

country profile											
government structure	<ul style="list-style-type: none"> • Executive: The president is both the chief of state and head of government. The president is directly elected by simple majority popular vote for a five-year term and is eligible for a second term. Cabinet is appointed by the president. • Legislative: Malawi has a unicameral National Assembly. • Judicial: The highest court is the Supreme Court of Appeal. The subordinate courts are the High Court, magistrate courts, Industrial Relations Court, and district and city traditional or local courts. • Next presidential elections: June 2025. 										
economic data	<table border="0"> <tr> <td>• Nominal GDP (USD billions):</td> <td>11.28</td> </tr> <tr> <td>• GDP per capita (USD):</td> <td>482.29</td> </tr> <tr> <td>• Inflation rate (% change):</td> <td>12.62</td> </tr> <tr> <td>• Government revenue (% of GDP):</td> <td>18.04</td> </tr> <tr> <td>• Government gross debt (% of GDP):</td> <td>75.21</td> </tr> </table> <p><i>*Source: IMF (August 2024 estimates)</i></p> <ul style="list-style-type: none"> • The main economic sector in Malawi is agriculture. Tobacco accounts for a large share of exports. • The main industries include tobacco, tea, sugar, sawmill products, cement, and consumer goods. • Malawi's main export partners are the United Arab Emirates, Belgium, Tanzania, Kenya, and South Africa. The main export commodities include tobacco, gold, tea, ground nuts, and dried legumes. • Malawi's main import partners are South Africa, China, the United Arab Emirates, India, and Kuwait. The main import commodities include refined petroleum, fertilisers, crude petroleum, packaged medicines, and plastic products. 	• Nominal GDP (USD billions):	11.28	• GDP per capita (USD):	482.29	• Inflation rate (% change):	12.62	• Government revenue (% of GDP):	18.04	• Government gross debt (% of GDP):	75.21
• Nominal GDP (USD billions):	11.28										
• GDP per capita (USD):	482.29										
• Inflation rate (% change):	12.62										
• Government revenue (% of GDP):	18.04										
• Government gross debt (% of GDP):	75.21										
risk ratings	<ul style="list-style-type: none"> • S&P Global Overall Country Risk (Q3 2024): 166/211 • Corruption Perceptions Index (2023): 115/180 										

international treaties and memberships	
international and regional organisations and customs unions	<ul style="list-style-type: none"> • African Continental Free Trade Area Agreement • African Development Bank Group • African Union • Common Market for Eastern and Southern Africa ("COMESA") • Commonwealth • Group of 77 • International Monetary Fund • Organisation of African, Caribbean and Pacific States ("OACPS") • Southern African Development Community • United Nations • World Bank Group • World Customs Organization • Malawi receives preferential treatment under the agreements listed here: http://ptadb.wto.org/Country.aspx?code=454
bilateral investment treaties	<ul style="list-style-type: none"> • Malawi has bilateral investment treaties with Egypt, Italy, the Netherlands, and Taiwan. • Treaties have been signed with Brazil, Malaysia, and Zimbabwe, but these have not yet entered into force.
investment-related agreements/institutions	<ul style="list-style-type: none"> • African Growth and Opportunity Act • Samoa Agreement (succeeding the Cotonou Agreement and its provisional application commencing on 1 January 2024. The Agreement will enter into force upon consent by the European Parliament and ratification by all European Union member states and at least two thirds of the OACPS members) • Multilateral Investment Guarantee Agency • World Trade Organization
dispute resolution	<ul style="list-style-type: none"> • Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) • Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) • United Nations Commission on International Trade Law (UNCITRAL) Model Laws
intellectual property ("IP") treaties	<ul style="list-style-type: none"> • A comprehensive list of IP-related treaties signed by Malawi is available at: https://www.wipo.int/wipolex/en/legislation/members/profile/MW?collection=treaties • See the trade marks section below for further detail.

legal regime	
applicable legal regime	<ul style="list-style-type: none"> Malawi's legal system is based on English common law and customary law.
dispute resolution	<ul style="list-style-type: none"> Malawi has specialised commercial courts with an established mediation process promoting agreements between parties in a dispute before going to court. As a member of the International Centre for the Settlement of Investment Disputes, Malawi accepts binding international arbitration of investment disputes between the state and investors if detailed in a written contract.
land acquisition, planning and use	<ul style="list-style-type: none"> The land-related laws in Malawi include the Land Act, 2016, the Physical Planning Act, 2016, the Land Survey Act, 2016, the Customary Land Act, 2016, the Registered Land (Amendment) Act, 2016, and the Land Acquisition (Amendment) Act, 2016 based on Malawi's National Land Policy adopted in 2002. Subject to exceptions provided for in the Land Act, non-citizens will not be granted land directly by the Government and land cannot be sold to a non-citizen. The Land Act provides that land designated for investment purposes shall be identified and allocated to the Malawi Investment and Trade Centre ("MITC"), which shall create derivative rights to investors in accordance with the Investment and Export Promotion Act, 2012. Some areas are customary land, generally reserved for indigenous Malawians.
competition	
<i>merger control</i>	<ul style="list-style-type: none"> The Competition and Fair Trading Act, 2024 (the "Competition Act") regulates competition law and merger control in Malawi. The Competition Act defines a merger as occurring when one or more enterprises directly or indirectly acquire or establish direct or indirect control over the whole or part of a business of another enterprise. The Competition Act sets out examples of what constitutes control for the purposes of merger regulation. The Competition Act provides that thresholds for a notifiable merger (to be based on combined annual turnover or assets in Malawi, either in general, or in relation to specific industries) will be determined. However, the threshold values have yet to be determined or published. The Competition Act provides for notification upon payment of the prescribed fee of 0.05% of combined turnover or total assets, whichever is higher, of the enterprises proposing to effect the merger or takeover. Submission of a merger notification is suspensory and mandatory; therefore approval must be sought from the Competition and Fair Trading Commission (the "CFTC") prior to implementation of the proposed transaction. Where the CFTC is of the opinion that a merger has been implemented without obtaining formal approval, it may, among others, impose an administrative order on the enterprises.

	<ul style="list-style-type: none"> The CFTC will take public interest considerations into account when making a determination on the merger. Malawi is a member of the COMESA regional competition body, which has an operational merger control regime. Merger activities in Malawi should be conducted with this regional competition body in mind.
<i>prohibited practices</i>	<ul style="list-style-type: none"> The Competition Act prohibits any horizontal and vertical agreement, decision, and concerted practice, whether by object or by effect, which is likely to result in the prevention, restriction, or distortion of competition to a substantial extent in, or into, Malawi or in any substantial part thereof. Cartel conduct (including price fixing, market division / allocation and collusive tendering) is <i>per se</i> prohibited by the Competition Act. The Competition Act also <i>per se</i> prohibits resale price maintenance. The Competition Act also prohibits abuses of dominance (including predatory pricing, excessive pricing, price discrimination, tying and bundling, resale price maintenance, margin squeeze, and refusals to deal). In addition, the Competition Act prohibits conduct which amounts to abuse of buyer power in a market in Malawi, or a substantial part of Malawi. The Competition Act grants the CFTC the power to operate a leniency programme in terms of which an enterprise that voluntarily discloses the existence of a prohibited agreement and cooperates with the CFTC in its investigation thereof, may not be subjected to all or part of an administrative order imposed under the new Competition Act. The CFTC is required to prescribe details of the leniency programme but is yet to do so. The CFTC may impose administrative orders on any firm who engages in a restrictive horizontal or vertical agreement or abuses its dominant position or abuses its buyer power. Included in the administrative orders are fines to be imposed of (i) up to 5% of annual turnover if it is an individual; or (ii) up to 10% of annual turnover if it is a company. COMESA regulates prohibited practices in the COMESA Common Market. Activities in Malawi should be conducted with this regional competition body in mind.
employment	
<i>immigration</i>	<ul style="list-style-type: none"> Expatriates working in Malawi must hold a valid temporary employment permit ("TEP"), which can be renewed for a maximum period of six years. All applications for a TEP should indicate that the post was advertised locally, that it was not possible to identify a suitably qualified person locally, and include details of a qualified Malawian who will understudy the expatriate and eventually take over the position.
<i>local employment vs secondment</i>	<ul style="list-style-type: none"> In terms of Malawi's employment and immigration legislation, employees seconded to Malawi must be employed by a local company.

<i>fixed-term contracts and temporary employment services</i>	<ul style="list-style-type: none"> Fixed-term contracts and task-based contracts are permitted in Malawi and automatically terminate on expiry of the term and on completion of the specific task, respectively. The Employment Act does not specify the maximum length and maximum number of renewals of a single fixed-term contract. There is no statutory prohibition to labour broking in Malawi.
<i>payment in local currency</i>	<ul style="list-style-type: none"> Remuneration must be paid in local currency.
<i>restraint of trade agreements</i>	<ul style="list-style-type: none"> Restraint of trade agreements are generally not valid and enforceable in Malawi; however, depending on the nature of the restraint, a restraint agreement may become enforceable if the employee is remunerated (over and above the termination benefits owing to him/her) in return for the employee agreeing to be restrained for an agreed period that is reasonable and not excessive. Generally, the more restrictive the restraint, the less likely it is to be enforced.
foreign investment regime	
investment regime	<ul style="list-style-type: none"> The Investment and Export Promotion Act governs foreign investment in Malawi. The MITC has been established as a one-stop service centre for setting up a business in Malawi and in 2016, the Ministry of Industry, Trade and Tourism launched the Malawi Trade Portal, containing trade-related regulatory information.
registration/licensing requirements	<ul style="list-style-type: none"> All investors are required to obtain an investment certificate from the MITC prior to establishing a business in Malawi. A minimum investment capital of USD50 000 is a prerequisite for an investment certificate.
non-industry specific registrations / licences	<ul style="list-style-type: none"> The following general non-industry specific registrations / licences may be required:
<i>business / commercial licence</i>	<ul style="list-style-type: none"> In terms of the Business Licensing Act, 2012 which applies to every person who carries on any form of trade, commerce, craftsmanship, or specified profession for profit or gain, all businesses must apply for a general business licence from the Local City Council or District Council Office. In addition, all businesses with premises require a business premises licence for each geographical location of operation. The licence is issued by the Local City Council or District Council Office and must be renewed annually.
<i>Malawi Revenue Authority ("MRA")</i>	<ul style="list-style-type: none"> All taxpayers must register with the MRA and obtain a Taxpayer Identification Number. If the enterprise's turnover exceeds the VAT registration threshold (see 'tax' below), it should also specifically apply for VAT registration and employers must apply for PAYE and Fringe Benefits Tax registration.

<i>Occupational Safety, Health, and Welfare Department of the Ministry of Labour</i>	<ul style="list-style-type: none"> Workplaces must be registered with the Occupational Safety, Health, and Welfare Department of the Ministry of Labour. The registration certificate will be issued following a satisfactory inspection of the premises by officers of the department.
industry-specific licences	<ul style="list-style-type: none"> Industry-specific licences may also be required.
incentives	<ul style="list-style-type: none"> Incentives include: <ul style="list-style-type: none"> allowances granted to registered exporters in respect of the export and international transport of non-traditional products; an additional deduction of 50% of the amount paid as basic salary to an employee with a disability; various incentives available to manufacturing companies; preferential tax rates available to companies operating in export processing zones and priority industries (including agro-processing and electricity generation, transmission, and distribution); and fiscal stabilisation in the mining sector.
exchange control regulation	<ul style="list-style-type: none"> Malawi applies foreign exchange control rules in terms of the Exchange Control Act, which is administered through commercial banks and foreign exchange bureaus under the supervision of the Reserve Bank of Malawi ("RBM"). Foreign investors are generally free to repatriate after-tax income and capital. However, foreign direct investment in the form of equity and loans as well as management, technical services, licensing, and royalty agreements must be registered with the RBM and remittances of payments for interest, management fees, licences, royalties, and similar fees require prior RBM approval.
types of entities available for foreign investment	<ul style="list-style-type: none"> Public limited company; private limited company; company limited by guarantee; and registered branch of foreign company.
private limited liability company	
minimum number of shareholders	<ul style="list-style-type: none"> A minimum of one shareholder is required and the maximum allowed is 50.
minimum share capital	<ul style="list-style-type: none"> There are no minimum share capital requirements in Malawi. However, a minimum investment capital of USD50 000 is a prerequisite for an investment certificate from the MITC.

directors	<ul style="list-style-type: none"> A company must have at least one director who must be ordinarily resident in Malawi.
company secretary	<ul style="list-style-type: none"> A private company is not required to have a company secretary.
auditor	<ul style="list-style-type: none"> There is no formal requirement for private companies to appoint an auditor. A private company with an annual turnover of MWK20-million or less is exempt from having audited accounts.
registered address	<ul style="list-style-type: none"> A company must have a registered office in Malawi to which all communications and notices may be addressed, and which must constitute the address for service of legal proceedings on the company. A company may have its registered address at the offices of any firm of accountants, legal practitioners, or any other person.
shelf companies	<ul style="list-style-type: none"> There are no shelf companies available in Malawi.
registration process	<ul style="list-style-type: none"> Companies are registered with the Registrar of Companies, under the Department of the Registrar General, and it takes approximately five business days to complete registration once all required documents have been submitted.
tax	
tax system	<ul style="list-style-type: none"> Malawi has a source-based tax system, in terms of which both residents and non-residents are subject to tax on income from a source in Malawi.
corporate residence	<ul style="list-style-type: none"> A company is resident in Malawi if it is incorporated in Malawi or has its place of effective management in Malawi.
corporate tax rate	<ul style="list-style-type: none"> Resident companies are subject to corporate income tax at the rate of 30%, whereas permanent establishments of foreign companies are taxed at the rate of 35%. An additional 10% corporate income tax applies on profits above MWK10-billion. Priority sector companies qualify for a tax holiday not exceeding 10 years and are taxed at a rate of 15% thereafter. Investment income of pension funds is taxed at 15%.
capital gains tax	<ul style="list-style-type: none"> Capital gains are included in ordinary taxable income and subject to corporate income tax at the standard rate.

withholding tax ("WHT") rates	WHT rate	
	payment to residents	non-residents*
branch profits	N/A	N/A
dividends	10%	15% 10% (mining projects)
interest	20% 15% (interest on investments of life insurance)	15% 10% (mining projects)
royalties	20%	15% 10% (mining projects)
management, consulting and technical service fees	20%	15% 10% (certain services to mining projects)

**The withholding tax rate may be reduced in terms of a relevant double tax agreement.*

double tax agreements ("DTAs")	<ul style="list-style-type: none"> DTAs are in force with France, Norway, South Africa, Switzerland, and the United Kingdom.
losses	<ul style="list-style-type: none"> Losses may be carried forward for a period of six years. Losses attributable to mine start-up expenditure may be carried forward for 10 years.
transfer pricing	<ul style="list-style-type: none"> In terms of Malawi's transfer pricing rules-controlled transactions between related persons must be entered into on an arm's length basis. Two persons are considered to be related where, <i>inter alia</i>: <ul style="list-style-type: none"> one person participates directly or indirectly in the management, control, or capital of the other; or a third person participates directly or indirectly in the management, control, or capital of both. A person is deemed to participate directly or indirectly in the management, control, or capital of another person where the person: <ul style="list-style-type: none"> owns, directly or indirectly, more than 50% of the share capital of the other person; or has the practical ability to control the business decisions of the other person.

limitations on interest deductibility	<ul style="list-style-type: none"> A general debt-to-equity ratio of 3:1 is applicable to all sectors and is limited to related party debt, whether direct or indirect. 										
employee taxes	<ul style="list-style-type: none"> With effect from 19 April 2024, the income tax rates applicable to resident individuals are: <table border="1" data-bbox="331 454 1010 625"> <thead> <tr> <th>annual chargeable income (MWK)</th> <th>tax rate</th> </tr> </thead> <tbody> <tr> <td>up to 1 800 000</td> <td>0%</td> </tr> <tr> <td>1 800 001 – 6 000 000</td> <td>25%</td> </tr> <tr> <td>6 000 001 – 30 600 000</td> <td>30%</td> </tr> <tr> <td>over 30 600 000</td> <td>35%</td> </tr> </tbody> </table> Non-residents are taxed at a flat rate of 15%. 	annual chargeable income (MWK)	tax rate	up to 1 800 000	0%	1 800 001 – 6 000 000	25%	6 000 001 – 30 600 000	30%	over 30 600 000	35%
annual chargeable income (MWK)	tax rate										
up to 1 800 000	0%										
1 800 001 – 6 000 000	25%										
6 000 001 – 30 600 000	30%										
over 30 600 000	35%										
social security contributions	<ul style="list-style-type: none"> There is no regulated social security system in Malawi. However, in terms of the Pension Act, 2023 both employers and employees must make monthly contributions to a pension fund, which can either be the National Pension Fund or a pension scheme registered under the Pension Act. The employer's minimum contribution rate is 10% of an employee's gross salary, whereas the employee's minimum contribution rate is 5%. The National Pension scheme has not yet been implemented and the current practice is for employers to register with and make contributions to private pension schemes. Expatriates may be exempted from participating in the pension scheme. 										
payroll taxes	<ul style="list-style-type: none"> There is no payroll tax in Malawi, but a training levy and fringe benefits tax apply (see below). 										
<i>Technical, Entrepreneurial and Vocational Education and Training ("TEVET") levy</i>	<ul style="list-style-type: none"> Employers are liable to an annual TEVET levy at a rate of 1% of basic annual payroll costs. 										
<i>fringe benefits tax</i>	<ul style="list-style-type: none"> All employers (other than the government) are liable to fringe benefits tax at the rate of 30% on the value of specified fringe benefits (including housing, motor vehicles, and furniture) provided to any employee with annual total emoluments and benefits exceeding MWK420 000. 										
stamp duty	<ul style="list-style-type: none"> Stamp duty is levied under the Stamp Duty Act (Cap. 43:01) on a number of instruments and transactions, including transfer deeds for property and land at varying rates of up to 3%. 										
value added tax ("VAT")											
<i>taxable supplies</i>	<ul style="list-style-type: none"> VAT is levied on the supply of goods or services in Malawi and on the importation of goods or services. 										

<i>VAT rate</i>	<ul style="list-style-type: none"> 16.5%
<i>registration threshold</i>	<ul style="list-style-type: none"> Any person who has an annual taxable turnover / expected annual taxable turnover exceeding MWK25-million must register for VAT purposes.
<i>reverse VAT on imported services</i>	<ul style="list-style-type: none"> Resident companies are required to account for output VAT in respect of imported services rendered by non-resident companies in terms of a reverse charge mechanism.
trade marks	
international conventions, treaties and arrangements	<ul style="list-style-type: none"> African Regional Intellectual Property Organization (Banjul Protocol) (incorporated into local legislation) Madrid Protocol (incorporated into local legislation) Nice Agreement Paris Convention for the Protection of Industrial Property World Intellectual Property Organization Convention World Trade Organization / Trade-Related Aspects of Intellectual Property Rights (TRIPS)
classification	<ul style="list-style-type: none"> The International Classification of Goods and Services (Nice Classification) applies.
categories of trade marks	<ul style="list-style-type: none"> Provision is made for: <ul style="list-style-type: none"> certification marks; collective marks; and goods and service marks. There are no provisions for the registration of defensive marks.
filing requirements	<ul style="list-style-type: none"> Power of Attorney, simply signed; twelve prints, except for word marks in ordinary type (no printing block required); and certified priority document (if applicable), with verified English translation.
procedure	<ul style="list-style-type: none"> Applications are examined as to formal requirements as well as conflict with prior existing registrations / applications.
oppositions	<ul style="list-style-type: none"> Opposition may be lodged within 30 days following the date of advertisement of the trade mark application.
duration and renewal	<ul style="list-style-type: none"> The registration term of a trade mark is for a period of 10 years and the trade mark may be renewed after every 10 years, perpetually. The registration date of a mark is deemed to be the date of filing of the application.

ENS is a full-service law firm with significant experience and specialist expertise that spans all commercial areas of law, tax, forensics, and IP across Africa. For more information or assistance please contact:

Celia Becker

Executive | Africa regulatory and business intelligence
cbecker@ENSafrica.com

This document contains general information and no information provided herein may in any way be construed as legal advice from ENS, any of its personnel and/or its correspondent firms. Professional advice must be sought from ENS before any action is taken based on the information provided herein. This document is the property of ENS, and consent must be obtained from ENS before the information provided herein is reproduced and/or distributed in any way.

LAST UPDATED AUGUST 2024