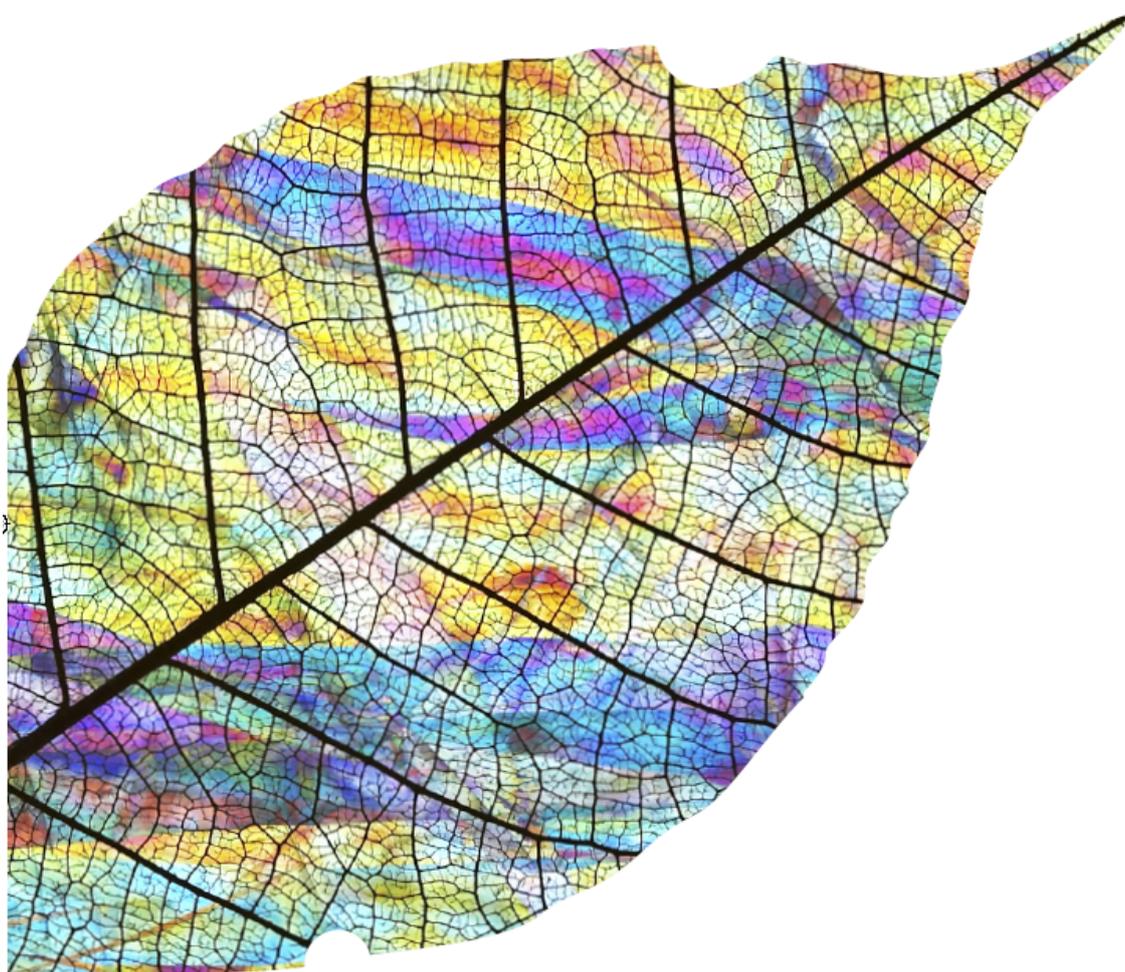


World Universities Comparative Law Project

Legal rating of Malawi

carried out by students at the University of Malawi

A production of the Allen & Overy Global Law Intelligence Unit



July 2016

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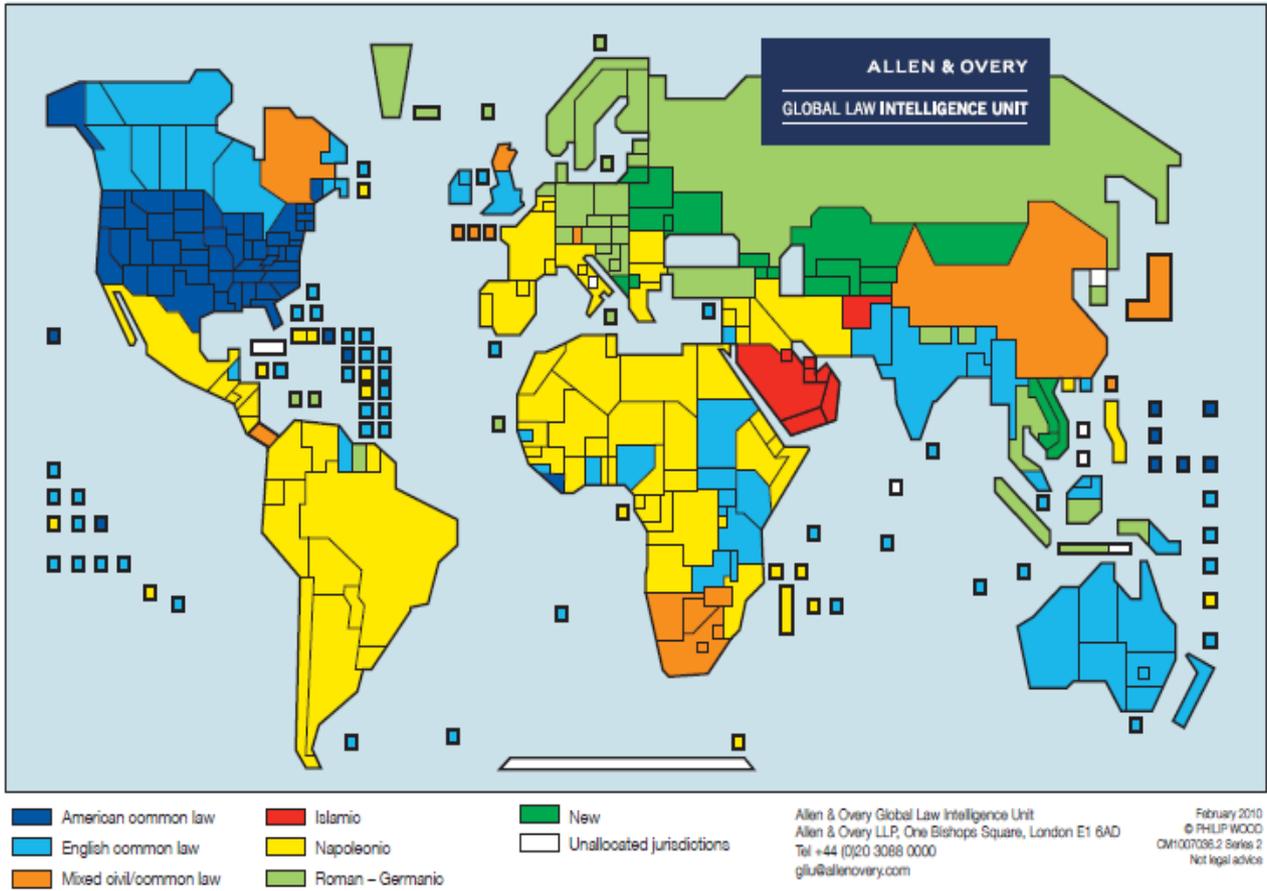
World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Malawi was carried out by students at the University of Malawi.

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

I am delighted to write a foreword for this legal rating of Malawi, which is one of a series of similar ratings carried out by students around the world as part of the World Universities Comparative Law Project

The aim was to produce a survey of the wholesale financial and corporate law in Malawi looking at how Malawi compares with the rest of the world.

I hope that the reader will find the colour-coded methodology and the technique of selecting symbolic and resonant legal indicators to be an expressive and creative way of signalling some of the main contours of wholesale financial, corporate and related law in Malawi. I certainly find the result to be most fascinating and helpful.

I am most grateful to the five students at University of Malawi for being willing to participate in this project and I warmly congratulate them on the excellent work they have done. I would pay a special tribute to their intellectual flair and dedication.

My gratitude also goes to the Dean of Law, Dr Mwiza Nkhata and Tisungane Makato - Senior State Advocate who managed, guided or facilitated this project and made a splendid contribution to the successful achievement of the survey.

Some of the aims of the project are to advance international comparative law, to contribute to the ideology of "one world", to promote the understanding of the law as a fundamental foundation of modern society, and to achieve these aims through the excellence of the universities, of the students, of the lawyers and of all others involved in the project. These aims have been greatly enhanced by the Malawi contribution and I believe that this survey will be of much interest to other universities, students and lawyers around the world.

Philip R Wood CBE, QC (Hon), BA (Cape Town), MA (Oxon), LL.D (Lund, Hon)
Head, Allen & Overy Global Law Intelligence Unit
Special Global Counsel
Visiting Professor in International Financial Law, University of Oxford
Yorke Distinguished Visiting Fellow, University of Cambridge
Visiting Professor, Queen Mary University, London

Description of the legal rating method

Introduction

This paper assesses aspects of the law in Malawi with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

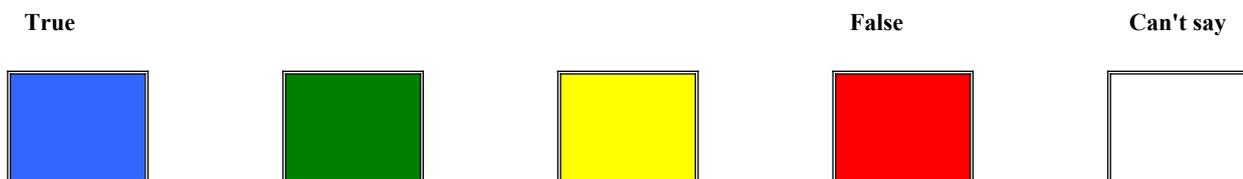
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at the University of Malawi. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of the University of Malawi, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Malawi. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators

intended to measure whether the law supports those habitual creditors or debtors, such as large corporations as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

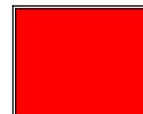
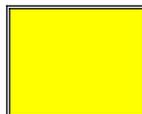
Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In Malawi, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True



False



Can't say



Comment:

In Malawi creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency. Section 33 of the Bankruptcy Act (Cap. 11:01 of the Laws of Malawi) provides that where there have been mutual credits, mutual debts or other mutual dealings, between a debtor against whom a receiving order shall be made under the Bankruptcy Act and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

However, a person is not entitled under the above section to claim the benefit of any set-off against the property of a debtor, if at the time of giving credit to the debtor, he had notice of an act of bankruptcy committed by the debtor and available against him.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

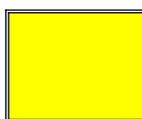
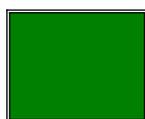
On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

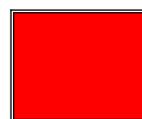
The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In Malawi, the law offers a security interest which is highly protective of the secured creditor.

True



False



Can't say



Comment:

Section 60 of Land Act (Cap. 46:03 of the Laws of Malawi) provides that a proprietor may, by an instrument charge his land or lease or charge to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition. Corporations which have created charges are mandated under section 86 of the Companies Act (Cap. 46:03 of the Laws of Malawi) to register the charges within 21 days of creation.

There is a wide spectrum of charges the company can create. These range from (1) a charge for the purpose of securing any issue of a series of debentures, (2) a charge on uncalled share capital of the company; (3) a floating charge on the whole or part of the undertaking or property of the company; (4) a charge on land, wherever situate, or any interest therein; (5) a charge on any present or future book debts of a company; a charge on calls made but not paid; (6) a charge on a ship or aircraft or any share in a ship or aircraft; (7) a charge on goodwill, on a patent or a licence under a patent, on a trade mark, or on a copyright or a licence under a copyright; and (8) a charge over shares in another body corporate. (Section 86(2) of the Companies Act.). It is only the foregoing categories of charges which are registrable.

In Malawi secured creditors are entitled to payment out of their securities in priority to all the other creditors. Under section 287 of the Companies Act some debts are deemed preferential. These include; costs and expenses of liquidation; wages in respect of 12 months before commencement of winding up and tax, duty, or rates payable by the company to the government.

Unsecured creditors do not rank *pari passu*. After all secured creditors have been paid off and the preferential debts have been settled, the surplus is available to unsecured creditors and members of the company. Included under this head are unsecured non-preferential debts such as ordinary bank overdrafts; short term debts, any part of a secured creditor's debt that remains unsatisfied after the realisation of his security and shareholders according to entitlements under the articles:

Under section 72(8) of the Financial Services Act, a separate ranking of claims for prudentially regulated financial institutions in liquidation whether voluntarily or involuntarily is set out. First payment is to the liquidator for all liquidation costs, depositors, policy holder claims and pension member benefits, then secured creditors, employees for all wages, salaries and compensation due net of any liabilities to the financial institution and the government for all taxes, duty, rates and rent in respect of any period prior to the commencement of winding up. All other creditor claims rank in *pari passu*.

Universal trusts

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

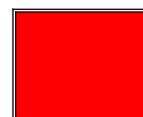
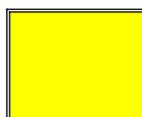
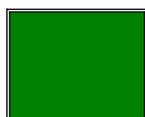
All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and Malawi.

Q3 Malawi has a universal trust for all assets.

True



False



Can't say



Comment:

Malawi is a common law jurisdiction and it has a universal trust for all other assets. For instance, sections 76, 77 and 78 of the Companies Act allows companies to create debenture trusts on behalf of debenture holders. A trust corporation is also capable acquiring and holding any property, movable or immovable as well as being appointed a trustee jointly with another trust corporation or an individual.

Further, where a trust corporation and an individual, or two or more trust corporations, become entitled to any such property under circumstances or by virtue of any instrument which would, if the trust corporation had been an individual, have created a joint tenancy, they shall be entitled to the property as joint tenants. (Section 35 of the Companies Act).

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

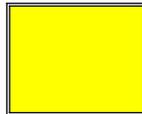
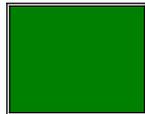
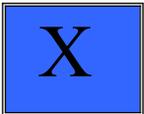
Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

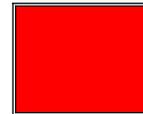
There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Malawi the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True



False



Can't say

**Comment:**

In Malawi, the duties of directors are statute as well as common law based. Under the common law, directors owe the company fiduciary duties, the duty of care and skill as well as the duty to act in conformity with the constitution of the company. Under statute (which is somehow a codification of common law principles) directors are required to disclose their interest if any in a contract, stating the nature and extent thereof (Section 150 Companies Act). A director is further prohibited from voting with respect of a contract or an arrangement in which he or she is materially interested whether directly or indirectly.

As the law is now, directors are under no liability for deepening insolvency of the company. However, a new Companies Act is in the offing and under section 222 of that Act, directors are placed under duty to call a meeting of the Board to consider appointing a liquidator. Non-compliance attracts liability to pay part of or the whole of any loss suffered by the creditor of the company as a result of the company continuing to trade.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

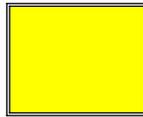
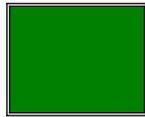
The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

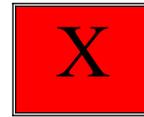
A contravening transaction is usually a criminal offence and void.

Q5 Malawi permits a company to grant financial assistance for the purchase of its own shares.

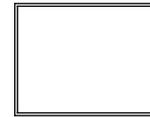
True



False



Can't say



Comment:

Section 72(1) of the Companies Act prohibits a company to give financial assistance by means of a loan or guarantee or provision of security to any person for the purposes of purchasing its shares or those of its holding company.

The specific section states that it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connexion with a purchase or subscription made or to be made by any person of or for any shares in the company, or, where the company is a subsidiary company, in its holding company.

Exceptions do exist and they include where the lending of money is part of the ordinary business of the company and where a company loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or a group company to be held by themselves by way of beneficial ownership.

Contravention of the above attracts one year imprisonment and a two thousand kwacha fine on every officer of the company who is in default.

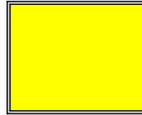
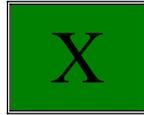
Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

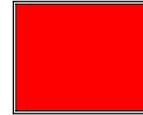
The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Malawi is open and has few restrictions.

True



False



Can't say



Comment:

The takeover regime is regulated under section 201 of the Companies Act. Normally, the predator company must make an offer to shareholders of the target company to acquire their shares. That is of course subject to some conditions which if satisfied, the predator company has the right to compulsorily acquire the shares. The conditions are that:

1. The offer must be made to holders of all shares of the target company except those which are already held by or for the predator company or its subsidiaries or holding company.
2. Consideration for the offer must be either an allotment of shares in the predator company or such an allotment or cash.
3. The same terms must be offered to all shareholders to whom the offer is made or, where the shares to be acquired are of different classes, to all holders of shares of the same class and
4. The offer must be accepted within 4 months in respect of at least 90% of all the shares or each class of shares for which the offer is made.

Where some shareholders do not accept the offer, the predator company can notify them of its intention to compulsorily acquire their shares provided that the above conditions are satisfied (a squeeze out). Any shareholders who receives the notice may within that period apply to the court against it or if he does not object to the offer, ask the predator company to acquire his shares. Should the predator company decide to acquire his shares, then it must do so on the terms upon which the shares of the approving shareholders have been bought. The court may hold for the dissentient shareholders if they show that the acquisition is unfair to the general body of shareholders.

The Competition and Fair Trading Commission (CFTC) which is established under section 4 of the Competition and Fair Trading Act (CFTA) (Cap. 48:09 of the Laws of Malawi) has of recent taken an active role in mergers and takeovers and other schemes of arrangement as mandated under section 8 of the Competition and Fair Trading Act.

If there is a proposed merger or any other scheme or arrangement, the CFTC conducts investigations to determine the effect of a proposed merger on competition and the economy as a whole (section 38 of the CFTA). A recent example is the takeover of International Commercial Bank Limited (ICB Malawi) by First Merchant Bank Limited (FMB) which was reviewed and authorised by the CFTC. After noting that ICB Malawi did not meet the minimum regulatory capital and other liquidity requirements, the CFTC opined that the takeover would safeguard customers who would have suffered if the company had liquidated due to capitalization problems.

Under section 35 of the CFTA, it is an offence to effect a merger or takeover without the authorisation of the Competition and Fair Trading Commission.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

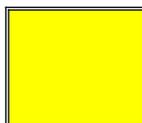
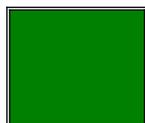
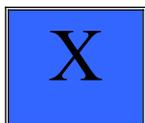
The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

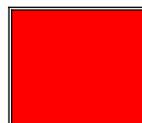
Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Malawi, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True



False



Can't say



Comment:

Generally, the position of the law has been that parties will be bound by terms of their agreement but parties are not bound if the terms are subject to contract although there is an estoppel that may be created depending on what the normative content of the agreement is. There is a paradigm shift with the establishment of the Competition and Fair Trading Commission (CFTC) which is working towards elimination of consumer exploitation and anti-competitive trading practices on the market.

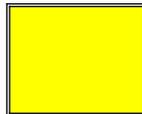
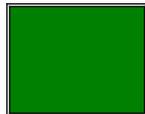
Termination clauses

Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which

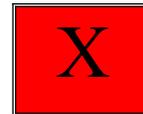
uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In Malawi, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True



False



Can't say



Comment:

In Malawi, it is not possible to discuss termination clauses without discussing what constitutes a condition and a warranty respectively. A condition is a major term of the contract. It is expressed as going to the root of the contract and a breach of a condition entitles the other party to treat the contract as terminated. On the other hand, a warranty is a minor term of the contract, often expressed as being subsidising to the main purpose of the contract. If a warranty is breached it entitles the other people to claim damages but does not entitle him to treat the contract as having been terminated. In the case of *Skipco (Malawi) Limited v ADMARC* [1998] MLR 344 (HC), the Court observed that in relation to remedies for breach, the terms of a contract are classified as conditions or warranties. The Court went further to state that it is for the Court to decide whether or not the breach of any particular 'condition' is a repudiatory. Thus, an event will have to be polarised into a condition and a warranty before a corresponding clause is upheld or not. If in the eyes of the court the event concerned does not go to the root of the contract or it is relatively trivial, the termination clause will not be upheld by the court. For the court to uphold a termination clause, breach of that clause has to go to the root. Such an approach has of course been challenged in the English case of *Hong Kong Fir Shipping Co. v Kawasaki Kisen Kaisha Ltd* [1962] 2 Q.B. 26. The Court of Appeal suggested that a better way might be to concentrate on the effect of the breach itself, rather than the quality of the term broken. Therefore, the solution is in looking at the event that has followed as a result of the breach and then deciding whether the events have deprived the innocent party of the substantial benefits which it was intended that he should obtain under the contract. Taking such an approach would help upholding a termination clause even if the event is trivia.

Exclusion clauses

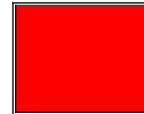
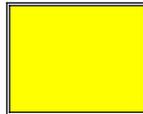
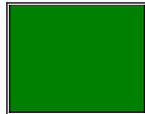
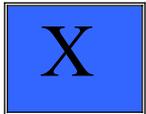
Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In Malawi, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True

False

Can't say



Comment:

The learned authors of Cheshire’s Contract Law, 13th Edition at pg. 169 observed that clear words must be used if they are designed to excuse one party from serious breach. Malawian courts have also taken such an approach that for a term of contract to be upheld, it has to be spelt out in the clearest of terms. As a matter of principle, a party intending to limit its liability, must do so with very clear language otherwise, the clause will be construed against it. In the case of Gestetner Limited (NCR OEC) v Malawi Revenue Authority, Commercial Case No. 115 of 2008, the Court stated that it is trite law that, and it is well to point out that where any party to a contract is to limit his liability which is otherwise clear at law, he must do so with clear language otherwise the clause will be construed against him. Similarly, in Safari Clothing Company Limited V Pearl Assurance Company [1995] 1 MLR 238, the Court stated that if a party wishes to exclude the ordinary consequences that would flow in law from that contract that he is making he must do so in clear terms as an ambiguous clause is no protection.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

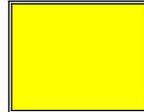
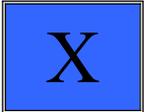
The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

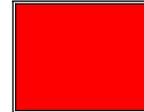
Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The Malawian courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Malawian public policy and mandatory statutes.

True



False



Can't say

**Comment:**

In the case of *Landell Mills Association Ltd v Marshal* [1991] 14 MLR 175 (HC), the court was of the view that it is the duty of the court to give effect to binding agreements between parties to a contract. Banda J (as he then was) held that the issues between the parties should be resolved by the law the parties had submitted themselves to. In that case, the parties had chosen English law and therefore, terms stipulating the choice of a foreign law could not be trivialised. Parties, according to him, are bound by the terms of the agreements they make and it is important that courts give effect to those agreements. This is clearly a liberal approach as courts do not wish to write contracts of parties. Such foreign law has to of course be pleaded as facts in line with Section 64 of the Court's Act and has to be proved before the court as it is not the law for that local forum. Such application of law is also subject to issues of public policy and other mandatory statutes.

Foreign jurisdiction clauses

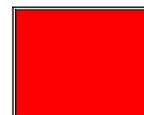
Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The Malawian courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True



False



Can't say

**Comment:**

There is a dearth of authorities addressing the issue above directly. However, the case of *Landell Mills Associates Ltd v Marshall* [1991] 14 MLR 175 (HC) comes close. In that case the plaintiff was a company registered in England. It was appointed as managing agent for a Malawi company, referred to as Impala. The plaintiff employed the defendant as financial controller for Impala. The plaintiff sued the defendant for K114 600-00, being money paid by the plaintiff to Impala but allegedly stolen by the defendant. Clause 17 of the agreement of employment between the parties was a jurisdiction clause. It provided for "... all legal proceedings whatsoever in connection with the provisions of this contract and the performance of it ..." to be brought in the courts of England

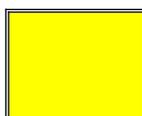
and that the parties submit to the English jurisdiction. The Registrar, on the strength of clause 17 and after a careful examination of the authorities, ordered that proceedings be stayed. The plaintiff appealed against that ruling. The High Court dismissed the appeal. Banda J. said that the Registrar had exercised his discretion properly. Banda J (as he was then) concluded it is important that courts should give effect to the contractual choice of forum made by the parties and in this case they had submitted themselves to the English jurisdiction. It is therefore likely for a court in Malawi to hold such jurisdiction clauses in the affirmative. However, being a common law jurisdiction, Malawian courts have some discretion (exercised judicially) on whether to uphold or deny such jurisdictional clauses.

Arbitration recognition

Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In Malawi, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Malawian courts.

True



False



Can't say



Comment:

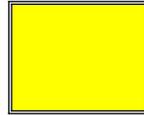
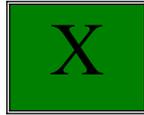
The law seems to be in a state of flux in this area. The Supreme Court in **National Insurance Co Ltd v Ngwira [1993] 16(1) MLR 381** in effect held that it could not be bound by the parties exclusive jurisdiction agreement contained in their arbitration contract. The court upheld a well-settled principle of the common law that no man can effectively withdraw himself from the protection of the courts of law any more than he can effectively deprive himself of his personal freedom. However, a recent High court decision **The Preferential Trade Area Bank v Electricity Supply Corporation of Malawi and Attorney-General and Mbendera, Chiwambo and Associates [2002–2003] MLR 304**, held that courts will generally honour arbitration agreements and encourage arbitration than intervene. Similarly, in **Landell Mills Associates Ltd v Marshall [1991] 14 MLR 175**, it was held that it is important that courts should give effect to the contractual choice of forum made by the parties. Parties must be bound by agreements they have freely made.

Class actions

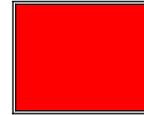
Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In Malawi, class actions where the class is bound if they do not opt out are generally not allowed.

True



False



Can't say

**Comment:**

In Malawi, where numerous persons have the same interest in any proceedings, the proceedings may be begun or continued by or against any one or more of them as representing all (Order 15 rule 12 Rules of Supreme Court 1999). It is very important that a representative action that the persons who are to be represented and the person or persons representing them should have the same interest (a common grievance) and that the relief sought is in its nature beneficial to all. The class must be clearly defined (Nyasaland Trade Union Congress -v- Nkolokosa (1961-63) ALR Mal. 367). That is so because a judgement obtained in a class action is binding upon all being represented but enforcement on those not mentioned will require leave of the court. (O. 15, r. 12(3) RSC 1999)

Other indicators

Other indicators not covered by this survey include contingent costs; loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property**Ownership of land**

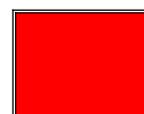
Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Malawi nationals and local corporations are entitled to own land absolutely.

True



False



Can't say



Comment:

Freehold (absolute) ownership of land is only reserved for land which was already under freehold ownership during British Colonial rule through what are known as certificates of claim. Freehold ownership is also reserved for land which was converted by the Government of Malawi after independence to spur commercial agriculture. As of July 2000, no freehold titles have been created. Suffice to state that yes nationals and local corporations are entitled to own land that is already under the freehold tenure.

However, we should expect a number of changes in this area as there are before parliament nine statutes which will effectively change or modify most of the land related laws of Malawi and on the issue of absolute ownership; there are proposals to convert the existing freehold titles to leases of 99 year term. (National Land Policy, 2002)

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in Malawi is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True



False



Can't say



Comment:

Land registers exist in Malawi. Currently there is a two tier system. The first one is established under the Registered Land Act. This is a title based registration system. It records ownership in land. Subsequent changes in ownership are registered with reference to the land itself not as executed instruments (or deeds). Registration provides validity to the transaction since the original proof of ownership acts as a guarantee of the root of the title. This system of registration mainly affects land situated in major towns such as Lilongwe, Blantyre and Mzuzu and some areas of Kasungu District.

The second system is deeds registration governed by the Deeds Registration Act. It was designed to record copies of whole documents, plans and other evidence of conveyance that may or may not involve the transfer of title. There is a Central Deeds Registry which is of greater importance to businesses because it shows a complete record of all transactions and liabilities linked in some way to or the other to the property. All claims whether private, public and commercial (including liens,

wills, probate, mortgages, insurance, easements etc.) affecting the particular parcel of land can be attached.

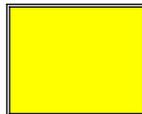
All registers are open to the public for inspection at a small fee.

Land development restrictions

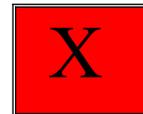
Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In Malawi, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True



False



Can't say



Comment:

It is important to note that there are three types of land in Malawi and these are: Customary Land: land under the jurisdiction of Traditional Authorities outside municipal boundaries and is held in trust by the state president (Section 2 of the Land Act, Cap. 57:01). Public Land is land that has been occupied, used or acquired by the Government (Sections 8, 9, and 10 of the Land Act, Cap. 57:01). Private land is land that is held either under freehold or leasehold ownership both in rural or urban areas.

It is possible to have Commercial and industrial development on all three types of land. However, it is necessary that the location must conform to the zoning regulations set by the Department of Housing and Physical Planning. Importantly, before development of the land, an applicant must apply for and receive an offer of a Lease from the Ministry of Lands and Physical Planning and Surveys in the case of customary and public lands. Transfers of freehold land are private transactions; although notice of intended sale must be given to Government when freehold property is sold.

In Malawi, the change of use of land is very restricted

Other indicators

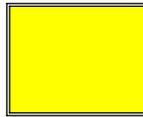
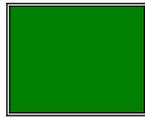
Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

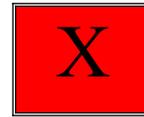
Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Malawi, there are few controls on hiring and firing employees or on the terms of employment.

True



False



Can't say

**Comment:**

The legislative framework governing employment law in Malawi comprises the Malawi Constitution (1994), the Labour Relations Act (1996), the Occupational Safety, Health and Welfare Act (1997), the Employment Act (1999), the Workers' Compensation Act (200), the Employment amendment Act (2010) and ILO Conventions to which Malawi is a party. The overarching principle of all labour issues is Section 31 of the Constitution of Malawi which provides for the right to fair labour practices for everyone.

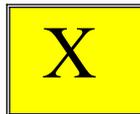
With regard to terms, the minimum legal requirement is that the employer has to give an employee a written contract with specifying at the least; the names of the employee and of the employer; the date of commencement of the contract; the rate of remuneration and the method of calculating remuneration; the intervals at which remuneration is paid; the nature of the work to be performed; normal hours of work (maximum of 8 hours a day); any provision for the termination of the contract other than those provided by this Act; and any disciplinary rule applicable to the employee, all of which are subject to the general labour laws of the country. The Courts have even found an employment contract to exist even where the parties did not draw up a written agreement. (*Chisowa v Ibrahim Cash 'n' Carry* [2008] MLLR 385 (IRC)).

On the issue of firing an employee, an employer has to comply with both substantive and procedural legal requirements. Section 58 of Employment Act provides that a dismissal is unfair unless it is constructive dismissal or there is a valid reason connected with the capacity or conduct of the employee or based on the operational requirements of the undertaking. Where the reason is connected to capacity and conduct, due process involves fair trial following rules of natural justice. There is no local statute that provides for procedural requirements on dismissing an employee for operational requirements (viz retrenchment and redundancy). However, the practice which has been endorsed by the courts is that the employer envisaging to dismiss has to consult the Ministry of Labour and Vocational Training in accordance with the Policy Statement on Retrenchment and Recruitment Procedures and Practices of 2000. In this statement companies and employers are advised to inform the Ministry of Labour and Vocational Training well in advance of any intended or planned retrenchments, redundancies or dismissals of employees en-masse. (*Chiume v SS Rent a Car*, Matter No IRC 149 of 2000; *Gladys Matiki v Cure International*, Matter No. IRC 234 of 2004) If the dismissal is found to be unfair, courts award damages that are deemed fair and just having regard to peculiar circumstances of every case. (*Terrastone Construction v Solomon Chatuntha*, MSCA Civil Appeal No 60 of 2011)

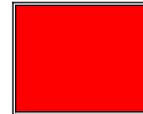
Environmental restrictions

Q18 In Malawi the rules governing the environment and liability for clean-up are very light and relaxed.

True



False



Can't say



Comment:

From 1994, Malawi has made efforts to sustainably protect the environment. Malawi has a National Environmental Action Plan and an Environmental Management Policy which led to the promulgation of an overarching legislation on the environment, the Environment Management Act (EMA) in 1996. The EMA is the legislation in which Environmental Impact Assessment (EIA) falls. It is a legal requirement, according to section 24 of EMA that any prescribed project has to abide by the dictates of the EMA.

Individuals who contravene the EMA are liable to fines extending from MK 5000 to MK 1,000,000 depending on the offence committed and prison terms ranging from two years to 10 years.(Sections 61 to 67 of the EMA). Section 75 of the EMA provides for liability of a body corporate. Thus, where a body corporate contravenes the EMA, every director, manager or similar officer of the body corporate shall be guilty of the offence and can only be exonerated if he proves to the satisfaction of the court that the act constituting the offence was done without his knowledge, consent or connivance and that he did his part to prevent the commission of the offence having regard to all the circumstances of the case.

In Malawi the environment is endangered by lack of political will as evidenced by the go-ahead of some mining deals which needed full environmental Impact Assessment as well as specific legislation dealing with the type of metals being mined.

Malawi also continues to suffer from an influx of second hand electronic imports which are not durable and are easily rendered unserviceable and obsolete. Although such wastes endanger both human life and the environment, Malawi is yet to legislate on electronic waste management.

The Clean Air Bill is gathering dust somewhere at the seat of government despite the fact that it was drafted so many years ago. It is therefore safe to conclude that Malawi has inadequate legal infrastructure for environmental protection and this is exacerbated by lack of lack of enforcement of existing laws, lack of political will and weak linkage between laws governing different sectors.

Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

Foreign direct investment

Q19 In Malawi foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True



False



Can't say



Comment:

Malawi is generally open to foreign investment and there are few restrictions if any on foreign investments. Foreigners in fact control most local corporations in what might be regarded as protected industries in other countries save for defence which is the province of the Malawi Government.

For instance, Standard Bank (Malawi) Ltd is a local Banking company owned by foreigners, DSTV (a media company) owned by Multichoice a foreign controlled company. The examples are numerous and they are found in a wide spectrum of industries ranging from agriculture, engineering, manufacturing and mining to finance and media just to mention a few.

For companies, the requirement is that

Exchange controls

Q20 In Malawi, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

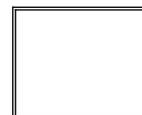
True



False



Can't say



Comment:

In Malawi foreign exchange controls exist and the ultimate authority is the minister who is mandated to make regulations under section 3 of the Foreign Exchange Act (Cap 45:01 of the Laws of Malawi).

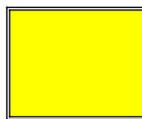
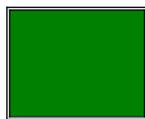
Another regulatory role is played by the Reserve Bank of Malawi (RBM). The RBM is mandated under section 27 of the Reserve Bank Act (Cap. 44:02 of the Laws of Malawi) to exercise such functions as are necessary in the administration of any law relating to the control of foreign exchange transactions in accordance with such law. The foreign exchange control regime is restrictive in Malawi as it is a crime to transfer or possess foreign currency without permission from the minister or the RBM (Regulation 12(10) of the Foreign Exchange Control Regulations). In

essence it possible for businesses to hold foreign bank deposit accounts, borrow in foreign currency but as to transfer of profits in foreign currency, there is need for authorisation from the Reserve Bank of Malawi or the Minister of Finance.

Alien ownership of land

Q21 In Malawi, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True



False



Can't say



Comment:

Generally, Section 4(1) of the Land Act (Cap. 57:01 of the Laws of Malawi) is to the effect that foreign controlled companies cannot acquire or be assured of land without a licence issued by the president allowing the said company to hold lands in Malawi.

Exemptions to the above section include local companies, or companies coming within the terms of section 275 of the Companies (Consolidation) Act, 1908, of the United Kingdom in its application to Malawi, or a body corporate established by or under a written law which empowers it to hold land. (*see* Land Act, section 4(2)).

In essence, foreign controlled companies cannot own land absolutely (freehold land) but they can lease land just as nationals and residents from the Government or from private owners for investment purposes. Where a foreign corporation or individual is acquiring land (leasehold) it is the requirement of the law under section 24C of the Land Act that a notice should be published in a newspaper in daily circulation in Malawi not less than twenty-one days before the date of sale, specifying the price, location and size of the private land, any developments thereon and any other particulars sufficient to identify the land. Such a notice must show the intention to sell the land to a non-citizen. This is done to give first right of purchase to citizens and if no offers are received from a citizen the sale to a foreign corporation can proceed. This is backed both by policy and legislation. The National Land Policy provides that any freehold interest held by a non- citizen should be converted to leasehold unless the holder acquires Malawian citizenship within a period of seven years. The short of it is that rights in land are the same for foreign controlled corporations save for land under freehold tenure.

Application of the law

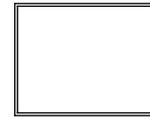
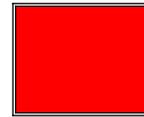
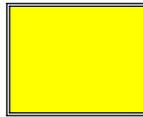
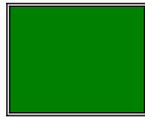
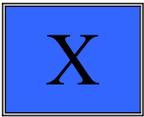
Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In Malawi, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True

False

Can't say



Comment:

The judiciary in Malawi, which is styled after the British System, is impartial and the doors of the courts are open to everyone including big businesses. The Constitution of Malawi prohibits discrimination based on any status, opinion or condition. Thus, foreign and local interests receive the same treatment. In issues of consumer protection and environmental protection the courts may be more lenient to individuals than big business. For instance if a company contravenes the offences created under the Environmental Management Act, every director, manager or similar officer of the body corporate shall be guilty of the offence and can only be exonerated if he proves to the satisfaction of the court that the act constituting the offence was done without his knowledge, consent or connivance and that he did his part to prevent the commission of the offence having regard to all the circumstances of the case. (Section 75, Environmental Management Act).

Our research did not come across any case whether court reported or in the media which showed favouritism toward local interests over foreigners’ suffice to mention that it is difficult in absence of a comprehensive survey to pin point that the higher courts in Malawi favour local interests over foreigners’.

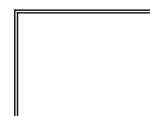
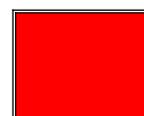
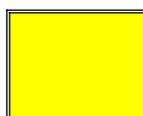
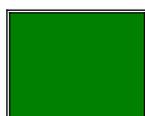
Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in Malawi are not considered materially greater than in other comparable countries.

True

False

Can't say



Comment:

Exorbitant legal costs and delay of commercial litigation was at some point a problem in Malawi. However, the problem was dealt with partially through the establishment of the Commercial Division of the High Court in 2007. This Division was specifically established to ensure speedy resolution of commercial disputes in Malawi. It has Justices who are specifically dedicated to hear commercial matters. The Commercial Division employs a model which involves an active Judge who is responsible from the time the writ is files to prehearing conferences, mediation and trial. The procedures of the Commercial Division of the High Court were tailored for expediency.

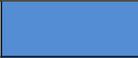
The Division has jurisdiction to hear disputes arising out of transactions of a commercial nature where the subject matter of the dispute has a value of not less than MK1, 000, 000.00. (Order 1, rule 6 of the High Court (Commercial Division) Rules 2007).

Court fees in the commercial division are higher than in the general division so expediency in this case comes at an extra cost. For unquantifiable claims the filing fee is MK 150,000.00. To file a writ, originating summons, motion or petition, the fee is 1.5% of the claim of value of the subject matter in dispute with a maximum of MK 150,000.00 (for MK 10,000,000.00), (High Court (Schedule of fees, Commercial Division) Rules 2007).

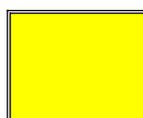
We couldn't find comparable data with other countries within the region, thus we cannot say with certainty.

Overall ranking

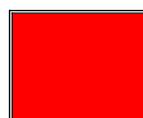
This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

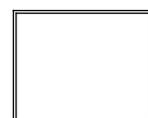
True



False



**Can't
say**



Profiles

The survey was carried out by the following students:

Sullivan Isaac Kagundu holds a Bachelor of Laws (Hons) Degree from the University of Malawi and he is currently working as a Law Consultant at the Law Offices of M&M Global Law Consultants in Blantyre, Malawi where he specialises in labour, insurance and commercial law litigation. His areas of interest are intellectual property law and private international law. Sullivan can be contacted at skagundu@gmail.com

Reuben Chifundo Nazombe graduated from Chancellor College, a constituent college of the University of Malawi with a Bachelor of Laws (Honours) Degree on 27th January, 2016. On 13th May, 2016, he was admitted to practice the law in the Supreme Court of Malawi, the High Court and courts subordinate thereto. He is currently working as a law consultant at Messrs M & M Global Law Consultants Chambers. His major area of interest is law and development scholarship, a branch in the law and society studies. For any further details, contact him at nazombereuben@gmail.com

Gift Dick Chimowa is a graduate of the University of Malawi's Faculty of Law. He is now a private practice lawyer working at the renowned law firm of Messrs. Kalekeni Kaphale Lawyers in Blantyre Malawi. Gift aspires to pursue a masters in International Environmental Law. He is passionate about helping indigent litigants and he harbours an ambition to open a law firm at Kasungu Boma in Rural Central Malawi. He can be contacted at gdchimowa@yahoo.com

Kizito Sonkho Kumwenda was born in 1991 in the city of Blantyre, Malawi. He holds a Bachelor of Laws (Honours) degree from the University of Malawi. Currently, he is a Legal Practitioner working in the firm of Messrs Anchor Mooring Partners in Blantyre. He is reachable on emails:- kumwendak@gmail.com and kizito@anchormooring.com

Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenoverly.com or Melissa Hunt, melissa.hunt@allenoverly.com.

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Yorke Distinguished Visiting Fellow, University of Cambridge

Visiting Professor, Queen Mary University, London

Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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