilities. For such products, arrangements are sometimes made with firms operating from South Africa.

Establishing an Office

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The Government of Malawi is officially supportive of foreign businesses interested in establishing agency, franchise, joint venture, or licensing relationships. The government encourages local and foreign investment in any sector of the economy with moderate restrictions on ownership. There are no restrictions on the size of investment, the source of funds, or whether products are destined for export or for the domestic market. The Malawi Investment and Trade Center (MITC) is mandated to promote, attract, encourage, facilitate and support domestic and foreign investment and trade, and publishes an "Investors Guide," which may be obtained upon request or by visiting MITC's website: <http://www.mitc.mw>. Another organization useful in establishing commercial links with Malawi is the Malawi Confederation of Chambers of Commerce and Industry (MCCCI); visit <http://www.mccci.org>.

Franchising

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There are no restrictions on franchising in Malawi, although very few American companies operate in Malawi through franchising.

Direct Marketing

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The Malawi business community is familiar with U.S. products. A U.S. company may market directly through an established importer or agent, by winning a tender, or by opening an office in Malawi. Most products imported into Malawi come from nearby South Africa. Competitive pricing and reliability of supply are essential to enter and stay in the market.

Joint Ventures/Licensing

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The Government of Malawi allows joint ventures under the Partnership Act. The amount and form of capital invested in a joint venture are not regulated. Joint ventures, like any other business, must be licensed by the Registrar General in the Ministry of Justice.

Selling to the Government

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The Government of Malawi issues periodic tender notices for supplies and services in local and international publications 15 to 90 days before the bids are due. Detailed bid documents are normally obtained from a specific government ministry, department or agency for a non-refundable fee. Bids are often opened in the presence of bidders or their representatives. There are public websites listing government tenders and awards (<http://www.odpp.gov.mw/>, temporarily offline at the time of publication). Although the Office of the Director of Public Procurement (ODPP) has a website, many government ministries neither use ODPP nor link their procurements and tenders on the ODPP website. Most public procurement opportunities are advertised in the printed versions of the leading national newspapers. The U.S. Embassy sends Trade Opportunity (TOP) notices with information on major public bids to the U.S. Department of Commerce in Washington, DC (see <http://www.export.gov/tradeleads/index.asp>). Major procurements are also listed in the U.S. Department of State's Business Information Database System (BIDS, at <http://bids.state.gov>).

Distribution and Sales Channels

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Product distribution in Malawi can be problematic since some rural areas are difficult to reach and become inaccessible during the rainy season (roughly November to April). In addition, there is negligible purchasing power outside cities. Some local companies have a network of rural distributors, but many firms opt to reach rural markets through wholesale arrangements with local entrepreneurs.

Selling Factors/Techniques

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Most manufacturers distribute their products through wholesalers or agents. The U.S. Embassy in Lilongwe has an American Economic/Commercial Officer and a Malawian Economic/Commercial/Labor Specialist. Commercial resources are also available in the Information Resource Center in Lilongwe and at "American Corners" located at major universities in Blantyre, Mzuzu, and Zomba.

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E-Commerce is not widely available in Malawi. Few people have credit cards, limiting access to internet shopping for Malawians at the moment. Internet penetration in Malawi is estimated to be only 2.3%.

Trade Promotion and Advertising

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Malawi has one major television station, Malawi Broadcasting Corporation (MBC) TV, which is funded and controlled by government. In early 2014, two new private stations came on the air: Times TV and Zodiak TV. The most affluent subscribe to satellite television networks. Product advertisement can be done through print media and radio broadcasting. The newspapers with the largest circulation are "The Nation," "The Daily Times," "Malawi News," and "The Weekend Nation." State-owned MBC Radio reaches significantly more Malawians than any of the print media. Several private radio stations have become very popular and may be preferred for advertising in the cities of Blantyre, Lilongwe, Mzuzu, Zomba, and surrounding areas.

Times Group: <http://www.bnltimes.com/>

The Nation: <http://www.mwnation.com>

Zodiak: <http://www.zodiakmalawi.com>

Capital Radio: <http://www.capitalradiomalawi.com/>

Malawi News Agency: <http://www.manaonline.gov.mw/>

Pricing

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Prices for most goods are generally market-determined. Low priced goods tend to sell very well due to the generally low income levels of most Malawians. The arrival of cheap Chinese-made products has negatively impacted sales for most local and western-made products.

Petroleum and sugar are still subject to some degree of price controls. The state-owned Agricultural Development and Marketing Corporation (ADMARC) has intervened in the maize market in the recent past, attempting to stabilize prices. With a declared intent of protecting poor farmers and alleviating poverty, the Government of Malawi has also intervened in the marketing of tobacco and cotton to set minimum floor prices. State-provided utilities and services (water, electricity, etc.) are also subject to varying degrees of government price administration. Recently, automatic pricing systems with predetermined trigger points were introduced for strategic goods such as petroleum and utilities.

A number of companies and agents in the four major towns of Blantyre, Lilongwe, Mzuzu and Zomba offer sales and customer support services.

Protecting Your Intellectual Property in Malawi

Several general principles are important for effective management of intellectual property (“IP”) rights in Malawi. First, it is important to have an overall strategy to protect your IP. Second, IP is protected differently in Malawi than in the U.S. Third, rights must be registered and enforced in Malawi, under local laws. Your U.S. trademark and patent registrations will not protect you in Malawi. There is no such thing as an “international copyright” that will automatically protect an author’s writings throughout the entire world. Protection against unauthorized use in a particular country depends, basically, on the national laws of that country. However, most countries do offer copyright protection to foreign works under certain conditions, and these conditions have been greatly simplified by international copyright treaties and conventions.

Registration of patents and trademarks is on a first-in-time, first-in-right basis, so you should consider applying for trademark and patent protection even before selling your products or services in the Malawi market. It is vital that companies understand that intellectual property is primarily a private right and that the U.S. government generally cannot enforce rights for private individuals in Malawi. It is the responsibility of the rights’ holders to register, protect, and enforce their rights where relevant, retaining their own counsel and advisors. Companies may wish to seek advice from local attorneys or IP consultants who are experts in Malawi law. The U.S. Commercial Service can provide a list of local lawyers upon request.

While the U.S. Government stands ready to assist, there is little we can do if the rights holders have not taken these fundamental steps necessary to securing and enforcing their IP in a timely fashion. Moreover, in many countries, rights holders who delay enforcing their rights on a mistaken belief that the USG can provide a political resolution to a legal problem may find that their rights have been eroded or abrogated due to legal doctrines such as statutes of limitations, laches, estoppel, or unreasonable delay in prosecuting a law suit. In no instance should U.S. Government advice be seen as a substitute for the obligation of a rights holder to promptly pursue its case.

It is always advisable to conduct due diligence on potential partners. Negotiate from the position of your partner and give your partner clear incentives to honor the contract. A good partner is an important ally in protecting IP rights. Consider carefully, however, whether to permit your partner to register your IP rights on your behalf. Doing so may create a risk that your partner will list itself as the IP owner and fail to transfer the rights should the partnership end. Keep an eye on your cost structure and reduce the margins (and the incentive) of would-be bad actors. Projects and sales in Malawi require constant attention. Work with legal counsel familiar with Malawi laws to create a solid

contract that includes non-compete clauses and confidentiality/non-disclosure provisions.

It is also recommended that small and medium-size companies understand the importance of working together with trade associations and organizations to support efforts to protect IP and stop counterfeiting. There are a number of these organizations, both Malawi and U.S.-based. These include:

- The U.S. Chamber and local American Chambers of Commerce
- National Association of Manufacturers (NAM)
- International Intellectual Property Alliance (IIPA)
- International Trademark Association (INTA)
- The Coalition Against Counterfeiting and Piracy
- International Anti-Counterfeiting Coalition (IACC)
- Pharmaceutical Research and Manufacturers of America (PhRMA)
- Biotechnology Industry Organization (BIO)
- Copyright Society of Malawi (COSOMA)

IP Resources

A wealth of information on protecting IP is freely available to U.S. rights holders. Some excellent resources for companies regarding intellectual property include the following:

- For information about patent, trademark, or copyright issues -- including enforcement issues in the US and other countries -- call the STOP! Hotline: **1-866-999-HALT** or register at www.StopFakes.gov.
- For more information about registering trademarks and patents (both in the U.S. as well as in foreign countries), contact the US Patent and Trademark Office (USPTO) at: **1-800-786-9199**.
- For more information about registering for copyright protection in the US, contact the US Copyright Office at: **1-202-707-5959**.
- For more information about how to evaluate, protect, and enforce intellectual property rights and how these rights may be important for businesses, a free online training program is available at www.stopfakes.gov.
- For US small and medium-size companies, the Department of Commerce offers a "SME IP Advisory Program" available through the American Bar Association that provides one hour of free IP legal advice for companies with concerns in Brazil, China, Egypt, India, Russia, and . For details and to register, visit: http://www.abanet.org/intlaw/intlproj/iprprogram_consultation.html
- For information on obtaining and enforcing intellectual property rights and market-specific IP Toolkits visit: www.StopFakes.gov This site is linked to the USPTO website for registering trademarks and patents (both in the U.S. as well as in foreign countries), the U.S. Customs & Border Protection website to record registered trademarks and copyrighted works (to assist customs in blocking

- imports of IP-infringing products) and allows you to register for Webinars on protecting IP.
- The U.S. Commerce Department has positioned IP attachés in key markets around the world. You can get contact information for the IP attaché who covers Malawi at: Mohamed Shaltout, IPR Specialist, Foreign Commercial Service, U.S. Embassy, Cairo, mohamed.shaltout@mail.doc.gov

IPR Climate in Malawi

The Copyright Society of Malawi (COSOMA) administers the Copyright Act which protects copyrights and "neighboring" 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 licenses is kept. Patents must be registered through an agent. Trademarks are registered publicly following advertisement and a period of no objection. As a less developed country, World Trade Organization (WTO) rules allow Malawi to delay full implementation of the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement until 2021. The Ministry of Trade and Industry (MTI), coordinator of WTO issues in Malawi, has limited capacity to effectively track WTO developments. The MTI is still 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 Organization (ARIPO).

Due Diligence

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Firms that specialize in verifying the authenticity, diligence, and bona fides of banks, agents, and customers do not exist in Malawi. Nonetheless, it is not difficult to obtain information on business entities.

Local Professional Services

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Local professional services are easily accessible in the following areas: accounting and auditing, engineering, law, architecture, surveying and medicine. Three international professional auditing firms -- Ernst and Young, Deloitte, and KPMG -- have a local presence in Malawi. A Malawi telephone directory is accessible at: www.africaphonebooks.com.

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Malawi Investment and Trade Center: <http://www.mitc.mw>

Malawi Confederation of Chambers of Commerce and Industry: <http://www.mccci.org>

Office of the Director of Public Procurement: <http://www.odpp.gov.mw>

Department of Commerce Trade Leads database:
<http://www.export.gov/tradeleads/index.asp>

Department of State Business Information Database System (BIDS): <http://bids.state.gov>

Times Group: <http://www.bnltimes.com/>

The Nation: <http://www.mwnation.com>

Zodiak: <http://www.zodiakmalawi.com>

Capital Radio: <http://www.capitalradiomalawi.com/>

Malawi News Agency: <http://www.manaonline.gov.mw/>

Department of Commerce SME IPR Advisory Program:
http://www.abanet.org/intlaw/intlproj/iprprogram_consultation.html

STOP! Hotline: www.StopFakes.gov

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Chapter 4: Leading Sectors for U.S. Export and Investment

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Textile Fabric Manufacturing (TXF)

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Malawi's annual production of cotton has varied considerably over the last few years:

Year	2007	2008	2009	2010	2011	2012	2013
Cotton Production (metric tons)	63,290	76,761	72,664	29,165	52,448	221,198	162,791

Source: Ministry of Agriculture; Malawi Government, Economic Report (2013)

Malawi's garment industry currently relies on imported fabric as raw material. There is capacity to produce more cotton for a reliable market, there is excess ginning capacity in country, and there is interest in value added processing of the cotton from lint into yarn.

Sub-Sector Best Prospects

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Malawi is a beneficiary of the African Growth and Opportunity Act (AGOA) program for exports of apparel to the U.S. Although the U.S. Congress has extended AGOA's third country fabric provision, the government of Malawi is interested in promoting value added processing of Malawi's cotton with an end goal of textile and garment production from locally grown cotton. Malawi is one of only a handful of countries in Africa implementing genetically modified confined cotton trials as it explores tools to boost small shareholder productivity. Establishing textile production to feed Malawi's garment industry would be a good complimentary investment.

Opportunities

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There is currently only one garment making company exporting to the U.S. under AGOA, using imported fabric from Asia and the Far East. There is one outdated textile plant that is not able to supply the local market; however, this plant has recently imported used ginning equipment from the United States. In the short term, Malawi's textile exports will continue to rely on imported fabric. In the long term, Malawi's textile exports to the U.S. under AGOA will not survive unless a modern domestic textile plant comes into play.

Web Resources

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Malawi Confederation of Chambers of Commerce and Industry: <http://www.mccci.org>

Malawi Investment and Trade Center: <http://www.mitc.mw>

Email contact for local Commercial Specialist is: msiskapa@state.gov

Used Trucks (USD/AUT/AGM)

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Road transport is the most used mode of transport in Malawi for both passengers and goods. The road network is relatively comprehensive and well-maintained by regional standards. Road cargo haulage is important for delivery and collection of goods from sea ports in Tanzania, Mozambique and South Africa. A large majority of all external trade is moved through road transport.

Sub-Sector Best Prospects

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Used heavy goods trucks are in high demand. There is good potential to market U.S. vehicles through agents and/or dealerships in Malawi. Office space acquisition is easy in both Blantyre and Lilongwe.

Opportunities

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The only other source for used trucks is the U.K. Japanese vehicle exports are largely confined to used passenger vehicles. Used farm tractors are also in demand, and are sometimes sourced directly from the U.S.

Web Resources

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Malawi Confederation of Chambers of Commerce and Industry: <http://www.mccci.org>

Malawi Investment and Trade Center: <http://www.mitc.mw>

Email contact for local Commercial Specialist is: msiskapa@state.gov

Mining Industry (MIN/OGS)

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Mining is taking center stage in Malawi's development agenda and the government encourages investment in the sector. Malawi's long term goal is to increase the mineral sector's contribution to GDP from less than 2% in 2011 to 10% over the coming years. Potential exploration targets include rare earth minerals, gold, uranium, platinum group of minerals (PGMs), base metals (nickel and copper), dimension stone, phosphates, heavy mineral sands, graphite, and coal.

The Government of Malawi, with funding from development partners, conducted detailed geophysical surveys in 2013-2014. As this guide went to print, the data from those surveys was being compiled. It is expected to be made available to the public in late 2014 or early 2015.

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Opportunities exist for investors to develop projects in mining itself or to provide support services such as power generation. The Government of Malawi is looking for investors in power generation to support mineral extraction.

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Malawi Investment and Trade Center: <http://www.mitc.mw>

Email contact for local Commercial Specialist is: msiskapa@state.gov

Telecommunications Sector (TEL)

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The telecommunications sector is fast-growing but still underdeveloped in Malawi. Telephone penetration rates in Malawi are the lowest in the Southern African Development Community (SADC) region. Mobile phone penetration in Malawi is 20%. Existing mobile phone companies have a combined customer base of about 3 million within a population of nearly 16 million. The service offered is at times not reliable, with many dropped calls and daily congestion. Call rates are also one of the highest in the region. The Government of Malawi plans to increase the number of operators to bring efficiency to the sector.

Sub-Sector Best Prospects

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The best prospects in the telecommunications sector are in the operation of mobile phone companies and the supply of inexpensive handsets.

Opportunities

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The Government of Malawi is upgrading its telecommunications systems and infrastructure. Some U.S. firms have already entered this sector, but opportunities for other firms still exist. The first mobile phone company, Telecommunications Network Malawi (TNM) started operation in 1995. Malawi's second cellular telephone network -- Airtel Malawi -- began operations in 1999. Airtel has since expanded service to many parts of the country and has now become the largest cellular service provider. The next license, awarded in 2008, was cancelled when the operator failed to roll out service on time in 2010. A third mobile phone license was subsequently issued to Access Communications, which launched phone and internet services in 2010. In 2011, a fourth operator -- C-Mobile -- received a license, although it has not yet launched services. The telecom regulator plans to increase the number of operators to six in the near future.

Web Resources

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Malawi Communications Regulatory Authority: <http://www.macra.org.mw>.

Malawi Communications Regulatory Authority Email: dg-macra@macra.org.mw.

Malawi Investment and Trade Center: <http://www.mitc.mw>

Email contact for local Commercial Specialist is: msiskapa@state.gov.

Other Commercial Services (ITA Industry Code)

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Solar Products (REQ)

Recent sales suggest that there is a growing demand for solar products, particularly products adapted to allow users in remote areas to operate electrical equipment.

Computers and Computer Peripherals (CPT)

U.S. products constitute about half of the growing Malawi market for computers and computer peripherals. In July 2000, Malawi eliminated import duties on computers, uninterrupted power supply (UPS) units, and computer printers.

Aid Projects (EDS/MED)

Donor support for Malawi has created opportunities for U.S. businesses to supply materials, equipment, and expertise for donor-financed projects in various areas. The U.S. Agency for International Development (USAID), the World Bank, and the African Development Bank/Fund are the major donors for projects for which U.S. firms are eligible. There is a particular opportunity in providing medical supplies and equipment. Requests for proposals are available with the African Development Bank (AFDB), the World Bank and USAID here:

USAID: <http://www.fedbizopps.gov> or <http://www.fbo.gov>

AFDB: <http://www.afdb.org/en/documents/project-related-procurement/>

World Bank:

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,p>

Agriculture is the sector in which Malawi competes most successfully in international markets. Tobacco, tea, sugar and coffee are Malawi's most important cash crops, but exporters have registered growing success with groundnuts, macadamia nuts, paprika, and chilies. Given the uncertain long-term outlook for tobacco sales, agricultural diversification is important for Malawi. U.S. goods or technical knowledge that could be adapted in a cost-effective manner to Malawi's agricultural conditions and boost the quality, quantity, or diversity of crops might find a profitable market.

Opportunities for investment in irrigation exist in Malawi's still largely rain-fed agricultural sector. Horticultural products such as vegetables, flowers, and fruits including rice can be grown using surface, gravity, pump, river diversion or sprinkler irrigation systems. Out of the 400,000 hectares of land suitable for irrigation, only 62,000 hectares are currently under irrigation.

Agriculture Sector Opportunities:

Soy Bean Processing

Malawi grows significant quantities of soy beans. This high protein value crop is currently being processed for breakfast cereal for infants and HIV/AIDS patients, additives for meat, bakery and animal feed, for soy milk, and for the manufacture of soap. Current processing is at a small scale and there is great potential for additional investment to supply the local and regional markets.

The central and northern Malawi districts of Kasungu (17,000 tons/year), Ntchisi (17,000 tons/year) and Mzimba (18,000 tons/year) are significant soy bean growing areas. Kasungu town has adequate infrastructure to support potential processing investments.

Groundnuts

Malawi has a history of supplying groundnuts (peanuts) to the global market, and its yields compete with or exceed regional competitors despite smallholder farmers' use of less advanced farming techniques. Although aflatoxin presents challenges, some private companies have successfully instituted handling procedures to ensure quality control, suggesting the fungus can be overcome. Opportunities exist to add value by processing groundnuts into products such as peanut oil, peanut paste, and livestock feed, among others.

Maize

Maize is Malawi's staple food, resulting in high demand for maize and maize products. Production grew significantly from 2006 to 2010, driven in part by a government fertilizer subsidy program, and among SADC countries, Malawi is the third-largest producer, behind South Africa and Tanzania. Today, the majority of Malawi's maize production is undertaken by smallholder farmers. If yields are increased, for example through increased use of improved inputs, Malawi could be regionally competitive in maize and maize products. Potential investors intending to export the commodity should be aware that maize is one of a small number of goods whose export requires a government

issued export permit. In recent years, exports have not been permitted. The domestic maize market is subject to price controls.

Pigeon Peas

Malawi is the world's third largest producer of pigeon peas, which are consumed both locally and abroad. Malawi's pigeon peas are valued in India for their unique flavor, and Malawi's harvest season coincides with India's dry season, offering market synergies and a premium price during India's shortage period. Other export markets in Europe and the United States offer year-round opportunities. Malawi's current pigeon pea processors operate under capacity, and investors believe there is significant scope to expand production without negatively impacting the overall market.

Sugarcane

Malawi's sugarcane productivity and yields are over 60% higher than the regional average, indicating the country has a comparative advantage in sugarcane. Opportunities exist at both production and processing stages of the value chain. The country has a single, structured market for sugarcane and sugar, but the sole sugar processor requires more raw sugarcane than it can produce on its own. Malawi's National Export Strategy prioritizes investments in the sub-sector, and investors could expect substantial support from the government.

Dairy Industry

Malawi's milk consumption is the lowest in Africa at 5 liters per capita compared with Africa's average of 80 liters and the World Health Organization's (WHO) recommended intake of 200 liters per year. There are about 17,000 dairy farmers in Malawi (members of the Malawi Milk Producers' Association), approximately 8,800 or 52% of whom have dairy animals. Average production of milk in Malawi is 67,000 liters per day for the formal market. This translates to about 24 million liters per year for both commercial and small scale farmers. Even at this level Malawi imports 50% of its dairy products. This shortfall underlines the opportunity for investment in the industry. Key areas for investment at the primary production level include:

- Cattle breeding;
- Feed growing and feed production;
- Hay production through growing of Rhodes grass and stocking it for sale to farmers;
- Manufacture cooling tanks and collection equipment (e.g. milk churns);
- Service provision (e.g. artificial insemination, operation of dipping tanks, administration of drugs, and transportation of raw milk to processing plants).

Livestock Farming

The livestock industry as a whole is not well developed in Malawi. In addition to the dairy sector, opportunities exist for investment in cattle farming for beef and meat products. The existing cattle population, livestock culture and available land in Mzimba District in Northern Malawi make it a suitable area for investment in cattle farming. Mzimba town, Champhira and Euthini have the basic power, transport and water infrastructure to

support investment in processing industries. In the poultry industry there is a potentially significant market for day-old chicks, many of which are currently imported from South Africa.

Other Agricultural Products

A recent study of agricultural investment opportunities in Malawi identified cassava, cotton, macadamia nuts, rice, and tea as sub-sectors with potential for medium- to long term growth. According to the study, value addition in these chains could be a significant medium- to long-term opportunity, as the commodities currently are consumed or exported with limited processing.

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Chapter 5: Trade Regulations, Customs and Standards

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Import Tariffs

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Domestic protection through tariffs is gradually diminishing as the government continues to shift sources of revenue collection from customs duties to consumption and direct taxes. Import duties vary according to product and country of origin. As a member of the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA), Malawi grants reciprocal preferences to member states of these organizations. Malawi has bilateral trade agreements with South Africa, Mozambique, and Zimbabwe which allow duty exemptions on selected commodities. The SADC Trade Protocol calls for the establishment of a SADC Free Trade Area that stipulates the gradual elimination of tariffs between member states. In principle, the SADC FTA took effect in January 2008, although certain members (Malawi, Mozambique, Tanzania and Zambia) are still implementing their scheduled tariff phase-down. In general, import duties and import taxes vary according to end use and national interest decisions. Heavy construction equipment and trucks attract no import duty, no excise tax and no value added tax. Building materials are charged 5% import duty, 10% excise duty and 16.5% VAT. Luxury goods including clothes, furniture and cars attract 25% import duty, 20% excise duty and 16.5% VAT. Import excise duty for big luxury vehicles can be as high as 50%.

Trade Barriers

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The Government of Malawi is working to reduce and/or eliminate various tariff and nontariff barriers. Malawi operates a liberal import and export-licensing system with restrictions largely based on health, safety and national security reasons.

Import Requirements and Documentation

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According to customs regulations, the following documents can be demanded by customs officials:

- Transport by Road Vehicle: a complete list of the goods carried; copies of all waybills; and copies of consignment notes.
- Transport by Aircraft: manifests of the cargo signed by an authorized person at the point of departure; lists of the passengers and crew; lists of any goods on board which are accompanying passengers (i.e., baggage); the clearance, if any, from the last foreign port; and the aircraft's journey log book.
- Transport by Train: copies of invoices, waybills, delivery and advice notes, and other documents for goods which will enter at that port; lists of all goods carried on the train other than the cargo.
- A "Clean Report of Findings" from the ITS affiliate in the exporting country.

U.S. Export Controls

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For information on the latest U.S. export and re-export regulations, please go to the following website: <http://www.bis.doc.gov/>

Temporary Entry

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Under Malawi law, the Controller of Customs and Excise is authorized to allow the temporary importation of goods. The Controller may impose conditions on temporary importation -- such as mandatory re-export -- and may allow entry "for such period as he thinks fit" and "for such purposes as he may approve." Temporary entry is customarily authorized when goods are in transit to other countries, or when goods are accompanying tourists.

Labeling and Marking Requirements

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Labeling and marking requirements are not strictly enforced, though it is uncommon to find products without labels. The Malawi Bureau of Standards is responsible for monitoring labeling and enforcing acceptable standards. The bureau is stricter for food products than for others. Producers are required to declare the composition of their products and ensure that products conform to required standards.

Prohibited and Restricted Imports

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Trade licensing covers thirteen import and six export commodities. Import licenses are required for military, naval, air force or police uniforms; radioactive substances; nests for wild birds; wild animals, trophies and products of such animals; live fish; compound products for use as animal feed (with exceptions); live poultry and eggs; meat (with exceptions); dieldrin; aldrin; and salt.

Goods in transit, used personal and household effects, temporary imports by bona fide tourists, goods less than MK 20,000 (about US\$55) in value, sample products, and advertising materials are exempted from import licensing.

Export licenses are required for implements of war other than arms and ammunition; petroleum products; wild animals, trophies and products of such animals; maize and maize meal; unprocessed tobacco; and tea. The Ministry of Trade and Industry issues import and export licenses. It frequently reviews and changes the lists of goods subject to licensing. Licenses are valid for six months, but may be extended.

Customs Regulations and Contact Information

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The Commissioner General
Malawi Revenue Authority
Private Bag 247
Blantyre, Malawi
Tel: (265) 1-822 588 or 1-820 844
Fax: (265) 1-820 202
<http://www.mra.mw>

Standards

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Overview

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The Malawi Bureau of Standards (MBS), a member of the International Bureau of Standards, promotes conformity with internationally accepted standards. MBS prescribes and enforces product standardization in Malawi. All products manufactured locally for export must obtain certification before export. Hotel and catering services are also subject to reviews. Goods imported into Malawi are also checked to ensure that they meet standards set for such products.

Standards Organizations

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MBS, a member of the International Bureau of Standards, is responsible for overseeing standards within Malawi. The Pharmacy and Medicines Board sets standards for medicines. The Ministry of Agriculture, Irrigation and Water

Development sets standards for agricultural crops, meat products, and dairy products.

NIST Notify U.S. Service

Member countries of the World Trade Organization (WTO) are required under the Agreement on Technical Barriers to Trade (TBT Agreement) to report to the WTO all proposed technical regulations that could affect trade with other Member countries. **Notify U.S.** is a free, web-based e-mail subscription service that offers an opportunity to review and comment on proposed foreign technical regulations that can affect your access to international markets. Register online at Internet URL: <http://www.nist.gov/notifyus/>

Conformity Assessment

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MBS enforces conformity with internationally accepted standards and performs product certification. The Pharmacy and Medicines Board and the Ministry of Agriculture monitor and enforce conformity with the standards that they respectively set.

Product Certification

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Malawi Bureau of Standards is responsible for product certification for industrial and commercial sectors. Other products such as medicines, hospital equipment, agricultural products, and products educational usage, etc., are certified by relevant government authorities.

Accreditation

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The Malawi Bureau of Standards is responsible for product accreditation and tests from accredited foreign laboratories are accepted.

Publication of Technical Regulations

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Technical regulations are not centralized and are therefore managed by relevant government departments. These are published in the "Malawi Government Gazette" and form part of the schedules to relevant Acts.

Labeling and Marking

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Labeling and marking requirements are not strictly enforced, though it is uncommon to find products without labels. The Malawi Bureau of Standards is responsible for monitoring labeling and places more emphasis on food products than others.

Contacts

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The Director General
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Tel: + 265 1 670 488; Fax: + 265 1 670 756
<http://www.mbsmw.org>

Ministry of Agriculture, Irrigation and Water Development
P. O. Box 30134
Lilongwe 3
Tel: +265 1 789 033/252
Fax: +265 1 789 218
agriculture@agriculture.gov.mw

Pharmacy, Medicines and Poisons Board
P.O. Box 30241
Lilongwe 3
Tel: +265 1 755 165/166
Fax: +265 1 755 204
admin@pmpb.malawi.net

Trade Agreements

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Malawi is a member of the World Trade Organization (WTO) and two regional trade blocs: the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA). Under the COMESA Treaty, all goods may be traded among member states under preferential treatment as long as they satisfy the prescribed rules of origin. The SADC Trade Protocol calls for the establishment of a SADC Free Trade Area that stipulates the gradual elimination of tariffs between member states. In principle, the SADC FTA took effect in January 2008 although certain members (Malawi, Mozambique, Tanzania and Zambia) are still implementing their scheduled tariff phase down. Despite Malawi's membership in these organizations, to date intraregional trade has not been a strong component of Malawi's exports.

Web Resources

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Department of Commerce, Bureau of Industry and Security / Export Controls:
<http://www.bis.doc.gov>

Malawi Revenue Authority: <http://www.mra.mw>

National Institute of Standards and Technology / Notify U.S.: <http://www.nist.gov/notifyus>

Malawi Bureau of Standards: <http://www.mbsmw.org>

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Chapter 6: Investment Climate

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Openness to Foreign Investment

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Malawi is open to foreign investment and foreign investors are generally granted national treatment. The Malawi constitution protects investment irrespective of ownership. The government encourages both domestic and foreign investment in most sectors of the economy without major restrictions on ownership, size of investment, source of funds, or the destination of the final product. Restrictions on foreign investment are few and are based on environmental, health, and national security concerns. Affected items are firearms and ammunition; chemical and biological weapons; explosives; and manufacturing involving hazardous waste treatment/disposal or radioactive material. Since industrial licensing in Malawi applies to both domestic and foreign investment, and is restricted to a short list of products, it does not limit competition, protect domestic interests, or discriminate against foreign investors at any stage of investment. Restrictions are mostly regulations affecting trade (foreign exchange, taxes, etc.) and apply equally to domestic and foreign investors. While not discriminatory to foreign investors, investments in Malawi require multiple bureaucratic processes, which may include licensing and land use permissions that can be time consuming and may constitute an impediment to investment.

Despite the generally favorable attitude to foreign investment, investors face many challenges in terms of starting a business. These include lengthy procedures to incorporate and register a business with the Registrar General, and difficulties in obtaining temporary employment permits (TEP) and business residency permits (BRPs).

Apart from the privatization program, the government's overall economic and industrial policy does not have discriminatory effects on foreign investors. 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) and the investment capital must be registered with the Reserve Bank of Malawi through any commercial bank in Malawi. The minimum investment qualifying is USD 50,000.00.

There have been no external investment policy reviews undertaken on Malawi by any international organizations. However, the World Trade Organization conducts periodic "Trade Policy Reviews" on Malawi. The last one was conducted in 2010. These trade policy reviews have informed future co-operation and assistance to Malawi.

The second Malawi Growth and Development Strategy (MGDSII) (2011-2016) identifies a number of sectors as priority growth areas. FDI is particularly encouraged in agriculture, mining, tourism, energy and transport infrastructure. Sugar cane production and processing, legumes, livestock production and dairy farming, irrigation farming, and large scale commercial agriculture have the highest priority in the agricultural sector. Independent power producers particularly for hydropower and other renewable power sources are encouraged, although the sector's legal and regulatory framework currently limits investment. Government is also calling for the private sector (both local and foreign) to develop the tourism sector. A nation-wide resource mapping project supported by the World Bank and the French Government is underway to define Malawi's mineral resources. Private sector-led mineral exploration is also promoted. 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.

The Malawi Competition and Fair Trading Act (CFTA) (1998) only became operational in 2005. Since its passage, the CFTA has governed the review and determinations on over a dozen mergers and acquisitions and cases of alleged abuse of a dominant position by an enterprise. The CFTA'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 and there have been no reported cases of contested decisions of CFTA.

Malawi has privatized 66 formerly state-owned enterprises. A revised divestiture sequence plan to privatize another 65 public enterprises stalled in the cabinet. Government decided to revive the original divestiture plan, but with emphasis on public-private partnerships other than outright sales. Malawi has about 60 state-owned enterprises that are involved in commercial operations. They are concentrated in public utilities, agriculture, housing, finance, education, and aviation. All investors, irrespective of ethnic group or source of capital (foreign or local) may participate in the privatization program. However, Malawi Stock Exchange regulations limit participation of an individual foreign portfolio investor to a maximum of 10% of any class or category of security under the program and limit maximum total foreign investment in any portfolio to 49%. Malawian nationals are offered preferential treatment, including discounted share prices and subsidized credit. Subsidized credit carries a precondition that the shares or assets be retained for at least two years.

TABLE 1: The following chart summarizes several well-regarded indices and rankings.

Measure	Year	Rank or value	Website Address
TI Corruption Perceptions index	2013	(91 of 177)	http://cpi.transparency.org/cpi2013/results/
Heritage Foundation's Economic Freedom index	2013	(124 of 177)	http://www.heritage.org/index/ranking
World Bank's Doing Business Report "Ease of Doing Business"	2013	(161 of 189)	http://doingbusiness.org/rankings
Global Innovation Index	2013	(119 of 142)	http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener
World Bank GNI per capita	2012	USD 320	http://data.worldbank.org/indicator/NY.GNP.PCAP.CD

TABLE 1B - Scorecards:

The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a 2012 per capita gross national income (GNI) or \$4,085 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here: <http://www.mcc.gov/pages/selection/scorecards>. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: <http://www.mcc.gov/documents/reports/reference-2013001142401-fy14-guide-to-the-indicators.pdf>.

Conversion and Transfer Policies

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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). The terms and conditions of international loans, management contracts, licensing and royalty arrangements, and similar transfers require initial RBM approval. The RBM grants approval according to prevailing international standards; subsequent remittances do not require further approval. All commercial banks are authorized by the RBM to approve remittances, and approvals are fairly automatic as long as the applicant's accounts have been audited and sufficient foreign exchange is available.

In practice, foreign exchange availability is very limited and from time to time remittances cannot be made immediately. Foreign exchange availability improved in 2013-2014 compared to 2010-2012. In 2013, the supply of foreign exchange was adequate throughout the year and Malawi's import cover remained above two months even during

the traditional lean periods. Historically, foreign exchange availability follows the agricultural cycle. It is generally plentiful from April through September (when tobacco sales generate foreign exchange inflows), and scarce from October through March. During periods of scarcity, investors may experience extended periods without access to foreign exchange.

The Reserve Bank of Malawi (RBM) devalued and floated the Malawi Kwacha exchange rate on May 7, 2012. Since then, the value of the kwacha against the USD has experienced very wide swings in 2012-2013. Movement has been less pronounced in 2014, but foreign exchange risk remains an important consideration for U.S. companies considering doing business in Malawi.

Expropriation and Compensation

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Malawi's constitution prohibits deprivation of an individual's property without due compensation. There are effective laws that protect both local and foreign investment. The likelihood of direct expropriations has been low since the repeal of the Forfeiture Act in 1992. Some measures with expropriatory effects are occasionally imposed. For example, in both 2008 and early 2012 the government imposed export bans on maize which have not been lifted. Furthermore, the government unilaterally revoked the licenses of all private maize traders in the country. These restrictions applied equally to foreign and domestic investors. Although public tenders for the sale of shares of state-owned enterprises often require local participation, foreign investors tend to dominate the share-holding of large Malawi Stock Exchange-listed companies requiring significant technical and financial resources.

There are three types of land tenure in Malawi: Customary land (controlled by traditional leaders), Public Land (controlled by local and/or central government) and Leasehold land (legal title held by private individuals or company). Leasehold title can either be for a fixed period (25-99 years renewable) or freehold (usually 99 years and above). The bulk of land in Malawi is under customary tenure with land passing on to the next generation through blood relation (hereditary) or through the traditional chief to a new settler (this applies to unused/unclaimed land).

At present, the government may 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. Fair market value is assessed by summing the amount the owner originally paid for the land, the value of any permanent improvements that increase the productive capacity, utility or amenity of the land, and any appreciation of the land value. 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.

The Land Reform Commission—which the government established in 1996 to review land tenure and establish a new land reform program—presented its final report to the President in November 1999. In January 2002, the Ministry of Lands published a new land policy. Draft legislation consisting of six bills have been prepared that incorporates many recommendations of the Commission's report. These bills are: the Land

Acquisition Act Amendment (provides for compensation of persons affected by land acquisition), the Registered Land Act (bill provides for title registration for all land categories including customary estates), the Physical Planning Bill (seeks to enforce orderly and progressive development of land in both rural and urban areas and to preserve and improve land amenities), the Land Survey Bill (seeks to establish Land Surveyors Registration Board, Malawi Geographic Information Center, licensing and control of Land surveyors), the Local Government Amendment (seeks to introduce consequential amendment to the Local Government Act emanating from the proposed new land laws), and the Customary Land Bill (seeks to repeal the Customary Land Act and replace it with new legislation on the management and regulation of customary land) including the abolition of freehold tenure (owners holding permanent title) and the conversion of all freehold titles to leasehold (owners holding land on lease for a maximum period of 99 years).

The Ministry of Lands and the cabinet have approved these new bills and presented them to the Malawi Parliament in 2013, but none of the bills became law due to public outcry that more consultations need to be done. Since July 2000, the Malawi Government stopped issuing new freehold land certificates in anticipation of this new legislation. However, freehold land is still transferable to both Malawians and non-Malawians. Land of all tenures continues to be tradable regardless of nationality, though Malawians are given the first priority. If a foreigner wants to buy leasehold land, the offer price must to be publicly declared in a newspaper. If no Malawian comes up with a counter offer, the land transfer can be implemented, otherwise the interested Malawian buys the land instead.

Dispute Settlement

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Malawi has an independent judiciary, which derives its procedures from English Common Law. There has been little overt government interference in the court system. The commercial courts have qualified personnel who are working toward the improvement of the court system in Malawi. There is an established mediation process to promote agreements between parties in disputes before court proceedings start.

Although processing of commercial cases has significantly improved in the court system, enforcement of judgments continues to be a problem. The Commercial Court now has one dedicated enforcement Sheriff. Before that the Commercial Court used Sheriffs assigned to the High Court who did not grant priority to commercial enforcements. Judgments against the government can be difficult to enforce.

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. However, the fact that there is no such agreement between Malawi and the United States does not mean that judgments involving the two countries cannot be enforced.

Malawi has legislation that offers adequate protection for property and contractual rights. Malawi has written commercial laws which codify Common Law. The Sale-Of-Goods Act, the Hire-Purchase Act, the Competition Fair Trading Act, and the Companies Act

cover commercial practices. The first two acts have been consistently applied, and there is a track record of cases involving commercial law.

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

The 2006 Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act established an autonomous Financial Intelligence Unit (FIU) to combat money laundering and terrorist financing. The FIU is responsible for analyzing disclosures from financial institutions and referring actionable cases to competent authorities. It is also mandated to monitor compliance by reporting institutions.

Malawi is a member of the International Center for Settlement of Investment Disputes (ICSID), and accepts binding international arbitration of investment disputes between foreign investors and the state if specified in a written contract. There have been no major investment disputes involving U.S. companies since 1996.

Performance Requirements and Incentives

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Malawi is not in compliance with World Trade Organization (WTO) Trade Related Investment Measures (TRIM) notification 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. The government accords Export Processing Zone (EPZ) status only to firms (foreign or domestic) that produce exclusively for export.

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 the following sectors: construction, electricity generation and distribution, communication, tourism, agriculture, transport, mining, health, education, banking, and EPZs. Two priority industries have been targeted for tax relief: agro-processing and electricity generation, transmission and distribution. A detailed list of these incentives can be found at the Malawi Investment and Trade Center (MITC) website: www.mitic.mw.

The above incentives are applied consistently but many companies have complained about long delays in accessing the accrued benefits, especially those that require investors to spend first and claim later.

Foreign investors are generally accorded the same treatment as nationals. U.S. and other foreign firms are able to participate in government/donor-financed and/or subsidized research and development programs. The following information is required to register and incorporate a company: name of the company, authorized share capital, registered office, location of account books, address of the company secretary, and the

names of directors and shareholders. There is also a requirement that at least two Malawian residents be appointed directors for such a subsidiary company.

Visas do not inhibit investors, but the need for employment permits sometimes can. Expatriate employees (of both domestic and foreign businesses) who reside and work in Malawi must obtain temporary employment permits (TEPs). TEPs can be difficult to obtain.

Government policy on TEPs has been unchanged since a "Policy Statement and New Guidelines for The Issuance and Renewal of [Expatriate] Employment Permits" was issued in November 1998. The guidelines state that investors may employ expatriate personnel in areas where there is a shortage of "suitable and qualified" Malawians. The policy provides for two types of TEPs:

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

The policy underscores the government's desire to make TEPs readily available to expatriates, and mandates that processing times for TEP applications shall not exceed 40 working days. In practice these guidelines have been applied inconsistently, leading to delays and considerable uncertainty.

Right to Private Ownership and Establishment

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The government encourages both domestic and foreign investors to establish and own business enterprises in most sectors of the economy. All investors have the right to establish, acquire, and dispose of interests in business enterprises. Foreigners require a business residence permit (BRPs) to carry out any business activity in Malawi. The government issues BRPs to foreign nationals who own/operate businesses. BRPs are issued for five-year periods and are renewable.

Permanent Residence Permits (PRPs) are issued to foreign spouses who reside permanently in Malawi, and to owners/operators of businesses who reside in Malawi for periods in excess of ten years. PRP holders cannot work as employees. Malawi's immigration laws governing BRPs and PRPs have been revised. There are three categories of residence permits based on the amount of investment, the status of applicant (investor, retiree, student, or wife of a Malawian citizen) and the period of the business assignment. The maximum number of resident permits per organization is five positions, with the actual number allowed depending on the amount of investment.

There are some restrictions to land ownership by foreigners. Sale of land to foreigners is approved only after no Malawian has shown interest to match the price offered by the foreigner. However, land acquired as part of a business establishment is not subject to this rule.

Protection of Property Rights

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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. 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 and trademarks, etc.).

Real Property: Efforts to improve on land tenure are underway. At present most land is under customary land tenure with occupants holding no legally bidding title. More than half of arable land is untitled (customary). Government has developed draft legislation to legalize customary land tenure to leasehold title so that those currently using that land can have legal rights to the land. This would enable them to use such land as collateral for acquiring financing to develop the land and/or to finance other business ventures. However, traditional leaders are against this development as it will limit their power over land. Government has been preparing for these new developments and already started training people to be engaged as land surveyors and registrars at the local government level. Currently record keeping for registering land ownership is centralized and inefficient. Efforts are underway to computerize the recordkeeping and to decentralize to the district councils.

Malawi recognizes the importance of intellectual property (IP) protection and enforcement but lacks adequate resources to do so. The Registrar General administers the Patent and Trademarks Act, which protects industrial intellectual property rights in Malawi. A public registry of patents and patent licenses is kept. Patents must be registered. Trademarks are registered publicly following advertisement and a period of no objection. The government has signed and adheres to bilateral and multilateral investment guarantee treaties and key agreements on intellectual property rights. Malawi is a member of the convention establishing the Multilateral Investment Guarantee Agency, the World Intellectual Property Organization (WIPO), the Berne Convention, and the Universal Copyright Convention. Enforcement of IP is inadequate due to resource constraints. However, general awareness of the importance of protecting IP in all forms (copyrights, trademarks, patents, trade secrets, and others) has improved. IP enforcement agencies have commemorated the World IP Day on April 26 for the past two years and this has helped to promote the importance of IP protection in the country. Malawi is not listed in USTR's Special 301 Report.

The Copyright Society of Malawi (COSOMA), established in 1992, administers the 1989 Copyright Act which protects copyrights and "neighboring" rights in Malawi. 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 2016. The Ministry of Trade and Industry 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.

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/>.

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

While market prices for goods are generally not controlled, prices of most agricultural goods such as maize and state-provided utilities are regulated. In recent years the government has announced “minimum prices” for tobacco, cotton, and maize. Buyers have been obliged to offer these prices under threat of the loss of their buyers’ licenses. Buyers have complained of a lack of transparency in the setting of these prices. Since 2012, government has moved away from setting controversial prices in commodity markets such as tobacco and cotton, though minimum prices are still being released. Government also instituted automatic pricing mechanisms for fuel and electricity prices. In addition to these progressive reforms, the government removed a levy on fuel for a price stabilization fund and thereby mitigated overall price increases while removing a contentious tax whose account had been misappropriated by the government in the past.

There have been positive steps toward increasing regulatory transparency and improving the foreign investment environment. The government also privatized Air Malawi, the loss making national airline, in 2013 when Ethiopian Airlines acquired a 49% stake. Air Malawi was renamed Malawian Airlines and is under the management of Ethiopian Airlines.

Efficient Capital Markets and Portfolio Investment

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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). MSE hosts about a dozen listed companies. Most of these companies are local but a few are transnational. The MSE is regulated by the Reserve Bank of Malawi. The Companies Act, the Capital Market Development Act (1990), and the Capital Market Development Regulations (1992) as amended in 2013 provide the legislative and regulatory framework for portfolio investment in Malawi. These acts govern the MSE. Foreign investors can buy and sell shares at the stock market without any restrictions. Trading in shares can either be direct or through established stock market brokers. 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 also 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. The demand and supply of shares for existing listed companies is therefore limited. However, demand for newly listed companies always exceeds shares on offer.

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

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

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

Competition from State Owned Enterprises

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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 technology, media, and services. A list of these enterprises is available at the Office of the President and Cabinet. Government does not publish such list in the media or online. 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.

Private and public enterprises freely compete on the same terms and conditions for access to markets, credit and other business opportunities. There are exceptions, however, for some public works assignments where public enterprises tend to be given special preference by government. There have been several instances in the past where public enterprises such as the Agricultural Development and Marketing Corporation (ADMARC) and the Small-holder Farmers Fertilizer Revolving Fund (SFFRF) have been awarded contracts to distribute subsidized agricultural inputs without competing with private sector enterprises. These SOEs also access cheap financing from government thereby acquiring unfair advantage over private sector traders 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. Not all SOEs perform public function mandates. Malawi has a mixed bag system of SOEs where some SOEs are purely performing a public good function, others are commercial, and the rest both. All SOEs are subject to government regulations that apply to other government departments including employment and on procurement procedures, though some variations apply to some. All SOEs are required by law to produce annual reports, which are not always audited by independent professional audit firms despite the law requirement.

SOEs in the agriculture, education and health sectors spend more on research and development than private sector players (both local and foreign) and they tend to do so for the public good rather than for profit.

SOEs are subject to the same taxes as their private sector counterparts, including value added tax. However, capital acquisition (motor vehicles, equipment and machinery) are not subject to the same taxes. SOEs, particularly non-profit SOEs, also enjoy better and preferential access to land than private sector competitors, for example a government run agricultural college or research institution.

All SOEs report to a line ministry but also have a Chairperson and Board of Directors. The Boards of Directors are composed of politicians and professionals. All such boards also have senior government officials representing government departments as ex-officio/non-voting members. The participation of members of the government as ex-officio/non-voting members on these boards creates a perceived and/or real conflict of interest.

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

The MCC Compact Program entered into force in September 2013 and focuses on the power sector (strengthening state-owned electric utility ESCOM and its generation, transmission, and distribution infrastructure) and promoting private sector investment in power production.

Corporate Social Responsibility

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There is a well-developed sense of corporate social responsibility in Malawi and most corporate entities make a point to publicize such activities in the local media. Large domestic companies and international enterprises tend to be more active and generous than small domestic companies. There are no established laws and regulations governing Corporate Social Responsibility (CSR), nor does the government overtly direct the destination of CSR to particular sectors.

There are laws governing protection of the environment and waste disposal for producers and consumers. Enforcement of these regulations is, however, inadequate. Government expects all enterprises to follow all laws of Malawi regarding employment and compensation. Malawi has enacted a number of labor laws governing employment, work environment, industrial safety, age limits, hours of work and minimum wages among many others.

Government has enacted accounting standards that conform to international standards that the corporate sector is expected to adhere to. Executive compensation is 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.

Political Violence

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Malawi has been largely free of political violence since gaining independence in 1964. Apart from the disarming of the Malawi Young Pioneers, a paramilitary group active during Malawi's 1994 transition to democracy, incidents of violence have been few. Sporadic violence occurred in the run-up and immediately following the 2004 elections. Presidential and parliamentary elections in May 2009 were peaceful, with no significant incidences of violence. On July 20 and 21, 2011, nationwide demonstrations over economic and political governance turned violent and 20 Malawians died in the civil unrest that ensued. There was a peaceful transition of power after President Mutharika's death to Vice President Joyce Banda, who was not a member of Mutharika's ruling party at the time of his death. Despite two days of uncertainty, the constitution was followed and Joyce Banda was sworn in as the new president. Presidential, parliamentary, and local government elections were held in May 2014. Despite logistical challenges on voting day, the polls resulted in the election of the Democratic People's Party's Peter Mutharika as the country's new president, representing this young democracy's fourth peaceful transition of power.

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 nonviolent. There are no nascent insurrections or other politically motivated activities of major concern to investors. However there have been some political tensions with neighboring Mozambique, Zambia, and Tanzania in recent times. Tanzania and Malawi are currently trying to resolve a border dispute over the northeastern portion of Lake Malawi.

Corruption

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Corruption, including bribery, raises the costs and risks of doing business. Corruption has a corrosive impact on both market opportunities overseas for U.S. companies and the broader business climate. It also deters international investment, stifles economic growth and development, distorts prices, and undermines the rule of law.

It is important for U.S. companies, irrespective of their size, to assess the business climate in the relevant market in which they will be operating or investing, and to have an effective compliance program or measures to prevent and detect corruption, including foreign bribery. U.S. individuals and firms operating or investing in foreign markets should take the time to become familiar with the relevant anticorruption laws of both the foreign country and the United States in order to properly comply with them, and where appropriate, they should seek the advice of legal counsel.

The U.S. Government seeks to level the global playing field for U.S. businesses by encouraging other countries to take steps to criminalize their own companies' acts of corruption, including bribery of foreign public officials, by requiring them to uphold their obligations under relevant international conventions. A U. S. firm that believes a competitor is seeking to use bribery of a foreign public official to secure a contract should bring this to the attention of appropriate U.S. agencies, as noted below.

U.S. Foreign Corrupt Practices Act: In 1977, the United States enacted the Foreign Corrupt Practices Act (FCPA), which makes it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to foreign public officials for the purpose of obtaining or retaining business for or with, or directing business to, any person. The FCPA also applies to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States. For more detailed information on the FCPA, see the FCPA Lay-Person's Guide at: <http://www.justice.gov/criminal/fraud/>

Other Instruments: It is U.S. Government policy to promote good governance, including host country implementation and enforcement of anti-corruption laws and policies pursuant to their obligations under international agreements. Since enactment of the FCPA, the United States has been instrumental to the expansion of the international framework to fight corruption. Several significant components of this framework are the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Antibribery Convention), the United Nations Convention against Corruption (UN Convention), the Inter-American Convention against Corruption (OAS Convention), the Council of Europe Criminal and Civil Law Conventions, and a growing list of U.S. free trade agreements. Malawi is party to the UN Anticorruption Convention and subscribes to the provisions of the OECD Anti-bribery Convention, but generally all countries prohibit the bribery and solicitation of their public officials. 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 laws.

OECD Antibribery Convention: The OECD Antibribery Convention entered into force in February 1999. As of March 2009, there are 38 parties to the Convention including the United States (see <http://www.oecd.org/dataoecd/59/13/40272933.pdf>). Major exporters China, India, and Russia are not parties, although the U.S. Government strongly endorses their eventual accession to the Convention. The Convention obligates the Parties to criminalize bribery of foreign public officials in the conduct of international business. The United States meets its international obligations under the OECD Antibribery Convention through the U.S. FCPA. Malawi subscribes to the provisions of the OECD Anti-bribery Convention, though it is not yet a signatory to the Convention.

UN Convention: The UN Anticorruption Convention entered into force on December 14, 2005, and there are 158 parties to it as of November 2011 (see <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>). The UN Convention is the first global comprehensive international anticorruption agreement. The UN Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption. The UN Convention goes beyond previous anticorruption instruments, covering a broad range of issues ranging from basic forms of corruption such as bribery and solicitation, embezzlement, trading in influence to the concealment and laundering of the proceeds of corruption. The Convention contains transnational business bribery provisions that are functionally similar to those in the OECD Antibribery Convention and contains provisions on private sector auditing and books and records requirements. Other provisions address matters such as prevention, international cooperation, and asset recovery. Malawi is a party to the UN Anticorruption Convention.

OAS Convention: In 1996, the Member States of the Organization of American States (OAS) adopted the first international anticorruption legal instrument, the Inter-American Convention against Corruption (OAS Convention), which entered into force in March

1997. The OAS Convention, among other things, establishes a set of preventive measures against corruption, provides for the criminalization of certain acts of corruption, including transnational bribery and illicit enrichment, and contains a series of provisions to strengthen the cooperation between its States Parties in areas such as mutual legal assistance and technical cooperation. As of December 2009, the OAS Convention has 34 parties (see <http://www.oas.org/juridico/english/Sigs/b-58.html>) Malawi is not a party to the OAS Convention.

Council of Europe Criminal Law and Civil Law Conventions: Many European countries are parties to either the Council of Europe (CoE) Criminal Law Convention on Corruption, the Civil Law Convention, or both. The Criminal Law Convention requires criminalization of a wide range of national and transnational conduct, including bribery, money-laundering, and account offenses. It also incorporates provisions on liability of legal persons and witness protection. The Civil Law Convention includes provisions on compensation for damage relating to corrupt acts, whistleblower protection, and validity of contracts, inter alia. The Group of States against Corruption (GRECO) was established in 1999 by the CoE to monitor compliance with these and related anti-corruption standards. Currently, GRECO comprises 49 member States (48 European countries and the United States). As of December 2011, the Criminal Law Convention has 43 parties and the Civil Law Convention has 34 (see www.coe.int/greco.) Malawi is not a party to the Council of Europe Conventions.

Free Trade Agreements: While it is U.S. Government policy to include anticorruption provisions in free trade agreements (FTAs) that it negotiates with its trading partners, the anticorruption provisions have evolved over time. The most recent FTAs negotiated now require trading partners to criminalize “active bribery” of public officials (offering bribes to any public official must be made a criminal offense, both domestically and trans-nationally) as well as domestic “passive bribery” (solicitation of a bribe by a domestic official). All U.S. FTAs may be found at the U.S. Trade Representative Website: <http://www.ustr.gov/trade-agreements/free-trade-agreements>. Malawi does not have a FTA with the United States, but the country benefits from the Africa Growth and Opportunity Act, which was enacted in 2000.

Local Laws: U.S. firms should familiarize themselves with local anticorruption laws, and, where appropriate, seek legal counsel. While the U.S. Department of Commerce cannot provide legal advice on local laws, the Department’s U.S. and Foreign Commercial Service can provide assistance with navigating the host country’s legal system and obtaining a list of local legal counsel. 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 laws.

Assistance for U.S. Businesses: The U.S. Department of Commerce offers several services to aid U.S. businesses seeking to address business-related corruption issues. For example, the U.S. and Foreign Commercial Service can provide services that may assist U.S. companies in conducting their due diligence as part of the company’s overarching compliance program when choosing business partners or agents overseas. The U.S. Foreign and Commercial Service can be reached directly through its offices in every major U.S. and foreign city, or through its Website at www.trade.gov/cs.

The Departments of Commerce and State provide worldwide support for qualified U.S. companies bidding on foreign government contracts through the Commerce

Department's Advocacy Center and State's Office of Commercial and Business Affairs. Problems, including alleged corruption by foreign governments or competitors, encountered by U.S. companies in seeking such foreign business opportunities can be brought to the attention of appropriate U.S. government officials, including local embassy personnel and through the Department of Commerce Trade Compliance Center "Report A Trade Barrier" Website at tcc.export.gov/Report_a_Barrier/index.asp.

Guidance on the U.S. FCPA: The Department of Justice's (DOJ) FCPA Opinion Procedure enables U.S. firms and individuals to request a statement of the Justice Department's present enforcement intentions under the anti-bribery provisions of the FCPA regarding any proposed business conduct. The details of the opinion procedure are available on DOJ's Fraud Section Website at www.justice.gov/criminal/fraud/fcpa. Although the Department of Commerce has no enforcement role with respect to the FCPA, it supplies general guidance to U.S. exporters who have questions about the FCPA and about international developments concerning the FCPA. For further information, see the Office of the Chief Counsel for International Counsel, U.S. Department of Commerce, Website, at http://www.ogc.doc.gov/trans_anti_bribery.html. More general information on the FCPA is available at the Websites listed below.

Exporters and investors should be aware that generally all countries prohibit the bribery of their public officials, and prohibit their officials from soliciting bribes under domestic laws. Most countries are required to criminalize such bribery and other acts of corruption by virtue of being parties to various international conventions discussed above.

Anti-Corruption Activities in Malawi

Public sector corruption, including bribery of public officials, remains a major challenge for U.S. firms operating in Malawi. The Corrupt Practices Act establishes the Anti-Corruption Bureau (ACB). 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 Director and the Deputy Director of the ACB are both appointed by the President, subject to confirmation by the Public Appointments Committee of Parliament. The ACB 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 law provides for criminal penalties for corruption by officials. There were numerous reports of government corruption at the national and local level during 2013. Beginning in September 2013, a national corruption scandal known as "Cashgate," involving the theft of at least 20 billion Malawi Kwacha (\$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 ACB 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. Civil society organizations also formed their own institution called “Civil Society Action Against Corruption” to deal with corruption within 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.

The ACB cooperates with other anti-corruption bureaus in the region.

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Website: <http://www.anti-corruptionbureau.mw/about/background/>

Anti-Corruption Resources

Some useful resources for individuals and companies regarding combating corruption in global markets include the following:

- Information about the U.S. Foreign Corrupt Practices Act (FCPA), including a “Lay-Person’s Guide to the FCPA” is available at the U.S. Department of Justice’s Website at: <http://www.justice.gov/criminal/fraud/fcpa>.
- Information about the OECD Antibribery Convention including links to national implementing legislation and country monitoring reports is available at: http://www.oecd.org/departement/0,3355,en_2649_34859_1_1_1_1_1,00.html. See also new Antibribery Recommendation and Good Practice Guidance Annex for companies: <http://www.oecd.org/dataoecd/11/40/44176910.pdf>.

- General information about anticorruption initiatives, such as the OECD Convention and the FCPA, including translations of the statute into several languages, is available at the Department of Commerce Office of the Chief Counsel for International Commerce Website: http://www.ogc.doc.gov/trans_anti_bribery.html.
- Transparency International (TI) publishes an annual Corruption Perceptions Index (CPI). The CPI measures the perceived level of public-sector corruption in 180 countries and territories around the world. The CPI is available at: http://www.transparency.org/policy_research/surveys_indices/cpi/2009. TI also publishes an annual *Global Corruption Report* which provides a systematic evaluation of the state of corruption around the world. It includes an in-depth analysis of a focal theme, a series of country reports that document major corruption related events and developments from all continents and an overview of the latest research findings on anti-corruption diagnostics and tools. See <http://www.transparency.org/publications/gcr>.
- The World Bank Institute publishes Worldwide Governance Indicators (WGI). These indicators assess six dimensions of governance in 213 countries, including Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption. See <http://info.worldbank.org/governance/wgi/index.asp>. The World Bank Business Environment and Enterprise Performance Surveys may also be of interest and are available at: <http://data.worldbank.org/data-catalog/BEEPS>.
- The World Economic Forum publishes the *Global Enabling Trade Report*, which presents the rankings of the Enabling Trade Index, and includes an assessment of the transparency of border administration (focused on bribe payments and corruption) and a separate segment on corruption and the regulatory environment. See <http://www.weforum.org/s?s=global+enabling+trade+report>.
- Additional country information related to corruption can be found in the U.S. State Department's annual *Human Rights Report* available at <http://www.state.gov/g/drl/rls/hrrpt/>.
- Global Integrity, a nonprofit organization, publishes its annual *Global Integrity Report*, which provides indicators for 106 countries with respect to governance and anti-corruption. The report highlights the strengths and weaknesses of national level anti-corruption systems. The report is available at: <http://report.globalintegrity.org/>.

Bilateral Investment Agreements

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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. Bilateral investment agreements have also been initialed with Brazil, China, Germany, India and the OPEC Fund for International Development.

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.

OPIC and Other Investment Insurance Programs

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

Labor

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The Government of Malawi estimates that more than half of the population is of working age. Unskilled labor is plentiful. Skilled and semi-skilled labor is scarce. Occupational categories with skills shortages include accountants and related personnel, economists, engineers, primary and secondary school teachers, lawyers, and medical/health personnel. The University of Malawi provides bachelors and masters degrees in economics, engineering, medicine, education, agriculture and administration. The Malawi College of Accountancy teaches accounting. Chancellor College operates the country's law school. In early 1999, the government established the Technical, Entrepreneurial and Vocational Education and Training Authority (TEVETA) program to address technical skills shortages in industry.

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

Workers have the legal right to form and join trade unions. Twenty-nine unions are registered. Union membership is low, however, given the small percentage of the work force in the formal sector, the lack of awareness of worker rights and benefits, and a resistance on the part of many employees to join unions. Only 18% of people employed in the formal sector belong to unions. Unions may form or join federations and have the right to affiliate with, and participate in, the affairs of international workers' organizations. While the government is a signatory to the ILO Convention protecting worker rights, mechanisms for enforcing the provisions of the convention are weak. There are serious manpower shortages at the Ministry of Labor, resulting in very few labor-standards inspections. There was no new legislation enacted during the reporting period.

Foreign-Trade Zones/Free Ports

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Legislation for the establishment of export processing zones (EPZs) came into force in 1995. All companies engaged exclusively in manufacture for export may apply for EPZ status. As of April 2014, 13 were operating under the EPZ scheme. Almost all of these are foreign owned companies though the law does not discriminate on ownership. 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 EPZ arrangement.

Foreign Direct Investment Statistics

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Economic Data	Malawi National Statistics Office*		USG or international source		USG or international Source of data
	Year	Amount	Year	Amount	
Malawi Gross Domestic Product (GDP) (Current U.S. Dollars)	2012	\$4.557 billion	2012	\$4.240 billion	World Bank: http://data.worldbank.org/country/malawi
	2013	Data not available	2013	\$3.705 billion	
Malawi GDP Per Capita (Current U.S. Dollars)	2012	Data not available	2012	\$266	Calculated from World Bank: http://data.worldbank.org/country/malawi
	2013	Data not available	2013	\$226	
Malawi GDP Growth (annual %)	2012	Data not available	2012	2%	World Bank: http://data.worldbank.org/country/malawi
	2013	Data not available	2013	5%	
Foreign Direct Investment	Year	Amount	Year	Amount	
U.S. FDI in Malawi (Millions U.S. Dollars, stock positions)	2012	Data not Available	2012	\$2.0 million	Bureau of Economic Analysis: http://www.bea.gov/international/index.htm#iip
Malawi's FDI in the United States (Millions U.S. Dollars, stock positions)	2012	Data not Available	2012	\$0.0 million	Bureau of Economic Analysis: http://www.bea.gov/international/index.htm#iip
Total inbound stock of FDI as % Malawi GDP	2012	2.8%			

* <http://www.nsomalawi.mw>

Malawi is one of the least developed and most densely populated countries in the world. Malawi's economy is based on agriculture which accounts for over 30% of GDP and 90% of export revenues. Small shareholder agriculture is the source of income for more than 80% of the population. Malawi's economy depends on substantial inflows of foreign aid from the IMF, the World Bank, and individual donor nations.

Both the Reserve Bank of Malawi (RBM) and the Malawi Investment and Trade Center (MITC) maintain records on the value and composition of Foreign Direct Investment (FDI) in Malawi. Neither the RBM nor MITC, however, currently capture actual FDI figures. The following chart shows the amount of approved FDI into Malawi since 2005 as well as its relative percentage of the GDP for that year.

Year	FDI Inflows (US\$)	% GDP
2005	52,327,161	1.8
2006	72,192,866	2.3
2007	92,055,126	2.6
2008	195,424,461	4.6
2009	49,130,855	1
2010	97,010,028	1.8
2011	92,407,704	1.6
2012	129,500,000	3.0

*Source: Annual Economic Reports, Malawi Government.

Foreign Direct Investment (FDI) from 2005 to 2012 ranged from 1 to 4.6% of GDP. The prospect for future FDI is bright following government's move to devalue and float the currency, the Malawi Kwacha. Malawi's government is implementing its economic recovery plan that is expected to stimulate the growth of the economy and attract foreign direct investment. The economy is likely to grow by between 4.6% and 5.5% in 2013 according to international forecasts. The liberalization of the exchange rate regime is an important step toward improving Malawi's investment climate. While still early in his term, President Mutharika has made very positive statements urging his government to take tangible actions to attract investors and promote trade.

Contact Point at Post

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Chapter 7: Trade and Project Financing

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How Do I Get Paid (Methods of Payment)

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Imports into Malawi are financed primarily through letters of credit (LCs). Commercial banks require importers to provide cash up front to secure the LCs in order to hedge against possible foreign exchange loss risks. Money is then transferred to foreign suppliers through correspondent banks. LCs were difficult to obtain from the commercial banks in 2011 and early 2012, as lack of a competitive and real exchange rate resulted in severe foreign exchange shortages throughout the banking sector. The situation improved since the currency was floated, allowing depreciation to relieve shortages of foreign exchange. Banks have reported limited difficulties accessing LCs due to suspension of budget support by donors in late 2013. Widespread lack of confidence in the Malawi government's management of resources affects Malawi's credit rating.

How Does the Banking System Operate

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Malawi's banking sector is overseen by the Reserve Bank of Malawi—the central bank. There are twelve full-service commercial banks, but Malawi's four largest banks (National Bank of Malawi, First Merchant Bank, Standard Bank, and New Building Society Bank) command 90% of the market, with a total capitalization of over \$1 billion.

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., and adopted Basel II standards in January 2014. 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, Ernst & Young, and Deloitte.

Foreign-Exchange Controls

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In May 2012, the RBM lifted the foreign exchange controls that had been imposed on tobacco sales proceeds and large transactions in 2010 and 2011. Tobacco proceeds in U.S. dollars are once again directly routed through commercial banks. Commercial

banks no longer need to seek prior approval from RBM to effect foreign exchange payments to foreign suppliers for their customers.

U.S. Banks and Local Correspondent Banks

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National Bank of Malawi (NBM) maintains banking relationships with over thirty correspondent banks, including Citibank, Standard Chartered of New York, Chase Manhattan, Bank of New York, Equator Bank and Barclays Bank. Banking services include demand-deposit accounts, telegraphic transfers, and travelers' checks.

Standard Bank (SB) maintains banking relationships with Citibank, Chemical Bank, Bank of New York, Bank of America, and Equator Bank. Banking services include demand deposit accounts, telegraphic transfers, and Citibank travelers' checks.

Finance Corporation of Malawi (FINCOM) maintains banking relationships with Citibank and Equator Bank. Banking services include demand deposit accounts and telegraphic transfers.

Investment and Development Bank of Malawi (INDEBANK) maintains a banking relationship with Citibank. Banking services include demand deposit accounts, telegraphic transfers, and travelers' checks.

First Merchant Bank (FMB) maintains banking relationships with Citibank and American Express. Banking services include demand deposit accounts and telegraphic transfers.

Project Financing

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The World Bank, through its International Development Agency (IDA), is Malawi's most consistent international source of financing for public projects. The African Development Bank (AfDB) and its affiliated Fund constitute other major sources of project financing. The U.S. Agency for International Development (USAID), the World Bank, and the African Development Bank/Fund are the major donors for projects in which U.S. firms are eligible to participate. Several local financial institutions including INDEBANK have lines of credit from both regional and multilateral organizations for lending to domestic investors in need of foreign exchange.

General Financing Availability:

Kwacha-denominated financing is available from Malawi's commercial institutions. Credit is allocated on market terms, and foreign investors are eligible to apply for it. Proceeds from any investment using local resources, however, are not remittable.

Local financing for hard currency-denominated transactions can be problematic, e.g., during shortages of foreign exchange. Imports into Malawi are financed primarily through secured letters of credit (LCs).

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Export-Import Bank of the United States: <http://www.exim.gov>

Country Limitation Schedule: http://www.exim.gov/tools/country/country_limits.html

U.S. Overseas Private Investment Corporation: <http://www.opic.gov>

U.S. Trade and Development Agency: <http://www.tda.gov/>

U.S. Small Business Administration's Office of International Trade:
<http://www.sba.gov/oit/>

U.S. Department of Agriculture Commodity Credit Corporation:
<http://www.fsa.usda.gov/cc/default.htm>

U.S. Agency for International Development: <http://www.usaid.gov>

Reserve Bank of Malawi: <http://www.rbm.mw>

Malawi Investment and Trade Center: <http://www.mitc.mw>

National Bank of Malawi: <http://www.natbank.co.mw>

Standard Bank: <http://www.standardbank.co.mw>

First Merchant Bank: <http://www.fmbmalawi.com>

African Development Bank: <http://www.afdb.org>

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Chapter 8: Business Travel

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Business Customs

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Malawians are characteristically helpful in both personal and business dealings. U.S. business travelers are encouraged to obtain a copy of the "Key Officers of the Foreign Service Posts: Guide for Business Representatives" available for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; tel. (202) 512-1800; fax (202) 512-2250. Business travelers to Malawi seeking appointments with U.S. Embassy Lilongwe officials should contact the commercial section in advance. The commercial section can be reached by telephone at +265 1-773-166 extensions 3406 and 3253 or by email to Commercial Specialist Priston Msiska, MsiskaPA@state.gov.

Malawi business attire is very close to the British style. Smart business suits are recommended but normally jacket and tie is acceptable. Gifts are expected and acceptable during festive seasons.

Food:

A variety of food is normally available in Malawi's urban areas. A few stores carry limited selections of imported goods. Expatriates patronize a handful of restaurants in both Lilongwe and Blantyre. Rural areas have very few restaurants, almost none of which attract foreigners.

Housing:

Short-term visitors to Malawi would most likely stay in tourist-class hotels, which are located in major urban areas and lakeside resorts. Accommodations in rural areas are generally not recommended. Expatriate residents in Malawi generally live in modern housing in the major urban centers. Power and water are generally available in major cities, but supply interruptions are common. The housing markets in Lilongwe and Blantyre are tight. Local real estate agents are available to help locate housing.

Travel Advisory

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The Department of State has no current travel advisory specific to conditions in Malawi, but all travelers are encouraged to exercise caution while in country.

The Department of State Consular Information Sheet for Malawi can be found at: http://travel.state.gov/travel/cis_pa_tw/cis/cis_959.html

Visa Requirements

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U.S. citizens do not require visas when entering Malawi for business or vacation travel. Temporary residence permits for up to 30 days are issued upon arrival in Malawi, and various types of extensions can be granted.

U.S. companies that require travel of foreign businesspersons to the United States should be advised that visas should be applied for before any travel plans are finalized. Visa applicants should go to the following links.

State Department Visa Website: <http://travel.state.gov/visa/>

United States Embassy Lilongwe Internet Website: <http://lilongwe.usembassy.gov>

Telecommunications

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Malawi's telecommunications infrastructure is functional but overburdened. Malawi Telecoms Limited's (MTL) telephone penetration rate of 0.4% of the population is the lowest in the Southern African Development Community (SADC) region. MTL previously had a long waiting period for acquiring new telephone lines, but this has improved of late.

Introduction of private sector participation in the telecommunications sector has begun to improve services. MTL began privatization in 2005. A second fixed line operator, Access Communications Limited, was licensed in 2008 and rolled out in 2010. Access Communications Limited is the only competitor to MTL. Malawi has GSM cellular telephone networks. Most corporate offices and tourist class hotels have telephones and faxes. The international country code for Malawi is 265; there are no city codes.

There are two internet gateway providers and several internet service providers. According to the International Telecommunication Union, approximately 4.5 percent of the country's individuals used the Internet in 2012. Internet is widely accessible in the major cities of Blantyre, Lilongwe, Mzuzu and Zomba, but only about 15% of the population lives in urban areas. Internet is not widely available in the rural areas except for satellite internet links at some tourist resorts. Wireless access to the internet is improving and some access is now available in rural areas located along major transportation corridors with adequate communications tower coverage.

Transportation

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Ground Transportation

Paved, two-lane highways connect Malawi's major cities of Blantyre, Lilongwe, Mzuzu, and Zomba. Highways also connect the lakeshore communities of Nkhatakota, Nkhata Bay, Salima, and Mangochi with Lilongwe and Mzuzu. Paved roads extend from Blantyre to the borders of Mozambique, from Lilongwe to the Zambian border, and from Karonga to the Tanzanian border. Road infrastructure has significantly improved following the establishment in the early 2000s of the National Roads Authority (NRA) and the National Road Fund (NRF). Inadequate drainage often contributes to the premature break-up of road surfaces that are subject to washouts during the rainy season. Many dirt roads are not usable during the rainy season (roughly November to April).

Rental cars are available for hire in Blantyre, Lilongwe, and Mzuzu. Driving at night outside urban areas is unsafe. Malawi has an extensive network of buses, but only the best class bus service connecting Blantyre, Lilongwe, and Mzuzu is normally considered acceptable for business travel.

Air Transportation

Airports on the outskirts of Lilongwe and Blantyre handle international air traffic. There are daily scheduled flights to Addis Ababa, Ethiopia; Nairobi, Kenya; and Johannesburg, South Africa. Connections can be made from these points to Asia, Europe and North America.

In 2012, the government liquidated Air Malawi (a state-owned enterprise) and in 2013, Ethiopian Airways acquired 49% ownership and managerial control of the airline. Renamed Malawian Airlines, it resumed flying in 2014. It flies daily to Johannesburg from both Lilongwe and Blantyre and connects both cities to Addis Ababa, Dar es Salaam, Lusaka, Harare, and Maputo. Domestic routes connect Lilongwe and Blantyre daily. Domestic service to Mzuzu and other international routes from the old Air Malawi network may soon be added.

Rail Transportation

The Central East African Railways Company (CEAR) took over the operations of the former Malawi Railways Limited in December 2000. CEAR operates limited passenger service in the southern part of the country, and freight service between Lilongwe, Blantyre, and the Mozambican port of Nacala. Freight service also extends south to the town of Makhanga near the Mozambique border. A track extension connects Malawi's network to the Zambian network, but there is not yet any scheduled service to Zambia.

Vale, a Brazilian mining company, began construction and rehabilitation of the new rail line from Tete/Moatize in Mozambique through Malawi to the port of Nacala in 2013. The new rail line is expected to be ready for traffic by early 2015. The new rail line has been designed to transport over 18 million tons of coal and 5 million tons of other cargo per year. If there is sufficient demand from Malawi businesses, this line will carry cargo between Malawi and Mozambique's Nacala port.

Water Transportation

Two state-owned companies -- Malawi Lake Services (MLS) and Lake Malawi Ports (LMP) – used to provide lake transport services in Malawi. Limited freight and passenger services are offered on Lake Malawi. There is a shipyard and workshops at Monkey Bay, and fourteen vessels (of which nine are operational). The vessels have capacity to transport containers, petroleum products and passengers through the ports of Chilumba and Chipoka on Lake Malawi, including stops in Tanzania and Mozambique. These services have been concessioned out to Mota Engel who now manage both the lake services and ports.

Language

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English, the official language of Malawi, generally suffices for business communication, although few rural Malawians speak it. The most common vernacular languages include Chichewa (spoken throughout the country), Chitumbuka (spoken primarily in the North), and Chiyao (spoken primarily in the South).

Health

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Malawi's national health facilities are far below Western standards. Malaria and other tropical diseases are prevalent throughout the country. The HIV/AIDS rate is high, particularly in urban areas. Much of Lake Malawi is infested with schistosomiasis (bilharzia). Malaria prophylaxis is recommended while in Malawi, as is a comprehensive immunization regime before entering the country. The U.S. Embassy recommends drinking only boiled, bottled, or distilled water. Raw, unpeeled fruits and vegetables should be avoided.

Local Time, Business Hours, and Holidays

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Malawi is on GMT plus 2. There is no system of daylight savings time during any part of the year. Official government business hours are 07:30 to 12:00 and 13:00 to 17:00 Monday to Friday. Some businesses choose to open on Saturdays.

Malawi's official holidays for 2015 are:

New Year's (January 1), John Chilembwe Day (January 15), Martyrs' Day (March 3), Good Friday, Easter Monday, Labor Day (May 1), Kamuzu Day (May 14), Republic Day (July 6), Eid El Fitr, Mothers' Day (October 15), and Christmas Day (December 25).

Temporary Entry of Materials and Personal Belongings

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Under Malawi law, the Controller of Customs and Excise is authorized to allow the temporary importation of goods. The Controller may impose conditions on temporary importation -- such as mandatory re-export -- and may allow entry "for such period as he thinks fit" and "for such purposes as he may approve." Temporary entry is customarily authorized when goods are in transit to other countries, or when goods are accompanying tourists.

Web Resources

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Department of State Consular Information Sheet:
http://travel.state.gov/travel/cis_pa_tw/cis/cis_959.html

State Department Visa Website: <http://travel.state.gov/visa/index.html>

United States Embassy Lilongwe Internet Website: <http://lilongwe.usembassy.gov>

Malawi Tourism Guide: <http://www.malawitourism.com>

Lonely Planet Malawi: <http://www.lonelyplanet.com/malawi>

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Chapter 9: Contacts, Market Research and Trade Events

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Contacts

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Government Offices

Secretary to the President and Cabinet
Office of the President and Cabinet
Private Bag 301
Lilongwe 3, Malawi
Tel: (265) 1-789-311/411/263/005
Fax: (265) 1-788-456/789-273

Secretary to the Treasury
Ministry of Finance and Economic Planning
Box 30049
Lilongwe 3, Malawi
Tel: (265) 1-788-150/156/261/531; 789-355
Fax: (265) 1-789-173
<http://www.finance.gov.mw>

Principal Secretary
Ministry of Trade and Industry
P.O. Box 30366
Lilongwe 3, Malawi
Tel: (265) 1-770-244
Fax: (265) 1-770-680

The Commissioner General
Malawi Revenue Authority
Private Bag 247
Blantyre, Malawi
Tel: (265) 1-822-588
Fax: (265) 1-820-202
<http://www.mra.mw>

Governor
Reserve Bank of Malawi
Box 30063
Lilongwe 3, Malawi
Tel: (265) 1-770-600
Fax: (265) 1-772-752

<http://www.rbm.mw>

General Manager
Malawi Investment and Trade Center
Private Bag 302
Lilongwe 3, Malawi
Tel: (265) 1-770-800
Fax: (265) 1-771-781
<http://www.malawi-invest.net>

Country Trade and Industry Associations

Chief Executive Officer
Malawi Confederation of Chambers of Commerce and Industry
Box 258
Blantyre, Malawi
Tel: (265) 1-671-988
Fax: (265) 1-671-147
<http://www.mccci.org>

Country Commercial and Financial Institutions

Standard Bank
Box 1111
Blantyre, Malawi
Tel: (265) 1-621-947
Fax: (265) 1-624-627
<http://www.standardbank.co.mw>

National Bank of Malawi
Box 945
Blantyre, Malawi
Tel: (265) 1-620-622
Fax: (265) 1-620-606
<http://www.natbank.co.mw>

U.S. Embassy Lilongwe

Economic/Commercial Section
U.S. Embassy Lilongwe
Box 30016
Lilongwe 3, Malawi
Tel: (265) 1-773-166 ext. 3253 and ext. 3406
Fax: (265) 1-770-471
<http://lilongwe.usembassy.gov>

Multilateral Development Bank Offices in Country

Country Manager
World Bank
P.O. Box 30557

Lilongwe 3, Malawi
Tel: (265) 1-770-611/774 410
Fax: (265) 1-771-158

Resident Representative
International Monetary Fund (IMF)
Private Bag B354
Lilongwe 3, Malawi
Tel: (265) 1-770-725
Fax: (265) 1-770-702

Resident Representative
African Development Bank/Fund
P.O. Box 30732
Lilongwe 3, Malawi
Tel: (265) 1-774-460
Fax: (265) 1-774-469

Market Research

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To view market research reports produced by the U.S. Commercial Service please go to the following website: <http://www.export.gov/mrktresearch/index.asp> and click on Country and Industry Market Reports.

Please note that these reports are only available to U.S. citizens and U.S. companies. Registration to the site is required, and is free.

Trade Events

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Please click on the link below for information on upcoming trade events.

<http://www.export.gov/tradeevents/index.asp>

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Chapter 10: Guide to Our Services

The President's National Export Initiative marshals Federal agencies to **prepare U.S. companies to export successfully, connect them with trade opportunities** and **support them once they do have exporting opportunities**.

The U.S. Commercial Service offers customized solutions to help U.S. exporters, particularly small and medium sized businesses, successfully expand exports to new markets. Our global network of trade specialists will work one-on-one with you through every step of the exporting process, helping you to:

- Target the best markets with our world-class research
- Promote your products and services to qualified buyers
- Meet the best distributors and agents for your products and services
- Overcome potential challenges or trade barriers
- Gain access to the full range of U.S. government trade promotion agencies and their services, including export training and potential trade financing sources

To learn more about the Federal Government's trade promotion resources for new and experienced exporters, please click on the following link: www.export.gov

For more information on the services the U.S. Commercial Service offers to U.S. exporters, please click on the following link: (Insert link to Products and Services section of local buyusa.gov website here.)

U.S. exporters seeking general export information/assistance or country-specific commercial information can also contact the **U.S. Department of Commerce's Trade Information Center** at **(800) USA-TRAD(E)**.

To the best of our knowledge, the information contained in this report is accurate as of the date published. However, **The Department of Commerce** does not take responsibility for actions readers may take based on the information contained herein. Readers should always conduct their own due diligence before entering into business ventures or other commercial arrangements. **The Department of Commerce** can assist companies in these endeavors.

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