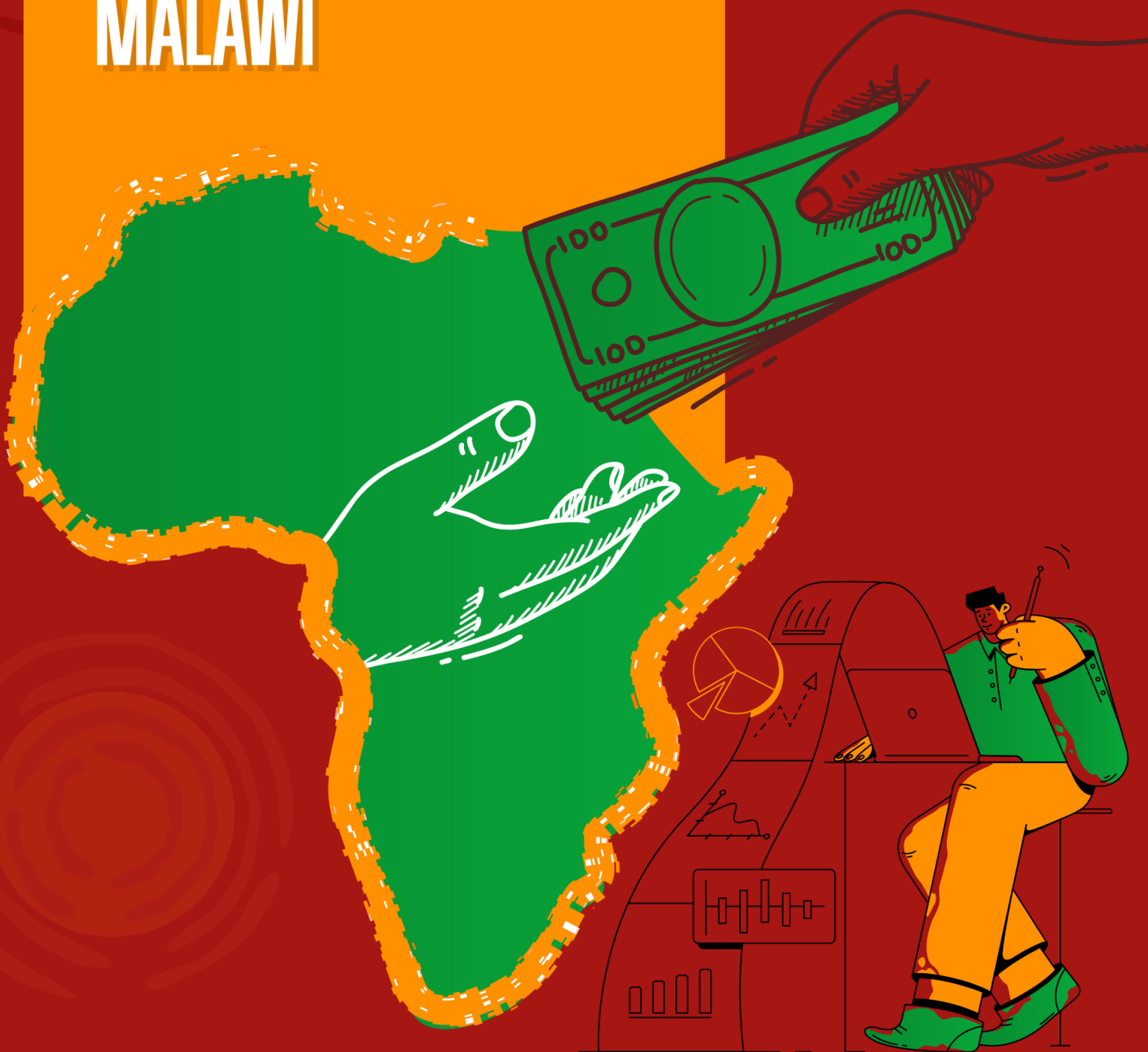


THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING SOVEREIGN DEBT CONTRACTION AND MANAGEMENT IN MALAWI





**AFRICAN FORUM AND NETWORK
ON DEBT AND DEVELOPMENT**



**International
Lawyers
Project**

The Legal and Institutional Framework
Governing Sovereign Debt Contractation and
Management in Malawi

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List of Acronyms

Acronym	Full Term
AFDB	African Development Bank
AFRODAD	African Forum and Network on Debt and Development
DSA	Debt Sustainability Analysis
DACU	Development Assistance Coordination Unit
ECF	Extended Credit Facility (IMF Program)
EXIM	Export-Import Bank (context specifies China or India as origin)
GDP	Gross Domestic Product
IFAD	International Fund for Agricultural Development
ILP	International Lawyers Project
IMF	International Monetary Fund
IT	Indicative Target (in IMF context)
MEJN	Malawi Economic Justice Network
MK	Malawi Kwacha (currency)
MoFEA	Ministry of Finance and Economic Affairs (Malawi)
MTDS	Medium-Term Debt Management Strategy
NIR	Net International Reserves
OFID	OPEC Fund for International Development
PFMA	Public Finance Management Act
SB	Structural Benchmark (IMF context)
USAID	United States Agency for International Development
TDB	Trade and Development Bank
UNDP	United Nations Development Programme
USD	United States Dollar
SDR	Special Drawing Rights (IMF unit of account)



1. Introduction and Scope

1.1 The aim of this overview is:

- (a) to provide a summary of the existing legal framework for the incurrence of sovereign debt by the Republic of Malawi; and
- (b) to identify areas for potential reform in policy and practices related to public debt contracting and management.

1.2 This overview:

- (a) provides in Section 2, an executive summary;
- (b) provides in Section 3, an overview of Malawi's current economic situation;
- (c) provides in Section 4, an overview of Malawi's key existing public debt legislation and institutions; and
- (d) discusses in Section 5, perceived gaps in the legislation, discrepancies between policy goals and practice in public debt management and potential reforms for consideration and discussion

¹* This overview should not be construed as a conclusive study, but as an overview of Malawi's existing framework for sovereign debt incurrence and a discussion of the core issues of transparency, prudent public debt management and accountability. This review has been undertaken by lawyers not qualified in Malawian law on the basis of publicly available information and discussions with representatives of the African Forum and Network on Debt and Development ("**AFRODAD**"), the International Lawyers Project ("**ILP**") and the Malawi Economic Justice Network ("**MEJN**"). This overview summarizes certain information made available to the lawyers, and any views expressed by others and reflected in this overview should not be attributed to the lawyers.

2. Executive Summary

- 2.1 Based on the findings described in sections 3, 4 and 5 of this overview, the current system of incurring public debt by the government of Malawi appears opaque, with (i) limited practical opportunities for public participation and (ii) limited recourse for the legislative and judicial branches to challenge the executive on matters of public debt.
- 2.2 While the Malawi Constitution and relevant legislation provide frameworks for transparency and oversight of the executive (as described in section 4), the public debt management system in Malawi would benefit from:
- (a) emphasising the positive and practical exercise of the powers established through these existing frameworks;
 - (b) strengthening the enforcement of existing rules and oversight mechanisms; and
 - (c) implementing reforms to enhance scrutiny of executive decisions..
- 2.3 This overview suggests areas in which efforts by both the legislative and judicial branches are needed to ensure responsible debt management and provide accountability through the prism of the matters set out under paragraphs 2.2(a) to (c) above.
- 2.4 The Minister of Finance and Economic Affairs (the “Minister”) retains very broad powers under existing legislation to incur debt and, although the National Assembly of Malawi (the “National Assembly”) ostensibly must approve new loan terms, the National Assembly often engages in rubber-stamping exercises where money bills are approved without a significant degree of scrutiny.² An example of this is that the National Assembly has the theoretical ability to limit any new debt that the executive can incur, but in reality this power is rarely exercised.³
- 2.5 Accordingly, a shift away from the status quo in the National Assembly and towards consistently applying the legislative branch’s existing powers in scrutinizing bills on public finance appears to be needed.
- 2.6 Finally, this overview has helped to inform certain other discussions within the Malawian political and legislative spheres. In particular we note the September 2024 publication by the International Lawyers Project (“ILP”) entitled “Malawi: an Evaluation of Taking on and Managing Sovereign Debt”⁴, which contains additional recommendations following a validation session in Malawi organised by the African Forum and Network on Debt and Development (“AFRODAD”) and its in-country

2 Global Partners Governance. 21 November 2023. National Debt and Unchecked Borrowing (<https://gpgovernance.net/national-debt-and-unchecked-borrowing/>)

3 Open Government Partnership, Legislative Oversight of Public Debt (MW0009) (<https://www.opengovpartnership.org/members/malawi/commitments/MW0009/>)

4 International Lawyers Project. 23 September 2024. Malawi: An Evaluation of Taking on and Managing Sovereign Debt (<https://www.internationallawyersproject.org/post/malawi-an-evaluation-of-taking-on-and-managing-sovereign-debt>).

partner Malawi Economic Justice Network (“MEJN”) with respect to the topic of managing sovereign debt. We hope that this overview continues to contribute to such discussions and acts as a catalyst for further dialogue between domestic actors with first-hand experience of the process of sovereign debt incurrence within Malawi.

Malawi's Economic Situation and Debt Sustainability



3. Malawi's Economic Situation and Debt Sustainability

3.1 Malawi's economy is in a delicate state, and its debt burden has reached unsustainable levels. In November 2023 the International Monetary Fund (the "IMF") completed a report on the financial situation in Malawi, including a Debt Sustainability Analysis (the "DSA"), in connection with their approval of a request by the government of Malawi (the "Government") for a new 48-month financing arrangement under the IMF's Extended Credit Facility (the "ECF") program (the "Second Review").⁵ According to the Second Review, Malawi has struggled to sustain economic growth and continues to face a challenging macroeconomic environment:

- (a) "Growth remains stagnant due to macroeconomic uncertainty and the lingering effects of external shocks, including the COVID-19 pandemic, the food and fertilizer prices shock following the war in Ukraine, a cholera outbreak and three cyclones. Real GDP growth is expected to be 1.6% in 2023, with inflation expected to average 30.3% in 2023."
- (b) "The Reserve Bank of Malawi has continued to struggle to accumulate international reserves and pressure on the exchange rate persists".
- (c) "Poverty and food insecurity have been worsening, with over 70% of the population living below the international poverty line and 22% of the population projected to face hunger during the upcoming lean season (October 2023 through March 2024)."

Looking further at more recent economic projections for 2025, real GDP is expected to be stagnant at 1.8%, showing no improvement from 2024⁶, while inflation is projected to fall to a 15.3% annual rate.⁷ However, 28% of Malawians are expected to face hunger as food insecurity "coincides with the lean season" from October 2024 through March 2025.⁸

3.2 In addition, the IMF notes in the DSA that Malawi's debt levels are unsustainable and its debt service requirements are increasing fiscal deficits:

- (a) "The stock of public and public-guaranteed debt reached 75.7% of GDP in 2022, driven by both external and domestic debt."

5 International Monetary Fund (IMF). 2023. *Second Review under the Staff-Monitored Program with Executive Board Involvement and Request for an Arrangement under the Extended Credit Facility* IMF Country Report No. 23/375, Washington, DC (<https://www.imf.org/en/Publications/CR/Issues/2023/11/22/Malawi-Second-Review-Under-the-Staff-Monitored-Program-with-Executive-Board-Involvement-and-541708>).

6 World Bank Group, Malawi Overview (<https://www.worldbank.org/en/country/malawi/overview>)

7 International Monetary Fund (IMF) – Malawi: Country Data (<https://www.imf.org/en/Countries/MWI>) (last accessed 6 December 2024).

8 ReliefWeb, 5 July 2024, Malawi: IPC Acute Food Insecurity Analysis 2024 (<https://reliefweb.int/report/malawi/malawi-ipc-acute-food-insecurity-analysis-may-2024-march-2025-published-5-july-2024#:~:text=The%20situation%20is%20expected%20to,to%20be%20in%20Phase%204>).

- (b) “The government’s recourse to high-cost domestic borrowing to finance fiscal deficits has pushed domestic debt upwards, reaching 40.8% of GDP in 2022.”
- (c) “Rising interest costs not only increased the fiscal burden (absorbing 36.8% of domestic revenue in FY2022/23) but have also strained liquidity on the domestic market.”

3.3 However, certain green shoots are present in the broader economic backdrop:

- (a) some degree of progress is being made towards meeting fiscal targets set by the IMF (as noted within the Second Review):

“Although Malawi continues to experience protracted balance of payments (BOP) challenges and remains vulnerable to shocks, a combination of strong policy effort, increased support from the international community, and more favorable weather recently is now beginning to contribute to macroeconomic adjustment. In a pivot from mixed performance at the time of the first review, the authorities have undertaken important corrective actions, and program performance under the second review was satisfactory. Five out of six end-June and continuous Quantitative Targets (QTs) and all three end-June Indicative Targets (ITs) were met. Seven out of 10 Structural Benchmarks (SBs) were not met, but some progress has been made. Revenue is coming in broadly on target, and expenditure has been contained. The target on net international reserves (NIR) was met at end-June, helped by frontloading of foreign project fund inflows, though official international reserve accumulation has stalled since June as access to trade credit has remained limited. Preliminary data show that NIR stood at US\$993.3 million at end-September 2023.”

and

- (b) the IMF reports the inflation rate (as at April 2024) was 15.3%, in contrast to the projected rate of 30.3% in the Second Review.⁹

3.4 Malawi has also identified the need to reform its economic base, and in January 2021 issued the policy document “Malawi 2063”,¹⁰ which proposes a vision to set the future evolution of the Malawian economy into an “industrialized upper-middle-income country, through a focus on agriculture commercialization,

⁹ International Monetary Fund (IMF) – Malawi: Country Data (<https://www.imf.org/en/Countries/MWI>) (last accessed 9 January 2025).

¹⁰ United Nations Malawi. 19 January 2021. Malawi Vision 2063: An Inclusively Wealthy and Self-reliant Nation (<https://malawi.un.org/en/108390-malawi-vision-2063-inclusively-wealthy-and-self-reliant-nation>).

industrialization, and urbanization.”¹¹ This evolution of the country and the economy of Malawi will require significant political reform and capital expenditure within Malawi; to develop both economic infrastructure and economic sustainability and will inter-alia require:

- (a) a debt restructuring with Malawi's bilateral and commercial creditors to restore Malawi's debt sustainability (although the Second Review notes that even “if external debt were to be successfully restructured, domestic debt remains an increasing source of strain, with domestic interest at 5% of GDP in FY2023/24”);
- (b) enhanced processes surrounding foreign exchange interventions by the Reserve Bank of Malawi, coupled with restoring international currency reserves, which have decreased by more than 50% from December 2019 to March 2022.¹² This will lessen Malawi's vulnerability to external shocks;
- (c) continued progress to track the application of debt proceeds to reduce the possibility of misappropriation of funds;
- (d) improved oversight of any Government-linked entities which may create losses or credit risk that is borne by the Reserve Bank of Malawi and/or the Government (e.g., the Commodity Market Making Unit of Malawi's Export Development Fund); and
- (e) growth in the underlying economy supported by a policy targeting investment in economically productive activities.

3.5 Of all the factors listed above, a debt restructuring seems most pressing, with the Second Review noting that the target of the debt restructuring strategy is a reduction of Malawi's external debt by US\$592 million. However, Malawi's total external public debt stock has continually grown since the Second Review, expanding from ~US\$3.8 billion in March 2023¹³ to ~US\$4.13 billion as of June 2024.¹⁴

3.6 More specifically, a debt restructuring “would be achieved via significant maturity extension and reprofiling of scheduled payments to provide important near-term liquidity relief and to bring Malawi's external debt servicing costs in the medium term to a sustainable level.”¹⁵

11 World Bank Group. *The World Bank in Malawi* (<https://www.worldbank.org/en/country/malawi/overview>) (last accessed 6 December 2024).

12 United Nations Development Programme. July 2022. *Emerging Effects of the Russia-Ukraine Conflict on Malawi and the Road to Recovery “UNDP Malawian Perspective* (<https://www.undp.org/sites/g/files/zskgke326/files/2023-04/POLICY%20BRIEF%20ISSUE%202.pdf>).

13 Malawi Ministry of Finance and Economic Affairs, Debt and Aid Management Division. July 2023. *Annual Debt Report 2022-2023*.

14 The Times Group. 4 August 2024. *Malawi sinks into K15.1 trillion debt* (<https://times.mw/malawi-sinks-into-k15-1-trillion-debt/>).

15 International Monetary Fund (IMF). 8 November 2023. *Second Review under the Staff-Monitored Program with Executive Board Involvement and Request for an Arrangement under the Extended Credit Facility* IMF Country Report No. 23/375, Washington, DC.

- 3.7 This rebalancing of payments would, as described above, need to be supported with productive reform in the economy, including establishing new agricultural commercialization and introducing or modernising infrastructure (e.g., transport and electricity generation) to stabilise and encourage economic growth. This ambition is articulated by the Malawi 2063, which envisages reforming the Malawian economy “*through a focus on agriculture commercialisation, industrialisation, and urbanisation.*”¹⁶ However, this evolution of the country and the economy of Malawi will require significant political reform and capital expenditure within Malawi to develop both economic infrastructure and economic sustainability.
- 3.8 Moreover, the difficulty in securing a successful debt restructuring that is effective and has the capacity to deliver meaningful fiscal space for economically accretive actions is in convincing a sufficiently large number of creditors to restructure their participation in Malawi’s debt. Given the spread of multilateral and bilateral creditors (as set out in the table below), achieving a critical mass to effect a restructuring will likely be challenging.

¹⁶ World Bank Group. October 2024. *The World Bank in Malawi* (<https://www.worldbank.org/en/country/malawi/overview>) (last accessed 6 December 2024).

Text Table 2. Malawi. Decomposition of Public Debt and Debt Service by Creditor, 2022¹

	Debt Stock (end of period)		
	2022		
	(In Million US\$)	(Percent total debt)	(Percent GDP)
Total	8,699	100	76
External	4,006	46	35
Multilateral creditors ²	2,558	29	22
IMF	437	5	4
World Bank	1,317	15	11
AfDB	431	5	4
Other Multilaterals	372	4	3
o/w: IFAD	106	1	1
OFID	76	1	1
Bilateral Creditors	418	5	4
Paris Club	4	0	0
o/w: Spain	3	0	0
Belgium	1	0	0
Non-Paris Club	414	5	4
o/w: EXIM China	222	3	2
EXIM India	114	1	1
Saudi Arabia	29	0	0
Local debt with non-residents	87	1	1
Commercial creditors	890	10	8
o/w: AFREXIM	495	6	4
TDB	395	5	3
FX Swaps with non-residents	53	1	0
Domestic	4,693	54	41
Held by residents, total	4,555	52	40
FX Swaps with resident	139	2	1
Memo items:			
Collateralized debt ³	503	6	4
o/w: Related			
o/w: Unrelated		0	0
Contingent liabilities	53	1	0
o/w: Public guarantees		0	0
o/w: Other explicit contingent liabilities ⁴			
Nominal GDP	12,535		

1/As reported by country authorities according to their classification of creditors, including by official and commercial. Debt coverage is the same as the DSA.

2/Multilateral creditors are defined here as institutions with more than one official shareholder and may not necessarily align with creditor classification under other IMF policies (e.g. Lending Into Arrears)

3/Debt is collateralized when the creditor has rights over an asset or revenue stream that would allow it, if the borrower defaults on its payment obligations, to rely on the asset or revenue stream to secure repayment of the debt. Collateralization entails a borrower granting liens over specific existing assets or future receivables to a lender as security against repayment of the loan. Collateral is "unrelated" when it has no relationship to a project financed by the loan. An example would be borrowing to finance the budget deficit, collateralized by oil revenue receipts. See the joint IMF-World Bank note for the G20 "Collateralized Transactions: Key Considerations for Public Lenders and

4/Includes other one-off guarantees not included in publicly guaranteed debt (e.g. credit lines) and other explicit contingent liabilities not elsewhere classified (e.g. potential legal claims, payments resulting from PPP arrangements).

17

3.9 The DSA within the Second Review excludes certain debt classes held by state and local governments, other elements in the central government (such as the social security fund and extra budgetary funds or non-guaranteed state-owned enterprises) from the review due to lack of data. This lack of trackable data underscores the need for credible and reliable data capture within the Malawian governmental landscape; to properly understand the scale of the need for reform and to prevent misappropriation of funds.

3.10 Whilst discussions regarding transparency improvements and debt reform continue,

17 International Monetary Fund (IMF). 8 November 2023. *Second Review under the Staff-Monitored Program with Executive Board Involvement and Request for an Arrangement under the Extended Credit Facility* IMF Country Report No. 23/375, Washington, DC.

Malawi must manage its future debt incurrence and creditors carefully. The 2022–2023 Annual Debt report notes that the current policy of the Government is to only contract external loans which are concessional (i.e., “loans with an original grant element of 35 percent or more”), with a view to producing more fiscal space over consuming additional resources, e.g., for debt service when compared with the non-concessional counterfactual (see the Second Review for further discussion with respect to fiscal space). Maximising concessional financing is a key strategy articulated in the 2022–2023 Annual Debt Report and would seem to be an important step forward in achieving a more sustainable fiscal position in Malawi.

- 3.11 In summary, macroeconomic events affecting Malawi (including e.g. the continued after-effects of Covid-19 and cyclone Freddy) have intensified the already significant fiscal strain on Malawi. This has resulted in stagnant GDP growth, high levels of inflation and food scarcity, all of which have had a negative impact on the Malawian economy. Government borrowing has increased despite high interest rates, and the fiscal burden of this debt as a percentage of domestic revenue has risen, putting pressure on the fiscal space.
- 3.12 Malawi’s fiscal situation remains tenuous. A rigorous assessment of the institutions involved in Government borrowing and the monitoring of public debt to fully plan short, medium and long term capital needs and their proper management would assist in managing this situation.

Overview of Malawi's Key Existing Public Debt Legislation and Key Institutions



4. Overview of Malawi's Key Existing Public Debt Legislation and Key Institutions

4.1 The power to incur debt by and on behalf of the Government, and the associated checks and balances, are documented in Malawi's constitution (the "Constitution") and additional primary legislation. For analysis on the extent to which these institutions and rules are practically effective or adhered to, see Section 5 (*Practical Considerations and Discussion*).

The Constitution

4.2 Although there is no explicit definition of "public debt" in the Constitution, Section 174 of the Constitution stipulates that all debt charges for which the Government is liable must be paid from government revenues, including:

- (a) interest on debt;
- (b) sinking fund charges;
- (c) all expenditure in connection with the raising of loans on the security of the consolidated fund; and
- (d) the service and redemption of such debt.

4.3 Section 180 of the Constitution requires an Act of the Parliament of Malawi ("Parliament") to grant authority for the Government to borrow money and authorizes Parliament to appropriate the proceeds of any loan for specific purposes.

4.4 There appears to be no requirement under the Constitution for Parliament to scrutinise the purpose for which the loans are being raised in any particular way or with respect to any particular cost-benefit analysis.

The Public Finance Management Act – General

4.5 The Public Finance Management Act 2022 (the "PFMA") is the principal legislation governing the incurrence of public debt in Malawi.¹⁸ Part VIII of the PFMA covers *Borrowing, Loans and Guarantees, within which Section 70 grants the Government the authority to borrow money in accordance with Section 180 of the Constitution. This authority is exercised by the Minister, subject to the requirements that an authorising act of the National Assembly be passed and that the Minister:*

- (a) ensures that the raising of the loan is in the public interest;
- (b) ensures the borrowing is fiscally responsible;
- (c) ensures the borrowing is consistent with the Government economic

¹⁸ *Public Finance Management Act 2022 (No. 4 of 2022)* (Malawi).

policy; and

- (d) satisfies himself that the Government has the ability to meet all obligations under the loan agreement.

The degree to which such borrowing is scrutinised by the National Assembly is discussed further at Section 5 (Practical Considerations and Discussion).

- 4.6 Section 71 of the PFMA requires the production of a medium-term debt management strategy by the Secretary to the Treasury for submission to the Minister and approval by the Cabinet (see discussions on the *Medium-Term Debt Management Strategy* below).
- 4.7 Section 72 of the PFMA requires the production of an annual borrowing plan (the "ABP") by the Secretary to the Treasury for submission to the Minister and approval by the Cabinet (see discussion of the Annual Borrowing Plan below).
- 4.8 Section 73 requires that every loan raised under Part VIII of the PFMA is done so in the name of the Republic of Malawi, and that all documents evidencing the loan terms are to be executed by the Minister.
- 4.9 Section 74 imposes specific conditions on borrowing loans. The Minister must, prior to raising a loan, consult the Reserve Bank, obtain a written legal opinion of the Attorney General on the loan agreement, though it is unclear from publicly available information whether this step is rigidly enforced, and also:
 - (a) ensure the loan is in the public interest;
 - (b) ensure the loan is fiscally responsible in accordance with certain principles of fiscal responsibility set out in Section 25 of the PFMA; and
 - (c) satisfy themselves that the Government is likely to have the financial ability to meet the loan obligations.
- 4.10 Section 74 also imposes certain pre-incurrence restrictions on the ability of the Minister to incur term loans (including external debt such as bilateral and multilateral loans) by reference to public interest and general prudential incurrence. Section 74 also ties the Minister's ability to borrow term loans to authorisation by the National Assembly via an Act of Parliament, with the amount borrowed limited to the sum authorised in the relevant Act. Cash must be held in the consolidated fund established by section 172 of the Constitution and used only for the specified purpose.
- 4.11 Finally, pursuant to section 74 term loans are subject to the Third Schedule of the PFMA, containing provisions for general borrowing, unless borrowing from a foreign government or international agency. Section 2 of the Third Schedule to the

PFMA states that the Minister shall borrow in accordance with the ABP. The Third Schedule to the PFMA also sets out rules regarding the issuance of government securities and the registration rules for any security granted for incurred debt. While in theory Section 74 provides limits to the Minister's ability to borrow, those limitations are predicated on the practical scrutiny of borrowing proposals by Parliament. The apparent lack of such scrutiny along with the perceived rubber-stamping attitude within the National Assembly means that this power is not being checked as theoretically intended (see section 5 (*Practical Considerations and Discussion*) for further discussion below).

- 4.12 Section 78 allows the Minister to delegate borrowing responsibility to the Secretary to the Treasury for sums not exceeding 25% of annual budget revenue by issuing Treasury Bills payable at the Reserve Bank of Malawi. The Minister is further empowered to delegate responsibility for borrowing such further sums as the Minister directs when accompanied by a resolution of the National Assembly. The relevant legislation does not otherwise appear to impose a debt ceiling or any other specific monetary limits (ratios or otherwise) on the amount of debt to be incurred. The only guidance on debt incurrence is Section 25(a) of the PFMA, which provides that "public debt shall be managed at prudent levels", without further clarification. Subject to the approval of the National Assembly, there appears to be no hard and fast limit to the amount of debt that the Minister is empowered to incur.
- 4.13 The lack of a clear constitutional limit for public debt levels presents a challenge if the National Assembly is to play an active role in scrutinising debt proposals from the executive.

The Public Finance Management Act – Derivatives, Guarantees and other public debts

- 4.14 In addition to the general provisions covering loans as set out above, the PFMA also covers derivative actions, the granting of guarantees (or indemnities) and certain other debt-related actions. In particular, the following are relevant:
- (a) Section 80 which enables the Minister to enter into certain derivative transactions, so long as those transactions are in the public interest and are carried out within the framework and limits of the budget policy statement and medium-term debt management strategy (noting that historically Malawi has experienced foreign exchange shortages with "gross foreign exchanges reserves remaining at around 0.8 months of import cover" and "various measures to rebuild foreign reserves, including conducting foreign exchange auctions, having had limited impact on foreign exchange accumulation");¹⁹ and

¹⁹ Malawi Economic Monitor. July 2023. *Powering Malawi's Growth: Rapidly and Sustainably Increasing Energy Access* (<https://documents1.worldbank.org/curated/en/099071423121539304/pdf/P179529071fbd40290899901e20929fd171.pdf>).

(b) Section 82 which enables the Minister to give a guarantee or an indemnity where the Minister deems that doing so would be necessary and in the public interest (noting also that the Minister is required to report any such guarantee or indemnity to the National Assembly within seven days of it being granted).²⁰

4.15 The legislative position with respect to these additional liabilities, contemplates safeguards on the Government's incurrence and contraction of domestic and foreign debt given the public interest qualifiers. Moreover, Part IX of the PFMA establishes a Debt Retirement Fund (the "Fund"), which contains a financial reserve for servicing public debt.

4.16 Accordingly, it is clear that there is a theoretical basis for managing public debt and for the provision of guarantees and indemnities. However, the adequacy of these safeguards is difficult to assess without greater contextual information on the effectiveness of Government oversight e.g., how active the Budget Committee of the National Assembly has been historically, and how the Budget Committee interacts with the broader political backdrop of Malawi. The publicly available information is insufficient to answer those contextual questions. However, the current unsustainability of Malawi's debt levels suggests the need for additional limitations and scrutiny of the amount, and the terms of public debt that is incurred or guaranteed (as applicable).

The Reserve Bank of Malawi Act

4.17 The Reserve Bank of Malawi Act establishes the Reserve Bank of Malawi, with the purpose, among other things, to promote a sound financial structure in Malawi with due regard to the interest of the Government's economic policies. Section 43 of the Reserve Bank of Malawi Act together with Section 74(2)(e) of the PFMA,²¹ require that the Minister²² must consult the Reserve Bank of Malawi on the terms and conditions of any external debt, including interest rate, fees, and maturity.

Medium Term Debt Management Strategy

4.18 The PFMA outlines the process for the implementation of a medium-term debt management strategy (the "MTDS"), which must ensure and take into account:

(a) that the financing and repayment needs of the Government are met on a timely basis;

(b) that borrowing costs to the Government are as low as possible over the

20 International Monetary Fund (IMF). 8 November 2023. *Second Review under the Staff-Monitored Program with Executive Board Involvement and Request for an Arrangement under the Extended Credit Facility* IMF Country Report No. 23/375, Washington, DC.

21 For completeness note that Section 74(2)(e) of the PFMA cross-references Section 42 of the Reserve Bank of Malawi Act, but this appears to be an error and Section 43 appears to be the more appropriate cross-reference.

22 The term "Minister" as used in the PFMA is not defined, but logically we understand this to mean The Minister of Finance and Economic Affairs.

medium to long term, consistent with a prudent degree of risk;

- (c) the development of the domestic debt market;
- (d) the pursuit of any other actions considered to impact positively on public debt;
- (e) the cost and risk embedded in the current debt portfolio;
- (f) future borrowing and debt requirements of the Government;
- (g) the macro-economic framework of Malawi;
- (h) prevailing market conditions; and
- (i) any other factors that may be relevant for the development of the MTDS.

4.19 The Secretary to the Treasury is required to prepare and submit to the Minister the MTDS, updated at least once every year, based on sound fiscal policies as outlined in the PFMA. The Minister is required to review the MTDS by December 31st of each year and then submit the MTDS to the Cabinet for approval. Following approval by the Cabinet, the Minister is required to publish the strategy in the Malawi Gazette.

4.20 All Government borrowing and other debt management operations must be undertaken in compliance with the MTDS.

4.21 The MTDS is available publicly and published on the Malawian Ministry of Finance website.²³

Annual Borrowing Plan (ABP)

4.22 The Annual Borrowing Plan (ABP) must detail the planned borrowing operations for the year, the borrowing instruments to be used and the indicative timing of borrowings.

4.23 The Secretary of the Treasury is required, no later than the 31st of March of each year, to prepare an annual borrowing plan, updated at least once every six months, to meet the aggregate borrowing requirements of the Government for the next financial year. The Minister is required to submit the ABP to the Cabinet for approval and, following approval, publish the plan in the Malawi Gazette.

4.24 The ABP for the financial year 2023/2024 links the ABP to the MTDS noting: "Since this is Malawi's first Annual Borrowing Plan and given that the MTDS was approved in December 2022, evaluation of how the ABP aligns with the MTDS will be done at mid-year. Assessment will include analysis of performance of the strategic

²³ Malawi Ministry of Finance and Economic Affairs. 2023. *Annual Debt Reports - Medium Term Debt Management Strategy* (<https://www.finance.gov.mw/index.php/our-documents/annual-debt-reports>).

targets and evaluation on any deviations on debt issuances.”²⁴

- 4.25 The ABP is based upon the gross financing requirements of Malawi as a result of existing debt, and the further borrowing planned to meet those needs. Note that the role of the ABP is not to address future debt to be contracted, but only the servicing of existing debt.
- 4.26 The ABP is available publicly and published on the Malawian Ministry of Finance website.²⁵

The Courts and Dispute Resolution Bodies

- 4.27 Arbitration in Malawi has recently been reformed by the country’s accession to the New York Convention on 2 June 2021, which made the country a suitable jurisdiction for international and commercial disputes. The National Assembly subsequently passed the International Arbitration Bill on 7 December 2023, enabling the creation of the Malawi International Arbitration Centre on 5 January 2024. This institution aims to provide a centralized and cohesive forum for commercial dispute resolution in Malawi.
- 4.28 The reforms demonstrate a serious commitment from the Malawian government to move away from the previously ad hoc system of dispute resolution, and into an efficient streamlined process that will provide the bedrock for increased economic activity in the country. The reforms were supported by the Malawian Supreme Court of Appeal decision, *Projex Group Limited v Central East African Railways Limited*,²⁶ in which the court refused to grant an anti-arbitration injunction on the grounds that “judicial intervention should not disrupt the process of arbitration”.²⁷
- 4.29 However, Malawi’s court system remains relatively inactive when it comes to matters of public debt. Commentators have suggested that Malawi’s courts face the same cultural issues of a dominating executive that makes oversight by either the legislative or judicial branches difficult.²⁸ As noted in other sections of this overview, the theoretical legal framework for substantive oversight of the public debt incurrence protests exists, however, it may be that the political and legal culture in Malawi in terms of deference to the executive in matters of public debt

24 Malawi Ministry of Finance and Economic Affairs. 2023. *Annual Borrowing Plan 2023/2024* (<https://www.finance.gov.mw/index.php/our-documents/annual-debt-reports>).

25 Ibid.

26 Supreme Court of Appeal (Malawi). *Projex Holding v Central East African Railways Limited*. 14 March 2024 (<https://malawilawsociety.net/wp-content/uploads/2024/04/Projex-Group-Limited-vs-CEAR-MSCA-Ruling.pdf>).

27 Malawi Law Society. 8 April 2024. *Enactment of International Arbitration Act, the Establishment of Malawi International Arbitration Centre and Support of the Courts Clears the Way for International Arbitration in Malawi* (<https://malawilawsociety.net/enactment-of-international-arbitration-act-the-establishment-of-malawi-international-arbitration-centre-and-support-of-the-courts-clears-the-way-for-international-arbitration-in-malawi/>).

28 Open Government Partnership. 2023. *Legislative Oversight of Public Debt* (<https://www.opengovpartnership.org/members/malawi/commitments/MW0009/>).

may impact the **outcomes of prudent** debt management.²⁹ Indeed, commentators have noted that until responsibility over public debt is shared between the executive, legislative and judicial branches, the process will most likely continue to appear opaque.³⁰

4.30 The Office of the Attorney General is an example of a department that could be using its power to scrutinise the proper management of public debt liabilities by the executive branch of the Government of Malawi. Working with the Reserve Bank of Malawi, the office of the Attorney General could ensure that the executive follows procedural rules regarding debt issuance and enforce the law more rigorously when it comes to misuse and corruption. In a similar theme, the National Assembly could also politically demand accountability in matters of public debt.³¹

Debt and Aid Division of the Ministry of Finance and Economic Affairs

4.31 The Ministry of Finance and Economic Affairs, since its establishment in 1997, has divided the executive's public debt management responsibilities between 3 key units, colloquially known as the "Front", "Middle" and "Back" Offices.³²

4.32 The Resource Mobilisation Unit, or "Front Office", is responsible for designing and implementing the Government's external funding program. It is responsible for sourcing external financing such as loans, grants and other forms of funding. This unit works closely with government ministers responsible for public finances to facilitate government borrowing within the scope set by the National Assembly. The Front Office is also responsible, along with the Middle Office, for monitoring the current state of Malawi's public debt.

4.33 The Planning and Information Unit, or "Middle Office", is responsible for conducting analytical work for strategic debt and aid management. This office serves as the relay between the Front Office and the Back Office, along with providing analysis of current public debt. The Middle Office uses this data analysis to provide periodic reports into the country's debt and aid portfolio and make forecasts into the country's financial outlook on public debt.

4.34 The Disbursements and Debt Servicing Unit, or "Back Office", is responsible for maintaining an up-to-date aid and debt database which allows for registration of

²⁹ Malawi Law Society. 18 September 2023. Sovereign Debt Situation in Malawi: The Role of the Legal Profession in Public Debt and Finance Management and Lessons From Across the African Continent (<https://malawilawsociety.net/sovereign-debt-situation-in-malawi-the-role-of-the-legal-profession-in-public-debt-and-finance-management-and-lessons-from-across-the-african-continent/>).

³⁰ Ibid.

³¹ Ibid.

³² Malawi Ministry of Finance and Economic Affairs, Departments – Debt and Aid Management Division (<https://www.finance.gov.mw/index.php/departments/treasury/debt-aid>) (last accessed 6 December 2024).

aid and debt flows, disbursement, servicing and accounting. The office monitors and records the disbursements of grants and loans given under Government borrowing schemes and monitors the financial performance of donor funded programs and projects.

Development Assistance Coordination Unit

4.35 The Development Assistance Coordination Unit (the “DACU”) was established in 2006 to implement aid harmonisation as set out in the Paris Declaration on Aid effectiveness. The DACU aims to strengthen coordination between government and development partners and ensure best practices in aid coordination in line with the principles of the Paris Declaration on Aid. This unit’s key role is to function as a bridge between the Government and its development partners to communicate and provide data on how aid is being implemented and its effect.



**Practical
Considerations
and Discussion**

5. Practical Considerations and Discussion

Parliamentary Considerations

- 5.1 As flagged on the Public Finance Management Act, Parliamentary oversight could be improved through active engagement of the various stakeholders in the public debt process. Examples of the current lack of engagement include:
- (a) the Reserve Bank of Malawi not being consulted prior to the contraction of debt, contrary to the requirements of the PFMA;³³ and
 - (b) the 2020 rule stipulating that money bills must have 28 days notice before they are introduced into the National Assembly being frequently ignored.³⁴
- 5.2 It appears that there remains an attitude persistent in Malawi's political culture holding that loans for development projects are always acceptable, leading to limited parliamentary scrutiny of such items.³⁵ Parliament's habitual subordination to the executive on such matters has become known as "the tradition" and leads to a significant lack of transparency, as members of Parliament are often only provided limited information about the conditions of a given loan.³⁶ Parliament also does not provide scrutiny of ongoing projects, limiting the effect of checks and balances on application of debt proceeds to projects after incurrence.
- 5.3 Brokers and intermediaries are also frequently used to assist with loan acquisitions, leading to public debt being owed to "middle-men" and increasing opportunities for improper uses of government funds.³⁷ Sanctions for breaches of the law regarding public debt can be found under section 88 of the PFMA, which allows for a fine of MK100,000 (MK500,000 if a statutory body) or up to 5 years imprisonment. These sanctions, however, seemingly have not been enough to seriously discourage procedural irregularities in the issuing and management of public debt in Malawi.

Transparency

- 5.4 The policy goal of transparency in the management of Malawi's public debt is theoretically evident in its Constitution and the relevant legislation. The Constitution references transparency as a measure of public trust and good governance, and the stated purpose of the PFMA is to provide a framework for "effective,

³³ International Lawyers Project. September 2023. Malawi: an Evaluation of Taking on and Managing Sovereign Debt (<https://www.internationallawyersproject.org/post/malawi-an-evaluation-of-taking-on-and-managing-sovereign-debt>).

³⁴ Open Government Partnership. 2023. Legislative Oversight of Public Debt (<https://www.opengovpartnership.org/members/malawi/commitments/MW0009/>).

³⁵ Open Government Partnership. 2023. Legislative Oversight of Public Debt (<https://www.opengovpartnership.org/members/malawi/commitments/MW0009/>).

³⁶ Ibid.

³⁷ International Lawyers Project. September 2023. Malawi: an Evaluation of Taking on and Managing Sovereign Debt (<https://www.internationallawyersproject.org/post/malawi-an-evaluation-of-taking-on-and-managing-sovereign-debt>).

*transparent and responsible public finance management within an economic and fiscal framework in Malawi.*³⁸

- 5.5 Transparency is also materially important within any debt management process, especially in the context of an emerging and developing economy, as transparency can support, among other things, enhanced relations with international partners and build the investor confidence necessary to attract foreign direct investment on a broader scale.
- 5.6 Conversely, a lack of transparency can undermine relations with international partners and hinder foreign direct investment. An illustration of this negative outcome is the so-called ‘*hidden debts*’ case arising from the discovery of previously undisclosed debts in Mozambique in 2016 (the “**Mozambique Case**”).

- (a) In the Mozambique Case, state-owned enterprises incurred \$2.0 billion in debt. These loans were guaranteed by the Mozambique government without parliamentary approval and were not disclosed to international partners and creditors. As the extent of the hidden liabilities became known, Mozambique’s external public and publicly guaranteed debt ballooned from 61% of GDP in 2016 to 104% in 2018.³⁹ The disclosure of these obligations materially and negatively impacted Mozambique’s development trajectory:

“The ‘hidden’ loans crisis plunged Mozambique into a protracted economic downturn. Growth halved from 7.7% in 2000–2016 to 3.3% in 2016–2019. The metical depreciated drastically, inflation surged to 17.4% by the end of 2016, and fiscal space narrowed markedly. FDI dried up as international investors lost confidence. Concessional lending from international financial institutions was far more limited, with official aid falling from 17.5% to 12.4% of GDP between 2013 and 2018.”⁴⁰

- (b) Commentators analysing the Mozambique Case crisis pointed directly to governance weaknesses within the governmental system and particularly focused on a lack of independent auditing that allowed the loans to remain obscured within the Mozambique governmental framework and the existence of state-backed guarantees that were arranged without parliamentary approval.
- (c) On 29 July 2024, the High Court of Justice in London ruled that Abu Dhabi shipbuilder Privinvest owes \$825 million to Mozambique and

³⁸ Public Finance Management Act 2022 (No. 4 of 2022) (Malawi).

³⁹ World Bank Blogs, 19 April 2022. Mozambique’s “hidden debts”: Turning a crisis into an opportunity for reform (<https://blogs.worldbank.org/africacan/mozambiques-hidden-debts-turning-crisis-opportunity-reform>).

⁴⁰ Ibid.

owes a \$1.5 billion indemnity for money that Mozambique owes to banks and bondholders in connection with the Mozambique Case. While a significant victory for Mozambique, the judgment does not repair the damage done to the country's economy or commercial reputation.⁴¹

5.7 The Mozambique Case underscores the need for transparency, and as noted above, the legislative framework in Malawi theoretically places transparency at the core of public debt management, including through the requirements that the MTDS and ABPs:

- (a) align with sound economic policies;
- (b) include disclosure as to Malawi's external and domestic financing instruments; and
- (c) are made publicly available.

5.8 In practice however, there appears to be a lack of full transparency around the process of debt incurrence or the amount and types of outstanding debt liabilities. Examples include:

- (a) the disclosure within the MTDS and ABP being presented on an aggregated basis, particularly regarding domestic financing arrangements, so the individual debts are not fully visible to the public;
- (b) the disclosure inadequately identifying the amount and nature of guarantees related to state-owned enterprises (with respect to guarantees for state-owned enterprises; see in particular "Annex: Incorporating Guaranteed Debt" in the MTDS 2022-2026 which does not provide any details as to what the underlying guarantees relate to); and
- (c) a comparison of the disclosure in the MTDS and ABP revealing several discrepancies. As an example, the MTDS for 2022 – 2026 discloses that the "Export-Import Bank of China (EXIM China) is the third largest external creditor" whereas the ABP for 2023/2024 does not disclose this relationship. This lack of disclosure in the ABP may be on the basis that no debt incurrence is planned with the Export-Import Bank of China in the 2023/2024 fiscal period. However, the disconnect creates the impression of a lack of full and transparent disclosure.

5.9 Furthermore, it should be noted that there is a third report; the Annual Public Debt Report, which provides further disclosures related to the matters covered in the Medium-Term Debt Strategy (MTDS) and the Annual Borrowing Plan (ABP).⁴² However, this report does not appear to be mandated by statute, leaving its

⁴¹ The Republic of Mozambique (acting through its Attorney General) v Credit Suisse International and others (2024) [2024] EWHC 1957 (Comm).

⁴² Malawi Ministry of Finance and Economic Affairs. 2023. Annual Debt Reports - Medium Term Debt Management Strategy (<https://www.finance.gov.mw/index.php/our-documents/annual-debt-reports>).

legislative basis and the approval process for its content unclear.

- 5.10 We note further that our research to date has not been able to identify whether the production of the Annual Public Debt Report will be terminated in the future given the now incumbent statutory requirements to produce the ABP and MTDS.
- 5.11 This trio of reports (the ABP, MTDS and the Annual Public Debt Report) seems to underscore the desire for transparency, but at the same time results in confusing disclosure of the actual and contingent obligations of the Government. In such regard it is noted that:
- (a) although the legislation requires that both the MTDS and the ABP are approved by the Cabinet, there seems to be a gap in the legislative framework in that the metrics by which the Cabinet is intended to review the relevant plans are not clear;
 - (b) there does not appear to be publication of any Cabinet discussions, so an appropriate external analysis of the utility of the Cabinet approval process is therefore difficult; and
 - (c) there is no requirement for any type of independent verification or audit of the information disclosed in the public reports.
- 5.12 Practical steps for reform could be to amend the existing legislation (or in the absence of statutory amendments, revise existing practice) to:
- (a) require explicit disclosure in the MTDS and ABP of any contingent and/or derivative obligations, including how those obligations are being accounted and budgeted for by the Ministry of Finance and Economic Affairs;
 - (b) require specific disclosure in the MTDS and ABP of outstanding indebtedness and any associated contingent obligations and provide for the verification or audit of the disclosures by an independent third party;
 - (c) include any plans on how the Fund with respect to debt retirement will be funded; and
 - (d) publish the minutes of any Cabinet discussions regarding approvals of the MTDS and ABP.

Prudent Public Debt Management and Economic Planning

- 5.13 Debt financing can be critical for development of an emerging economy especially when such debt financing is linked with accretive economic uses and dedicated projects. In such regard, the ABP and the MTDS make clear that Malawi is projecting to incur material debt obligations in the short to medium term. Table

4 in the ABP for 2023/2024, as reproduced in Annex 1, indicates that certain external financing arrangements are to be linked with particular projects.

5.14 At present, the utility of the ABP and MTDS lacks outcome-reporting of the link between debt incurrence, specific creditors and specific underlying projects and uses, noting that:

- (a) domestic financing arrangements are not linked under the ABP 2023/2024;
- (b) there does not seem to be a methodology of analyzing how effective the investments using external and/or domestic debt have been in the past and accordingly whether the debt incurred has encouraged economic growth;
- (c) Table 2 from the MTDS for 2022 – 2026 (see Annex 2) discloses a number of bilateral relationships but does not indicate which projects the debt was incurred for was used and Table 2 does not disclose whether such projects have been completed and/or have generated an economic return; and
- (d) as was noted from discussions with MEJN, a key concern was that future debt incurrence was being used to pay off interest costs on previously incurred debt (i.e., that Malawi's increasing debt burden was not being used for new economically productive actions or projects but rather for debt service).

5.15 By linking anticipated and historical debt incurrence with specific items it will be clearer what the balance of debt incurrence is being used for. Accordingly, the clearer disclosure around the uses of such debt may stimulate broader discussions within Malawi on economic strategy especially if such disclosure reveals that debt incurrence is a self-reinforcing circle in order to meet debt repayment costs and charges.

5.16 Potential reforms may be:

- (a) explicitly linking debt incurrence as set out in the ABP and the MTDS with the relevant underlying projects or uses, which could have the effect of underscoring the importance of fiscal planning and also explicitly linking accretive projects with the relevant funding sources;
- (b) in the case of debt being raised to service existing debt, highlighting the levels of debt being incurred for non-accretive projects, stimulating broader discussions within Malawi on economic strategies; and
- (c) publishing within each update of the MTDS and ABP an analysis of how previously approved debt has been spent and the performance of such

projects.

Developing Critical Expertise within Parliament & Malawi's Civil Service and Encouraging Public Participation pre-incurrence

- 5.17 The legal framework around debt contraction is mostly centred around managing existing debt. Given Malawi's fiscal situation as noted in Section 3 (*Malawi's Economic Situation and Debt Sustainability*) above, it is essential that Malawi manages its future debt incurrence and creditors and implements transparency reforms moving forward.
- 5.18 Currently, contraction of further debt is the subject of 'public participation' only insofar as it has to be authorized by an Act of Parliament in accordance with the Constitution and the legislative provisions outlined above.
- 5.19 As set out in the overview of the existing legislation in Section 4 (*Overview of Malawi's Key Existing Public Debt Legislation and Key Institutions*) above, there are some limited theoretical legislative checks and balances with respect to debt incurrences. However, such checks and balances are seemingly not practically exercised or are exercised in a sub-optimal way with the legislation having limited detail (e.g., statements as to public interest) for interested stakeholders to use to frame their analysis.
- 5.20 To underscore the lack of rigorous review by Parliament it should be noted that the Parliament's own Strategic Plan 2022 – 2026⁴³ highlights that "Money Bills are passed in a process that looks more like rubber-stamping."⁴⁴ Rubber-stamping implies an absence of an effective review process together with a shortage of individuals with the relevant experience.
- 5.21 However, in November 2023 it was reported that two Loan Authorization Bills were referred to the Budget & Finance (Parliamentary) Committee for 'the first time in Parliament's history'.⁴⁵ This referral provides the future scope for developing expertise within Parliament and also the civil service officials that support parliamentarians within Malawi and reflects the possibility of greater substantive pre-incurrence legislative scrutiny of the underlying merits of the relevant debt instrument.
- 5.22 To be an effective check and balance from a legislative perspective, the broad statements made under the PFMA with regard to public interest and prudential debt management would require a combination of a dedicated and informed public sector department with appropriate expertise to review and comment on the same together with parliamentary critique by reference to a set of objective

⁴³ Parliament of Malawi. Strategic Plan 2022–2026 (https://parliament.gov.mw/uploads/doc_reforms_and_strategic_plan/doc_reforms_and_strategic_plan_1549019a-e2c2-46ee-b715-f57540d75e2a1668081542185.pdf).

⁴⁴ Ibid.

⁴⁵ Global Partners Governance. 21 November 2023. National Debt and Unchecked Borrowing: A Historic Step towards Government Oversight in *Malawi Parliament* (<https://gpgovernance.net/national-debt-and-unchecked-borrowing/>).

factors and an audit function to track past expenditure.

- 5.23 Malawi benefits from an Auditor General appointed under Section 184 of the Constitution to undertake a program of audits, and examine transactions, books and accounts and other public records of every ministry, statutory office, agency, and public funds received by non-profit organizations, including relevant international organizations.
- 5.24 Therefore, an additional change, not a 'reform' per se, would be for Parliament, the Auditor General's office, and related civil servants within Malawi to actively take on the role of robustly challenging money bills as a matter of de facto process in a way that it has not historically been undertaken whilst at the same time auditing how previous debt instruments have been dispersed.

Accountability and Sanctions

- 5.25 The potential reforms described above in paragraphs 5.12, 5.16 and 5.24 have the added benefit of potentially reducing the risk and/or perception of corruption in that:
- (a) the explicit linking of funds to designated projects and the tracking of the performance of such projects or purposes would reduce the ability of public debt proceeds to be applied other than as prescribed;
 - (b) the independent verification of the disclosures under the MTDS and ABP would reduce the ability to obfuscate the true amount of debt incurred; and
 - (c) the establishment of key criteria for review and approval by the Cabinet of the MTDS and ABP and publication of Cabinet minutes and approvals, together with utilizing appropriate expertise to review statements made, would enhance the ability of interested third party actors (including international bilateral partners and private citizens) to examine Malawi's sovereign debt management process more effectively.
- 5.26 A successful, transparent, and economically thoughtful regime needs to be underpinned with sanctions for non-compliance. Linking debt incurrence with underlying projects and specific use of proceeds requirements would be expected to drive positive behavior and associated results if there are sanctions for non-compliance for the responsible departments and relevant individuals.
- 5.27 Additional reforms to implement may be to:
- (a) explicitly require additional Cabinet and/or Parliamentary approvals for material departures from the debt incurrence set out in the ABP and MTDS; and

(b) update Malawi's legislative framework to include explicit criminal and/or civil liability for the relevant officials who approve material departures from the ABP and/or the MTDS (as applicable) without such consents.

5.28 Such a regime would have the benefit of practically linking the proposed updated Cabinet approval process with the powers that have been delegated to the Minister, potentially ameliorating some of the extreme examples of expansive debt incurrence powers in Africa (see for example, Zimbabwe's high court ruling on the constitutional limits of debt incurrence by ministers).⁴⁶

5.29 There are signs of such changes taking place. The referral of two Loan Authorization Bills to the Budget & Finance Committee may, as was noted above, represent a move by Parliament towards taking on this strengthened role.

⁴⁶ Order of the High Court of Zimbabwe. 15 March 2023 (<https://zimcodd.org/wp-content/uploads/2023/03/Order-Zimcodd.pdf>).

6. Conclusions

- 6.1 The primary legislation within Malawi is clear as to the delegation of responsibility of debt incurrence. Equally clear is a desire to put transparency at the center of the process given the requirement for the MTDS and ABP to be prepared, approved, and made publicly available. The legislation also emphasizes the goals of prudent debt management, accountability and public interest.
- 6.2 However, the policy imperatives are not perfectly implemented in practice, and the proposed reforms discussed above could help in achieving more sustainable public financing in Malawi.
- 6.3 Matters which require (i) conclusions made on the competence of actors within Malawi and (ii) specific advice on the contractual terms of debt instruments are outside the scope of this overview and would necessarily benefit from:
- (a) Malawian-based researchers with greater existing familiarity with the political system in Malawi;
 - (b) civil servants in Malawi that have experience of Malawi's international debt instruments in scenarios where such debt instruments have been repaid or refinanced in (x) non-distressed situations, and (y) distressed situations; and
 - (b) individuals with professional accounting qualifications to assess, for example, the degree of compliance with International Monetary Fund/ World Bank guidance on proper debt management procedures through the prism of accounting practices and procedures, and therefore the adequacy of information that the Government discloses in relation to its existing indebtedness.
- 6.4 Further research topics by Malawian-based actors could include:
- (a) historical terms achieved by Malawi in their sovereign debt and highlighting any terms that have resulted in technical defaults thereunder given incompatibility with Malawi's economic makeup and/or output;
 - (b) the different classes of creditors that have refused to engage in restructuring of their debt holdings;
 - (c) examples of proceeds of sovereign debt not being applied in accordance with their terms; and
 - (d) the quantum of debt that needs to be restructured because the underlying projects to which they were to be applied have not performed in accordance with planned economic models.

Table 4: 2023/24FY external disbursements, by Project/Loan

Loan/ Project	Creditor	Signing Date	Grace Period	Repayment Period	Interest	Grant element	Original amount (million)	Disbursement in FY2023/24 (MWK)
Shire Valley Transformation Project - Phase 1	IDA	2/2/2018	6	32	0.75	53	XDR113.3	61,723,378,337
Shire Valley Transformation Project - Phase 2	IDA	8/1/2022	6	32	0.75	53	XDR99.7	39,664,638,893
Malawi Resilience and Disaster Risk Management Project	IDA	5/22/2020	6	32	0.75	53	XDR43.6	7,339,720,511
Equity with Quality and Learning at Secondary	IDA	7/25/2019	6	32	0.75	53	XDR64.8	21,373,050,000
Malawi Education Reform Project	IDA	12/15/2021	6	32	0.75	53	XDR13.2	4,484,670,828
Malawi Financial Inclusion and Scaling Project	IDA	11/20/2020	6	32	0.75	53	XDR62.7	7,021,178,100
Southern Africa Trade and Transport Facilitation Project	IDA	11/25/2015	6	32	0.75	53	XDR49.1	20,319,463,984
Southern Africa Trade and Transport Facilitation Project - Additional Financing	IDA	12/15/2021	6	32	0.75	53	XDR7.8	2,972,775,913
Digital Malawi Project	IDA	7/9/2018	6	32	0.75	53	XDR53.4	13,482,809,927
Southern Africa Trade and Transport Connectivity Project	IDA	7/15/2021	6	32	0.75	53	XDR52.2	14,857,381,362
Agriculture Commercialisation	IDA	2/2/2018	6	32	0.75	53	XDR70.1	11,079,982,258

Annex 1: Table 4 of the ABP for 2023/2024 ⁴⁷

47 Malawi Ministry of Finance and Economic Affairs. 2023. Annual Borrowing Plan 2023/2024 (<https://www.finance.gov.mw/index.php/our-documents/annual-debt-reports>).

Table 2 Composition of Malawi's external debt portfolio, by creditor.

Creditor	Outstanding Debt (USD Million)	Ranking	(% of) External Debt
International Development Association	1,243.57	1	47.61
African Development Fund	420.67	2	16.10
Export-Import Bank of China (Main-Land)	217.88	3	8.34
Afrexim bank	144.06	4	5.51
Export Import Bank of India	119.16	5	4.56
European Investment Bank	97.07	6	3.72
International Fund for Agric. Development	95.56	7	3.66
OPEC Fund for International Development	77.64	8	2.97
Arab Bank for Economic Dev. in Africa	69.33	9	2.65
Kuwait Fund for Arab Economic Develop.	46.29	10	1.77
Saudi Fund for Development	30.30	11	1.16
International Monetary Fund	27.68	12	1.06
Nordic Development Fund	15.36	13	0.59
Compañía Española De Seguros de Crédito	4.11	14	0.16
Abu Dhabi Fund for Development	2.47	15	0.09
Government of Belgium	1.04	16	0.04
Total External Debt	2,612.18		100.0

Source: Debt and Aid Management Division, MoFEA

Annex 2: Table 2 of the MTDS for 2022 – 2026 ⁴⁸

48 Malawi Ministry of Finance and Economic Affairs. 2023. Annual Debt Reports – Medium Term Debt Management Strategy (<https://www.finance.gov.mw/index.php/our-documents/annual-debt-reports>).

**THE LEGAL AND INSTITUTIONAL
FRAMEWORK GOVERNING
SOVEREIGN DEBT CONTRACTION
AND MANAGEMENT IN MALAWI**

