

# MALAWI

## SACRANIE, GOW & CO.



### FIRM INFORMATION

**Languages spoken:** English

**Contacts:** Shabir Latif SC, BA (Hons) Law, Barrister at Law

**Telephone:** ++265 1 840 311/593/678

**Cell/Mobile:** +265 888 825 138

**Fax:** +265 1 840 750

**Email address:** sgow@sacgow.com and sgow@hotmail.co.uk

### POLITICAL SYSTEM

Multiparty democracy since 1994.

### GROWTH RATE

2.9% (Source: Reserve Bank of Malawi (RBM) Economic and Financial Review November 2011). The growth rate has slowed.

### INFLATION RATE

19.9% (2012).

Current Inflation rate is estimated to be about 23 %.

### INVESTMENT CLIMATE

The government is eager to continue attracting foreign investment in both the private and public sectors. Malawi has opened up and liberalised its economy. It is encouraging foreign investment in the mining industry, as well as tourism, local production for export and adding value to agricultural products. Tobacco remains a key export crop.

The government is also encouraging private sector participation in the economy. The government is pursuing stable macroeconomic policies by exercising fiscal and monetary discipline in terms of its international obligations and maintaining high interest rates to curb inflation. The "cashgate" scandal in 2013 continues to negatively affected donor confidence.

The exchange rate for the Malawi Kwacha (MWK) is floating.

The number of counters on the Malawi Stock Exchange is 14. The shares market has been inactive for the past 3 years. There have been no new listings for a number of years.

### FORMS OF BUSINESS

- Private or public limited liability company
- External company (i.e. a branch of a foreign company)
- Partnership
- Trading trust
- Sole trader

### FORMATION OF A COMPANY

Both local and foreign companies must be registered with the Registrar of Companies. Companies can be incorporated and registered within 24 hours. A local company must have a registered office in Malawi and a foreign company must have a documentary agent in Malawi. Local companies must have a majority of at least one resident director. Businesses not operating as incorporated companies or trusts are required to register their business names and the name(s) of the proprietor(s) of the business. Licences are required for certain types of business and other registrations are required for various purposes such as income tax, service and other taxes.

### EXCHANGE CONTROLS

Exchange controls exist in Malawi and are managed by the Reserve Bank of Malawi (RBM). Foreign investment capital in the form of equity or loans needs to be registered with the RBM. The RBM's prior approval is required for the terms and conditions of foreign loans, foreign investment in the form of equity and remittance of dividends (and capital in the event of disinvestment), technical, management and consultancy contracts with non-residents, licensing and royalty arrangements and technology transfers. These approvals are granted in respect of transactions concluded on internationally prevailing terms, conditions and standards. It takes about 4 weeks to process applications with the RBM. In order to pay for imports, prior permission is required from authorised dealer banks as agents of RBM. Applications are expeditiously processed.

### TAXATION

Tax is levied on income from actual and deemed Malawi sources at the following rates:

- 30% for companies (35% for foreign companies) and 30% for life assurance businesses
- 30% for ecclesiastical, charitable or educational institutions of a public character or trusts
- 30% for the mobile telecommunication industry
- sliding rates from 0% up to 30% (based on annual income)



for individuals and partnerships

- 30% for approved companies operating in an export processing zone
- 0% for 10 years or 15% for companies operating in priority industries
- Almost all taxpayers operating businesses are required to pay estimated advance tax on a quarterly basis. Operating losses can be carried forward indefinitely for agricultural and mining industries and for six years for manufacturing and trading industries.
- There are other taxes including, among others:
  - value added tax (VAT) on annual turnover in excess of 10 million Malawi Kwacha (the standard rate is 16.5%)
  - a turnover tax of 2% has been introduced for tax payers whose turnover is between 2 to 6 million Malawi Kwacha
  - duty is charged on the import of goods
  - surtax is charged on imports, services and locally manufactured goods
  - capital gains tax - any gain from the sale or voluntary disposition of a capital asset must be included in assessable income. Rollover relief is allowed on capital gains realised from the disposal of business assets if the business acquires qualifying replacement assets within 18 months
  - taxes on land and buildings (based on their valuation) is payable to local authorities
  - mineral rights duty is payable for an exclusive prospecting licence
  - stamp duty is payable at the rate of 1.5% on the transfer of land and buildings, leases and securities not capable of trading on the capital market. Stamp duty on debentures and legal mortgages is 0.60% of the value of the security. Transfers of shares are exempt from stamp duty
  - fringe benefits tax on 'perks' is payable by the employer at 30%
  - a training fund tax at 1% of the basic payroll of employees.

Tax must be withheld (in accordance with the relevant rates) when making certain payments such as rental, royalties, fees and commission, bank interest and remitted to the Malawi Revenue Authority.

Malawi has entered into double tax treaties with various countries including the United Kingdom, France and South Africa.

### INVESTMENT INCENTIVES

The following are some of the available allowances and incentives:

- certain capital allowances
- certain allowances for expenditure including a 100% investment allowance to a manufacturer for new buildings/ plant machinery in the first year
- mining allowances of 100% of mining expenditure incurred in the first year of assessment
- an allowance of 2.5% for newly constructed commercial buildings with a value of 100 million Malawi Kwacha or more
- allowances for bad or doubtful debts, rental paid in respect of property used in the production of income and interest incurred in
- respect of property used in the production of income

- export allowances for non-traditional exports and for the deduction of international transport costs
- a 50% allowance on social contributions paid directly for the building of a public hospital or school, or the sponsoring of youth sporting development activities.

Malawi does not offer any special incentives to foreign investors. Incentives in priority industries, like the mining and petroleum industry for foreign investment, have to be specifically negotiated by investors with the government.

### COMPETITION LAW

Under the Competition and Fair Trading Act a takeover of an entity by another entity which is likely to result in a substantial lessening of competition in any market, requires the prior authorisation of the Competition and Fair Trading Commission. Any purported takeover in contravention of the law is of no legal effect. The Competition Commission for the Common Market for Eastern and Southern Africa (covering 19 African countries including Malawi) is headquartered in Lilongwe and commenced operations in January 2013.

### INTELLECTUAL PROPERTY

Protection of patents, certain trademarks, design and copyrights is provided for by statute. Registries exist for trademarks, designs, patents, companies, business names and ownership of immovable or real property.

### LEGAL SYSTEM

Based on English common law.

### LABOUR RELATIONS AND EXPATRIATES

Labour relations are regulated under the Employment Act. The labour force is plentiful in Malawi and wages are relatively low compared with other African countries. A foreign resident requires a permit to reside in Malawi and may not take up employment or engage in any business, profession or other occupation unless his permit authorises such activity. A work permit can be processed within 90 days. Where the level of investment is up to US\$100 000, an investor can obtain work permits for only two key positions. For investments in excess of US\$100 000, the investor's requirements for expatriate employees are generally approved and work permits are generally approved if local skills are not available.

