



THE WORLD BANK

Report on the Observance of Standards and Codes (ROSC)

Corporate Governance

Corporate Governance Country Assessment

Malawi

June 2007

Overview of the Corporate Governance ROSC Program

WHAT IS CORPORATE GOVERNANCE?

Corporate governance refers to the structures and processes for the direction and control of companies. Corporate governance concerns the relationships among the management, Board of Directors, controlling shareholders, minority shareholders and other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital.

The *OECD Principles of Corporate Governance* provide the framework for the work of the World Bank Group in this area, identifying the key practical issues: the rights and equitable treatment of shareholders and other financial stakeholders, the role of non-financial stakeholders, disclosure and transparency, and the responsibilities of the Board of Directors.

WHY IS CORPORATE GOVERNANCE IMPORTANT?

For emerging market countries, improving corporate governance can serve a number of important public policy objectives. Good corporate governance reduces emerging market vulnerability to financial crises, reinforces property rights, reduces transaction costs and the cost of capital, and leads to capital market development. Weak corporate governance frameworks reduce investor confidence, and can discourage outside investment. Also, as pension funds continue to invest more in equity markets, good corporate governance is crucial for preserving retirement savings. Over the past several years, the importance of corporate governance has been highlighted by an increasing body of academic research.

Studies have shown that good corporate governance practices have led to significant increases in economic value added (EVA) of firms, higher productivity, and lower risk of systemic financial failures for countries.

THE CORPORATE GOVERNANCE ROSC ASSESSMENTS

Corporate governance has been adopted as one of twelve core best-practice standards by the international financial community. The World Bank is the assessor for the application of the OECD Principles of Corporate Governance. Its assessments are part of the World Bank and International Monetary Fund (IMF) program on Reports on the Observance of Standards and Codes (ROSC).

The goal of the ROSC initiative is to identify weaknesses that may contribute to a country's economic and financial vulnerability. Each Corporate Governance ROSC assessment reviews the legal and regulatory framework, as well as practices and compliance of listed firms, and assesses the framework relative to an internationally accepted benchmark.

- Corporate governance frameworks are benchmarked against the OECD Principles of Corporate Governance.
- Country participation in the assessment process, and the publication of the final report, are voluntary.
- The assessments focus on the corporate governance of companies listed on stock exchanges. At the request of policymakers, the ROSCs can also include special policy focuses on specific sectors (for example, banks, other financial institutions, or state-owned enterprises).
- The assessments are standardized and systematic, and include policy recommendations. In response, many countries have initiated legal, regulatory and institutional corporate governance reforms.
- Assessments can be updated to measure progress over time.

By the end of June 2009, 66 assessments had been completed in 55 countries around the world.

REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)

Corporate governance country assessment

Malawi

June 2007

Executive Summary

Good corporate governance ensures that companies use their resources more efficiently, protects minority shareholders, leads to better decision making, and improves relations with workers, creditors, and other stakeholders. It is an important prerequisite for attracting the patient capital needed for sustained long-term economic growth.

This report provides an assessment of Malawi's corporate governance policy framework, and benchmarks law and practice against the OECD Principles of Corporate Governance. The report addresses the corporate governance of all public interest entities (including financial institutions and parastatal companies) but focuses on the companies listed on the Malawi Stock Exchange. It highlights recent improvements in corporate governance regulation, makes policy recommendations, and provides investors with a benchmark against which to measure corporate governance in Malawi.

Achievements

Malawi's legal framework and traditions work to protect shareholder rights, and boards of listed companies generally play the role assigned to them by international good practice. The Code of Corporate Governance Code was an early and important step in awareness raising and reform.

Key Obstacles

Existing laws and regulations (including the Code of Corporate Governance) require harmonization and updating. The regime governing the review and approval of related party transactions is relatively under-developed in the law. Government concerns center on the corporate governance of parastatals and cooperatives, which frequently provide poor public services and present possible risks to financial stability.

Next Steps

To tap the potential of improved corporate governance, reform efforts must continue. The Companies Act should be comprehensively revised, and the Code updated. Revisions should be accompanied by an analysis of lessons learned from the recently revised Companies Act in the UK and neighboring countries. Stakeholders should consider moving explicit protection against unfair related party transactions into the Code, and revising the non-financial disclosure framework for listed companies. More support and resources should be provided by the public and private sector to the Institute of Directors of Malawi.

The government should move to quickly strengthen the corporate governance framework for parastatal companies. This includes clarifying the roles of the various government bodies that execute ownership rights of government and reducing the fragmentation of oversight bodies, developing an ownership policy, insulating the board nomination process from the political process, and providing training and improving corporate governance at the company level.

Acknowledgements

This assessment of corporate governance in Malawi was conducted in June 2007 by Constantine Chikosi, Alexander Berg, Mazen Bouri, and Ingrid Chikazaza, of the World Bank, as part of the Reports on Observance of Standards and Codes Program. The report was based on a template / questionnaire completed by the Sacranie and Gow. The assessment reflects technical discussions with the Ministry of Finance, its Public Enterprises Reform and Monitoring Unit, the Ministry of Trade and Industry and Private Sector Development, the Ministry of Finance, the Reserve Bank of Malawi, the Malawi Stock Exchange, SOCAM, the Department of Statutory Corporations, the Privatization Commission, and representatives of companies, banks, and market participants. A meeting of stakeholders in Blantyre 2009 also provided significant comments and improvements.

Thorsten Beck, Ghita Alderman, and Roman Zyla provided advice and comments.

The ROSC assessment for Malawi was cleared for publication by following the dissemination seminar in Blantyre, on January 21, 2009.

Table of Contents

Market profile	1
Key findings	3
<i>Investor protection</i>	3
<i>Disclosure</i>	3
<i>Company oversight and the board</i>	4
<i>Enforcement</i>	5
Recommendations	6
Summary of Recommendations	10
Summary of Observance of OECD Corporate Governance Principles	11
Corporate Governance Landscape	13
Principle - By - Principle Review of Corporate Governance	17
<i>Section I: Ensuring The Basis For An Effective Corporate Governance Framework</i>	17
<i>Section II: The Rights of Shareholders and Key Ownership Functions</i>	18
<i>Section III: The Equitable treatment of Shareholders</i>	24
<i>Section IV: The Role of Stakeholders in Corporate Governance</i>	26
<i>Section V: Disclosure and Transparency</i>	28
<i>Section VI: The Responsibilities of the Board</i>	34
Annex 1: Market Capitalization and Ownership of Domestic Listed Companies	41
Annex 2: Disclosure Practices of Listed Companies	42

Country assessment: Malawi

This ROSC assessment of corporate governance in Malawi benchmarks law and practice against the Organization for Economic Cooperation and Development (OECD) Principles of Corporate Governance and covers public interest entities (including public limited companies, financial institutions, and parastatal companies) with special focus on the companies listed on the MSE.¹ This report should be read in conjunction with the Accounting and Auditing ROSC Malawi, which reviews issues related to accounting, auditing, and financial reporting in more detail.

The current Government's policies are achieving positive improvements in the macroeconomic environment, and there is optimism for the future

Growth in 2006 has been estimated at 6.5 percent. Inflation and bank lending rates have declined significantly over the past few years. Malawi qualified for debt relief under the World Bank's Heavily Indebted Poor Countries (HIPC) initiative in 2006. The business environment has improved, and the private sector is optimistic about the future; the Malawi Business Survey 2006 conducted by the Malawi Confederation of the Chambers of Commerce and Industry (MCCI) rated the business environment good to very good with better expectations in the next 12 months. The Malawi Growth and Development Strategy (MGDS) 2006-2011 sets a future growth target of more than 6 percent annually for the five-year period, which will increase per capita income to US\$450 by the end of 2011. For this purpose, Malawi is seeking to increase domestic and foreign investment.²

Good corporate governance can assist the reform process by ensuring that large companies use their resources more efficiently, and improving corporate and financial stability.

Good corporate governance is an important prerequisite for attracting the patient capital needed for sustained long-term economic growth, and can lead to better relations with workers, creditors, and other stakeholders.

Malawi has taken important steps to improve corporate governance over the past few years. However, fully tapping the potential of capital markets and professionalizing boards and management will require reform efforts to continue. The challenge to policymakers is to implement reforms without raising the costs of remaining listed, or increasing the incentives of companies to leave the public market.

Market profile

Malawi is in the middle of a bull market as the number of listed companies rise, and valuations increase.

2006 and 2007 have been periods of strong activity in the equity market in Malawi, as a result of decreased interest rates, and increased interest from foreign investors as a result of the attainment of the HIPC completion point. The Malawi Stock Exchange (MSE) had 11 domestic listed companies at the end of June 2007.³ Two additional companies are expected to list in 2007. One listed company (Press Corporation Limited) has global depository receipts traded on the London Stock Exchange. As of December 29, 2006, domestic market capitalization was US\$0.6 billion.⁴ MSE trading increased substantially in 2006. Turnover on the MSE in 2006 was US\$14.3 million (versus US\$7.59 million in 2005 and US\$6.15 million in 2004). The listing of NBS in June 2007 was 5 times

¹ The Ratings in the report apply to listed companies only. The Government stressed the importance of reforming corporate governance in the NGO and cooperative sectors, but issues specific to these types of companies are not included in this report.

² Potential growth sectors as identified in the MDGS include tourism (to increase from 1.8 percent GDP to 8 percent GDP by 2011), mining (to increase to at least 10 percent GDP annually from current mining and quarrying contributions of 2.3 percent GDP) and manufacturing (to increase output with growing value addition, export development, and employment creation).

³ The MSE also lists one UK-listed company (Old Mutual Plc) to facilitate the trading of locally held shares. All data in this report exclude Old Mutual shares.

⁴ Total market capitalization reported by the MSE is US\$12 billion; 95% of this figure (US\$11.4 billion) is due to Old Mutual PLC.

	oversubscribed.
<i>Ownership and control are concentrated among foreign multinationals and the State</i>	<p>Ownership of large companies is relatively concentrated; principal controlling shareholders⁵ are local holding companies, along with the State and several foreign multinationals. There are approximately 40,000 individual shareholders.</p> <p>There are several emerging financial industrial groups, including NICO Holdings and Press Corporation Limited (PCL). Each owns shares in 5 other listed companies; PCL controls the National Bank of Malawi, and NICO controls both NBS and BHC. Press Corporation, the largest corporate structure in Malawi, has a unique corporate governance structure; it is controlled by Press Trust, which operates in the interest of the people of Malawi. Ownership and control of the financial sector is dominated by the domestic private sector.</p>
<i>The greatest challenges are in the corporate governance of parastatal companies</i>	<p>Government concerns center on the corporate governance of parastatals and cooperatives. Poor corporate governance in the parastatal sector has translated in the past into large financial deficits (e.g. Air Malawi, Malawi Development Corporation) increasing the government's budget deficit and liabilities, poor public services and possible risks to financial stability. The collapse of Finance Bank also indicates the risks of poor governance and poor transparency in the financial sector.</p> <p>Governance has improved in recent years, as boards have become more professional and companies have gained somewhat more autonomy. However, many boards continue to have high turnover and low caliber. Boards are nominated by the DSC, but the nominations are subject to Presidential approval, potentially introducing political criteria into the selection process.</p>
<i>In spite of a long privatization program, approximately 50 state-owned enterprises and financial institutions in the state portfolio</i>	<p>State-owned enterprises include companies incorporated under Companies Act, statutory companies with their own legal framework, trusts, and cooperatives.⁶ The key body providing oversight over the governance of parastatals is the Department of Statutory Companies, a ministerial-level department of the government. The Ministry of Finance also has a unit that monitors the performance of large parastatals.</p>
<i>The corporate governance framework is strongly influenced by its common law legal heritage and regional harmonization efforts</i>	<p>Malawi is a common law country, and inherits many of the shareholder protections from the UK. Key legislation includes the 1984 Companies Act (CA 1984) and the Capital Markets Development Act of 1990, which established the Reserve Bank of Malawi as the principal regulator of securities markets. The Listings Requirements of the MSE, which have been largely harmonized with the rules of the Johannesburg Stock Exchange, also contain important corporate governance provisions.</p>
<i>The Corporate Governance Code of Best Practice was an important step in awareness raising and reform</i>	<p>A public and private sector group led by the Society of Accountants in Malawi (SOCAM) issued a Corporate Governance Code of Best Practice in 2001, based on the models from the UK and South Africa (especially the King report). Many listed companies have begun to adopt the provisions and recommendations of the Code, but the process is not yet complete. Many companies continue to refer internally to corporate governance guidelines of their parent companies (especially South Africa).</p>

⁵ For international comparability, this report uses the term "shareholders" to refer to the owners or "members" of the company. In Malawi, both the term shareholder and member appear to be used.

⁶ State-owned enterprises are often referred to as 'statutory companies' in Malawi.

Key findings

The following sections highlight the principle-by-principle assessment of Malawi's compliance with the OECD Principles of Corporate Governance.

Investor protection

Basic shareholder rights are protected

Shareholders can demand a variety of information directly from the company and have a clear right to participate in the annual general meeting of shareholders (AGM). Directors are elected and removed through shareholder resolutions. Shares of listed companies are freely transferable. Changes to the company articles, increasing authorized capital, and sales of major corporate assets all require shareholder approval. Major corporate transactions require shareholder approval.

Shareholder rights appear to be relatively well protected during shareholder meetings, and there were no reports of problems

Annual meetings (AGMs) must be held every 15 months. Shareholders are notified 21 days in advance for an AGM or a meeting where a special resolution is proposed (14 days for any other type of meeting). Most voting is by "show of hands" – although there were no reports of shareholder exclusion as a result, and shareholders with 5% of voting rights can demand a formal poll. In practice shareholder meetings are not well attended.

Takeover rules and merger activity are limited

The market for corporate control is essentially inactive in Malawi. There are no takeover rules outside of some basic rules in the Companies Act, no requirements for a mandatory bid, no hostile takeovers, and a very limited number of mergers.

Concentrated control limits influence of minority shareholders

Concentrated control limits the influence that non-controlling shareholders can have on the company and effectively reduces their protection from abuse. When controlling owners dominate shareholder and board meetings, director accountability to other shareholders becomes critical.

Disclosure

Listed companies have been instructed to follow international accounting and auditing standards, although there are some statutory issues and compliance concerns

SOCAM requires its members (the audit profession) to comply with IFRS, and all ten listed companies surveyed in Annex 2 state their compliance with IFRS in their 2006 annual reports. The Accounting and Auditing ROSC notes some problems with compliance.

All companies are required to be audited under the Companies Act. SOCAM requires all auditors to follow International Standards of Auditing. Auditor independence is governed by the recently revised Professional Code of Ethics promulgated by SOCAM, which is based on the IFAC Code of Ethics.

The quality and timeliness of financial reporting is relatively high in most listed companies.

Listed companies are required to send a copy of the annual accounts to each shareholder. Companies must continuously disclose all material information. Information appears to be generally available for all listed companies, often from a company website. As indicated in Annex 2, most companies comply with non-financial disclosure requirements.

Companies are required to periodically disclose related party transactions

Because Malawi has adopted IFRS, listed companies are required to follow IAS 24 (Related Party Transactions). Anecdotal evidence suggests that compliance is uneven, with complete IAS 24 disclosures missing at some listed companies.

There are no requirements to disclose related party transactions before they are carried out. Companies are required to disclose amounts paid to directors and loans given to officers. Board members are required to disclose interests in

Ownership and control appears to be relatively well understood

contracts with the company but only to the board (and not necessarily to shareholders or to the public). Large related party transactions do not need to be approved by shareholders, so there is no disclosure in materials available for the shareholders meeting.

The corporate governance framework requires / recommends many of the disclosure of most non-financial items recommended by the OECD Principles.

Ownership information must be included in the annual report as a note to the accounts. Companies must disclose ownership by any shareholder (other than a director) who directly or indirectly owns 5% or more of any class of shares. In practice, however, disclosure appears to be made to the level of the registry of members and does not always capture the disclosure of ultimate beneficial owners. Shareholders owning 10 percent or more of voting capital must disclose their ownership. The small number of listed companies, the lack of complex group structures and the clear identity of the controlling shareholder means that in practice beneficial ownership appears to be relatively clear in most cases.

Companies must prepare a directors' report and all listed companies surveyed complied with the requirement in 2006 (see Annex 2).⁷ The Code also requires significant non-financial disclosures, including information about directors, board (but not executive) remuneration, details about the board charter, formal statements on risk management, and information about employees. In all but three cases in 2006, the board report met statutory requirements but could not be considered particularly substantive.

Confusingly, the Listings Requirements do not require companies to comply or explain non-compliance with the Code, but refer instead to compliance with the King or Combined Code.

Company oversight and the board

Listed company boards generally play the role assigned to them by international good practice

Malawi has a one-tier board system. The position of company secretary is well established in law and plays an important role in legal and governance compliance. Typical boards of listed companies have 7 members.

Fiduciary duties of care and loyalty and based on English common law. In practice, there is limited director accountability

Fiduciary duties of directors are not described in Malawian law and are instead laid out in case law, following the English common law tradition. Case law in Malawi is sparse and emphasizes loyalty to the company (not to shareholders). There are almost no suits against directors (in line with the UK tradition). It is not legal to indemnify directors against liability.

Listed companies have implemented a variety of specialized board committees

All listed companies for which information is available have implemented audit committees of the board. Eight companies have remuneration committees, and two (banks) have risk management committees at the board level.

Concentrated ownership may weaken board authority

Specific concerns were raised about the boards of two important groups of companies. First, some listed companies are the Malawian subsidiaries of international firms, with managing directors appointed by the parent companies. The direct relationship between the owner and management can mean that some

⁷ See annex 1 for an analysis of listed company compliance with the Director's Report requirement in 2005.

important corporate decisions are not made at the board (or AGM) level and, as a result, boards—as distinct from management—are sometimes not the driving force behind corporate strategy and strategic issues.

Second, among the wider non-listed group of ‘public interest entities’ (particularly parastatals), board practice is less sophisticated and boards are weaker relative to other company bodies.

Some director training has taken place

Following the drafting of the Code of Corporate Governance, the Malawi Institute of Directors (IoDM) was set up in 2001 and formally established in 2004. SOCAM played a key role in its formation and currently acts as its Secretariat. Like many similar organizations in emerging market countries, the IoDM has had difficulty becoming financially sustainable, and remains closely linked (and in the minds of many observers, indistinguishable) from SOCAM.

SOCAM / IODM have carried out a variety of director training and awareness programs, with both private and public-sector organizations. Some programs have been delivered on a company-specific basis. Other groups have also carried out board member training.

Based on the 2006 annual reports surveyed in Annex 2, no companies have begun to undertake (or disclose) systematic board evaluations.

The regime governing the review and approval of related party transactions is relatively under-developed in the law

Neither the law nor Code provides any requirements related to the review and approval of related party transactions. The Listings Requirements contain elaborate and complete rules that require shareholder approval of significant related party transactions; the MSE plays a key role in adjudicating the fairness of the transactions. However, these provisions do not appear to be enforced or complied with.

Some provisions on board conflicts of interest appear to apply to executives or to directors who are appointed by conflicted controlling shareholders, although there is limited awareness of this provision. There is no explicit responsibility for the board to manage conflicts of interest or oversee related party transactions.

The Code has a relatively weak formulation of independence

The Code requires boards to include two non-executive directors. Non-executive directors must have the skills and experience necessary to make judgments on company strategy, performance, resources, and performance evaluation. However, some listed companies have adopted the practice of appointing executive directors from affiliates of the parent (foreign) company. This practice makes it difficult for the board to maintain its objectivity and to act against the interests of its parent shareholder.

The Code recommends that the Chair and the CEO be performed by separate people. As shown in Annex 1, the positions are separate in every listed company where data is available.

Enforcement

Enforcement actions of the RBM and the MSE are constrained by limited resources

The RBM has the power to investigate problems and take enforcement action. However, the enforcement powers and resources available to the RBM are modest. The RBM does not have the power to directly issue regulations. Four RBM staff members are currently devoted to capital markets regulation. The RBM can follow up on MSE recommendations for sanctions in the event of non-compliance with listing rules, but there do not appear to have been any recent cases or investigations against listed companies. The MSE has taken informal action against non-compliance with disclosure requirements.

No system of independent oversight over the audit profession

The Public Accountants and Auditors Act gives the Malawi Accountants Board (MAB) the power to regulate the accountancy profession (SOCAM). However, MAB does not effectively exercise its oversight. The MAB is dominated by members of the profession, and does not have sufficient resources to independently discharge its responsibilities.

SOCAM checks compliance with auditing standards through quality reviews carried out by consultants from South Africa's Independent Regulatory Board for Auditors. Penalties have included fines and imposed mentoring arrangements. Self-regulatory organizations in other countries have been criticized for a lack of enforcement actions and power.

Shareholders have strong rights to redress under the law, although these rights are tempered by a lack of efficiency in the legal system

- Shareholders have pre-emptive rights to purchase new shares, to protect against share dilution and expropriation through capital increases.
- Shareholders (who have at least 5 percent of voting rights) can call a special shareholders meeting.
- Shareholders may sue if the “affairs of the company are being conducted, or the powers of the directors are being exercised, in a manner that is oppressive”. Courts ruling in favor can then issue orders directing or prohibiting any act or canceling or varying any transaction or resolution.

There are no rights for shareholders to order a special inspection of a transaction (before or after it is made), and no mandatory provisions in the Companies Act (or the Code) for special voting rules to encourage effective shareholder participation (i.e. cumulative voting or proportional representation). The practice of allocating significant shareholders board seats appears to be common.

Recommendations

The following section details policy recommendations that can address weaknesses in Malawi's corporate governance and investor protection framework.

Revise and harmonize the Companies Act

The Companies Act (and over the long term, the Securities Bill) should be updated, clarified, and fully harmonized, based on the experience of the past 20 years. Specific recommendations for updating the legal framework are addressed below.

The review of the Companies Act should include an analysis of lessons learned from the recently revised Companies Act in the UK

The recent update of the Companies Act in the UK included a number of significant changes to the traditional company law framework, in which many provisions of “judge-made” law were incorporated and formalized into the new Act. In particular, the fiduciary duties of care and loyalty were written into law. Given that Malawi derives its legal framework from common law traditions, policymakers should consider implementing the lessons learned from the UK experience in the update of Malawi's Companies Act, as well as reform experiences in neighboring countries.

Key targets for Companies Act reform and amendment include:

- Updating board responsibilities in line with international good practice.
- Harmonization of accounting requirements with modern accounting standards, and set penalties to act as effective deterrents.
- Harmonization and updating of existing requirements for the directors' report.
- Modernizing the regime for share recordkeeping, and definitions of direct.

Revise other parts of the statutory framework for accounting and auditing

and indirect ownership.

- Updating creditor rights and the role of the board during insolvency (following a World Bank Insolvency and Creditor Rights ROSC).
- Harmonizing takeover regulation in the Companies Act with the Listing Regulations.
- Revise the draft Public Accountants and Auditors Act to strengthen the regulatory functions of Malawi Accountants Board.
- SOCAM should issue guidance on IFRS and ISA implementation, and Malawi should issue simplified and more appropriate financial reporting standards for SMEs (based on either the ECSAFA-issued guidelines for SMEs or the IASB-issued SME exposure draft).

A complete set of recommendations is developed in the Accounting and Auditing ROSC for Malawi.

Consider moving the protections against unfair related party transactions from the Listing Regulations to the Code and/or the Companies Act

Shareholder protection from unfair related party transactions are contained in the MSE Listing Regulations, but awareness of the rules is low and they do not appear to be enforced. Policymakers should consider moving the rules from the Listing Regulations to the Code or to the Companies Act. Good practice suggests that the revised law and regulation should include:

- The board of directors should have the explicit responsibility for managing conflicts of interest and approving all related party transactions.
- For large or important related party transactions, the framework should require shareholder approval (and any shareholders with conflicts of interest should not be allowed to vote).
- Large related party transactions should be immediately disclosed before shareholder or board approval (as a “material event” disclosure), to allow shareholders to register disapproval.
- Shareholders with a significant share of voting rights (e.g. 10 percent) should have the right to call a special audit of a transaction at company expense.

Revise and rationalize the non-financial disclosure framework for listed companies

Listed companies already face significant disclosure obligations under the law, Listings Requirements, and recommendations of the Code. However, some of the non-financial disclosure recommendations of the OECD Principles are not implemented under the law. These include harmonization and updating of existing requirements for the directors’ report, and better rules for ownership disclosure (including disclosure of shareholder agreements, disclosure of group structures, and enforcement of rules to the level of the ultimate beneficial owner).

Law, regulation, and the Code should require additional information about prospective board members and the nomination process, including more complete disclosure about board members before election, including a statement about the director’s links to the company (and their independence), and mandatory disclosures about the board nomination process.

Revise and harmonize the Code of Corporate Governance

Stakeholders should consider reviewing and updating the Code of Corporate Governance. The Code review should be based on a broad consultation with relevant stakeholders, and should be harmonized with the Company Law reform process.

Consider the introduction of the concept of board member independence to the Code

One notable observation about the Code is that it does not discuss the concept of independence -- that is, requirements for board members that are independent of the company and its major shareholders. The Code currently requires two non-executive directors, which does not exclude conflicts of interest noted on current boards --like the appointment of executives from affiliates of the same parent. The review of the Code could introduce an independence requirement for one or two members of the board. Independent board members could also supplement the rules described above for related party transactions – for example, an audit committee chaired by an independent member could be responsible for making recommendations to the full board on related party transactions.

Other changes to the Code should also be considered

- Add all non-financial disclosure required by the OECD principles, including disclosure about prospective board members and the board nomination process.
- Lengthen the shareholder meeting notice period for listed companies to 30 days, in line with requests from international investors.
- Require formal polls at shareholder meetings for key shareholder decisions.
- Clearly state that the board has responsibility for monitoring company compliance, and has the general responsibility for overseeing disclosure and communications processes.
- Require companies to post various kinds of information on their website.

MSE should improve disclosure of company compliance with the Code

The code should also require the explicit submission of a report on compliance with the Malawi Code, accompanying the directors' report. The MSE should develop a standard template to report Code compliance and a process to capture compliance reports and present them on the MSE website.

Raising awareness of the Listing Requirements

Participate in process of updating the harmonized listing requirements for the SADC region

Revising Listing Regulations to introduce the Code on a “comply or explain” basis would require “de-linking” from the JSE listing rules, which is unnecessary and unlikely.

The working group that will revise the standardized listing requirements for SADC should consider including a requirement that allows companies to comply or explain their compliance to a national code of corporate governance or with the future King or Combined codes.

Raise awareness of the listing rules and their requirements for listed companies

Compliance with some parts of the Listing Requirements is weak or non-existent, particularly the two final sections (on large and related party transactions). These sections should be explicitly referenced in the Code. In addition, the MSE should consider developing and providing occasional training programs to company secretaries, directors, and company management responsible for compliance with the Regulations.

Focus enforcement activities

Establish RBM and MSE corporate governance enforcement priorities

The corporate governance enforcement and compliance activities of the Reserve Bank and the MSE are currently hampered by a lack of resources and critical mass. However, additional staff and budget are unlikely to become available. Instead, the two organizations should continue to carefully focus their resources on key priorities, and coordinate their enforcement efforts.

The MSE and the RMB should develop a joint strategy to enforce corporate governance rules and regulations. Additional training and capacity building

(including the development of operations manuals) should be provided to the staff of both institutions, to allow them to continue to improve the oversight over listed companies.

MSE should focus on compliance with disclosure requirements, particularly the non-financial disclosure requirements. The MSE (jointly with SOCAM) should also consider launching a competition on financial reporting, perhaps emulating the successful “FIRE” competition in Kenya. Given the important role played by the Board of the exchange in implementing corporate oversight through the Listing Requirements, an induction program should also be developed to give the board a full understanding of its responsibilities.

The RBM should be given the power to issue its own implementing regulations, as well as the authority to fine listed companies and their boards. It should follow up promptly on recommendations to take action from the MSE. Because the RBM is introducing risk-based supervision, it might find it useful to request specialized reviews of the governance of the financial institutions that it supervises.

Develop a system of independent audit oversight

There is an international consensus that self-regulatory arrangements and authority to impose sanctions should be balanced with adequate and independent oversight systems.

- The Malawi Accountants Board should be designated as the central regulator in matters of compliance with accounting and auditing standards. The MAB should be given the authority and should issue accounting and auditing standards, and should have adequate technical capacity and independence from the profession to be able to set and issue standards.
- The MAB should review corporate financial statements to monitor and enforce compliance with the applicable financial reporting standards, and conduct practice review of audit firms/auditors to monitor and enforce compliance with the applicable auditing standards and the code of ethics.
- MAB should be free to co-operate with SOCAM to create the required independent standard setting arrangement, and may delegate some of these functions. (The MAB should not delegate to the professional accountancy body any of the monitoring and enforcement functions relating to public interest entities.)

A complete set of recommendations will be developed in the Accounting and Auditing ROSC for Malawi (2007).⁸

Explore possibilities for alternative dispute resolution

Given that public sector enforcement resources are limited, and private sector actions are constrained by limited resources”, policymakers should review alternative disputes resolution mechanisms to address conflict prevention and conflict resolution.

Private sector initiatives

More support and resources should be provided by the public and private sector to the Institute of

Nearly all senior private sector representatives expressed an opinion that more resources should be invested in the mission of the Institute of Directors (IoDM). The IoD will further the cause of good corporate governance by upgrading the caliber of board members over time and helping to ensure adherence with law and benchmarking with international CG standards.

⁸ The Public Accountants and Auditors Bill which has been sent to Parliament aims to reform the accountancy profession and strengthen MAB in its oversight function.

Directors of Malawi.

Moving ahead will require a strategy that clearly identifies and builds on its relationship with SOCAM, gathers more support from the corporate and investor (and donor) communities, supports work to develop relevant curricula. The government can support the Institute by requiring formal training of all board members in companies where the state has participation. The IOD can also develop guidelines on key board processes, including the oversight of internal controls and the implementation and monitoring of codes of ethics, and training courses based on the guidelines.

Develop a Strategy for Improving Parastatal Governance

The government should undertake a comprehensive review of the governance framework of the parastatal sector, leading to the development of a strategy for reform.

The government should move to strengthen the corporate governance framework for statutory corporations and other parastatal companies. As a first step, the government should move towards the development of an 'ownership strategy' for the parastatal sector. This includes:

- Reviewing the current legal and regulatory arrangements and how the current system works in practice.
- Clarifying the roles of the various government bodies that execute government ownership rights (MoF, DSC, line ministries) and reduce the resulting fragmentation of oversight.
- Develop an ownership policy, including objective criteria and process for appointment of board members for the parastatal sector.
- Carry out additional corporate governance improvement programs at key parastatals and financial institutions.
- Build awareness and work to introduce a culture of performance and accountability for managers in the parastatal sector.
- The strategy could also include the development of an annex to the Code with specific recommendations for parastatal companies.

Convene a group of stakeholders to develop a country action plan

This assessment and its recommendations will be presented in Malawi to a group of key stakeholders in a dissemination workshop; SOCAM will anchor the dissemination event. The dissemination event should be followed by the development of a country action plan, in conjunction with donor partners interested in providing technical assistance and capacity building.

Key assistance priorities will include diagnostic work and capacity building related to the corporate governance of cooperatives and other NGOs, and to the Institute of Directors.

Summary of Recommendations

<u>Short Term</u>	<u>Long Term</u>
<ul style="list-style-type: none"> ▪ Develop a detailed country action plan ▪ Support Institute of Directors of Malawi ▪ Revise and harmonize Code of Corporate Governance ▪ Revise the statutory framework for accounting and auditing (Public Accountants and Auditors Bill) ▪ Develop a strategy for improving parastatal governance ▪ Develop an enforcement strategy ▪ Explore possibilities for alternative dispute resolution 	<ul style="list-style-type: none"> ▪ Revise and harmonize the Companies Act ▪ Revise and rationalize the non-financial disclosure framework for listed companies ▪ Complete reforms in other parts of the company and securities law framework ▪ Revise and harmonize Listing Requirements ▪ Develop a system of independent audit oversight

Summary of Observance of OECD Corporate Governance Principles

	Principle	FI	BI	PI	NI	NA
I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK						
IA	Overall corporate governance framework			X		
IB	Legal framework enforceable /transparent				X	
IC	Clear division of regulatory responsibilities			X		
ID	Regulatory authority, integrity, resources				X	
II. THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS						
IIA	Basic shareholder rights					
IIA 1	Secure methods of ownership registration				X	
IIA 2	Convey or transfer shares			X		
IIA 3	Obtain relevant and material company information			X		
IIA 4	Participate and vote in general shareholder meetings	X				
IIA 5	Elect and remove board members of the board	X				
IIA 6	Share in profits of the corporation		X			
IIB	Rights to part in fundamental decisions					
IIB 1	Amendments to statutes, or articles of incorporation	X				
IIB 2	Authorization of additional shares	X				
IIB 3	Extraordinary transactions, including sales of major corporate assets	X				
IIC	Shareholders AGM rights					
IIC 1	Sufficient and timely information at the general meeting		X			
IIC 2	Opportunity to ask the board questions at the general meeting			X		
IIC 3	Effective shareholder participation in key governance decisions			X		
IIC 4	Availability to vote both in person or in absentia		X			
IID	Disproportionate control disclosure			X		
IIE	Control arrangements allowed to function					
IIE 1	Transparent and fair rules governing acquisition of corporate control			X		
IIE 2	Anti-take-over devices		X			
IIF	Exercise of ownership rights facilitated					
IIF 1	Disclosure of corporate governance and voting policies by inst. investors				X	
IIF 2	Disclosure of management of material conflicts of interest by inst. investors				X	
IIG	Shareholders allowed to consult each other		X			
III. EQUITABLE TREATMENT OF SHAREHOLDERS						
IIIA	All shareholders should be treated equally					
IIIA 1	Equality, fairness and disclosure of rights within and between share classes	X				
IIIA 2	Minority protection from controlling shareholder abuse; minority redress			X		
IIIA 3	Custodian voting by instruction from beneficial owners			X		
IIIA 4	Obstacles to cross border voting should be eliminated				X	
IIIA 5	Equitable treatment of all shareholders at GMs		X			
IIIB	Prohibit insider trading				X	
IIIC	Board/Mgrs. disclose interests			X		
IV. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE						
IVA	Legal rights of stakeholders respected		X			
IVB	Redress for violation of rights			X		
IVC	Performance-enhancing mechanisms			X		
IVD	Access to information					X
IVE	"Whistleblower" protection				X	

	Principle	FI	BI	PI	NI	NA
IVF	Creditor rights law and enforcement			X		
V. DISCLOSURE AND TRANSPARENCY						
VA	Disclosure standards					
VA 1	Financial and operating results of the company		X			
VA 2	Company objectives		X			
VA 3	Major share ownership and voting rights			X		
VA 4	Remuneration policy for board and key executives			X		
VA 5	Related party transactions				X	
VA 6	Foreseeable risk factors				X	
VA 7	Issues regarding employees and other stakeholders				X	
VA 8	Governance structures and policies		X			
VB	Standards of accounting & audit			X		
VC	Independent audit annually			X		
VD	External auditors should be accountable			X		
VE	Fair & timely dissemination			X		
VF	Research conflicts of interests				X	
VI. RESPONSIBILITIES OF THE BOARD						
VIA	Acts with due diligence, care			X		
VIB	Treat all shareholders fairly			X		
VIC	Apply high ethical standards			X		
VID	The board should fulfill certain key functions					
VID 1	Board oversight of general corporate strategy and major decisions		X			
VID 2	Monitoring effectiveness of company governance practices				X	
VID 3	Selecting/compensating/monitoring/replacing key executives	X				
VID 4	Aligning executive and board pay			X		
VID 5	Transparent board nomination/election process			X		
VID 6	Oversight of insider conflicts of interest				X	
VID 7	Oversight of accounting and financial reporting systems			X		
VID 8	Overseeing disclosure and communications processes				X	
VIE	Exercise objective judgment					
VIE 1	Independent judgment				X	
VIE 2	Clear and transparent rules on board committees			X		
VIE 3	Board commitment to responsibilities			X		
VIF	Access to information		X			

Note: FI=Fully Implemented; BI=Broadly Implemented; PI=Partially Implemented; NI=Not Implemented; NA=Not Applicable

Corporate Governance Landscape

THE OWNERSHIP FRAMEWORK FOR LISTED COMPANIES AND OTHER PUBLIC INTEREST ENTITIES

There are approximately 8,379 companies limited by shares (or guarantee). Because of record-keeping problems in the company registry, the Registrar estimates that about 50 percent of these are dormant companies.

Large and medium sized companies in Malawi can generally be placed in one of five categories.

- A relatively large number of medium-sized companies, mostly family owned businesses.
- Large private companies in key sectors of the economy (an estimated 50-60 tobacco and tea producers and processors, and financial institutions). Legal compliance is regulatory high.
- Financial institutions.
- Parastatal companies and others with state ownership and control.
- Listed companies.

There were 11 domestic companies listed on the Malawi Stock Exchange (MSE) at the end of June 2007. (The MSE also lists one UK-listed company (Old Mutual Plc) to facilitate the trading of locally held shares). One company (NBS) was listed in June 2007, and two additional companies are expected to list in 2007. No corporate bonds have been issued or traded. Ownership of listed companies is highly concentrated, with the largest shareholder owning an average of 49% of shares, and the four largest (strategic) investors owning an average of 78.2 % of shares. National Investment Trust Limited appears to be the only company with relatively dispersed ownership. Free float tends to average 4-5 % (even though the MSE listing requirement is 15%).⁹

Of the domestic listed companies only First Merchant Bank and Blantyre Hotels Limited are not a result of the privatization program. National Investment Trust (Ltd), listed in 2005, is an innovative scheme that packaged the state's minority share packages in about 10 companies and sold it in 2002 as a closed-end investment trust. Malawi Telecommunication Limited is earmarked for future listing through the privatization program.

There are several emerging financial-industrial groups of companies, including NICO Holdings and Press Corporation Limited (PCL). Each owns shares in 5 other listed companies; PCL controls the National Bank of Malawi, and NICO controls both NBS and BHC. Press Corporation, the largest corporate structure in Malawi, has a unique corporate governance structure; it is controlled by Press Trust, which operates in the interest of the people of Malawi. PCL is owned by Press Trust (48%); Old Mutual (19%); foreign Investors (20%) pension funds and other corporate (10%), and individuals (3%). PCL in turn has holdings in a number of major listed and unlisted companies, including:

- National Bank of Malawi (52%)
- Bottling and Brewing group (44%)
- Limbe Leaf Tobacco Company Limited (42%)
- Maldeco Aquaculture (100%)
- Ethanol Co (66%)
- Macsteel (50%)
- Telecoms Holdings Limited (62.6%)

Two listed companies are subsidiaries of foreign (South African) parents (Illovo Sugar and Stanbic Bank). Other foreign investment appears to be limited, although recent interest has reportedly greatly increased. The shares of the parent companies of a number of listed companies also trade on foreign exchanges. Press Corporation Limited depository receipts (representing about 16 percent of total Press shares) also trade in London. One foreign company (Old Mutual Plc, the UK-listed parent of Old Mutual Malawi) is listed on the exchange.

Large companies also sponsor employee pension funds, which invest in shares. There are also seven licensed portfolio managers.

2006 and 2007 have been periods of strong activity in the equity market in Malawi, as a result of decreased interest rates, and increased interest from foreign investors as a result of the attainment of the HIPC completion point. As of December 29, 2006, market capitalization of the MSE was US\$12 billion. Only 5 percent of the value (US\$0.6 billion) related to domestic companies, with the balance (US\$11.4 billion) relating to Old Mutual, a South African-based foreign company.¹⁰ MSE trading increased substantially in 2006. Turnover on the MSE in 2006 was US\$14.3 million (US\$7.59 million in 2005; and US\$6.15 million in 2004). The listing of NBS in June 2007 was 5 times oversubscribed. Listings scheduled for 2007 include two companies that are partially state-owned (Malawi Property Investment Company Ltd and NBS Bank) as well as First Discount House.

⁹ There is also on public limited company (Auction Holdings) that is not listed, but is called an "OTC company".

¹⁰ All market data in this report excludes data for Old Mutual Plc.

Malawi Stock Exchange: Key Indicators (2004 - 2006)

	2006	2005	2004
MSE Share Index	2310.7	906.9	583.48
Market Capitalization (Kwacha)	84,296	29,922	18,321
Market Cap/GDP (%)	35.5	14.7	9.0
Number of Listed Companies	11	10	10
New Listings	1	1	0
Delistings	0	0	0
Turnover Ratio	2.33%	3.07%	3.65%

Malawi and other Emerging Markets: Selected Market Data (2005)¹¹

Country Name	Listed Companies	Market Cap % GDP	Market Cap (Billions \$US)	Turnover Ratio (%)	Market Cap % of OECD Avg.	Market Cap (\$) % of OECD Avg.	Turnover ratio % of OECD Avg.
Malawi	10	14.7	0.6	3.1	4.9	0.0	3.3
Uganda	5	1.2	.1	3.1	1.2	0.0	3.3
Tanzania	6	4.9	.6	2.3	4.9	0.0	2.4
Namibia	13	6.8	.4	1.5	6.8	0.0	1.6
Ghana	30	12.9	1.4	2.2	12.9	0.1	2.3
Zambia	12	13.6	1.0	2.0	13.7	0.1	2.1
West Africa	39	14.5	2.3	1.4	14.6	0.2	1.5
Nigeria	214	19.6	19.4	11.5	19.7	1.3	12.0
Botswana	18	26.1	2.4	1.8	26.2	0.2	1.9
Kenya	47	35.5	6.4	9.8	35.7	0.4	10.3
Mauritius	42	40.6	2.6	6.0	40.9	0.2	6.3
Zimbabwe	79	71.4	2.4	15.3	71.8	0.2	16.0
Regional average	43	21.2	3.3	4.7	21.3	0.2	5.0
South Africa	388	235.4	565.4	39.3	236.9	37.7	41.1
OECD Average	1046	99.4	1,501.4	95.7	100.0	100.0	100.0

Ownership and control of the financial sector is dominated by the domestic private sector, and the largest institutions are part of emerging financial industrial groups (see above under "ownership framework"). Malawi's regulated financial system, under the Reserve Bank of Malawi, consists of 9 commercial banks (with assets of approximately US\$740 million¹²), 2 discount houses; 12 insurance companies; 1 unit trust; 5 asset management companies; 3 stock broking companies; and 1 stock exchange (the MSE). Pension funds, micro finance institutions and co-operatives are currently outside the regulated financial system; but legislation has been drafted (the Financial Services Bill 2007) that brings these institutions into the regulated sector as well.

In spite of a long privatization program, there remain approximately 50 state-owned enterprises and financial institutions (referred to as statutory companies in Malawi). State-owned enterprises include companies incorporated under Companies Act, statutory companies with their own legal framework, trusts, and cooperatives. The key body providing oversight over the governance of parastatals is the Department of Statutory Companies (DSC), a ministerial-level department of the government. Governance has improved greatly in recent years, as boards have become more professional and companies have gained somewhat more autonomy.

However, market participants continue to reflect serious concern about the governance of the parastatal sector. Many boards continue to have high turnover and low caliber. Boards are nominated by the DSC, but the nominations are subject to Presidential approval, potentially introducing political criteria into the selection process. Many parastatals continue to suffer from low performance (e.g. Blantyre Water Board and Escom) and several government-owned companies have collapsed (e.g. Malawi Development Corporation).

LEGAL FRAMEWORK

Corporate legal framework. Malawi's legal system has a common law heritage. The legal framework governing companies is Companies Act 1984 administered by the Registrars General, which regulates non-listed private companies. The Act was based on UK company law (basically the 1948 version).

Company types. Company forms are defined in the Companies Act 1984, and overseen by the Registrars General. There

¹¹ Source: World Development Indicators 2006. Data for Malawi are for 2006. Regional average includes 12 African equity markets listed above but excludes South Africa. OECD average includes 24 high-income OECD countries (as defined by WDI).

¹² Malawi kwacha (MWK) 103.6 billion net after 1 percent provision. Exchange rate of MWK140 = US\$1. Figures as of December 31, 2006 (Reserve Bank of Malawi).

are two general types of companies in Malawi: private companies and public limited companies. Private companies cannot have more than 50 members (shareholders), and their shares are not freely transferable. Private companies can be further divided into private companies limited by shares, private companies limited by guarantee, and unlimited companies. No shares are issued for private companies limited by guarantee. Instead each subscriber signs a declaration of guarantee specifying the amount he undertakes to contribute to the assets of the company in the event of winding-up. Private companies are required by law to submit annual returns to the Registrar, including changes of particulars of directors, address, and company name.

Public limited companies (Plc) are open-ended in nature, and there are no restrictions on the maximum number of members. Shares must be freely transferable. Incorporation requires the issuance of a prospectus, an invitation to the general public to subscribe for shares.

There are approximately 8,379 companies in total (including public and private companies limited by shares and private companies listed by guarantee). Because of record-keeping problems, the Registrar estimates that about 50 percent of these are dormant companies.

Securities law framework. The Capital Markets Development Act (1990) regulates the MSE, brokers and listed companies. Compliance is overseen by the Reserve Bank (RBM). The RBM does not have the power to directly issue regulations. A significant enforcement role is played by the MSE.

New umbrella legislation is in preparation. Under a draft Financial Services Bill, the Reserve Bank of Malawi would regulate all financial institutions, including existing RBM-regulated banks and new non-bank financial institutions (including microfinance institutions, pension funds, and collective investments schemes), regulates custodians, and clarifies the clearing and settlement legal framework. A draft Securities Bill creates an independent securities and exchange commission, improves enforcement powers for the Reserve Bank, and gives the RBM the power to fine and issue regulations. However, the RBM stated that since the Bill had been drafted, it has carried out detailed studies of the costs and benefits of a unified regulator. As a result, it now plans to amend the eventual Act to bring the SEC function back within the RBM.

Listing rules. To be listed on the MSE public limited companies must follow the MSE's initial listing requirements and ongoing obligations. The listing requirements have been largely harmonized with rules of Johannesburg Stock Exchange and other members of SADC. The listing requirements are: (i) a subscribed capital of at least K 100 million, (ii) a minimum of 11 million issued shares, (iii) a satisfactory profit history for 3 years prior to listing, (iv) 25% free float for each share class (i.e. held by the public), unless otherwise agreed with the Board, (v) a minimum of 300 shareholders. In addition the company must publish a prelisting statement, including a responsibility statement by the directors that the facts presented are not misleading or false. The prelisting statement has to be signed by every director which then has to be approved by the board before its publication.

Corporate Governance Code. The Code of Best Practice for Corporate Governance (hereinafter called the Code) was published in 2001. The Code grew out of a public forum arranged in 1997 by the Society of Accountants in Malawi (SOCAM). SOCAM and other key stakeholders (including the Malawi Stock Exchange, institute of Internal Auditors, the Department of Statutory Companies, the Institute of Bankers, and several large listed companies) then created what became to be known as the Corporate Governance Task Force (CGTF) in 1998. The Corporate Governance Task Force reviewed a number of corporate governance reports and drafted a Code based on the South King Report on Corporate Governance (South Africa), the Commonwealth Association of Corporate Governance Guidelines, and the Kenyan Principles and Sample Code, which were considered to be the most relevant for Malawi.

The Code is structured according to the King I Code, and is designed to be applied to all enterprises. The Task Force placed particular emphasis on listed companies, banks and other financial institutions (including building societies and insurance companies), large unlisted companies with paid up capital of at least K50 million, state-owned enterprises (Statutory Corporations), and public trusts.

KEY INSTITUTIONS

Securities regulator. The securities market regulator is the Reserve Bank of Malawi (RBM); there is no independent securities regulator. The RBM is the supervisor for banks and most non-bank financial institutions in Malawi, including the stock exchange, brokers, fund managers, and dealers. The RBM proposes changes to statutes, rules and regulations and has the power to conduct investigations. The RBM also owns the MSE, and (under the Capital Markets Development Act) is responsible for the development of the securities market as a vehicle for public investment and economic development. The RBM oversees the workings of the capital market and works to protect investor interests. However, its enforcement powers are relatively weak. The RBM can take action if listed companies break the law, but cannot impose fines directly. It cannot issue its own regulations but must work through the Ministry of Finance. The Department of Capital Markets and Microfinance has six professional staff, of whom four work on capital markets issues.

A draft Securities Bill regulates custodians and collective investment schemes, and clarifies the clearing and settlement legal framework. The current version also creates an independent securities and exchange commission. However, the RBM stated that since the Bill had been drafted, it had carried out detailed studies of the costs and benefits of a unified regulator. As a result, it now plans to amend the Act to bring the SEC function back within the RBM. (The plan for a unified regulator is also specified in another draft Act, the Financial Services Act). The draft Securities Bill also improves enforcement powers for the Reserve Bank, gives the power to fine, and issue regulations.

The RBM does review periodic disclosures, but disclosure of price-sensitive information is their main focus.

Stock exchange. The Malawi Stock Exchange (MSE) is Malawi's only stock exchange. It was established in 1996, and began trading in 2001. All transactions in listed securities must be reported (if not executed) through the MSE. MSE is both owned and regulated by the RBM. It is also the country's only self-regulatory organization (SRO). There are three member brokers (2 owned by financial institutions as separate subsidiaries).

The MSE is supervised by a board of directors of seven, which includes a representative of the RBM. Market participants report that the MSE has some independence from the RBM. There are three key staff members supported by four support staff. The exchange does not have an electronic surveillance system. The Exchange's operations are heavily subsidized by the MSE – by RBM estimates, revenues from the MSE's operations cover approximately 32 percent of expenses. The RBM estimates that break-even point is 20 companies. The MSE has the power to censure companies (which has been done rarely, last in 2005) but does not have the power to fine.

Central securities depository. There is no central depository or organized clearing and settlement in Malawi. Trades carried out on the exchange are settled by the brokers, with shares transferred at the share registry.

Financial sector regulators. The Reserve Bank of Malawi is the only financial sector regulator in Malawi, and legislation is being drafted to bring more types of institutions under its supervision (see discussion above under "securities regulator"). The RBM is in general considered to be an effective regulatory body. The RBM has recently issued several directives that indicate an increased focus on the governance of financial institutions.

Company Registrar. The Registrar of Companies is responsible for the registration and protection of commercial property (including company registration), and for disseminating information. Company registration activities are governed by the Companies Act. However, the availability of financial statements and other company information is limited by capacity constraints. The Companies Act (Section 196) requires every public company (other than a company limited by guarantee) to file annual accounts at the Registrar's together with the annual return. This provision would ensure availability of financial statements of public companies to the general public. However, the Registrar is unable to monitor and enforce filing requirements because the filing systems are manual and cannot effectively handle the large volume of files. The Accounting and Auditing ROSC notes that the Registrar's office found several companies not up to date with their filing. Some were one or two years in arrears in filing accounts; in one instance the accounts filed were unsigned. A World Bank-sponsored program is getting underway to reform the registry and automate accounts.

Shareholder rights groups. A number of organizations have been working to promote corporate governance reform, including the Society of Accountants in Malawi (SOCAM), the Chambers of Commerce and Industry, Reserve Bank of Malawi, the Malawi Stock Exchange, the Bankers Association of Malawi, and the Malawi Law Society. SOCAM was closely involved with the launch of the Code of Corporate Governance, and acts as the Secretariat for the nascent Institute of Directors.

Accountancy bodies. A number of professional bodies are active in the area of accounting and auditing, particularly the Society of Chartered Accountants of Malawi (SOCAM). SOCAM is a self-regulated membership institution, established in 1969 as a company limited by guarantee. It is governed by a Council of 12 persons elected annually. As of December 2006, SOCAM has 311 professional members, 40 practicing and 271 non-practicing. This figure is estimated to be 65 percent of all professional accountants in Malawi. SOCAM is a member of the International Federation of Accountants (IFAC) and the Eastern Central and Southern African Federation of Accountants (ECSAFA). SOCAM aims to ensure its members are technically up to date and serve the public interest. However, SOCAM lacks the resources to fully deliver its objectives and discharge its responsibilities. SOCAM has been responsible for setting accounting and auditing standards in Malawi, although its statutory rights in this regard are limited.

Institute of Directors. Following the drafting of the Code of Corporate Governance, an Institute of Directors was set up in 2001. The Malawi Institute of Directors (IoDM) was formally established in September 2004. SOCAM played a key role in forming the Institute and currently acts as its Secretariat. Like many similar organizations in emerging market countries, the IoD has had difficulty becoming financially sustainable, and remains closely linked (and in the minds of many observers, indistinguishable) from SOCAM. SOCAM / IoDM have carried out a variety of director training programs, with both private and public-sector organizations. Curricula have been based on New Zealand director training programs, and include special courses on banking corporate governance, and risk management.

Courts. A special commercial court division of the High Court was created in 2007 to settle commercial disputes. Court procedures have traditionally taken 2 – 2 ½ years to resolve simple disputes.

Ownership of state-owned enterprises. The ownership functions of the government are somewhat decentralized. Financial issues are the responsibility of the Ministry of Finance, which formally owns the shares and votes them; policy issues are generally the responsibility of the respective line Ministry. Many responsibilities are also vested in the Department of Statutory Corporations (DSC), a Ministerial-level body. The President acts as the current Minister.

Principle - By - Principle Review of Corporate Governance

This section assesses compliance with each of the OECD Principles of Corporate Governance. Please see Methodology for Assessing the Implementation of the OECD Principles on Corporate Governance for full details.¹³

SECTION I: ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

Principle IA: The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets.

Assessment: Partially Implemented

Overall capital market transparency. Malawi has one of the newest equity markets in the world, and one that is now growing relatively quickly in terms of the number of listed companies and market capitalization. The operation of the capital market is reasonably transparent, although it is relatively small. Overall, information is generally available about listed companies; with the possible exception of the two very small companies. The listed firms with foreign parents and several other companies appear to practice relatively high levels of transparency and appear to be working towards international good practice in the area of corporate governance.

Regulatory consultation process. The authorities and legislatures develop policies, laws and regulation with consultation with other stakeholders. When the RBM proposes changes in statutes and new regulations, the respective stakeholders are consulted. Relatively few new regulations have been issued in recent years.

Principle IB: The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be consistent with the rule of law, transparent and enforceable.

Assessment: Not Implemented

Legal clarity. The legal and regulatory requirements affecting corporate governance practices are relatively well understood and not subject to sudden changes. However, many observers noted that the Companies Act is now outdated, confusing, inadequately organized, and not harmonized with other key pieces of legislation. The Companies Act does not take into account many recent developments, for example in registry / custody activities and the adoption of modern financial reporting standards, and needs to be updated in these areas.

The Capital Markets Development Act is similarly outdated; its implementing regulations appear to have been frozen since its introduction in 1990, and the securities law framework has not adjusted to lessons of experience.

The government intends to develop the regulatory system to facilitate the adoption of good governance principles. A draft Financial Services Bill (2007) is umbrella legislation under which the Reserve Bank of Malawi would regulate all financial institutions, including existing RMB-regulated banks and new non-bank financial institutions (microfinance institutions, pension funds, collective investments schemes, and other), regulates custodians, and clarifies the clearing and settlement legal framework. The current version also creates an independent securities and exchange commission. However, the RBM stated that since the Bill had been drafted, it has carried out detailed studies of the costs and benefits of a unified regulator. As a result, it now plans to amend the Act to bring the SEC function back within the RBM. (The plan for a unified regulator is also specified in another draft Act, the Financial Services Act). The draft Securities Bill also improves enforcement powers

¹³ Principles are **Fully Implemented** if the OECD Principle is fully implemented in all material respects with respect to all of the applicable Essential Criteria. Where the Essential Criteria refer to standards (i.e. practices that should be required, encouraged or, conversely, prohibited or discouraged), all material aspects of the standards are present. Where the Essential Criteria refer to corporate governance practices, the relevant practices are widespread. Where the Essential Criteria refer to enforcement mechanisms, there are adequate, effective enforcement mechanisms. Where the Essential Criteria refer to remedies, there are adequate, effective and accessible remedies. A **Broadly Implemented** assessment is likely appropriate where one or more of the applicable Essential Criteria are less than fully implemented in all material respects. A **Partly Implemented** assessment is appropriate when (1) one or more core elements of the standards described in a minority of the applicable Essential Criteria are missing, but the other applicable Essential Criteria are fully or broadly implemented in all material respects (including those aspects of the Essential Criteria relating to corporate governance practices, enforcement mechanisms and remedies); and (2) the core elements of the standards described in all of the applicable Essential Criteria are present, but incentives and/or disciplinary forces are not operating effectively to encourage at least a significant minority of market participants to adopt the recommended practices; or the core elements of the standards described in all of the applicable Essential Criteria are present, but implementation levels are low because some or all of the standards are new, it is too early to expect high levels of implementation and it appears that the reason for low implementation levels is the newness of the standards (rather than other factors, such as low incentives to adopt the standards). A **Not Implemented** assessment likely is appropriate where there are major shortcomings. A **Not Applicable** assessment is appropriate where an OECD Principle (or one of the Essential Criteria) does not apply due to structural, legal or institutional features (e.g. institutional investors acting in a fiduciary capacity may not exist).

for the Reserve Bank, gives the power to fine, and issue regulations. However, these Bills have been in draft form for many years and have not been passed by Parliament due to political problems.

The Listings Requirements of the MSE are an important part of the corporate governance framework. However, their complexity and the small resources of the exchange result in limited application / enforcement of certain sections (particularly those sections addressing related party transactions).

Consistency of application. There were no reports of inconsistent application of the legal framework.

Principle IC. The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.

Assessment: Partially Implemented

Clear division of regulatory responsibility. The Reserve Bank of Malawi is the unified financial sector regulator, and is the only financial sector regulator (and regulator of listed companies). Some parts of the financial sector are not currently regulated by the Reserve bank. The Reserve Bank has delegated some powers to the MSE (which is in turn owned by the RBM). The Registrar General is not a significant force in the market.

Regulatory cooperation. There were no issues reported with regulatory cooperation, because of the central role of the Reserve Bank.

Legal harmonization. There are many inconsistencies between the various Acts, and new financial sector regulation has been drafted (see Principle IB above).

Effectiveness, transparency, and public interest activities of the self-regulatory bodies. There are two self-regulatory bodies that are relevant to the corporate governance framework. The MSE has a relatively strong reputation, and has worked to build the market and to protect its integrity. It plays a major role because of the importance of the Listings Requirements. However, the MSE has struggled with inadequate resources and has had difficulty in retaining staff because of low salaries.

There is only one staff member that is responsible for monitoring and listing requirements. As a result, some aspects of the Listings Requirements do not appear to be enforced.

SOCAM is a traditional self-regulator of the auditing profession, and acts as the accounting and auditing standard setter. Audit self-regulatory organizations in other countries have been criticized for a lack of enforcement actions and power.

Principle ID. Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfill their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained.

Assessment: Not Implemented

Supervisory authority. The RBM oversees the workings of the capital market and works to protect investor interests. The RBM has the power to investigate problems and take enforcement action. However, the enforcement powers available to the RBM are low. The MSE has the power to censure companies (which has been done rarely, last in 2005) and does not have the power to fine directly. RBM cannot issue its own regulations but must work through the Ministry of Finance. There do not appear to have been any recent cases or investigations against listed companies; the MSE has taken informal action against non-compliance with disclosure requirements.

Authority is stronger over supervised entities (banks and insurance companies).

Supervisory resources. The enforcement resources available to the RBM to supervise listed companies are limited. The Department of Capital Markets and Microfinance has six professional staff, of whom four work on capital markets issues.

Resources are also limited at the MSE. There are three key staff members supported by four support staff, with one focused on the review of compliance issues.

Reputation of supervisory bodies. The reputation of the regulatory bodies in the market appears to be relatively high, although market participants recognize that resource and authority constraints restrict its powers as a market regulator. RBM staff are considered to be capable and to be working in the public interest; the low number of investigations conducted in the past 3 years does not imply any undue commercial or political influence from listed companies.

Regulatory efficiency. The RBM and the MSE have managed to accomplish a great deal with a limited amount of resources.

SECTION II: THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS

The corporate governance framework should protect and facilitate the exercise of shareholders' rights.

Principle IIA: The corporate governance framework should protect shareholders' rights. Basic shareholder rights include the right to:

Principle IIA 1: Secure methods of ownership registration

Assessment: Not Implemented

Secure share registration. All companies are required to maintain a registry of shareholders (CA 1994 §48). The share registries of listed companies have specialized “transfer secretaries” who are responsible for maintaining the registries. Company secretaries maintain share records for unlisted entities. Evidence of ownership is a paper share certificate. Responsibility lies with the issuers and its transfer secretaries. If the name of any person is omitted from the registry without cause, or if there is “unnecessary delay” in transfer, the person or any member of the company may apply to the court for an order that the register be rectified, and/or that the company pay compensation for the loss. Non-compliance with an order of the court can result in monetary fines (CA 1994 §35). There are no reported problems, at the current low transaction volume. Except when the register of members is closed, the shareholder register must be available for inspection by any shareholder of the company (CA §33). The Company Act requires share certificates, hampering any efforts at dematerialization.

Secure custody system. The law does not recognize the existence of “nominee owners” or custodians, but there is implied recognition of custodians by the legal and regulatory framework. Some shareholders do hold shares in the name of financial institutions (custodians). There are no reported problems in practice with the current system, although there is general recognition that lack of clarity in the legal framework inhibits institutional investors.

Regulatory oversight. Because there is no CSD, and transfer rules are governed by company law, the securities regulator does not have any direct oversight over the clearing and settlement process, or the operations of custodians. Bills currently before Parliament reportedly address the issue of nominee ownership.

Principle IIA 2: Convey or transfer shares**Assessment: Partially Implemented**

Restrictions on share transfer. The shares of public limited companies are freely transferable. Shares of listed / public companies are freely transferable. Management and current shareholders do not have discretion over who can become a shareholder (CA §50). The Listing Regulations further require free transferability for listed companies (§2.23).

Clearing and settlement framework. There is no central depository. Settlement is carried out by endorsement of certificates, and takes place on T+7, and is considered to be “delivery versus payment”. Settlement is organized by brokers working through the company transfer secretaries.

Principle IIA 3: Obtain relevant and material company information on a timely and regular basis**Assessment: Partially Implemented**

Availability of information (charter, financial statements, minutes, capital structure). Shareholders have the right to obtain all relevant and material information from the company. Companies are required to maintain a registry of all minutes of all company meetings, including board meetings. The minutes must be kept at the company office of record and be open to inspection by any member, officer, auditor, receiver or liquidator of the company, and by the Registrar (CA §126).

Shareholders inspect other company documents and special resolutions at the Registrar. Documents such as articles of association, capital structure, annual returns, and special resolutions must be filed in with the Registrar within 21 days. However, a procedural problem with the manual recordkeeping system means that many files are misplaced or lost in the registry. Many non-listed companies do not bother to file annual returns.

Shareholder access to information. The primary source of information for shareholders is the annual report (financial statements, and directors’ report). This must be mailed to every shareholder (and every debenture holder) (CA §182). In practice annual reports are easily available, and most listed companies have posted recent reports on the company website.

Principle IIA 4: Participate and vote in general shareholder meetings**Assessment: Fully Implemented**

Voting rights. Ordinary shareholders have the right to attend, participate and vote at meetings (CA §111).

Redress. If shareholders are denied their right to vote in a general meeting, they can obtain an injunction under the inherent jurisdiction of the Court, on the ground that the violation of right conferred under section 111 of the Companies, as well as oppressive conduct under §203(1). There are no known cases. Market participants report no problems with shareholder access to meetings.

Principle IIA 5: Elect and remove board members of the board**Assessment: Fully Implemented**

Election. Directors are elected by shareholders based on recommendations from the board at each AGM. Any shareholders can also nominate directors. There are no provisions for cumulative voting in the law, and it is not used in practice, but it is not expressly prohibited. The practice of giving significant shareholders board seats (“proportional representation”) appears to be increasingly common. It is normal in listed companies for the major shareholders to be allocated a certain number of directors to appoint, and to give a board seat to other 10 percent shareholders. “Public shareholders” sometimes get the

right to elect one or more additional directors.

A company can remove a director by ordinary resolution (CA §149). At least 35 days notice has to be given to the company of an intention to remove a director. A director is entitled to be heard at the meeting. Reasons for removing a director have to be given as well. In practice, many companies prefer to not reappoint a director at an AGM, instead of removing such a director.

Redress. Shareholders can take legal action if meetings are not appropriately convened or other elements of the law followed. If shareholders are entitled to elect or remove board members but denied the right to do so without assigning reason then shareholders can take action using the oppression remedy (CA §203). In practice, there are no procedural and/or legal mechanisms in use that allow a company to impede entitled shareholders from participating and voting in a general shareholder meeting.

Principle IIA 6: Share in profits of the corporation

Assessment: Broadly Implemented

Clear legal framework. Dividends are recommended by the board to the shareholders meeting (in the Directors' Report). Dividends can be paid as final dividends at the end of the year or during the course of the year as interim dividends. Shareholders can only approve the amount recommended by the board. Dividends are paid only out of net profits (CA §74 and First Schedule, §89-94).

There are no specific rules governing the process. There is no mandatory minimum dividend.

Equitable treatment. Dividend rights cannot be varied within a share class (see Principle IIIA below). There are no reports of problems with differential payments to different groups.

Redress. Shareholders have action through the court via the "oppression remedy" (see Principle IIIA1 below).

Principle IIB. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:

Principle IIB 1: Amendments to statutes, or articles of incorporation or similar governing company documents

Assessment: Fully Implemented

Changes to basic governing documents. Shareholders can amend the company bylaws and statutes by a special resolution with a $\frac{3}{4}$ majority of shares present and voting. (CA §13). This is exclusive power of the shareholder meeting and cannot be delegated to the Board. Information on the amendments must be included in the meeting notice.

Shareholder Challenges. Shareholders can challenge actions concerning fundamental corporate changes if shareholders did not receive sufficient and timely information about the proposed action, if they informed the Company Secretary. Shareholders have action through the court via the "oppression remedy" (see Principle IIIA1 below). There has been little or no litigation on these matters in Malawi.

Principle IIB 2: Authorization of additional shares

Assessment: Fully Implemented

Issuing share capital. The board cannot increase capital or issue new shares without the approval of a simple majority of shareholders (CA §149). Increasing authorized capital requires a shareholder special resolution or $\frac{3}{4}$ majority (CA 64 (1)).

Company law does not give existing shareholders standard pre-emptive rights in the event of a capital increase. For listed companies, the listings requirements require listed companies to grant pre-emptive rights during all share offerings, unless shareholders permit otherwise (LR §7.30). For private as well as public companies it is common for company articles to contain such provisions. Shareholders can waive pre-emptive rights by an 85% majority of votes present (if free float is greater than 35% of shares) or 90 percent (if free float is greater than 35 percent) (LR §4.201).

There was no indication that information provided is insufficient so that shareholders are unable to take considered decisions.

Shareholder Challenges. Shareholders have action through the court via the "oppression remedy" (see Principle IIIA1 below). There has been little or no litigation on these matters in Malawi.

Principle IIB 3: Extraordinary transactions, including sales of major corporate assets

Assessment: Fully Implemented

Sales of major corporate assets. Major corporate transactions require shareholder approval. The board cannot sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking or of the assets of the company without the approval (by majority resolution) of shareholders (CA §149).

Section 9 of the Listing Regulations provides additional detailed requirements for listed companies wishing to enter into large

transactions. Transactions which are “outside of the ordinary course of the company’s activities” (and which do not involve either raising finance or transactions with a subsidiary) must place the transaction into one of size four categories, as defined by a variety of different financial ratios (LR, §9.1).¹⁴ The company must then take an increasing series of steps to get approval for the transaction. Companies must disclose the transaction to the public, either through its periodic disclosure (Category 4), a press announcement (Category 3), or a circular to shareholders (Category 2). Category 1 transactions (representing more than 30% of market capitalization) must be approved by the AGM. The contents of the circulars are fully described in the regulations.

There was no indication that information provided is insufficient so that shareholders are unable to take considered decisions.

Principle IIC: Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:

Principle IIC 1: Sufficient and timely information on date, location, agenda and issues to be decided at the general meeting

Assessment: Broadly Implemented

Meeting deadline. The AGM must be held at least once every 15 months. Any shareholder can call an annual general meeting; other meetings can be called by the board or by 5% of the shareholders (CA §104, 106). Quorum requirements are limited to two shareholders (CA §112).

Meeting notice content. Shareholders are notified 21 days in advance for an AGM or a meeting where a special resolution is proposed. For any other meeting shareholders are notified 14 days in advance (CA §108, Listing rule 12.15a). General meetings must be held in Malawi unless the articles provide otherwise, or if all shareholders entitled to vote agree on another place (CA §110). There do not appear to be any specific requirements for the meeting notice, but there were no reported problems, and no indication that information provided is insufficient for shareholders to take considered decisions. While shareholder meetings of some large and widely held companies (e.g. Press Corporation) are well attended and major events, shareholder activism at general meetings is relatively weak in Malawi.

Principle IIC 2: Opportunity to ask the board questions at the general meeting

Assessment: Partially Implemented

Shareholder questions. There appear to be no limits for shareholders to ask questions at meetings. The Code states that the Annual General Meeting must be properly used by shareholders to ask questions on the accounts and reports presented. Forms should be provided in the annual reports to be used by shareholders to prepare and send written questions in advance.

Forcing items onto the agenda. Shareholders who are entitled to attend and vote at meetings can submit resolutions before the first agenda is published and not after (CA §117). Any shareholder can propose a resolution and add it to the agenda. If the proposed resolution is not passed, then the company does not need to vote on the matter again unless shareholders representing 5% of voting rights request it. The company must receive the request at least 6 weeks (30 days) before the meeting, or about 2 weeks before the notice must be issued.

Redress if rights are violated. Shareholders could theoretically take legal action if a company does not respect their right to ask questions, submit resolutions or propose items for the agenda, using the “oppression remedy”.

Principle IIC 3: Effective shareholder participation in key governance decisions including board and key executive remuneration policy

Assessment: Partially Implemented

Facilitation of shareholder participation. Among listed companies, concentrated ownership means that the controlling shareholder plays a major role in key corporate decision-making. However, the investor community appears to feel that shareholder participation is generally solicited, and that the process works reasonably well. The participation of large shareholders is facilitated by the practice of providing board seats to significant (>10%) shareholders. Shareholders are informed about board nominations and there were no reports of inadequate meeting notice.

Most voting is by “show of hands” – but there were no reports of any sense of shareholder exclusion as a result. A formal poll may be demanded at a meeting of a company by at least three shareholders with more than 5 percent of total voting rights (if there are more than 8 shareholders present). (CA §114). At least 4 listed companies carry out all shareholder voting

¹⁴ Transactions are placed in Category 4 if the ratios are between 5-10%, Category 3 if the ratios are between 10 and 20%, Category 2 if the ratios are between 20 and 30%, and Category 1 if any of the ratios are greater than 30%. The main ratio is the size of the transaction as a percent of market capitalization.

by poll.

The Code states that a summary of important matters raised at the AGM should be sent to shareholders.

Cumulative Voting / Proportional Representation. There is no provision in the Companies Act for special voting rules to encourage effective shareholder participation (i.e. cumulative voting or proportional representation). These procedures are not prohibited, and are included in Articles of Association or shareholder agreements. The practice of giving significant shareholders board seats appears to be increasingly common.

Approval of board and key executive remuneration. The Listing Regulations require that the Articles of listed companies contain a provision that executive director remuneration (including pension benefits) be confirmed by the company in its general meeting (Listing Regulations 12.42b). Shareholder approval is generally sought for board remuneration.

Principle IIC 4: Availability to vote both in person or in absentia

Assessment: Broadly Implemented

Proxy regulations. Shareholders may vote either in person or by proxy (CA §113). Shareholders entitled to attend and vote at meetings can nominate another person as his proxy to attend and vote. There is no requirement for proxy forms to be notarized. Shareholders can appoint separate proxies for different packages of shares. Directors appointed as proxies are not allowed to vote on dividend declarations, auditor and director reports, election or remuneration of directors and appointment of auditors.

Postal and electronic voting. Proxy forms must be sent to shareholders as part of the meeting notice, and can be submitted by post. Electronic voting or electronic submission of proxies is not mentioned in the law and is not available.

Redress if rights are violated. Shareholders could theoretically take legal action if a company does not respect their right to vote in absentia.

Principle IID: Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

Assessment: Partially Implemented

Classes of shares. The Articles of Association (CA §7) provides for different classes of shares and defines the rights attached to them. Depending on the provisions in the Articles of Association preferred shares maybe convertible, redeemable, fixed, and cumulative or a mixture of these. The MSE Listings Requirements (§2.24/5) excludes issues of non-voting equity shares or preference capital unless waived. In practice, ordinary shares of public limited companies are “one-share, one-vote”; only ordinary shares have been issued.

Disclosure of disproportionate control. Companies are required to disclose group structures. The directors' report of each company should include a discussion of related companies (CA §189(5)). If the company is a subsidiary of another, the report must state the name and country of incorporation of the holding company, and the company which the directors understand to be the ultimate holding company. In addition, shareholders and companies are required to disclose ownership (see Principle VA3 below). The registry of members (shareholder registry) is available for inspection by shareholders (CA §33).

In practice, while companies do make disclosures, disclosure appears to be made to the level of the registry of members, and does not capture the disclosure of ultimate beneficial owners.

Disclosure of shareholder agreements. Under the Listing Regulations (§4.103b), “any trust deed or agreement affecting the governance of the applicant or the interests of the shareholders” must be made available for inspection. Market participants report that shareholder agreements are available at the MSE.

Principle IIE: Markets for corporate control should be allowed to function in an efficient and transparent manner.

Principle IIE 1: Transparent and fair rules and procedures governing acquisition of corporate control

Assessment: Partially implemented

Basic description of market for corporate control. The market for corporate control is relatively inactive in Malawi. There have been two recent takeovers that triggered takeover rules in recent years (Standard Bank and NICO). Most change of control occurs within the context of the privatization program (which has resulted in the creation of most listed companies). Takeovers are governed by several provisions in the Companies Act, as well as further detailed requirements in the Listing Requirements. The Listing Requirements suggest that in the absence of detailed guidelines, takeovers in Malawi will be governed by the City (Takeover) Code in the UK (or similar rules in South Africa) (Listing Regulations §9.52).

Disclosure of substantial acquisition of shares. Companies must disclose in the annual reports “...the interest of any shareholder other than a director who, in so far as is known, is directly or indirectly beneficially interested in 5% or more of any class of the listed company's capital, together with the amount of each such shareholders interest, or if there are no such shareholders, an appropriate negative statement” (Listings Requirements 5.32f). In practice, the disclosures are made, but appear to be made to the level of the registry of members, and does not always capture the disclosure of ultimate

beneficial owners.

The Capital Market Development Act requires "...every shareholder who directly or indirectly owns, (of record or beneficiary) or controls..." 10 percent of share capital of a public company should inform the Reserve Bank and the MSE of the size of his position, within five days. The RBM is responsible for making this information public. Compliance with this requirement is unclear and is assumed to be very low, particularly in the reporting of indirect ownership. (The RBM also stated that it is not responsible for disseminating any information).

Tender rules/mandatory bid rules. The Companies Act contains several provisions relevant to takeovers and the market for corporate control, including a provision that provides for "compulsory acquisition of shares" (squeeze-out or freeze-out) when a single shareholder has acquired more than 90% of shares.

Takeover rules guidelines are specified in the Listing Regulations (LR 9.34-9.65). They specify that any shareholder attempting to acquire control must make a bid for all shares in the company. While not explicitly stated in the Listing Regulations, because of the reliance on the City Code specified in section 9.52, the control threshold has been established to be 30% of shares.

Delisting/going private procedures. The Companies Act provides that for company conversion rules (§27). A public company may be converted into a private company limited by shares if a special resolution (3/4 of shares present and voting) is passed that (a) approves the conversion; and (b) amends its articles to set the maximum number of shareholders (members) at 50.

Principle IIE 2: Anti-take-over devices

Assessment: Broadly implemented

Description of anti-takeover devices in use in the market. Because ownership of listed companies is relatively highly concentrated, market participants are not generally aware of any specific applications of anti-takeover devices.

Duty of loyalty in the event of a takeover. There are limited rules governing any special duties of board members during takeovers in Malawi. Any payments to directors during a takeover must be disclosed (CA §153).

Because the City Code notionally governs takeovers, UK board duties should apply. Directors should act in the interest of both current and future shareholders, and have a variety of duties to acquire a variety of information (City Code §23). However, there is no evidence that directors are aware of these provisions in Malawi.

Accountability of boards and management to market pressure. Because of limited market pressure (because of concentrated ownership), there have reportedly been only examples of takeover struggles in the market.

Because the City Code notionally governs takeovers, anti-takeover devices and "poison pills" are regulated. No action can be taken by the board without the approval of the shareholders in GMS. Furthermore, poison pills are not generally allowed in UK. In practice, poison pills are not used in Malawi and are not necessary because concentrated ownership prevents hostile takeovers.

Principle IIF: The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.

Principle IIF 1: Disclosure of corporate governance and voting policies by institutional investors

Assessment: Not Implemented

Blocked shares/record date. Companies can "close the register" up to 14 days before the annual general meeting.

General obligations to vote. There is no obligation or recommendation that institutional investors vote or weigh the costs and benefits of voting. Institutional shareholders do not generally attend meetings.

Disclosure of voting policy. There are no rules requiring disclosure of voting policy by institutional investors.

Principle IIF 2: Disclosure of management of material conflicts of interest by institutional investors

Assessment: Not Implemented

Institutional investor policies on conflicts of interests. There appear to be no rules requiring special disclosures of conflicts of interest by institutional investors, and no disclosures are made.

Principle IIG: Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.

Assessment: Broadly Implemented

Rules on shareholder consultation and acting in concert. There appear to be no rules that obstruct the ability of shareholders to consult with each other on the execution of their basic shareholder rights. The definition of 'acting in concert'

in the takeover regulations does not address the question of shareholders meetings.

SECTION III: THE EQUITABLE TREATMENT OF SHAREHOLDERS

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

Principle IIIA: All shareholders of the same series of a class should be treated equally.

Principle IIIA 1: Equality, fairness and disclosure of rights within and between share classes

Assessment: Fully Implemented

Equality within share classes. The Companies Act states that "... shares shall not be deemed to be of the same class unless they rank *pari passu* for all purposes" (§47). In addition, Section 178 of the Companies Act requires that any shares offered to the public be one share, one-vote. In practice, all listed companies practice one-share, one-vote, and there are no preferred shares.

Availability of share class information. Investors are able to obtain information about the voting rights attached to all classes of shares before they purchase them. The information is disclosed in the prospectus when the public is invited to buy shares (§30&44, 5th Schedule, CA, and the MSE Listings Requirements) or in the company articles (available at the company or at nominal cost from the Registrar).

Approval by the negatively impacted classes of changes in the voting rights. Any change to the share rights of a particular share class can only be carried out if a written consent is obtained from all members of that class or with the sanction of court if the articles expressly forbid any variation of the rights. If the articles do not explicitly forbid the variation then the written consent of ¾ of shareholders is required (CA §48 (3)).

If procedural rules not followed and detrimental or prejudicial to a persons rights or obligations then an application can be made under the Inherent jurisdiction of the court, or under Section 109 or Section 203 if the conduct is oppressive.

Principle III A 2: Minority protection from controlling shareholder abuse; minority redress

Assessment: Partially implemented

EX ANTE PROTECTIONS

Pre-emptive rights. For listed companies, the listings requirements require listed companies to grant pre-emptive rights during all share offerings, unless shareholders permit otherwise (LR §7.30). For private as well as public companies it is common for company articles to contain such provisions. Shareholders can waive pre-emptive rights by an 85% majority of votes present (if free float is greater than 35% of shares) or 90 percent (if free float is greater than 35 percent) (LR §4.201).

Ability to call meeting. Shareholders (who have at least 5 percent of voting rights) can call an extraordinary shareholders meeting or hold the EGM if directors fail to do so within 21 days (CA §106(1)).

Cumulative Voting / Proportional Representation. There is no provision in the Companies Act for special voting rules to encourage effective shareholder participation (i.e. cumulative voting or proportional representation). These procedures are not prohibited, and could be included in Articles of Association or shareholder agreements. The practice of giving significant shareholders board seats appears to be increasingly common.

EX POST PROTECTION

Ability to sue to overturn meeting decisions. Courts have wide latitude to intervene in a company's affairs to protect shareholder rights. Under Section 203 of the Companies Act 1984, any shareholder (member) may apply to the court on the grounds that "...the affairs of the company are being conducted, or the powers of the directors are being exercised, in a manner that is "oppressive", or that "some act of the company has been done or is threatened or that some resolution of the members or any class of them has been passed or is proposed which unfairly discriminates against, or is otherwise unfairly prejudicial to, on or more of the members". The court can then issue orders directing, prohibiting any act or canceling or varying any transaction or resolution; an order regulating the conduct of the company's affairs in the future; an order for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, for the reduction of the company's capital accordingly; an order that the company be wound-up; an order appointing a receiver of property of the company.

Redress from regulators. Shareholders could complain to the Reserve Bank. When the Reserve Bank, as the regulator of the capital market and financial institutions suspects that any person has violated the provisions of the Banking Act or the Capital Market Development Act, it may investigate as appropriate. The RBM's ability to take action is very limited, and it cannot impose fines.

Ability to sue directors. Directors can be sued for violations of their fiduciary duties. In practice, there are almost no suits against directors. It is not legal to indemnify directors against liability.

Withdrawal rights. Withdrawal / redemption rights are one of the possible outcomes that could be imposed by a judge

under the “oppression remedy” above.

Inspection Rights. There are no rights for shareholders to order a special inspection of a transaction (before or after it is made).

Principle IIIA 3: Custodian voting by instruction from beneficial owners

Assessment: Partially Implemented

Rights of beneficial owners. Financial institutions do hold shares on behalf of beneficial owners. However, there are currently no internationally accepted custodial facilities in Malawi. Custodial agreements are considered to be ad-hoc contractual arrangements. Custodians must vote based on the mandate in the custody agreement. Shareholders are entitled to appoint separate proxies to represent different shares, and give instructions how to vote the shares. In every meeting notice there should appear with reasonable prominence, a statement that a shareholder is entitled to appoint one or more proxies to attend (CA §108, 113(7)).

For an ordinary resolution, blanks and abstentions are ignored. However, where a specific proportion of vote is required (say 75% or 95% of total voting rights), then it would again not be counted but would not assist the yes vote.

Principle IIIA 4: Obstacles to cross border voting should be eliminated

Assessment: Not implemented

Clarity of right to exercise voting rights. An international-standard custody system has not yet been introduced in Malawi. This hinders the ability of large foreign institutional investors to exercise their voting rights (or to invest in the first place).

Meeting notice requirements. The meeting notice must be issued 21 days before an AGM, and 14 days before any other meeting. No complaints were made by investors about the meeting notice period. However, this period has been found to be too short by institutional investors – one set of corporate governance guidelines (by the Institute for International Finance, a global association of financial institutions) recommends a notice period of one month (30 days).

Procedures to facilitate voting by foreign investors. No specific obstacles other than potential problems identified above were noted for foreign investors. Electronic voting is not addressed in the law, and is not available in practice.

Principle IIIA 5: Equitable treatment of all shareholders at GMs

Assessment: Broadly Implemented

Procedures to facilitate voting (electronic and postal voting systems). Proxy forms may be returned through the post. Electronic voting is not addressed in the law, and is not available in practice.

Equitable treatment of shareholders at meetings. Voting is generally by show-of-hands or general consensus, which has been considered to be a violation of “one-share, one-vote” and abused in other jurisdictions. A formal poll may be demanded by at least 3 shareholders representing at least 5% of total voting rights (CA §114). If shareholders believe their rights are violated, they can apply to the court and under the oppression (§203) remedy. The Registry of Companies could also act (CA §332). Because of relatively high ownership concentration in Malawi, show-of-hands voting was not considered to be a significant abuse of minority shareholder rights, and no complaints were raised by market observers.

Disclosure of voting results. The minutes of shareholder meetings must be kept at the company office and open to inspection by shareholders, directors, and auditors (CA §126).

Principle IIIB: Insider trading and abusive self-dealing should be prohibited.

Assessment: Not Implemented

Basic insider trading rules. The Capital Markets Development Act 1990 provides basic insider trading rules. The Reserve Bank regulates insider trading. “No person shall, directly or indirectly, effect, alone or with one or more other persons, any transaction in any security knowing of information not yet published concerning the particular issuer, if such information may reasonably be assumed to be significant to the pricing of such security” (CMDA, §40). Penalties can include a fine of K10,000 (about USD 75) to imprisonment for two years (CMDA, §46), and aggrieved persons can file a civil suit as well. Under the Companies Act a sale based on inside information by a director can be voided if the inside information is not disclosed. There is no electronic surveillance system in place at the MSE, although low transactions volumes allow each transaction to be reviewed. There have been no cases or investigations.

Shareholders can complain to the MSE or the RBM. The MSE can investigate and censure or even suspend a listed company. If insider trading conduct is considered to be oppressive or prejudicial to, or in disregard of, shareholders interests, then (in theory) the court can give such order it thinks fit under the oppression remedy (CA §203).

Insider trading disclosure. Every shareholder who directly or indirectly owns or disposes of 10% or more shares of a listed company is required to inform the Reserve Bank and the MSE within 5 days of acquisition or disposal (CMDA, §20). Directors must notify MSE within 72 hours of completion of transactions in respect of all purchases and sales of shares, directly or indirectly as beneficial owners (Listings Requirements, §7.69). In the annual report, companies must disclose the

aggregate and individual direct and indirect interests of the directors in the share capital of the listed company, distinguishing between beneficial and non-beneficial interests, and note any change in those interests from the previous year.

The Listings Requirements prohibit directors from dealing in shares during sensitive periods of the financial year end and the preliminary announcement of the company's annual results, and the two months prior to the announcement of half yearly results). Directors may not trade if they are aware of unpublished price sensitive information, and must advise the chairman and receive his clearance before trading. The chairman must receive board approval (LR, §7.69).

Disclosure of other types of self dealing. There are a variety of prohibitions on market manipulation, including making misleading statements, or pegging, fixing or stabilizing the price of a security. See Principle VA7.

Principle IIIC: Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

Assessment: Partially Implemented

Conflict of interest rules and use of business opportunities. Board members are required to disclose if they are "directly or indirectly materially interested in contract or proposed contract with the company (CA §150). Directors must declare the nature and extent of their interest at a board or shareholders meeting. "Material" interests do not appear to be explicitly defined. On matters related to the conflict of interest, the director cannot vote. Directors who fail to comply can be fined up to 200 Kwacha.

The Code further notes that any advisory work that a non-executive director or any firm with which he is associated, is commissioned to undertake for the enterprise should be approved in advance by the board.

Companies are not allowed to make loans to directors or to directors of group companies (unless the company is in the business of making loans) (CA §151).

Board responsibility for managing conflicts of interest. There is no explicit responsibility for the board to manage conflicts of interest.

SECTION IV: THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

Principle IVA: The rights of stakeholders that are established by law or through mutual agreements are to be respected.

Assessment: Broadly Implemented

Employees do not have a specific right to sit on boards. The company law does not list any rights for stakeholders to nominate directors or in general to participate in the governance process. In accordance with the principles of the rules of natural justice, where decisions are made affecting employees rights then the employer is obliged to consult the employees before a decision is made. Specifically, according to the Constitution and various judicial precedents, it is now accepted that employees are entitled to be consulted during restructuring that affects their rights adversely, before an employer makes a decision affecting an employee (Section 43 of the Constitution). When 20% of employees are members of a Trade Union the employer will recognize that Trade Union(s) for the purposes of collecting bargaining. Any collective bargaining agreement is enforceable as deemed to have been incorporated into the employment contract (Labour Relations Act).

The Code mandates that boards formulate and implement a code of ethics for the company, and listed companies and their subsidiaries have generally adopted them. The Code also emphasizes the importance of worker participation "in one form or another" in company governance. Worker participation should assist in:

- Developing practices that lead to the effective sharing of relevant information;
- Effective consultation by management with the workforce before taking decisions that affect the workers;
- Speedy conflict identification and resolution.

No specific solution is recommended; the Code suggests that "system of worker participation ... should grow out of the nature of the corporation's business, the culture of the corporation and the workers' organisation."

The level of corporate social responsibility can be characterized as high. Most large companies support a variety of community activities. For example, Total Group have recently been sponsoring students at the Polytechnic, Press Corporation sponsors league football and other tournaments to raise awareness of various programs, and Stanbic has sponsored Golf Tournaments to raise funding for charitable activities. Other companies with similar activities include FBM, ILLOVO, NBM, and NICO Holdings LTD.

Principle IVB: Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

Assessment: Partially Implemented

Stakeholders have access to the courts. However, cases can take significant time to be resolved.

Employment can be terminated by mutual agreement or unilaterally. Appropriate notice or pay in lieu thereof has to be given. Where employment is terminated by employer, valid reasons for such termination have to be given. If no reasons are given then the termination deemed unfair dismissal and against the rules of natural justice. In the event of unfair dismissal, employees are entitled to be reinstated or compensated or both. The Industrial Relations Court decides on all Industrial Relations matters. (Article 43 of the Constitution of the Republic of Malawi, ILO Conventions, Employment Act).

Environmental groups recently attempted to seek an injunction to stop an Australian mining company (Palladin) from mining uranium in Malawi. This case is pending.

In cases where directors and shareholders have been trading while insolvent, then creditors are entitled to proceed personally against such persons.

Principle IVC: Performance-enhancing mechanisms for employee participation should be permitted to develop.

Assessment: Partially implemented

Companies have a variety of means to share profits with managers and employees, and none appear to be prohibited. ESOPs are widespread. At least one company (Press) has issued share options to management.

By law, whenever the government disposes of its shareholding through the Privatisation Commission of Malawi (the sole agency of the Malawi Government mandated to sell the assets of the Malawi Government) it sets aside a small proportion of shares for employees, at a discount up to 20% of the market rate. The company then funds the scheme.

Many large companies have contributory pension funds to which the employer will contribute 10% of the employee's salary and the employee will contribute up to 5% of his salary. The pension funds are then managed by a recognized fund manager (NICO, Old Mutual, Inde Trust, APT Trust).

Principle IVD: Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.

Assessment: Not applicable

This principle is rated as "Not Applicable" because (per the OECD Methodology) stakeholders in Malawi do not directly participate in the corporate governance process.

In general, stakeholders of listed companies do have significant rights to information in Malawi. This includes annual information and other filings required for listed companies (see Principles VA-F below). For example, the minutes of General Meeting, and all documents and reports filed by listed companies with the Reserve Bank or the MSE are in principle available for inspection by the public (§126, §129 CA §22(1) of the Capital Market Development Act).

In addition, the Code contains some stakeholder reporting recommendations.

Principle IVE: Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.

Assessment: Not Implemented

Whistleblower rules. There do not appear to be any specific provisions that protect whistleblowers in private companies. Some activity could fall under the Corrupt Practice Act, which extensively protects whistleblowers. For example, no information relating to whistleblowers is admitted in any civil or criminal proceedings; no witness is permitted to disclose the identity or any particulars of a whistleblower or any other information; and any documents in evidence in any proceedings containing any entry in which whistle blower or other informer is named has to be concealed by the court to protect his or her identity (Section 51, Corrupt Practices Act). Similarly, the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act 2006 (which will come into force at the end of 2007) protects the identity of whistleblowers in relation to the reporting of suspicious transactions (Section 31, Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act 2006).

Principle IVF: The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

Assessment: Partially Implemented

Effectiveness of bankruptcy, security/collateral, and debt collection/enforcement codes. Malawi's company law offers

certain creditor rights for bankruptcy and debt collection. A variety of standard measures developed by the World Bank for 175 countries indicates that while creditors have relatively strong legal rights, obtaining access to credit information remains a concern. See *Doing Business 2007* at www.doingbusiness.org.

Creditor Rights Indicator	Malawi	Regional Average	OECD Average
Legal Rights Index (out of a possible 10)	8	4.2	6.3
Credit Information Index	0	1.3	5.0
Public credit registry coverage (borrowers per 1000 adults)	0.0	1.5	8.4
Private bureau coverage (borrowers per 1000 adults)	0.0	3.8	60.8

SECTION V: DISCLOSURE AND TRANSPARENCY

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

Principle VA: Disclosure should include, but not be limited to, material information on:

Principle VA 1: Financial and operating results of the company

Assessment: Broadly Implemented

Overview of Financial Reporting. The Companies Act requires all companies to send a copy of financial accounts to each shareholder and to the Registrar. Financial statements must be prepared according to the requirements in the Act (which are not in accordance with IFRS). However, the MSE Listings Requirements require firms to prepare their financial statements in accordance with the issuer's national law and GAAP (Listings Requirements 5.31(a)). Large listed companies generally prepare their financial statements according to IFRS. Banks (both listed and unlisted) must publish their financial statements in a newspaper, within six months after the close of its financial year, and make them available in their head office (RBM Directive on Independent Audit for Licensed Institutions, 2006).

MSE Rules S7.19 and S7.20 require that listed companies publish half-year unaudited financial statements within three months after the reporting period and full-year audited financial results within six months after the reporting period. For the full-year results, if a company cannot publish audited financial statements within three months, they are required to publish unaudited financial statements within three months of the reporting period. Bank regulations require banks to publish audited annual financial statements in at least two local newspapers of wide circulation in Malawi, within six months of the end of their financial year.

Interviews carried out for the Accounting and Auditing ROSC noted that some stakeholders noted a lack of depth in local financial reporting, especially on non-financial disclosure, when compared to financial reporting in other countries, particularly South Africa. The lack of strong oversight institutions adds to concerns about the quality of financial reporting.

SOEs are governed by the Public Financial Management Act as well as the general legislation for private enterprises. They are required to submit financial statements to the Ministry of Finance on a quarterly basis, and the Ministry compiles an annual account of their financial statements (which is published as part of the Annual Economic Report). These accounts are not audited by external auditors, however, and are not subject to private sector accounting standards. Consolidated accounts for the SOEs are expected to be prepared starting FY2007/08 (but will only be published after the end of that fiscal year). Specific and tangible fiscal initiatives, such as the rural electrification project undertaken by ESCOM, Malawi's state-owned electricity company, are financed directly from the central government's budget.

There has been a notable lack in oversight of financial statements of state-owned enterprises due to the inadequate capacity in the Auditor General's Office.

All required financial statements. Because listed companies file under IFRS, all financial statements required by the OECD Principles / Methodology are included.

Consolidation. Companies are required to file consolidated financial statements. The Companies Act (§185 (4)) defines group accounts as consolidated accounts comprising (a) a consolidated profit and loss account dealing with the profit and loss of the company and all subsidiaries to be dealt with in the group accounts; and (b) a consolidated balance sheet dealing with the state of affairs of the company and those subsidiaries. The law allows group accounts to be prepared in a form other than as defined above if the company's directors are of the opinion that it is better for the purpose of presenting the same or equivalent information in a form that may readily be appreciated by the members and debenture holders.

The MSE Listings Requirements (§5.31(c)) requires the financial statements of MSE-listed companies to be consolidated if the listed company has subsidiaries, unless the MSE committee agrees otherwise.

Management discussion and analysis. The Companies Act requires that directors include a board report in the annual report.

The Code details the board's responsibility to issue a director's report and a statement of directors' responsibilities. It is the board's duty to "...present a balanced and understandable assessment of the company's position in reporting to stakeholders, including employment policies and environmental issues. Reports should be clear and succinct, balanced, objective, easy to understand and include all the relevant information that may be useful to investors." The Code specifies that the director's report should include statements on: a) the directors' responsibility to prepare financial statements that show a true and fair view of the enterprise's state of affairs as at the end of the financial / year and the profit or loss for that period. b) the maintenance of adequate accounting records and an effective system of internal controls. c) the consistent use of appropriate accounting policies supported by reasonable and prudent judgments and estimates. d) adherence with applicable accounting standards or, if there has been any departure in the interests of fair presentation, it must not only be disclosed and explained but also quantified. e) that there is no reason to believe the business will not be a going concern in the year ahead or an explanation of any reasons otherwise.

Oversight, sanctions and remedies. The RBM monitors compliance through on-site inspections and following the public press against filings. Sanctions for non compliance may include warnings, fines, suspensions, public reprimands, restatements, civil penalties and criminal penalties.

Timely submissions and filings are monitored by the MSE. The Listings Requirements specify sanctions for non-compliance, including censure, reprimands, warnings, suspension and delisting. These sanctions do not appear to be dissuasive, because of the absence of fines that can be imposed, and the conflict of interest between the MSE as regulator and the MSE business goals. There do not appear to have been any formal cases or investigations against listed companies; instead, the MSE has taken informal action (and sent warning letters) in cases of non-compliance with disclosure requirements.

Under the CMDA, violations of disclosure requirements in the Listings Requirements could also be penalized by the RBM by a 5,000 Kwacha fine or one year of imprisonment (CMDA §57). Shareholders can also bring a civil action before a court "... for compensation or damages or rescission of transactions against any person who he alleges has caused or participated in such violation."

Principle VA 2: Company objectives

Assessment: Broadly Implemented

The Director's report (to be attached to the annual report) should include a discussion of a number of issues related to company objectives, including: the principal activities of the company and of its subsidiaries in the course of that year, any significant change in those activities, particulars of any important events affecting the company or any of its subsidiaries which have occurred during the year, and an indication of likely future developments in the business of the company and of its subsidiaries (CA §189).

Principle VA 3: Major share ownership and voting rights

Assessment: Partially Implemented

Periodic disclosure of significant ownership. Ownership information is included in the annual report as a note to the accounts. Companies must disclose the interest of any shareholder other than a director who, "in so far as is known", is directly or indirectly beneficially interested in 5% or more of any class of the listed company's capital, together with the amount of each such shareholders interest, or if there are no such shareholders, an appropriate negative statement; (MSE Listings Requirements, 5.32f). Companies must also disclose "aggregate ... direct and indirect interests" of the directors in the share capital of the listed company distinguishing between beneficial and non-beneficial interests" (Listing Rule, 5.32e). The Code also states that beneficial holders of shares held by nominee companies should be disclosed to ensure that nominee shareholders are not used as a shield by a hostile bidder or used for insider trading purposes.

Voting rights, special voting rights, caps on voting rights and significant cross shareholdings have to be disclosed in the annual report as well. If the ownership information is not disclosed in the annual report it is disclosed in the Articles of Association.

Timely disclosure of significant ownership. Under the Capital Markets Development Act, significant shareholders are required to disclose their ownership (CMDA, §20). Every shareholder of a public company traded in the market who "directly or indirectly owns, (of record or beneficiary) or controls" ten or more percent of share capital has to inform the RBM and the MSE, within five days, after crossing the threshold or, if already a significant shareholder, if there are any changes in the position. Under the law, the RBM is responsible for disseminating the information.

There are only general penalties for non-compliance (under the CMDA), shareholders who do not comply are not (for example) stripped of voting rights.

Regulatory agency access to ownership information. There are no special rules for regulatory access to ownership information (outside of the banking sector). However, given the relatively small size of the corporate sector in Malawi, there were no few concerns raised about ownership transparency.

Disclosure of company group structures. Companies are required to disclose group structures. The directors' report of each company should include a discussion of related companies (CA §189(5). If the company is a subsidiary of another, the

report must state the name and country of incorporation of the holding company, and the company which the directors understand to be the ultimate holding company. In addition, shareholders and companies are required to disclose ownership (see Principle VA3 below). The registry of members (shareholder registry) is available for inspection by shareholders (CA §33).

In practice, while companies do make disclosures, disclosure appears to be made to the level of the registry of members, and does not capture the disclosure of ultimate beneficial owners.

Principle VA 4: Remuneration policy for board and key executives, and information about directors

Assessment: Partially Implemented

Material information about directors (qualification, selection, independence). The Code requires that companies have formal and transparent procedures for appointments to the board (Code B11), and that the meeting notice include a brief biography of each director standing for election / re-election (Code B14). Five of the 10 listed companies surveyed in Annex 2 appear to generally comply with this requirement, and disclose the age of directors, and their academic / professional qualifications. Three companies disclose the length of service on the board.

Disclosure of directors' interests. The Listings Requirements require the disclosure of the direct and indirect interest of each director in the share capital of the listed company distinguishing between beneficial and non-beneficial interests, as well as a comparison with the prior year. Several companies do appear to disclose directors' interests.

Full disclosure of remuneration and remuneration policy. The Companies Act of 1994 requires that the total amount of remuneration paid to the directors be disclosed in the annual report (CA Third Schedule, §37). The Act specifies remuneration in some detail, including pension and other non-cash benefits. Listed companies comply with this requirement. The Act and Code are silent about the disclosure of remuneration of key executives.

The Code reinforces the Act's requirements by recommending "separate, full and clear" disclosure in the annual report of total remuneration (representing the total cost to the company). A remuneration committee should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual executive directors. The remuneration committee should also be responsible for setting the remuneration of top management of the enterprise. The level of remuneration should be sufficient to attract and retain the quality and calibre of directors and staff needed to run the enterprise successfully while the make up should be so structured as to link corporate and individual performance.

Principle VA 5: Related party transactions

Assessment: Not Implemented

Ex-ante disclosure of material related party transactions. The Listings Requirements require disclosures to shareholders (via circular) of large related party transactions – see Principle VID6. The MSE can require companies to inform shareholders about the details of the transaction and obtain their approval (LR §10.1-10.5). The content of the circular to be sent to shareholders is laid out in detail, and must include the full particulars of the transaction, including the name of the related party concerned, a description of the relationship between the listed company and the related party and the nature and extent of the interest of such party in the transactions.

However, the review team found no evidence that these rules have been put in place and in practice. This may be because (a) the definition of related party contract is large enough that they are easily evaded (especially because of the exemption for "credit to the related party in normal commercial terms in the ordinary course of business" and "transactions of a revenue nature in the ordinary course of business"), and (b) the market community is unaware of the rules and their high level of complexity.

Timely submissions and filings are monitored by the MSE. The Listings Requirements specify sanctions for non-compliance, including censure, reprimands, warnings, suspension and delisting. These sanctions do not appear to be dissuasive, because of the absence of authority to fine, and the conflict of interest between the MSE as regulator and the MSE business goals. No sanctions have been applied since the founding of the exchange.

Under the CMDA, violations of disclosure requirements in the Listings Requirements could also be penalized by the RBM by a 5,000 Kwacha fine or one year of imprisonment (CMDA §57). Shareholders can also bring a civil action before a court "... for compensation or damages or rescission of transactions against any person who he alleges has caused or participated in such violation."

Periodic disclosure of related party transactions. Because Malawi has adopted IFRS, listed companies are required to follow IAS 24 (Related Party Transactions). Anecdotal evidence suggests that compliance is uneven, with complete IAS 24 disclosures missing at some listed companies (see Principle VB for a discussion of compliance with accounting standards). The Accounting and Auditing ROSC (forthcoming) reviews accounting standard compliance in detail, and notes some problems with compliance. One financial institution did not make any disclosures on related parties transactions and balances. In a majority of the financial statements, while the disclosures were made, some content was lacking. For instance, one financial institution made no disclosure on compensation made to key management personnel, while four other financial institutions disclosed compensation paid to key management personnel in total only without the breakdown required by IAS 24 of short-term compensation, long-term compensation, post-employment benefits, and share-based

payment. Also missing on some disclosures on related party transactions were the terms and conditions of the transactions with related parties and provisions for doubtful debts and bad debts.

Principle VA 6: Foreseeable risk factors

Assessment: Not Implemented

Disclosure of material risks. There are no requirements for the disclosure of material risks.

Disclosure of internal risk control procedures. There are no requirements for the disclosure of internal control procedures.

Principle VA 7: Issues regarding employees and other stakeholders

Assessment: Not Implemented

Disclosure of stakeholder issues. The Code states that "... reports and communications must be made in the context that society now demands greater transparency and accountability from corporations regarding their non-financial affairs including, for example, their employment policies and environmental issues." However, disclosure of any policies is not explicitly required.

Principle VA 8: Governance structures and policies

Assessment: Broadly Implemented

Disclosure of corporate governance report (including structure and operation of board). The Code of Corporate Governance provides basic guidelines for core governance standards and practices. Companies are required to submit a report to the MSE stating their areas of compliance and non-compliance with code within 3 months of the end of the fiscal year.

Comply-or-explain in force. The Code states that the directors' report should note the company's adherence to the Code, and any areas where it does not comply. However, the Listings Requirements do not directly cite the Malawi Code, but instead refer to the disclosure of "...the extent of their compliance or non-compliance with the Code of Corporate Practices and Conduct contained in the Cadbury or King Reports on Corporate Governance." This statement does not need to be audited.

Regulator enforcement practice. RBM or MSE enforcement of the "comply or explain" provisions of the code appears to be limited. However, listed companies (and all large companies) comply with the specific requirements of the Listings Requirements.

Principle VB: Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure.

Assessment: Partially Implemented

Quality of Accounting Standards. Listed companies (like other companies) are required to follow the Companies Act, which does not require application of International Financial Reporting Standards (IFRS) or any other standards. The Act elaborates requirements for keeping proper accounting records and preparing financial statements, and requires financial statements to show a "true and fair view" (CA §180(2)), but does not give up-to-date guidance on presentation.

Following an ECSAFA resolution in January 2001, the Society of Accountants in Malawi (SOCAM) directed all companies in Malawi to comply in full with IASB-issued IFRS. There is no statutory link between SOCAM and companies that must apply accounting standards (which are regulated by the Companies Act).¹⁵

Banks and insurance companies are not required to apply IFRS. The Capital Market Development Act, the Banking Act, Insurance Act, and regulatory directives on banks and insurance companies do not require banks or insurance companies to apply IFRS. The Public Finance Management Act (No. 7 of 2003) requires financial statements of government and state-owned enterprises to comply with "GAAP", as promulgated by IFAC or practices that have the support of the accounting profession in Malawi (i.e. IFRS, since a SOCAM directive in 2001).

Standard-setting body. SOCAM is the accounting standard-setting body. However, SOCAM does not have legal authority to set accounting standards, and lacks standard setting capacity. It is a voluntary body that is not in a position to effectively carry out the onerous responsibility of setting standards.

Review/enforcement of compliance. Despite the uncertain statutory framework, most listed companies do apply IFRS.

¹⁵ The SOCAM decree created a problem for many small and medium enterprises, for which the standards are too complex to implement cost-effectively. SOCAM has not adopted the recent ECSAFA-issued accounting guide for small and medium enterprises but has chosen to wait for the IASB release of IFRS for small and medium enterprises expected in late 2008.

Accounting standards of listed subsidiaries of foreign companies are set by their parents. The Accounting and Auditing ROSC team reviewed 23 sets of audited financial statements (including those of 8 listed companies). The review showed that companies are filing according to IFRS, while indicating some compliance gaps.

Improvements to compliance are hindered by a number of factors:

- Many in the market community appear to believe that SOCAM is responsible for ensuring compliance. However, SOCAM does not have any arrangement for monitoring and enforcing accounting standards applied in the case of financial reporting. There are no prescribed penalties for noncompliance, and no appointed regulator to monitor compliance making it difficult to enforce this directive.
- The regulatory authorities (the MAB, the MSE, the Registrar, the Reserve Bank, and the Auditor General) do not have either the technical expertise or resources to ensure compliance of the entities in their purview with financial reporting standards. The MSE has identified some cases of noncompliance; the matters were discussed with the concerned companies and improvements were made to subsequent financial statements.
- Local implementation guidance is insufficient. While SOCAM sells and distributes manuals on accounting and auditing standards to members and conducts seminars covering new standards, these efforts fall short of the implementation guidance required by most accountants to effectively comply with the standards. According to the Accounting and Auditing ROSC, only accountants in foreign-controlled companies and audit firms belonging to international networks, which have the opportunity to tap technical expertise from foreign-based (mainly South African-based) technical offices, appear to be comfortable with international standards.

Principle VC: An annual audit should be conducted by an independent, competent and qualified, auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

Assessment: Partially Implemented

Audit Requirements and Auditor Independence. All limited companies (private as well as public) have to appoint external auditors (Sections 182, 184, 190, 191, and 192 of Companies Act). The Companies Act establishes a comprehensive legal basis for the profile of auditors, their conduct, and requirements to comply with auditing standards. The board of every company must send the audit report to all shareholders (CA §182). All auditors are required to follow to International Standards of Auditing. The audit report must give the auditor's opinion on whether the company's financial statements give a "true and fair" view of the company.

The Public Audit Act (No. 6 of 2003) gives the Auditor General the duty to review and approve the audited accounts of state-owned enterprises. The Act also gives the Auditor General the responsibility to conduct audits of state-owned enterprises that have not had their financial statements audited by firms of public auditors or for which the Auditor General does not approve the audited financial statements.

Auditor independence is governed by the IFAC Code of Ethics (as promulgated by SOCAM). In general, auditor rotation is not required except for banks (the RBM requires rotation of firms every 7 years). Some observers believe that independence is compromised by situations in which preparers of company financial statements sought assistance from auditors in instances where they had problems applying IFRS. Some audit firms that prepare financial statements also audit the same financial statements.

The selection of the auditor is generally overseen by a body independent of management (a majority non-executive audit committee, see discussion below).

Auditor qualifications. The Companies Act (§191(2) and §192(1)) requires that persons to be appointed as auditors be only those duly qualified, eligible, and entitled to act as such under the Public Accountants and Auditors Act.¹⁶ Market participants report that Malawi appears to have a shortage of locally produced accountants.

Malawi has fourteen auditing firms; four are local firms each with two partners, five are also local with one partner, and five belong to international networks. The audit market is highly concentrated; two of the Big Five audit firms (KPMG and Deloitte) audit all eleven companies on the MSE, and eight out of the nine banks in the country. The Reserve Bank must vet the auditors of banks, and maintains a separate list of qualified auditors; currently four firms are eligible.

The Public Accountants and Auditors Act also established the Malawi Accountants Board (MAB) and the Public Accountants Examination Council (PAEC). Under the Act, the Malawi Accountants Board has powers to regulate the profession in both practice and training, while the Public Accountants Examination Council has powers to set syllabi and examinations and co-ordinate the marking and adjudication of examinations for accountancy training in Malawi.

According to the 2006 RBM directive on *Independent Audit for Licensed Institutions*, bank external auditors must be appointed upon the recommendation of the audit committee, and must be "satisfactory to the Reserve Bank." Auditors must

¹⁶ Section 16 of the Public Accountants and Auditors Act sets requirements for registration and practicing as a certified public accountant, including age limits, Malawi residency or temporary employment or residency permit, service under a training contract, passing prescribed examinations, and holding a practicing certificate.

further be qualified, properly licensed, have relevant professional experience and competence, be subject to a quality assurance program, and comply with IFAC Code of Ethics. The directive further defines auditor independence. The directive also sets the rules for the Reserve Bank's communication with bank auditors, who must notify the Reserve Bank in the case of several events, including non-compliance with the law and changes to the bank's status as a going concern.

Auditors theoretically lose their authorization to conduct audits if they do not maintain qualification and competency criteria but has not occurred in practice.

Audit quality assurance / enforcement. The Public Accountants and Auditors Act give the Malawi Accountants Board (MAB) the power to regulate the accountancy profession (SOCAM). However, MAB does not effectively exercise its oversight. The MAB is dominated by members of the profession, and does not have enough professionally qualified officers in its employment to independently discharge its responsibilities.

SOCAM, through quality reviews conducted on statutory auditors, checks compliance with auditing standards. Annually, SOCAM engages consultants from South Africa's Independent Regulatory Board for Auditors to conduct quality reviews of auditors in the country. Defaulters have had penalties including fines and (for persistent defaulters) working under a mentoring arrangement. So far there has been no expulsion. The review is conducted on a three-year cycle; up to 2006, it was based on a partner review only. SOCAM is finalizing negotiations with ACCA to join the ECSAFA-sponsored audit quality control scheme that has been set up on a regional basis to assist ECSAFA members to comply with the IFAC membership obligation on quality control. The new scheme is expected to start in January 2008 and will extend to audit firms.

Self-regulatory organizations in other countries have been criticized for a lack of enforcement actions and power.

Audit standards development. The Public Accountants and Auditors Act gives SOCAM a mandate to set auditing standards in Malawi. Following an ECSAFA resolution effective January 2001, SOCAM directed all companies in Malawi to comply in full with IFAC-issued International Standards on Auditing.

Bank and insurance company regulators do require auditors to conduct audits in accordance with International Standards on Auditing (RBM Directive on Annual Audit).

Board reporting of the audit relationship. There are no other reports required for the audit committee or the board on the audit relationship. MSE place a "Q" in front of quotations of companies with qualified opinions. There have been no qualified opinions of listed companies since trading began on the exchange.

Principle VD: External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.

Assessment: Partially Implemented

Auditor accountability to shareholders. Every company at every annual general meeting must appoint auditors to hold office until the next annual general meeting (CA §191(1)). The external auditor must be approved by the shareholders meeting; in practice the shareholders always approve the board recommendations.

Auditors must act in such a manner as faithful, diligent, careful, and ordinarily skillful auditors would act in the circumstances while in performance of their duties (CA §194 (1)). The law also stipulates that the company cannot exempt the auditor from his duties.

Auditor accountability to shareholders. The Code requires the company to supervise the audit function through an audit committee of the board. The majority of the members including its chairman should be non-executive directors. The Committee meetings should be attended by the head of internal audit, the external audit partner and the financial director. The head of internal audit and the external audit partner should have unrestricted access to the chairman of the audit committee. The head of internal audit and the external audit partners should bring all significant findings arising from audit activities to the attention of the audit committee and if necessary to the board.

In 2006 the RBM issued a directive on Independent Audit for Licensed Institutions. The directive requires banks (and other financial institutions licensed under the Banking Act) to establish an audit committee (majority non-executive). Under the Directive, the audit committee should carry out a variety of good-practice activities, including advising on the approval, appointment and dismissal of internal and external auditors.

In practice, the quality of oversight of auditors depends largely on the quality of the committee and the board.

Penalties for auditors who fail to perform with due care. There are no reported cases of litigation against auditors in Malawi. Under MAB requirements, professional indemnity insurance is compulsory, but is not readily available to some categories of practitioners. There have also been one or two cases where auditors had been disciplined for breach of professional conduct, but the judicial process is stymied by unclear legal provisions.

Principle VE: Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

Assessment: Partially Implemented

Material facts. The MSE Listings Requirements require listed companies to continuously disclose all material information.

Issuers must publish “without delay” a press announcement giving details of “circumstances or events that have or are likely to have a material effect on the financial results” or which might “lead to material movements in the ruling price of its listed securities” (MSE Listings Requirements, §7.3). If the directors of the listed company consider that disclosure to the public of information might prejudice the listed company’s legitimate interests, the MSE Board may grant a dispensation from the requirement to make the information public (§7.10).

Oversight, sanctions and remedies. Timely submissions and filings are monitored by the MSE, and the MSE devotes significant resources to enforcement. The Listings Requirements specify sanctions for non-compliance, including censure, reprimands, warnings, suspension and delisting. These sanctions do not appear to be dissuasive, because of the absence of fines that can be imposed, and the conflict of interest between the MSE as regulator and the MSE business goals. No sanctions have been applied since the founding of the exchange.

Under the CMDA, violations of disclosure requirements in the Listings Requirements could also be penalized by the RBM by a 5,000 Kwacha fine or one year of imprisonment (CMDA §57). Shareholders can also bring a civil action before a court “... for compensation or damages or rescission of transactions against any person who he alleges has caused or participated in such violation.”

Easy accessibility of disclosed information. The source of most information is the annual report (financial statements, and directors’ report). This must be sent to every shareholder (and every debenture holder) (CA §182). In practice annual reports are easily available (see Annex 2), and five of 10 listed companies have posted recent reports on the company website (an additional two companies have a website for the foreign parent).

On the other hand, only limited company information is available from the MSE, none is available from the Reserve Bank, and the inefficiencies of the Registrar General mean that in practice it is not a practical source of useful information.

Prohibitions on selective disclosure of information. Specific rules govern the selective disclosure of information to third parties, before it has been published. An issuer can disclose confidential information to its advisors and potential partners, but must advise any recipients of the information that it is confidential (MSE Listings Requirements §7.5). Announcements at general meetings of shareholders must be published as soon as possible.

Principle VF: The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice by analysts, brokers, rating agencies and others, that is relevant to decisions by investors, free from material conflicts of interest that might compromise the integrity of their analysis or advice.

Assessment: Not implemented

Disclosure of conflicts of interest by analysts, brokers, rating agencies. This information is currently not disclosed. In practice there are very few market players and they tend to concentrate on their own clients.

Regulation of credit rating agency conflict of interest. There are no credit rating agencies currently operating in Malawi.

Regulation of sell-side analyst conflicts of interest. Research is produced on a few companies by the two largest brokerage firms in Malawi. There does not appear to be any regulation of conflicts of interest.

SECTION VI: THE RESPONSIBILITIES OF THE BOARD

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board’s accountability to the company and the shareholders.

Principle VIA: Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

Assessment: Partially Implemented

Malawi has a one tier board system. Board tenure is three years. The minimum number of directors for a listed company is three. The typical board size is seven members (see Annex 2).

“Duty of care” and “Duty of loyalty”. Fiduciary duties of directors are not present in the law, but are instead laid out in case law, following the English common law tradition. Case law in Malawi is non-existent, and emphasizes loyalty to the company (not to shareholders). As in the UK, there is no explicit “business judgment rule”.

The law also recognizes “shadow directors” – “A person, not being a duly appointed director of a company, on whose directions or instructions the duly appointed directors are accustomed to act shall be deemed to be a director for the purposes of all duties and liabilities (including liabilities for criminal penalties) imposed on directors by this Act” (CA §204 (4)).

Effective enforcement. In the event that shareholders feel that directors are not following their duties, a number of potential legal actions can be taken, including direct suits, class actions (if the interest of various shareholders are the same) and in

appropriate cases derivative suits if the complaint is about oppressive conduct (§203 CA). In practice, there are almost no suits against directors. Board members cannot directly or indirectly seek a policy for the company to indemnify them for any negligence (§163 CA).¹⁷

Because of awareness-raising by various bodies in Malawi (and moves taken by parent companies), directors are beginning to understand their duties and obligations, and are more aware of their fiduciary duties under the law.

Principle VIB: Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.

Assessment: Partially Implemented

Board “duty of loyalty” / duty to treat all shareholders fairly. The Code states that the board must ensure that the company complies with all relevant laws, regulations and codes of business practice, and that the board must adopt a code of conduct with respect to conflicts of interest for directors and management. However, the Code has no provision urging directors to exercise their powers objectively and independently and in the best interest of the company and all shareholders, not just in the sectional interest of controlling shareholders.

Principle VIC: The board should apply high ethical standards. It should take into account the interests of stakeholders.

Assessment: Partially Implemented

Development of company codes of ethics. The Companies Act is silent on ethical issues, including contributions to political parties or distributing gifts. The Code states that companies should implement a Code of Ethics, and contains a sample code of ethics. The Code of Ethics should:

- Commit the corporation to the highest standards of behaviour.
- Be developed in such a way as to involve all its stakeholders to infuse its culture.
- Receive total commitment from the board and chief executive officer of the corporation.
- Be sufficiently detailed as to give a clear guide to the expected behaviour of all employees.

Listed companies report that they have implemented codes of ethics in compliance with the Code.

Board and interests of stakeholders. The board must take stakeholder interests into account, e.g. employee demotions or redundancies. The board does not have to make any disclosures on how it takes stakeholder interest into account.

The Code notes that board duties extend somewhat beyond shareholders: “...the board must identify key risk areas and key performance indicators of the business enterprises in order for the enterprise to generate economic profit so as to enhance shareholder value in the long term. This should be conducted within the context of recognising wider societal interests and other circumstances affecting the circumstances in which the enterprise fulfils its licence to operate.”

Principle VID: The board should fulfill certain key functions, including:

Principle VID 1: Board oversight of general corporate strategy and major decisions

Assessment: Broadly Implemented

Central and strategic role played by boards. Boards of directors do appear to play a central and strategic role in most companies. Most listed company boards appear to generally play the role assigned to them by the OECD Principles, and previous awareness raising efforts, the Code, and the policies of the parents of many large and respected companies have played an important and useful role in improving the awareness and implementation of corporate governance.

There are two groups of companies where concerns were raised. First, because many companies are the Malawian subsidiaries of international firms, it can be unclear how much decision making is truly local. For example, at Standard Bank, many credit decisions are taken outside of Malawi, effectively reducing the board's influence. (It should be noted that these group issues are common in many countries, and international good practice does not provide much guidance).

Second, among the wider non-listed group of ‘public interest entities’ (particularly parastatals), board practice is less sophisticated and boards are weaker relative to other company bodies.

Principle VID 2: Monitoring effectiveness of company governance practices

Assessment: Not Implemented

Board oversight of legal compliance. The Code does not specify that the board must ensure that the company complies

¹⁷ See also the Judgment in CC No. 211 of 1999 Finance Bank Malawi Ltd.

with all relevant laws, regulations, and codes of business practice.

Board oversight of code compliance. The Code does not specifically give the board the responsibility of monitoring company compliance with the Code. The company secretary should be responsible for advising the chairman and the board on the implementation of the Code and should have direct access to the Chairman. The whole board should be responsible for ensuring that the secretary remains capable and any question of his/her removal from office should be handled by the whole board.

Board self-evaluation. The Code also states that "...the board should regularly assess its performance and effectiveness as a whole and that of individual directors, including the chief executive officer". However, most evidence suggests that very few companies have begun a formal process of board self-evaluation.

Principle VID 3: Selecting/compensating/monitoring/replacing key executives

Assessment: Fully Implemented

Board oversight of selecting and replacing key executives. Boards determine recruit, evaluate and determine remuneration for executives. The Companies Act gives clear power to the board to appoint all "attorneys" acting in the name of the company. The Code specifies that the board should appoint the chief executive, and that it should regularly review the strengths of senior managers as potential successors to the chief executive.

The Listing Rules mandate that the Articles of listed companies must contain a provision that the "appointment and remuneration" of executive directors must be "determined by a disinterested quorum of directors" (Listing Regulations 12.41f).

Principle VID 4: Aligning executive and board pay with long term company and shareholder interests

Assessment: Partially implemented

Develop and disclose remuneration policy. The Companies Act states that directors recommend board remuneration and the recommendation is put before the AGM for approval by shareholders.

The code recommends that director remuneration should be set by a remuneration committee of the board. The committee should be composed by a majority of non-executives. It also recommends that the committee establish a "formal and transparent procedure for developing policy" on executive remuneration. Remuneration should be "sufficient to attract and retain the quality and calibre of directors and staff needed to run the enterprise successfully while the make up should be so structured as to link corporate and individual performance." However, there does not appear to be a recommendation that the policy should be disclosed. Shareholders unhappy with board remuneration can replace board members or vote against remuneration.

Sitting fees range from 5000-20000 kwacha per meeting, in addition to quarterly honoraria that range from 5000 to 100000. At Press Corporation board fees can reach Kwacha 1 million per year.

Oversight by non-executives. The code recommends that director remuneration should be set by a remuneration committee of the board. The committee should be composed by a majority of non-executives.

Principle VID 5: Transparent board nomination/election process

Assessment: Partially implemented

Clear and transparent board nomination process. Appointments of board members are made by ordinary resolution (simple majority) of the shareholders meeting, on recommendation by the board, according to the Companies Act. Some of the listed companies have dedicated nomination committees. The Code recommends that whenever there is need to fill a casual vacancy or replace retiring directors on the board, a search and preliminary screening committee comprising appropriately skilled and experienced members of the Board should be responsible for identifying suitable persons and have the Board recommend them to the Annual General Meeting for appointment. However, the Code does not require that the process be formal or transparent. In general, company articles establish the board nomination and election process.

For banks and other financial institutions, final approval by Reserve Bank of Malawi is required.

Effective shareholder participation in board nomination process. There are no provisions for cumulative voting in the law, and it is not used in practice, but it is not expressly prohibited. The practice of giving significant shareholders board seats ("proportional representation") appears to be increasingly common. It is normal in listed companies for the major shareholders to be allocated a majority of board seats to appoint, and to give a board seat to other 10 percent shareholders.

Disclosure of nomination procedures. There appear to be no requirements for the disclosure of board nomination procedures in the Code.

Principle VID 6: Oversight of insider conflicts of interest, including misuse of company assets and abuse in RPTs

Assessment: Not Implemented

Board oversight of internal controls. The Code states that companies should have an effective internal audit function that

has the respect and co-operation of both the board of directors and management. The board should establish an Audit Committee with written terms of reference confirmed by the board. The majority of its members including its chairman should be non-executive directors. The Committee meetings should be attended by the head of internal audit, the external audit partner and the financial director. The head of internal audit and the external audit partner should have unrestricted access to the chairman of the audit committee. The head of internal audit and the external audit partners should bring all significant findings arising from audit activities to the attention of the audit committee and if necessary to the board.

In practice, most listed companies appear to have put in place relatively good-practice reporting lines for their internal audit functions.

Board oversight of related party transactions. Neither the Companies Act nor the Code specifies any requirements for board oversight of conflicts of interest, procedures for monitoring shareholder conflicts of interest, approval of related party transactions, or independent oversight of the process. Board conflict of interest rules apply if a director has a conflict of interest.

However, the Listings Requirements establish an extensive procedure related to the review and approval of related party transactions. Listed companies that propose to enter into related party transactions must consult with the MSE "Committee" (in practice, the MSE board). The MSE may then, "at its sole discretion", require the company to inform shareholders about the details of the transaction and obtain their approval (LR §10.1-10.5). The related party cannot vote.

Related parties include ten percent shareholders, directors, "shadow directors," advisors with beneficial ownership, executives, and their "associates". A variety of transactions are excluded from these rules, including share subscriptions, employee benefit schemes, and "credit to the related party in normal commercial terms in the ordinary course of business. Transactions smaller than five percent of market capitalization is also excluded, as are "transactions of "a revenue nature in the ordinary course of business."

If the MSE committee decides not to impose the shareholder approval requirement, the listed company must (prior to completing the transaction) (a) provide a "written confirmation from an independent professional expert acceptable to the Committee that the terms of the proposed transaction with the related party are fair and reasonable, and as far as the shareholders of the listed company are concerned; and (b) include details of the transaction in the listed company's next published annual financial statements.

The MSE may require the company to provide it with a declaration that, to the best of the knowledge and belief of the directors, any nominee shareholders do not include any person who may be acting in consent with any other person in relation to the related party transaction.

In 2006 the RBM issued a directive on *Transactions with Related Persons*.

- All transactions between a bank and its insiders and related persons must be on an arm's-length basis.
- The board must adopt (and ensure the implementation of) a written policy covering all related party transactions. The policy impose strict and binding limits on exposures to insiders, require insiders to recuse themselves from the decision-making process, and require that transactions with insiders and related persons be reported to the board on a regular basis.
- All related party transactions must be approved unanimously and in advance by the board, and interested directors must abstain from the board's consideration and decision process.

Principle VID 7: Oversight of accounting and financial reporting systems, including independent audit and control systems

Assessment: Partially Implemented

Board oversight of internal controls. According to the Companies Act directors are responsible for the year-end preparation of annual accounts. The Code goes further and says that Companies should have an effective internal audit function that has the respect and co-operation of both the board of directors and management. The highest level of business and professional ethics should be observed by the auditors and in particular the independence of the auditor must not be impaired in any way. The board should establish an Audit Committee with written terms of reference confirmed by the board. The majority of its members including its chairman should be non-executive directors. The Committee meetings should be attended by the head of internal audit, the external audit partner and the financial director. The head of internal audit and the external audit partner should have unrestricted access to the chairman of the audit committee. The head of internal audit and the external audit partners should bring all significant findings arising from audit activities to the attention of the audit committee and if necessary to the board.

Board oversight of external auditors. The Code also includes extensive guidelines on both the internal audit and control functions and the role of external auditors.

Internal compliance programs. The Code also requires that companies establish a Code of Ethics and that they monitor compliance.

Principle VID 8: Overseeing disclosure and communications processes

Assessment: Not Implemented

Board oversight of disclosure process. In general, the board is responsible for a number of aspects of disclosure, and is jointly and severally liable for the contents of the annual report.

Board responsibility for communications strategy. The corporate governance framework is somewhat ambiguous with regard to the relative roles of the board and management. The corporate governance framework does not require the board to oversee the disclosure of material information about the company, or take responsibility for the company's communications strategy with the shareholders.

Principle VIE: The board should be able to exercise objective independent judgment on corporate affairs.

Principle VIE 1: Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial and non-financial reporting, the review of related party transactions, nomination of board members and key executives, and board remuneration.

Assessment: Not Implemented

Director independence requirements. The Code has a weak formulation of independence. It recommends that boards should have at least "2 non-executive directors of sufficient caliber." Non-executive directors are defined as anyone who does not take part in day-to-day management or collect any benefits from the company other than their fee. Shareholders, former executives, and employees of the group or holding company are not excluded. The Code goes further and notes that "...the composition of the board should be planned with strategic considerations and objectives of the enterprise in mind. The selection process must be managed by considering the skills needed in order to add value to the processes of the board. The board should however be balanced as between executive and non-executive directors with the actual proportion depending on the circumstances and business of each enterprise."

This definition is relatively easy to implement (or perhaps circumvent). In practice, the average listed company has one executive director and six non-executives. But many listed companies have the practice of appointing executive directors from the parent / group. Of the six non-executives, an average of three are representatives of large shareholders or the group. This practice makes it difficult for the board to maintain its independence and to act against the interests of its parent shareholder.

Some market participants raised the concern that truly independent directors would be difficult to find in a small market like Malawi.

Separation of Chairman / CEO. The Code recommends that the Chairman should be independent and non-executive, and should "preferably" be separate from the CEO. If the CEO/ Chairman roles are combined, the Code goes further and notes that the non-executive directors have additional responsibilities, and that there should be more of them. Under the Code it is the responsibility of the chairman to ensure that all board members that do not contribute to the board are removed. Where the Chairman is required to exercise a casting vote, he should use it objectively. In practice, the position is separated in 8 of the 11 companies where information is available.

Company disclosure of independence. There do not appear to be any requirements to provide biographical sketches of the board members, or to clearly identify the non-executive or independent members. In practice, only 4 companies disclose the age of board members and their academic / professional qualifications, and three disclosed the length of service on the board.

Independent oversight of key board tasks including:

Financial Reporting. The Code requires the establishment of an audit committee, with a majority of non-executive members. The entire board (not the audit committee) has oversight over the internal audit function and risk management, must approve company's financial statements, and must certify their responsibility to prepare financial statements that show a true and fair view of the enterprise's state of affairs, b) the maintenance of adequate accounting records and an effective system of internal controls, c) the consistent use of appropriate accounting policies supported by reasonable and prudent judgments and estimates.

Related Party Transactions. The Listing Regulations contain extensive requirements related to the review and approval of related party transactions. However, the board plays little explicit role in these requirements (instead, significant decision-making power is given to the Board of the MSE). The Code requires the board to adopt or have a code of conduct covering conflict of interest for directors and management.

Board and executive nomination. The Code recommends that when there is a need to replace retiring directors, a search and preliminary screening committee comprising appropriately skilled and experienced members of the Board, should be responsible for identifying suitable persons and have the Board recommend them to the Annual General Meeting for appointment. There are no recommendations for involvement in executive nomination / search. In practice, there are no permanent appointment committees, but some companies do appoint them on an ad hoc basis.

Shareholders unhappy with a lack of independence over these key decisions can raise concerns at the shareholders meeting, vote against board members, and complain to the press and the MSE.

Principle VIE 2: Clear and transparent rules on board committees

Assessment: Partially Implemented

Requirements and experience with committees of the board. The Code notes that boards will “will find it useful” to establish board committees, and requires that all committees should have clear terms of reference. As a minimum, the board should establish remuneration, appointments and disciplinary issues, and an auditing and financial reporting committee. The Reserve Bank Audit Directive sets additional requirements.

All listed companies (10 companies where information is available) have audit committees, and all but one have remuneration committees. The committees are composed entirely of non-executives, and an average of three members each. Two companies also have risk management committees, three have investment committees, and three (banks) have credit committees.

Disclosure of mandate, composition, and working procedures of important committees. The Code also requires that the annual reports for listed firms include brief descriptions, relevant information about each board committee, including their composition and a description of their activities. In general, most companies do not provide extensive disclosures on the mandate or working procedures of the committees.

Principle VIE 3: Board commitment to responsibilities**Assessment: Partially Implemented**

Eligible directors must be individuals, and must not have been previously disqualified or be un-discharged bankrupts (CA §142). The majority of directors must be resident in Malawi. A competent director should be diligent in discharging his/her duties to the enterprise, endeavour to regularly attend meetings and be prepared and able where necessary, to express disagreement with colleagues on the board including the chairman and the chief executive.

In 2006 the RBM issued a directive on Directors and Managers Requirements that defined the ‘fit and proper’ requirements for the board members and executives of commercial banks. All banks are required to obtain written RBM approval for all changes. Board members and key executives can only serve on the board of one bank, must be eligible to serve (not declared insolvent or bankrupt, in default, convicted of financial crime, previously removed from office), must have the “reputation, competence, and expertise to conduct banking business” (have a background of good professional reputation and integrity, have appropriate education and skills, have a good employment history, and not been a board member or executive of a bank which has had significant problems in the past, has time to be a board member, and is not a member of Cabinet or Parliament or a government employee, or an office-holder in a political party), and be able to comply with key provisions of the Banking Act (not broken the law in the past, failed to supply information, provided false or misleading information, or any evidence that the person’s service would not be in the interest of the national economy, the public, or the depositors or creditors of the licensed institution).

Company disclosure of board member activity. There are no requirements to disclose board member activity. The Companies Act is silent on board meeting requirements. The Code recommends that boards meet “regularly”. The specific board meeting frequency is left up to each board, but it is recommended that a board should meet at least once a quarter. Individual directors on the board should devote sufficient time to their responsibilities. For large and listed companies and financial institutions the practice is quarterly meetings.

The Code does not restrict the attendance on other boards. “Executive directors should be encouraged by their companies to take non-executive appointments in other enterprises. However the number of non-executive appointments should not be such that the directors’ executive responsibilities to their own enterprise are adversely impacted.

Requirements for initial and on-going training. The Code notes the importance of director training, and requires that directors must “acquire a broad knowledge of the business of the enterprise” and “the statutory and regulatory requirements affecting the direction of the enterprise”. It recommends that directors receive formal training on their role, duties, responsibilities, and obligations, as well as initiation training. It also recommends that directors should renew their training at least once every three years.

Following the drafting of the Code of Corporate Governance, an Institute of Directors was set up in 2001. The Malawi Institute of Directors (IoDM) was formally established in September 2004. SOCAM played a key role in forming the Institute and currently acts as its Secretariat. Like many similar organizations in emerging market countries, the IOD has had difficulty becoming financially sustainable, and remains closely linked (and in the minds of many observers, indistinguishable) from SOCAM.

SOCAM / IODM have carried out a variety of director training programs, with both private and public-sector organizations. Programs have conducted a number of workshops to build awareness, and training programs for Directors. Some programs have been delivered on a company-specific basis. SOCAM has conducted training with several state-owned enterprises (Escom, National Roads Authority, and the five principal Water Boards) in corporate governance and issues pertaining to the development of both the Public Procurement Act and Public Finance Management Act. In 2007, 2 core trainings were delivered.

The African Institute of Corporate Citizenship has also conducted corporate governance training of the Board of Governors of the Reserve Bank of Malawi, which included the CEO’s of the main commercial banks operating in the country, and Press Corporation Ltd.

Principle VIF: In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.

Assessment: *Broadly Implemented*

Board access to information. The Code recommends that all companies should employ a “competent and qualified” Company Secretary (or contract an experienced professional advisor offering similar services). The company secretary should be responsible for advising the chairman and the board on the implementation of the Code and should have direct access to the Chairman. The whole board should be responsible for ensuring that the secretary remains capable and any question of his/her removal from office should be handled by the whole board. Whenever possible the role of a Chief Executive and Company Secretary should be separated.

Free access to qualified advisors. All directors should have access to the advice and services of the Company Secretary and be entitled to seek independent professional advice about the affairs of the enterprise at its expense. There were no reports of non-compliance with this recommendation. Given that most directors are insiders (agents of the controlling shareholders) this does not appear to be a problem in practice.

Companies do not have to disclose if the board has received timely and free qualified advice regarding their duties of loyalty and care.

Annex 1: Market Capitalization and Ownership of Domestic Listed Companies

Year end-2006, Billions of Kwacha

	Market Cap	Market Cap % of Total	Trading Volume	Volume % of Total	Four Largest Shareholders	
ILLOVO	55.6	45.2%	745.7	1.2%	Sucoma Holdings Ltd	75.98%
					Old Mutual Life MW	10.09%
					First Merchant Bank Ltd	1.93%
					Press Trust	1.63%
NBM	24.4	19.8%	1,675.9	2.6%	Press Corporation Ltd (PCL)	51.80%
					Old Mutual Life MW	25.00%
					NICO Life Pension Fund	5.98%
					National Bank Pension	3.00%
PCL	19.3	15.7%	11,007.5	17.1%	Press Trust	48.51%
					Old Mutual Life MW	18.01%
					Deutsche Bank Trust Co	16.69%
					First Merchant Bank	3.68%
FMB	10.9	8.8%	21,644.3	33.5%	Zambezi Investments Ltd	44.94%
					Simsbury Holdings Ltd	22.47%
					Prime Bank Ltd	11.24%
					Prime Capital and Credit Ltd	11.24%
STANBIC	8.8	7.1%	103.7	0.2%	Stanbic Africa Holdings	60.17%
					NICO	12.50%
					Associated Pension Trust	3.83%
					Old Mutual Life MW	3.77%
NICO	8.3	6.8%	6,623.1	10.3%	Africap	27.32%
					IFC	26.03%
					Santam Ltd	25.09%
					Millenium Holdings	11.12%
SUNBIRD	1.7	1.4%	100.0	0.2%	MDC Ltd	68.96%
					Noel Hayes	16.04%
					Definco Ltd	8.00%
					Amanda Castle	2.30%
NITL	1.4	1.1%	615.7	1.0%	First Merchant Bank	7.07%
					Press Trust	3.55%
					Sucoma Non Contribty Pensn	3.50%
					First Merchant Pension Fund	2.40%
BHC					NICO	34.9%
					Africap LLC	32.2%
					Press Trust	26.5%
PIM					Transmar (Isle of Man) Ltd	60.0%
					Old Mutual	17.62%
					Press Trust	3.57%
					Indetrust	3.01%
NBS	<i>Listed June 2007</i>				NICO	60.0%
					NITL	10.0%

Annex 2: Disclosure Practices of Listed Companies

Based on Review of 2006 Annual Reports

	ILLOVO	NBM	PCL	FMB	SB
CONTROLLING SHAREHOLDER	Illovo SA	PCL	Press Trust	Zambezi	Standard
I-BOARD COMPOSITION, ROLES, AND RESPONSIBILITIES					
Number of Board members, of which:	9	7	7	8	7
Executive directors	2	0	2	3	1
Non-executive directors	3	2	1	2	3
Non-executive "group" directors	4	5	4	3	3
Is Chairman the same as the CEO?	Group	No	No	No	
Age of board members disclosed? (average)	Yes (47)	Yes (55)	Yes (54)		
Academic / professional qualifications?	Yes	Yes	Yes		
Length of service on board (average)	Yes (3.5)		Yes (7)		
Full time position	Yes		Yes		
Other board disclosures?					
Frequency of Board Meetings (per year)	4	6		3	
Is there a company secretary	Yes	Yes	Yes	Yes	Yes
II-BOARD COMMITTEES					
Audit Committee	Yes	Yes	Yes	Yes	Yes
Size	3	3	3	2	n/a
Composition	All NE	All NE	All NE	All NE	n/a
Remuneration	Yes	Yes	Yes	Yes	Yes
Size	H2	3	2	3	Yes
Composition	All NE	All NE	All NE	All NE	n/a
Appointments	No	No	No	No	
Size					
Composition					
Other Committees (total members / non-executive members)	Risk (4/3)	Credit (3/3)		Credit (3/2)	Credit Risk
Other notes on board committees	Chair is on committees				1
III-BOARD REMUNERATION/TRAINING					
Is board remuneration disclosed	Yes	Yes (aggregate)	Yes	Yes	Yes
Is there a board remuneration policy	No	No	No	No	?
Is there information on board training	No	No	No	No	No
If so, what types of training					
IV-DISCLOSURE AND TRANSPARENCY					
Is there a Director's Report	Yes	Yes	Yes	Yes	Yes
If so, it is substantive?	Yes	Brief	Yes	Somewhat	Somewhat
Compliance with CG code?	Yes	Yes	Yes	Yes	No
Which Code (K=K, C=Cadbury)?	K	K+C	n/a	K+C	n/a
Is statement substantive	Yes	No	No	Yes	
Any details of non-compliance?	No	No	No	No	
Other Codes?	Yes	Yes	Yes	Yes	No
Is there a company website?	Group	Yes	Yes	No	Group
Annual report "clear, easy to understand"?	Yes	Yes	Yes	No	No
Does the annual report state that:					
Shows "true and fair view"?	Yes	Yes	Yes	Yes	Yes
Company maintained adequate controls?	Yes	Yes	Yes	Yes	Yes
IFRS Adherence	Yes	Yes	Yes	Yes	Yes

Annex 2: Disclosure Practices of Listed Companies

Based on Review of 2006 Annual Reports

	ILLOVO	NBM	PCL	FMB	SB
Company will be going concern?	Yes	Yes	Yes	Yes	Yes
Disclosure of ownership?	Yes	Yes	Yes	No	No
Level	1%	1%			
Beneficial ownership clear for all owners?	No	Yes	Yes	No	No
Disclosure of related party transactions?	es	Yes	Yes,	Yes	Yes
Any indication of board evaluation?	No	No	No	No	No

**Annex 2:
Disclosure Practices of Listed Companies
Based on Review of 2006 Annual Reports**

	NICO	BHL	SUNBIRD	NITL	PIM	Average
CONTROLLING INSTITUTION	Unclear	NICO	MDC	None	Unclear	
I-BOARD COMPOSITION, ROLES, AND RESPONSIBILITIES						
Number of Board members, of which:	6	8	5	8	7	7
Executive directors	2	ND	0	0	1	1.2
Non-executive directors	4	ND	2	8	6	3.4
Non-executive "group" directors	0	ND	3	0	Unknown	2.8
Is Chairman the same as the CEO?	No	No	No	No	No	10
Age disclosed? (average)				Yes (46)	Yes (47)	5
Academic / professional qualifications?				Yes	Yes	5
Length of service on board (average)				Yes	No	3
Full time position				Yes		
Other board disclosures?	Affiliation			Industry position		
Frequency of Board Meetings (per year)	4			4	4	4
Is there a company secretary	Yes	?		No	Yes	?
II-BOARD COMMITTEES						
Audit Committee	Yes	?	Yes	Yes	Yes	9
Size	3	?	3	2	3	3
Composition	All NE	?	All NE	All NE	All NE	9 all NE
Remuneration	Yes	?	Yes	Yes	No (audit)	8
Size	n/a	?	3	3		3
Composition	All NE	?	All NE	All NE		7
Appointments	No	?	No	No	No	0
Size		?				
YesComposition		?				
Other Committees (identify)	Investment, 4 members, 2 non-exec.	?		Investment	No	Investment (3) Risk Mgt (2), Credit (3)
III-BOARD REMUNERATION/TRAINING						
Is board remuneration disclosed	Yes	No	Yes	Yes	Yes	Yes
Is there a board remuneration policy	?	No	?	Yes	Yes	Yes
Is there information on board training	No	No	No	No	No	No
If so, what types of training						
IV-DISCLOSURE AND TRANSPARENCY						
Is there a Director's Report	Yes	Brief	Yes	Yes	Yes	10
If so, it is substantive?	Scattered	No	Somewhat	Yes	Somewhat	3
Compliance with CG code?	Yes	No	Yes	Yes	Yes	8
Which Code?	K	n/a	K+C	n/a	K	
Is statement substantive	No	No	No	No	Somewhat	0
Any details of non-compliance?	No	No	No	No	No	0
Compliance with other codes (ethics etc.)?	No	No	No	No	Conduct	7
Is there a company website?	Yes	No	Yes	Yes	No	5
Annual report "clear, easy to understand"?	Yes	No	No	Yes	Yes	6
Does the annual report state that:						
Show "true and fair view"?	Yes	Yes	No	Yes	Yes	9
Company maintained adequate controls?	Yes	No	No	Yes	Yes	8
IFRS Adherence	Yes	Yes	No	Yes	Yes	9
Company will be going concern?	Yes	No	Not clear	Yes	Yes	9
Disclosure of ownership?	Yes	Yes	Yes	No	Yes	7
Level	1%	5%	No mention	Anonymous	1%	
Ultimate ownership clear for all owners?	No	Yes	No	No	No	3
Disclosure of related party transactions?	Yes	Yes	Yes	Yes	Yes	10
Any indication of board evaluation?	No	No	No	No	No	0

Notes:

NE = Non-executive

ND = Not disclosed

Malawi Terms/Acronyms

ACCA: Association of Chartered Certified Accountants	NBM: National Bank of Malawi
AGM: Annual General Meeting	OECD: Organization for Economic Cooperation and Development
CA: Companies Act	Pre-emptive rights: Pre-emptive rights give existing shareholders a chance to purchase shares of a new issue before it is offered to others. These rights protect shareholders from dilution of value and control when new shares are issued.
Cumulative voting: Cumulative voting allows minority shareholders to cast all their votes for one candidate. Suppose that a publicly traded company has two shareholders, one holding 80 percent of the votes and another with 20 percent. Five directors need to be elected. Without a cumulative voting rule, each shareholder must vote separately for each director. The majority shareholder will get all five seats, as s/he will always outvote the minority shareholder by 80:20. Cumulative voting would allow the minority shareholder to cast all his/her votes (five times 20 percent) for one board member, thereby allowing his/her chosen candidate to win that seat.	Proportional representation: Proportional representation gives shareholders with a certain fixed percentage of shares the right to appoint a board member.
CGTF: Corporate Governance Task Force	PAEC: Public Accountants Examination Council
CMDA: Capital Markets Development Act	PCL: Press Corporation Limited
DSC: Department of Statutory Corporations	PS: Permanent Secretary
ECSAFA: Eastern Central and Southern African Federation of Accountants	RBM: Reserve Bank of Malawi
EGM: Exceptional General Meeting	RPT: Related party transaction.
GAAP: Generally Accepted Accounting Principles	Shareholder agreement: An agreement between shareholders on the administration of the company, shareholder agreements typically cover rights of first refusal and other restrictions on share transfers, approval of related-party transactions, and director nominations.
GDP: Gross Domestic Product	SADC: Southern African Development Community
HIPC: Heavily Indebted Poor Countries	SOCAM: Society of Accountants in Malawi
IAS: International Accounting Standard	SOE: State owned enterprise
IASB: International Accounting Standards Board	SRO: Self Regulatory Organization
IFAC: International Federation of Accountants	Squeeze-out right: The squeeze-out right (sometimes called a "freeze-out") is the right of a majority shareholder in a company to compel the minority shareholders to sell their shares to him. The sell-out right is the mirror image of the squeeze-out right: a minority shareholder may compel the majority shareholder to purchase his shares.
IFRS: International Financial Reporting Standards	Withdrawal rights: Withdrawal rights (referred to in some jurisdictions as the "oppressed minority," "appraisal" or "buy-out" remedy) give shareholders the right to have the company buy their shares upon the occurrence of certain fundamental changes in the company.
IOSCO: International Organization of Securities Commissions	
IoDM: Malawi Institute of Directors	
ISA: International Standards on Auditing	
JSC: Joint Stock Company	
LR: Listing Rules	
MAB: Malawi Accountants Board	
MCCI: Malawi Confederation of the Chambers of Commerce and Industry	
MGDS: Malawi Growth and Development Strategy	
MOF: Ministry of Finance	
MSE: Malawi Stock Exchange	

This report is one in a series of corporate governance country assessments carried out under the Reports on the Observance of Standards and Codes (ROSC) program. The corporate governance ROSC assessments examine the legal and regulatory framework, enforcement activities, and private sector business practices and compliance, and benchmark the practices and compliance of listed firms against the OECD Principles of Corporate Governance.

The assessments:

- use a consistent methodology for assessing national corporate governance practices
- provide a benchmark by which countries can evaluate themselves and gauge progress in corporate governance reforms
- strengthen the ownership of reform in the assessed countries by promoting productive interaction among issuers, investors, regulators and public decision makers
- provide the basis for a policy dialogue which will result in the implementation of policy recommendations

To see the complete list of published ROSCs, please visit
http://www.worldbank.org/ifa/rosc_cg.html

To learn more about corporate governance, please visit the IFC/World Bank's corporate governance resource
Web page at: <http://www.worldbank.org/corporategovernance>