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**MALAWI**



## SECTION 1: COUNTRY OVERVIEW

### 1.1 GENERAL INFORMATION

<b>Capital:</b>	Lilongwe
<b>Population:</b>	18.63 million
<b>Currency of government (official) fees:</b>	Malawian Kwacha (MWK)
<b>Language for filing IP applications:</b>	English
<b>GDP per capita:</b>	652.294 (est. in 2020)
<b>Human Development Index:</b>	0.373 (est. in 2020)
<b>Main exports:</b>	tobacco, tea, tree nuts, raw beet, cane sugar, and unroasted coffee
<b>Main imports:</b>	oil, coal, consumer goods and fertilizers

### 1.2. INTERNATIONAL IP AGREEMENTS AND CONVENTIONS

Malawi is a contracting state to the following international legal instruments:

- Berne Convention
- Locarno Agreement on Classification of Designs
- Nice Agreement on Classification of Marks
- Madrid agreement
- Marrakesh VIP Treaty
- Paris Convention
- Patent Cooperation Treaty
- Strasbourg Agreement on Patent Classification
- WIPO<sup>1</sup> Convention
- WTO/TRIPS<sup>2</sup>

1 WIPO: World Intellectual Property Organization.  
2 TRIPS Agreement: Agreement on Trade-Related Aspects of intellectual Property Rights the World Trade Organization (WTO).

### 1.3. REGIONAL LEGAL INSTRUMENTS

Malawi is a contracting state to the following regional legal instruments:

- African Continental Free Trade Area (AfCFTA) Agreement
- ARIPO<sup>3</sup> Agreements: Lusaka Agreement, Banjul Protocol on Trade marks and Harare Protocol, on patents, utility models and industrial designs
- Declaration and Treaty of SADC<sup>4</sup> (also referred to as the SADC Treaty)
- COMESA<sup>5</sup>

### 1.4. OVERVIEW OF REGIONAL AGREEMENTS

- AfCFTA Agreement (Agreement Establishing the African Continental Free Trade Area)

Malawi has signed and ratified the Agreement. The Agreement is available here: <https://au.int/en/treaties/agreement-establishing-african-continental-free-trade-area>. It contains a Protocol on Intellectual Property Rights (IPR) which aims at the effective protection and promotion of IPR in Africa and may, therefore, have legal implications for Malawi when it enters into force.

- ARIPO Agreements

Malawi is a signatory of the Lusaka Agreement on the Creation of the African Regional Intellectual Property Organization (ARIPO). It is also a contracting party to the Banjul and Harare Protocols that are administered by ARIPO.

- COMESA (Common Market for Eastern and Southern Africa)

Malawi is a member of COMESA.

- It has a COMESA Policy on Intellectual Property Rights. The purpose of the Policy is to promote the use of IP rights by COMESA member states so that they can shift from resource-based economies to knowledge-based and innovation-driven economies. COMESA has no regional IP agreements, protocols or registration systems in place.

- SADC (the Southern African Development Community)

3 ARIPO: The African Regional Intellectual Property Organization  
4 SADC: Southern African Development Community  
5 COMESA: The Common Market for Eastern and Southern Africa

Malawi is a member of SADC.

- SADC's headquarters are in Gaborone, Malawi.
- SADC has no regional IP agreements, protocols or registration systems in place.
- It has the SADC Industrialization Strategy and Roadmap (2015-2063) which includes a focus on promoting the use and enforcement of IP rights to encourage research and development and innovation amongst SADC countries. More information about SADC is available at <https://www.sadc.int/about-sadc/>.

### 1.5 AVAILABLE IP PROTECTION

The following IP protection is available in Malawi:

- 1) trade marks: national, regional (ARIPO) and international (Madrid)
- 2) patents: national and regional (ARIPO)
- 3) utility models: national and regional (ARIPO);
- 4) industrial designs: national and regional (ARIPO)
- 5) copyright and Related Rights: national

### 1.6 IP PROTECTION NOT AVAILABLE:

- 1) geographical Indications;
- 2) layout designs of integrated circuits;
- 3) plant variety protection
- 4) traditional knowledge

### 1.7. AVAILABLE IP PROTECTION ROUTES

IP protection in Malawi is available through three routes: national, regional and international.

#### 1.7.1. National

The five types of IP mentioned above can be protected directly in Malawi Department of the Registrar General Ministry of Justice and Constitutional Affairs.

#### 1.7.2. Regional



The ARIPO regional route can be used in Malawi for:

- 1) the registration of trade marks under the Banjul Protocol on Marks;
- 2) the grant of patents and registration of utility models and industrial designs under the Harare Protocol on Patents and Industrial Designs.

#### Trade marks

Malawi is a signatory of the Banjul Protocol which means it can be designated for the purpose of registering trade marks using the ARIPO trade mark system.

Member states carry out a substantive examination of applications after which ARIPO registers the trade marks on behalf of its member states and subsequently administers the registrations in accordance with the Banjul Protocol. [ARIPO member states](#) are free to join any of ARIPO's protocols. Not all ARIPO member states are signatories of the Banjul Protocol. Consequently, non-members cannot be designated in an ARIPO trade mark application or in a subsequent designation application. A list of current states that have joined the Banjul Protocol can be found [here](#).

Filing requirements, the registration process and payable fees can be seen on [ARIPO's trade mark web page](#).

Once registered, an ARIPO IP registration becomes a 'bundle of national rights' that have the same legal effect as directly registered national rights and which the rights holder will need to enforce according to the national laws of each designated state. ARIPO IP rights therefore co-exist with, rather than displace, the national IP systems.

#### Advantages of the ARIPO trade mark system

The ARIPO system allows an applicant to file a single application that designates one or more Banjul Protocol member states for the registration of trade mark rights that will be enforceable in multiple states that are members of the system. In this regard, the ARIPO trade mark system is similar to the [Madrid System](#) for the international registration of marks except that the ARIPO system covers a limited geographical area in Africa, and a few other differences.

When it is used to facilitate multiple state designations, the ARIPO trade mark system aims to reduce costs and to simplify the process of trade mark registration on a regional basis through

ARIPO, thus encouraging investment in IP rights.

When only one member state is designated, the ARIPO trade mark system has a complementary role to the national trade mark registration system and provides brand holders with an alternative registration system for the registration of trade marks.

Another advantage of the ARIPO trade mark system is that, if a trade mark is rejected by one or more of its member states, it can still proceed to registration in the remaining states that were originally designated in the application. In this regard, the ARIPO system differs from the Madrid system. The 'central attack' feature of the Madrid system means that an international registration may be defeated for all the countries in which it is protected, by means of a single invalidation or revocation action against the basic registration. This feature does exist in the ARIPO trade mark system.

A further advantage of the ARIPO trade mark system is that a trade mark application or registration can be extended to other Banjul Protocol contracting states, although not to the other ARIPO member states that have not joined the Protocol. For an extension, the rights holder must file an application using Form M3 – which can be downloaded from ARIPO's [e-service platform](#) – to designate additional state(s).

The application is processed in the same way as any other ARIPO trade mark application, namely, ARIPO receives the application, examines it for compliance with formal requirements and if there are no objections, transmits the application to the state(s) in relation to which the subsequent designation applies, for them to carry out the substantive examination of the application within 9 months from the transmittal date. The period of protection under the subsequent designation expires on the same date as the earlier registration.

#### Disadvantages of the ARIPO trade mark system

Despite its advantages, brand holders have major concerns about the ARIPO trade mark system.

These concerns include:

- a poor opposition procedure which derives from the fact that oppositions are dealt with in a decentralised manner in individual states with different and non-harmonised national laws. This makes it expensive for brand holders and undermines the efficiencies of a centralised system for trade mark registration through a single application.

ARIPO has attempted to lessen the impact of this weakness by providing a centralised system for the filing and transmittal of opposition documents. Opponents can now file them directly instead of having to file them in each state to which the opposition relates, as was previously the case. ARIPO currently does not charge a fee for its filing and transmittal services as a way of facilitating the administration for the users of the ARIPO trade mark system.

- the limited number of contracting parties. The admission of The Gambia as the 12th and latest Banjul Protocol state with effect from 3 August 2021 was a positive step for the ARIPO trade mark system. However, a system that has only 12 out of 20 [ARIPO's current member states](#) may be of concern to brand owners who want the convenience

of designating a large and diverse number of countries in one trade mark application. Considering that the majority of users of the ARIPO trade mark system are from Europe and non-African countries, the system suffers heavily from the competition of the Madrid System. Statistics for 2014-2019 can be found in the [ARIPO Annual Reports](#).

The concern about the less-than-optimal level of integration of the Banjul Protocol by member states into their national laws applies equally to the extent of integration of the Madrid Protocol in most low-income countries (LICs), a significant number of which are in Africa. This factor is therefore unlikely to be a key distinguishing feature of the ARIPO and Madrid systems for brand holders.

Tips for effective use of the ARIPO trade mark system

- Compare costs with other registration systems (national and Madrid), if available for the states that you want. The ARIPO system tends to be cheaper than national routes if you intend to designate several countries. It will also be a cheaper option in comparison to countries that operate a single-class registration system. For example, an ARIPO application designating one state in 10 classes will have an application fee of USD 220 in ARIPO, as follows:

Basis	Amount (USD)
Application and 1st designated class fee	80
Designation fees – one single class state	50
Additional class fees @USD 10 per class x 9 (of the 10 classes included in the application), assuming the application does not attract surcharges for additional words of the specifications, payable at USD 5 per word from the 51st word.	90
Total application fees payable	220

- These costs may be lower than the fees that you would pay under a national registration system which, apart from being more expensive, would not offer the advantage of extending trade mark rights to other Banjul Protocol states to give your brand wider protection in the ARIPO region.
- Reduce the list of goods/services. ARIPO's surcharge of USD 5 per word can mean a significant cost for long specifications. Aim to designate only the goods/services that you genuinely need.
- Be strategic with your state designations. The ARIPO trade mark system is flexible enough to allow you to be strategic. You do not have to designate all the Banjul Protocol states in an application. You can leave out some or you can create your own 'sub-designations' to suit your business needs. For example, if you need to focus on Southern African Banjul Protocol states but you are not sure about others, you can categorise the designations as you wish and then file the applications in stages. Also, if you think that your trade mark will be opposed in many states, you can file one 'test' application and then apply for subsequent designations to avoid having to deal with multiple oppositions at once, which will probably be the case if you designate all the states in one application. Develop the strategy by establishing which states operate a 'first to file' and a 'first to use' system so that you do not jeopardise your rights. You can also 'mix and match' system use approaches, for instance by carrying out national IP office searches in the states that you wish to designate in your ARIPO application. These searches will help to avoid objections during the substantive examination phase of your ARIPO application which is carried out by the designated states under their national laws. ARIPO examines for formalities only and transmits the application to the designated member states for substantive examination.
- Invest in quality legal expertise. The ARIPO trade mark system has its faults, but it also offers significant advantages to brand holders. You will need an experienced professional to advise you on how to use the ARIPO system to your brand's best advantage.

#### Patents, utility models and industrial designs

Malawi is a signatory of the Harare Protocol under which ARIPO grants patents and registers utility models and industrial designs on behalf of those of its member states that are contracting parties to the Harare Protocol. More information about ARIPO's processes and applicable fees is available here for [patents](#), [utility models](#) and [industrial designs](#). A list of current ARIPO member states that have joined the Harare Protocol is available [here](#).

Compared to the trade mark system, the Harare Protocol system works well and is the most heavily utilised of ARIPO's IP registration protocols; the statistics can be seen in [ARIPO's Annual Reports](#). You can also obtain statistics and other related information about searches conducted through [ARIPO's e-service platform](#) or from the [Regional IP database](#).

Information that you may need about the relevance of the ARIPO system to your IP protection strategy in Malawi

#### Patent filings

- ARIPO is a member of the Patent Cooperation Treaty (PCT); over 75 % of its applications are PCT-based.
- Malawi receives most of its patent applications through its designation under the ARIPO region in PCT applications. In 2019, the Malawi national IP office received 0 patent applications compared to 506 ARIPO PCT-based applications and, in 2018, 3 patent applications compared to 458 ARIPO PCT-based applications. The pattern is similar for most ARIPO member states. See the ARIPO Annual Report 2019 available [here](#).

#### Substantive examination of patents and utility models

- ARIPO offers technical support to its member states, including Malawi, to carry out the substantive examination of patents and utility models.

#### Searches

- You can carry out free online simple and advanced searches for trade marks, patents, utility models and industrial designs from the [ARIPO e-service platform](#), even if you are not registered for e-services.
- Go to the ARIPO homepage, then to the e-service platform and select the IP Digital Library. From the ARIPO homepage, select Regional IP Database and choose the IP title. You can then choose from patents, trade marks and designs and the country in which you want to search. This will then take you to the landing page for searches.

You can also access the Regional IP Database through this [link](#).

#### 1.7.3. International



- The WIPO international route can be used for Malawi for two IP rights:

- 1) the registration of trade marks under the Madrid System;
- 2) the filing and processing of patents in accordance with the Patent Corporation Treaty (PCT).

#### Trade marks: Madrid System

- Malawi is a signatory of the Madrid Protocol, which means it can be designated for the purpose of registering trade marks under the Madrid trade mark system.
- The Madrid system makes it possible for a brand owner to designate a country in an international application to secure trade mark protection in that country. Brand owners can also extend their trade mark protection to other countries that are members of the Madrid Protocol.
- A brand owner can file one application and pay a single fee to obtain the registration of a trade mark in many other countries that are members of the Madrid System. Information about the Madrid trade mark system is available through these links: [General information](#) and [How to file](#).

#### Patents: PCT

- The PCT makes it possible to seek patent protection for an invention simultaneously in many countries by filing a single international patent application instead of filing several separate national or regional patent applications. More information about the PCT is available through this [link](#).
- Malawi is a contracting party to the PCT and is also a member state of ARIPO which, as a region, is also a contracting party to the PCT. As a result, Malawi can be designated in a PCT application as a country or under the designation of ARIPO as a regional block.

#### 1.7.4 National/Regional/International:

How do I choose a route?

- The choice will depend mainly on the nature of the IP right(s) involved. Professional advice may be necessary to establish the most suitable protection route for your IP right(s).
- The questions below may provide a general guide.

#### 1.7.5. When would I use the national route?

- When the national route is the only available route for the protection of the IP right in question. Some IP rights – geographical indications, for example – can only be protected under national law because protection is not available under regional and international systems.
- When IP protection is required in one country only it may not be necessary to use regional or international routes.

- When used in response to specific national law provisions. ARIPO confers IP protection as a 'bundle of rights' which an IP holder must enforce in each designated state, based on the laws of that state. Some IP rights – pharmaceutical patents, for example – are not readily accepted in all ARIPO member states. In this case, a patent holder may choose the national route in the state where the right is likely to be contested to avoid a conversion from a regional into a national application, and then use the regional route for the remaining potentially unproblematic states.
- When the national route provides special advantages. Examples include:
  - Preferential substantive examination timeframe: it takes an average of 18 months for a patent filed through a national IP office to complete substantive examination compared to an average of 36 months if a patent application is filed directly with ARIPO.
  - Exemption from substantive examination fees and surcharges: patent applications submitted through national IP offices are currently exempt from the substantive examination fees and surcharges for excess claims and pages that are payable in all other applications. However, this is being reviewed by ARIPO and is likely to change.

#### 1.7.6. When would I use the regional (ARIPO) route?

This route is currently available for trade marks, patents, utility models and industrial designs only.

It is advisable to use the ARIPO regional route when:

- IP protection is required in multiple ARIPO states. In this case, a single application for the registration of an IP right using the regional system may be more efficient and cost-effective than applying for registration in two or more countries.
- the regional route offers more technical capacity. For example, ARIPO has more capacity to substantively examine patents, especially those with a complicated subject matter.

#### 1.7.7. When would I use the international route?

You should use this route if you want IP protection that covers Malawi for international trade marks under the Madrid System and patent filings under the PCT.

#### Trade marks and industrial designs

In general, it is advisable to use the international route when:

- you want a wider coverage of IP protection than that available under the national and regional routes. The international route can be used to secure and extend protection to multiple countries and continents. Malawi's national and regional IP protection routes are limited to Malawi and to the ARIPO region only and not all ARIPO member states can be designated in trade mark and industrial design applications. Therefore, use of the Madrid System will give more coverage for the protection of your trade marks and designs.

## Patents

- In addition to the reasons listed above, you may choose the PCT route because it offers a streamlined multi-country patent filing service that is not available under national and regional patent routes. more information about the PCT's services is available [here](#).

## Trade marks

Malawi is a signatory of the Banjul Protocol which means it can be designated for the purpose of registering trade marks using the ARIPO trade mark system.

Member states carry out a substantive examination of applications after which ARIPO registers the trade marks on behalf of its member states and subsequently administers the registrations in accordance with the Banjul Protocol. [ARIPO member states](#) are free to join any of ARIPO's protocols. Not all ARIPO member states are signatories of the Banjul Protocol. Consequently, non-members cannot be designated in an ARIPO trade mark application or in a subsequent designation application. A list of current states that have joined the Banjul Protocol can be found [here](#). Filing requirements, the registration process and payable fees can be seen on [ARIPO's trade mark web page](#).

Once registered, an ARIPO IP registration becomes a 'bundle of national rights' that have the same legal effect as directly registered national rights and which the rights holder will need to enforce according to the national laws of each designated state. ARIPO IP rights therefore co-exist with, rather than displace, the national IP systems.

### Advantages of the ARIPO trade mark system

The ARIPO system allows an applicant to file a single application that designates one or more Banjul Protocol member states for the registration of trade mark rights that will be enforceable in multiple states that are members of the system. In this regard, the ARIPO trade mark system is similar to the [Madrid System for the international registration](#) of marks except that the ARIPO system covers a limited geographical area in Africa, and a few other differences.

When it is used to facilitate multiple state designations, the ARIPO trade mark system aims to reduce costs and to simplify the process of trade mark registration on a regional basis through ARIPO, thus encouraging investment in IP rights.

When only one member state is designated, the ARIPO trade mark system has a complementary role to the national trade mark registration system and provides brand holders with an alternative registration system for the registration of trade marks.

Another advantage of the ARIPO trade mark system is that, if a trade mark is rejected by one or more of its member states, it can still proceed to registration in the remaining states that were originally designated in the application. In this regard, the ARIPO system differs from the Madrid system. The 'central attack' feature of the Madrid system means that an international registration may be defeated for all the countries in which it is protected, by means of a single invalidation or revocation action against the basic registration. This feature does exist in the ARIPO trade mark system.

A further advantage of the ARIPO trade mark system is that a trade mark application or registration can be extended to other Banjul Protocol contracting states, although not to the other ARIPO member states that have not joined the Protocol. For an extension, the rights holder must file an application using Form M3 – which can be downloaded from [ARIPO's e-service platform](#) – to designate additional state(s).

The application is processed in the same way as any other ARIPO trade mark application, namely, ARIPO receives the application, examines it for compliance with formal requirements and if there are no objections, transmits the application to the state(s) in relation to which the subsequent designation applies, for them to carry out the substantive examination of the application within 9 months from the transmittal date. The period of protection under the subsequent designation expires on the same date as the earlier registration.

### Disadvantages of the ARIPO trade mark system

Despite its advantages, brand holders have major concerns about the ARIPO trade mark system. These concerns include:

- a poor opposition procedure which derives from the fact that oppositions are dealt with in a decentralised manner in individual states with different and non-harmonised national laws. This makes it expensive for brand holders and undermines the efficiencies of a centralised system for trade mark registration through a single application.

ARIPO has attempted to lessen the impact of this weakness by providing a centralised system for the filing and transmittal of opposition documents. Opponents can now file them directly instead of having to file them in each state to which the opposition relates, as was previously the case. ARIPO currently does not charge a fee for its filing and transmittal services as a way of facilitating the administration for the users of the ARIPO trade mark system.

- the limited number of contracting parties. The adhesion of The Gambia as the 12th and latest Banjul Protocol state with effect from 3 August 2021 was a positive step for the [ARIPO trade mark system](#). However, a system that has only 12 out of 20 ARIPO's current member states may be of concern to brand owners who want the convenience of designating a large and diverse number of countries in one trade mark application. Considering that the majority of users of the ARIPO trade mark system are from Europe and non-African countries, the system suffers heavily from the competition of the Madrid System. Statistics for 2014-2019 can be found in the [ARIPO Annual Reports](#).

The concern about the less-than-optimal level of integration of the Banjul Protocol by member states into their national laws applies equally to the extent of integration of the Madrid Protocol in most low-income countries (LICs), a significant number of which are in Africa. This factor is therefore unlikely to be a key distinguishing feature of the ARIPO and Madrid systems for brand holders.

### Tips for effective use of the ARIPO trade mark system

- Compare costs with other registration systems (national and Madrid), if available for

the states that you want. The ARIPO system tends to be cheaper than national routes if you intend to designate several countries. It will also be a cheaper option in comparison to countries that operate a single-class registration system. For example, an ARIPO application designating one state in 10 classes will have an application fee of USD 220 in ARIPO, as follows:

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Additional class fees @USD 10 per class x 9 (of the 10 classes included in the application), assuming the application does not attract surcharges for additional words of the specifications, payable at USD 5 per word from the 51st word.	90
<b>Total application fees payable</b>	<b>220</b>

- These costs may be lower than the fees that you would pay under a national registration system which, apart from being more expensive, would not offer the advantage of extending trade mark rights to other Banjul Protocol states to give your brand wider protection in the ARIPO region.
- Reduce the list of goods/services. ARIPO's surcharge of USD 5 per word can mean a significant cost for long specifications. Aim to designate only the goods/services that you genuinely need.
- Be strategic with your state designations. The ARIPO trade mark system is flexible enough to allow you to be strategic. You do not have to designate all the Banjul Protocol states in an application. You can leave out some or you can create your own 'sub-designations' to suit your business needs. For example, if you need to focus on Southern African Banjul Protocol states but you are not sure about others, you can categorise the designations as you wish and then file the applications in stages. Also, if you think that your trade mark will be opposed in many states, you can file one 'test' application and then apply for subsequent designations to avoid having to deal with multiple oppositions at once, which will probably be the case if you designate all the states in one application. Develop the strategy by establishing which states operate a

'first to file' and a 'first to use' system so that you do not jeopardise your rights. You can also 'mix and match' system use approaches, for instance by carrying out national IP office searches in the states that you wish to designate in your ARIPO application. These searches will help to avoid objections during the substantive examination phase of your ARIPO application which is carried out by the designated states under their national laws. ARIPO examines for formalities only and transmits the application to the designated member states for substantive examination.

- Invest in quality legal expertise. The ARIPO trade mark system has its faults, but it also offers significant advantages to brand holders. You will need an experienced professional to advise you on how to use the ARIPO system to your brand's best advantage.

#### Patents, utility models and industrial designs

Malawi is a signatory of the Harare Protocol under which ARIPO grants patents and registers utility models and industrial designs on behalf of those of its member states that are contracting parties to the Harare Protocol. More information about ARIPO's processes and applicable fees is available here for [patents](#), [utility models](#) and [industrial designs](#). A list of current ARIPO member states that have joined the Harare Protocol is available [here](#).

Compared to the trade mark system, the Harare Protocol system works well and is the most heavily utilised of ARIPO's IP registration protocols; the statistics can be seen in [ARIPO's Annual Reports](#). You can also obtain statistics and other related information about searches conducted through [ARIPO's e-service platform](#) or from the [Regional IP database](#).

#### 1.8 Information that you may need about the relevance of the ARIPO system to your IP protection strategy in Malawi

##### Patent filings

- ARIPO is a member of the Patent Cooperation Treaty (PCT); over 75 % of its applications are PCT-based.
- Malawi receives most of its patent applications through its designation under the ARIPO region in PCT applications. In 2019, the Malawi national IP office received 0 patent applications compared to 506 ARIPO PCT-based applications and, in 2018, 3 patent applications compared to 458 ARIPO PCT-based applications. The pattern is similar for most ARIPO member states. See the ARIPO Annual Report 2019 available [here](#).

##### Substantive examination of patents and utility models

- ARIPO offers technical support to its member states, including Malawi, to carry out the substantive examination of patents and utility models.

##### Searches



- You can carry out free online simple and advanced searches for trade marks, patents, utility models and industrial designs from the [ARIPO e-service platform](#), even if you are not registered for e-services.
- Go to the ARIPO homepage, then to the e-service platform and select the IP Digital Library. From the ARIPO homepage, select Regional IP Database and choose the IP title. You can then choose from patents, trade marks and designs and the country in which you want to search. This will then take you to the landing page for searches.
- You can also access the Regional IP Database through this [link](#).

#### 1.8.1. International



The WIPO international route can be used for Malawi for two IP rights:

- 3) the registration of trade marks under the Madrid System;
- 4) the filing and processing of patents in accordance with the Patent Corporation Treaty (PCT).

#### Trade marks: Madrid System

- Malawi is a signatory of the Madrid Protocol, which means it can be designated for the purpose of registering trade marks under the Madrid trade mark system.
- The Madrid system makes it possible for a brand owner to designate a country in an international application to secure trade mark protection in that country. Brand owners can also extend their trade mark protection to other countries that are members of the Madrid Protocol.
- A brand owner can file one application and pay a single fee to obtain the registration of a trade mark in many other countries that are members of the Madrid System. Information about the Madrid trade mark system is available through these links: [General information](#) and [How to file](#).

#### Patents: PCT

- The PCT makes it possible to seek patent protection for an invention simultaneously in many countries by filing a single international patent application instead of filing several separate national or regional patent applications. More information about the PCT is available through this [link](#).
- Malawi is a contracting party to the PCT and is also a member state of ARIPO which, as a region, is also a contracting party to the PCT. As a result, Malawi can be designated in a PCT application as a country or under the designation of ARIPO as a regional block.

#### 1.8.2 National/Regional/International: How do I choose a route?

- The choice will depend mainly on the nature of the IP right(s) involved. Professional advice may be necessary to establish the most suitable protection route for your IP right(s).
- The questions below may provide a general guide.

#### 1.8.3. When would I use the national route?

- When the national route is the only available route for the protection of the IP right in question. Some IP rights – geographical indications, for example – can only be protected under national law because protection is not available under regional and international systems.
- When IP protection is required in one country only it may not be necessary to use regional or international routes.
- When used in response to specific national law provisions. ARIPO confers IP protection as a 'bundle of rights' which an IP holder must enforce in each designated state, based on the laws of that state. Some IP rights – pharmaceutical patents, for example – are not readily accepted in all ARIPO member states. In this case, a patent holder may choose the national route in the state where the right is likely to be contested to avoid a conversion from a regional into a national application, and then use the regional route for the remaining potentially unproblematic states.
- When the national route provides special advantages. Examples include:
  - Preferential substantive examination timeframe: it takes an average of 18 months for a patent filed through a national IP office to complete substantive examination compared to an average of 36 months if a patent application is filed directly with ARIPO.
  - Exemption from substantive examination fees and surcharges: patent applications submitted through national IP offices are currently exempt from the substantive examination fees and surcharges for excess claims and pages that are payable in all other applications. However, this is being reviewed by ARIPO and is likely to change.

#### 1.8.4 When would I use the regional (ARIPO) route?

This route is currently available for trade marks, patents, utility models and industrial designs only.

It is advisable to use the ARIPO regional route when:

- IP protection is required in multiple ARIPO states. In this case, a single application for the registration of an IP right using the regional system may be more efficient and cost-effective than applying for registration in two or more countries.
- the regional route offers more technical capacity. For example, ARIPO has more capacity to substantively examine patents, especially those with a complicated subject matter.

#### 1.8.5. When would I use the international route?

You should use this route if you want IP protection that covers Malawi for international trade marks under the Madrid System and patent filings under the PCT.

Trade marks and industrial designs

In general, it is advisable to use the international route when:

- you want a wider coverage of IP protection than that available under the national and regional routes. The international route can be used to secure and extend protection to multiple countries and continents. Malawi's national and regional IP protection routes are limited to Malawi and to the ARIPO region only and not all ARIPO member states are can be designated in trade mark and industrial design applications. Therefore, use of the Madrid System will give more coverage for the protection of your trade marks and designs.

#### Patents

- In addition to the reasons listed above, you may choose the PCT route because it offers a streamlined multi-country patent filing service that is not available under national and regional patent routes. more information about the PCT's services is available [here](#).

## SECTION 2: OVERVIEW OF IP ENFORCEMENT

Malawi is a signatory of the WTO's TRIPS Agreement and its laws are substantially TRIPS-compliant in terms of providing a legal framework for the protection and enforcement of IP rights.

NATIONAL IP OFFICE is mandated by the Trade Mark Act and the Copyright and Neighbouring Rights Act to enforce compliance and bring IP infringers to justice.

The Trade Mark Act provides that those who are found guilty of infringement may be fined up to K10,000,000.00 or be imprisoned for a term not exceeding 10 years, or both.

National IP office engages constantly with other stakeholders who have a role to play in combating IP infringements. These include Interpol, border officials, customs officials, the legal profession, , retailers and the general public.

Despite the national IP office and State efforts to curb IP infringement, rights holders must play a significant role in policing the use of their IP in Malawi . They must constantly check that the industrial and commercial markets in which they sell their goods or services take appropriate action against the infringement of their IP rights by competitors, retailers or street vendors. Malawi Law entitles rights holders to take civil action against infringers to recover their lost revenue and/ or to have the infringing products destroyed.

For copyrights, the Copyright and Neighbouring Rights Act provides for conservatory measures that seek to prevent infringements and also to preserve relevant evidence related to an alleged infringement. In addition, the Act empowers the police to conduct searches of premises where it is suspected that infringing goods are concealed, and to seize any offending goods. Civil remedies include court injunctions, confiscation of offending goods and payment of damages to the rights holder for any economic damage suffered because of an infringement of their rights. Criminal sanctions include the imposition of substantial fines and the possibility of imprisonment. A copyright owner is expected to 'police' their work and take action against infringers of their rights. That means that the rights holder should initiate action such as reporting infringements to the police or customs (in the case of the importation of infringing goods) and also seek the intervention of the courts to fight third parties who infringe their rights.

## SECTION 3: TYPES OF AVAILABLE IP PROTECTION

### 3.1 TRADE MARKS

WHAT YOU SHOULD KNOW ABOUT MALAWI TRADE MARKS.

- Foreigners need to appoint a local agent.
- Multi-class filing system.
- Member state of Madrid Protocol.
- 'First to file' jurisdiction – pre-filing rights clearance searches are advisable.
- Nice Classification is used.
- Cancellation for non-use period is 5 years.
- Appointment and recordal of licensees at the IP office is advisable.
- Opposition period is 30 days.

#### 3.1.1 Who can register a trade mark?

A natural person, a company or any other entity can apply to register a trade mark.

However, a person who does not have their place of business in Malawi needs a professional representative.

### 3.1.2 Do I need a local representative?

- You must be represented by an agent if you are a foreign national (i.e., not a citizen of Malawi) or if you are applying on behalf of a company that has its principal place of business outside Malawi.
- Representation is optional for local applicants.
- You can find a local agent for Malawi [here](#).

### 3.1.3 What qualifies for registration?

A trade mark that is fanciful and unique and is not in conflict with earlier registrations or pending applications.

### 3.1.4 What cannot be registered?

A trade mark cannot be registered if it:

- contains false indications, is deceptive or is likely to deceive or mislead the public or cause confusion;
- contains a likeness to a specific armorial bearing, flag emblem;
- contains a title or abbreviation of any international intergovernmental organisation;
- constitutes a name or likeness of individuals without the authorisation of such individuals;
- is likely to cause confusion with an earlier registered trade mark or pending application;

is contrary to law, public order or morality;

is likely to cause confusion with an earlier registered trade mark or pending application;

### 3.1.5 Where can I file an application?

- [Department of the Registrar General, Ministry of Justice and Constitutional Affairs](#)
- [ARIPO](#), for regional marks
- International (Madrid) applications can be filed directly with ARIPO or Malawi Department of the Registrar General.

### 3.1.6 What are the registration requirements?

A trade mark application must contain the following:

- an application letter containing the full name, nationality and physical address of the applicant, or the full name (represented in a special or particular manner or as it appears on the Certificate of Incorporation) and physical address of the company;
- a list of the goods and/or services, based on the Nice Classification, on which the trade mark will be used;
- representation of the mark;
- a declaration of use or intention to use the mark as a trade mark;
- payment of the prescribed application fee.

### 3.1.7 How do I register

The national registration process involves the following:

- trade mark application;
- examination for compliance with formal and substantive requirements;
- after acceptance, publication in the official gazette; the opposition period is 2 months from the date of publication.

### 3.1.8 How much does it cost?

#### Government (official) fees

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Malawi Kwacha) . Application forms and information on fees are available through this link: Fees ([registrargeneral.gov.mw](http://registrargeneral.gov.mw))

#### Professional fees

Professional fees vary so it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

### 3.1.9 How long does registration take?

The national trade mark registration process takes 12-24 months from the filing date to complete, assuming that there are no unusual delays and no oppositions. This includes an opposition period of 30 days.

### 3.1.10 What is the duration of protection?

10 years from the filing date, renewable.

### 3.1.11 When are renewal fees paid?

Trade mark registrations are valid for 10 years from the date of filing and may be renewed indefinitely for 10-year periods thereafter

## 3.2 PATENTS

### WHAT YOU NEED TO KNOW ABOUT PATENTS IN MALAWI

- The national IP office carries out a formal examination of applications only. ARIPO

carries out a substantive examination as part of its technical assistance to ARIPO member states under the objectives of the Lusaka Agreement. More information about the Lusaka Agreement objectives is available [here](#).

- ARIPO examines patent applications submitted by its member states on a preferential basis. Substantive examination is completed on average in 18 months from the receipt date of the application, compared to 36 months for other applications.

### 3.2.1 Who can register a patent?

An inventor (or successor in title) or an assignee of an invention can apply to register a patent.

### 3.2.2 Do I need a local representative?

- You must be represented by an agent if you are a foreign national (i.e. not a citizen of Malawi) or if you are applying on behalf of a company that has its principal place of business outside Malawi.
- Representation is optional for local applicants.
- You can find a local agent for Malawi [here](#).

### 3.2.4 What qualifies for registration?

- A registrable patent must meet the following requirements:
- novelty which must be absolute novelty in that the invention must be a new characteristic which is not known in the body of existing knowledge in its technical field. It must not be anticipated by prior art;
- inventive step which means that, having regard to prior art, the invention is not obvious to a person skilled in the art;
- susceptible of industrial applicability in that it can be used in any kind of industry, including agriculture, and
- patentable invention under national patent law. Unregistrable patents in Malawi are those related to the treatment of humans or animals or to pharmaceutical inventions. These inventions are not patentable to avoid undue restrictions to access to medical care and medicines by people or animals in need.

### 3.2.5 What cannot be registered?

The following inventions cannot be patented:

- anything obviously contrary to well-established natural laws;
- anything that would be contrary to law or morality;
- if it claims as an invention a substance capable of being used as food or medicine

which is a mixture of known ingredients possessing only the aggregate of the known properties of the ingredients;

- if it claims as an invention a process producing such a substance by mere admixture.

### 3.2.6 Where can I file an application?

National applications must be filed at Department of the Registrar General, Ministry of Justice and Constitutional Affairs

Regional applications can be filed at the national IP office or, clearly indicating that they are regional applications, through ARIPO. Applications filed through ARIPO can be filed electronically, by email, registered mail, fax, by courier or in person. Online ARIPO application fees have a 20 % discount to encourage online filings.

### 3.2.7 What are the registration requirements?

A patent application must contain the following:

- a request on the prescribed form;
- the patent title, abstract, description, claims and drawings;
- a power of attorney, simply signed, if an application is filed through an agent.
- the Deed of Assignment, if the applicant is not the inventor;
- a certified copy of the priority document, if applicable;
- the prescribed application fees;

### Regional (ARIPO) patents

See here for [ARIPO patent application filing procedure](#).

### 3.2.8 How do I to register?

National procedure for registration:

- application of patent
- examines the application for compliance
- publication of complete specification
- opposition to grant of patent
- grant of patent

### 3.2.9 How much does it cost?

Government (official) fees

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Malawi Kwacha) . Application forms and information on fees are available through this link: Fees ([registrargeneral.gov.mw](http://registrargeneral.gov.mw))

### Professional fees

Professional fees vary so it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

### ARIPO-route patent registration fees

Fees must be paid through ARIPO if an applicant chooses to register a patent for Malawi using the ARIPO route. ARIPO's fees are reviewed regularly. The latest fees are available through this link: <https://www.aripo.org/fee-schedules/>.

Application fees consist of three components, as follows:

Type of Fee	ARIPO Fee (USD)	Total Fees (USD)
Application fee, regardless of the number of states designated in the application	232	932
State designation fee	85 per state (multiplied by the number of designated states)	Depends on the number of designated states
Mandatory annuity fee: for PCT-based applications, the first ARIPO annuity fee will usually be due and must be paid with the application fee	50 per state (multiplied by the number of designated states)	<u>Depends on the number of designated states</u>
Total fees, assuming only Malawi is designated and payment of first annuity fee	317	1 037
Total fees, assuming all 18 Harare Protocol states, including Malawi, are designated and payment of first annuity fee	2 662	3 722

### Note on professional fees

Professional fees vary depending on several factors, such as the level of experience of the professional concerned and the time spent on a task, amongst others.

It is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

### 3.2.10 How long does registration take?

- National applications take up to 22 months assuming that there is no opposition.
- Regional-route Malawi applications are substantively examined by ARIPO and take 3-4 months on average to complete registration, assuming that there are no objections.

### 3.2.11 What is the duration of protection?

- National protection lasts 16 years from the filing date, subject to the payment of annual maintenance fees. The duration of a patent may be extended by the Patents Tribunal on the ground of inadequate remuneration, or loss or damage from hostilities, for a term not exceeding five (5) years or, in exceptional cases, ten (10) years.
- ARIPO Patent Protection lasts 20 years from the filing date, subject to the payment of annual maintenance fees.

### 3.2.12 When are renewal fees paid?

#### National patents

Renewal fees are paid from the third anniversary of the filing date up to the 20th year. Late payment is possible, with a corresponding surcharge, within a grace period of 6 months after the due date

#### ARIPO-route Malawi patents

Renewal fees are payable up to the 19th year. Before payment, it is advisable to confirm the amount of the fees on the ARIPO website as the official fees may change. The latest fees are available through this link: <https://www.aripo.org/fee-schedules/>.

ARIPO fees are payable per designated state.

The following ARIPO renewal fees are currently applicable:

Annuity Year	ARIPO Fee
1 (NB: Due the second year after the filing date)	50
2	70
3	90
4	110
5	130
6	150
7	170
8	190
9	210
10	230
11	250
12	270
13	290
14	310
15	330
16	380
17	430
18	480
19	530
Late renewal fees consist of 2 parts: I. Surcharge for late payment of annual maintenance fee	100
II. Penalty fee for each month or fraction of a month for which the fees remain unpaid	50

### 3.3 UTILITY MODELS

In some jurisdictions utility models are referred to as 'petty patents' because they are similar to patents but require less stringent conditions for registration and are registered for a shorter term than a conventional patent.

#### WHAT YOU SHOULD KNOW ABOUT MALAWI UTILITY MODELS

- Currently, utility model protection for Malawi is available through ARIPO as Malawi is a signatory of the Harare Protocol on Patents and Industrial Designs.
- Malawi's law recognises and gives effect to ARIPO IP registrations.

#### 3.3.1 Who can register?

An inventor or assignee of an invention can apply to register a utility model.

#### 3.3.2 What are the registration requirements?

A utility model application must contain the following:

- a completed ARIPO Form 3 (Request form);
- a description of the invention
- one or more claims
- one or more drawings (if any)
- an abstract
- prescribed application fees or a written undertaking to lodge the fees
- designation of at least one state

At any time before the grant or rejection of a patent, an applicant may convert a patent application into a utility model application which will be given the filing date of the initial patent application.

For conversion, a request for conversion of the patent application must be submitted together with all the documents filed in the patent application. An application may not be converted more than once.

#### 3.3.3 What qualifies for registration?

A registrable utility model must meet the following requirements:

- novelty: the invention must be a new characteristic and must not be anticipated by the prior art;
- industrial applicability: the invention must be useful in any kind of industry.

#### 3.3.4 What cannot be registered?

The following inventions cannot be registered as utility models in Malawi:

- utility models related to the treatment of humans or animals or to pharmaceutical inventions. These inventions are not registrable to avoid undue restriction to access to medical care and medicines by people or animals in need.
- inventions whose commercial exploitation would be contrary to public policy or morality, public health and safety, and principles of humanity and environmental conservation;
- a discovery of a plant, animal, microorganism or substance as found in nature, including the human body;
- a scientific theory or mathematical method;
- methods for the treatment of the human or animal body by surgery or therapy, including diagnostic methods practised on them (as opposed to medical products);
- a literary, dramatic, musical or artistic work or other aesthetic creation;
- a scheme, rule or method for doing business, performing mental acts or playing a game;
- presentations of information;
- software.

### 3.3.5 Where can I file an application?

National applications for utility models must be filed at the Department of the Registrar General, Ministry of Justice and Constitutional Affairs.

Regional applications can be filed at national IP office or, clearly indicating that they are regional applications, through ARIPO. Applications filed through ARIPO can be filed electronically, by email, registered mail, fax, by courier or in person. Online ARIPO application fees have a 20 % discount to encourage online filings. If an applicant wishes to obtain a utility model instead of a patent in Malawi on the basis of an international application, this must be indicated in the international application when filed.

### 3.3.6 How much does it cost?

#### Government (official) fees

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Malawi Kwacha) . Application forms and information on fees are available through this link: Fees ([registrargeneral.gov.mw](http://registrargeneral.gov.mw))

#### Professional fees

Professional fees vary so it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

#### ARIPO-route utility model registration fees

Fees must be paid through ARIPO if an applicant chooses to register a utility model in Malawi using the ARIPO route. ARIPO's fees are reviewed regularly. The latest fees are available through this link: <https://www.aripo.org/fee-schedules/>.

Application fees consist of three components, as follows:

Type of Fee	ARIPO Fee (USD)	Total Fees (USD)
Application fee, regardless of the number of states designated in the application	80	580
State designation fees	20 per state (multiplied by the number of designated states)	Depends on the number of designated states
Mandatory annuity fees (per designated state): 1st year: USD 20 2nd to 7th year: increases by USD 5 Each year thereafter: increases by USD 10	20 (1st year) per state multiplied by the number of designated states	<u>Depends on the number of designated states</u>
Total fees, assuming only Malawi is designated and payment of 1st annuity fee	120	<u>640</u>
Total fees, assuming all 18 Harare Protocol states, including Malawi are designated and payment of 1st annuity fee	800	1 520

### Note on professional fees

Professional fees vary depending on several factors, such as the level of experience of the professional concerned and the time spent on a task, amongst others.

It is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

## 3.4 INDUSTRIAL DESIGNS

### 3.4.1 Who can register?

A creator or assignee of an industrial design can apply to register a design in Malawi .

It is possible for two or more persons or companies to jointly own and apply for the registration of an industrial design.

### 3.4.2 Do I need a local representative?

- You must be represented by an agent if you are a foreign national (i.e. not a citizen of Malawi) or if you are applying on behalf of a company that has its principal place of business outside Malawi.
- Representation is optional for local applicants.
- You can find a local agent for Malawi [here](#).

### 3.4.3 What qualifies for registration?

- For a creation to qualify for design registration it must clearly identify novel features of the design in terms of:
  - shape;
  - configuration; and
  - pattern and/or ornament.
- It is not a requirement that a design should have an objectively noticeable aesthetic quality.

### 3.4.4 What cannot be registered?

The following cannot be registered:

- designs that are contrary to the law, public policy or morality and
- designs for articles that are primarily literary or artistic in character such as paintings, sculptures, drawings, engravings, photographs, works architecture and works of artistic craftsmanship.

### 3.4.5 Where can I file an application?

National route design applications must be filed at Department of the Registrar General, Ministry of Justice and Constitutional Affairs

Regional-route design applications can be filed at national IP office or, clearly indicating that they are regional applications, through ARIPO. Applications filed through ARIPO for Malawi designs can be filed electronically, by email, registered mail, fax, by courier or in person. Online ARIPO application fees have a 20 % discount to encourage online filings.

### 3.4.6 What are the registration requirements?

A design application must contain the following documents:

- a formal application on a prescribed form;
- drawings depicting different elevations of the design, usually 3 dimensional views,
- a Power of Attorney, simply signed if the application is filed through an agent;
- a Deed of Assignment if the creator is not the applicant; and
- a priority document (original or certified copy) if priority is claimed.

### Regional (ARIPO) patents

See here for [ARIPO industrial design application](#) filing procedure.

### 3.4.7 How do I register?

National procedure for registration:

- application for the design;
- formal examination;
- publication.

### 3.4.8 How much does it cost?

#### Government (official) fees

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Malawi Kwacha) . Application forms and information on fees are available through this link: [Fees \(registrargeneral.gov.mw\)](https://www.registrargeneral.gov.mw)

#### Professional fees

Professional fees vary so it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

#### ARIPO-route design registration fees



These fees are paid through ARIPO. ARIPO's fees are reviewed regularly. The latest fees are available through this link: <https://www.aripo.org/fee-schedules/>.

Application fees consist of three components, as follows:

Type of Fee	ARIPO Fee (USD)	Total Fees (USD)
Application fees, regardless of the number of states designated in an application	40	340
State designation fees	10 per state (multiplied by the number of designated states)	Depends on the number of designated states
Total fees, assuming that only Malawi is designated in the application	50	370
Total fees, assuming that all 18 Harare Protocol states, including Malawi, are designated in the application	220	<u>880</u>

#### Note on professional fees

Professional fees vary and it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

#### 3.4.9 How long does registration take?

National-route applications usually take 12-18 months to complete registration.

Regional-route applications usually take 8-12 months to complete registration. This includes a period of 6 months for states to examine and decide if a design will have legal effect in their territories after ARIPO has issued them with a notice of intention to register a design.

#### 3.4.10 What is the duration of protection?

A national industrial design has an initial duration of 5 years from the filing date, with the possibility of two further consecutive 5-year terms, a total of 15 years.

ARIPO-route design registrations are valid for 10 years, with no possibility of extension.

#### 3.4.11 When are renewal fees paid?

In Malawi, renewal fees must be paid within 3 months after the due date.

In ARIPO, renewal fees are payable 12 months before the registration period expires. Late payment of the renewal fees is possible, with a corresponding surcharge, within a grace period of 6 months after the due date.

#### ARIPO-registered design renewal fees

Before payment, it is advisable to confirm the amount of the fees on the ARIPO website as the official fees may change. The latest fees are available through this link: <https://www.aripo.org/fee-schedules/>.

ARIPO fees are payable per designated state. The following ARIPO renewal fees are currently applicable:

Annuity Year	ARIPO Fee
1	10
2	12
3	14
4	16
5	18
6	20
7	24
8	28
9	32
Late renewal fees consist of 2 parts: I. Surcharge for late payment of annual maintenance fee	15
II. Penalty fee for each month or fraction of a month for which the fees remain unpaid	2

### Professional services renewal fees

These are usually payable as a flat-rate fee per annuity payment, regardless of the number of designated states. They range between USD 150 to USD 250 per renewal. It is advisable to compare the fees of different IP agents.

## 3.5 COPYRIGHT AND NEIGHBOURING RIGHTS

About Copyright and Neighbouring rights in Malawi

Malawi has a dedicated law for the protection of copyright and neighbouring rights, namely the Copyright Act.

Malawi is a member ARIPO which is currently considering the possibility of creating a voluntary copyright registration system for its Member States. It remains to be seen if this system will become a reality.

Malawi international agreements

- Berne Convention for the Protection of Literary and Artistic Works (12 October 1991)
- Universal Copyright Convention (Geneva) (26 October 1965)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (31 May 1995)

### 3.5.1 Can I register?

- There is no registration requirement for copyright in Malawi. It exists automatically upon the creation of any original work in respect of subject matter that is protected by the Copyright Act.

### 3.5.2 What qualifies for protection?

Any original work in the categories listed below qualifies for protection:

- works expressed by writing;
- musical works audio-visual works;
- works of architecture;
- photographic works;
- works of applied art;
- works deriving from Malawi national folklore;
- dramatic and phonogram musical works;
- other works derivative works provided for;
- expressions of folklore recognized and protected; and
- computer programmes.

### 3.5.3 What cannot be protected?

Any work whose subject matter does not qualify for legal protection.

- written laws and decisions of courts and administrative bodies and official translations thereof;
- news published, broadcast or communicated to the public by any other means;
- a report made by a commission appointed by the Government or any agency thereof and which the Government has made available to the public.

### 3.5.4 What are the requirements for legal protection?

The original work must be in one of the following categories:

- works expressed by writing;
- musical works audio-visual works;
- works of architecture;
- photographic works;
- works of applied art;
- works deriving from Malawi national folklore;
- dramatic and phonogram musical works;
- other works derivative works provided for;
- expressions of folklore recognized and protected; and
- computer programmes.

### 3.5.5 What are examples of acts permitted in relation to copyright works?

Permitted acts that do not infringe copyright include:

- fair use: copyright in a work is not infringed by any fair dealing for the purposes of research or private study by the person using the work. Fair dealing does not apply if the person who reproduces the work knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time.
- fair use for purposes of criticism, review or news reporting;
- educational use;
- copies made to replace or conserve library or archival copies of works;
- use of anonymous or pseudonymous works, subject to conditions;
- use of work for parliamentary or judicial proceedings or inquiries;
- quotations from copyright works;
- public readings and recitations.

### 3.5.6 What acts are not permitted in relation to copyright works?

Unpermitted/restricted acts include:

- reproducing the work;
- publishing the work;
- importing the work into Malawi or exporting it from Malawi, otherwise than for personal

- and private use;
- causing the work to be transmitted in a cable programme service, unless the service transmits a lawful broadcast, and is operated by the original broadcaster;
- making an adaptation of the work.

### 3.5.7 What is the duration of protection?

The duration of copyright protection is as follows:

- literary works, musical and artistic (except photographs): the lifetime of the author, (or last surviving author in the case of co-authored works) plus 50 years;
- other works: 50 years from the end of the year in which the work was made available to the public with the consent of the owner of the copyright;
- photographic works: 25 years from the date on which the work was made or was made available to the public;
- computer programs: 10 years from the date on which the work was made or was made available to the public;

### 3.5.8 Can I renew copyright after its term of protection expires?

- Copyright cannot be renewed once its term has expired. The work lapses into the public domain at the end of the term of protection.

Professional services renewal fees

These are usually payable as a flat-rate fee per annuity payment, regardless of the number of designated states. They range between USD 150 to USD 250 per renewal. It is advisable to compare the fees of different IP agents.

## 3.5 COPYRIGHT AND NEIGHBOURING RIGHTS

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Malawi has a dedicated law for the protection of copyright and neighbouring rights, namely the Copyright Act.

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- Berne Convention for the Protection of Literary and Artistic Works (12 October 1991)
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### 3.5.1 Can I register?

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- photographic works;
- works of applied art;
- works deriving from Malawi national folklore;
- dramatic and phonogram musical works;
- other works derivative works provided for;
- expressions of folklore recognized and protected; and
- computer programmes.

### 3.5.3 What cannot be protected?

Any work whose subject matter does not qualify for legal protection.

- written laws and decisions of courts and administrative bodies and official translations thereof;
- news published, broadcast or communicated to the public by any other means;
- a report made by a commission appointed by the Government or any agency thereof and which the Government has made available to the public.

### 3.5.4 What are the requirements for legal protection?

The original work must be in one of the following categories:

- works expressed by writing;
- musical works audio-visual works;
- works of architecture;
- photographic works;
- works of applied art;
- works deriving from Malawi national folklore;
- dramatic and phonogram musical works;
- other works derivative works provided for;
- expressions of folklore recognized and protected; and
- computer programmes.

### 3.5.5 What are examples of acts permitted in relation to copyright works?

Permitted acts that do not infringe copyright include:

- fair use: copyright in a work is not infringed by any fair dealing for the purposes of research or private study by the person using the work. Fair dealing does not apply if the person who reproduces the work knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time.
- fair use for purposes of criticism, review or news reporting;
- educational use;
- copies made to replace or conserve library or archival copies of works;
- use of anonymous or pseudonymous works, subject to conditions;
- use of work for parliamentary or judicial proceedings or inquiries;
- quotations from copyright works;
- public readings and recitations.

### 3.5.6 What acts are not permitted in relation to copyright works?

Unpermitted/restricted acts include:

- reproducing the work;
- publishing the work;
- importing the work into Malawi or exporting it from Malawi, otherwise than for personal and private use;
- causing the work to be transmitted in a cable programme service, unless the service transmits a lawful broadcast, and is operated by the original broadcaster;
- making an adaptation of the work.

### 3.5.7 What is the duration of protection?

The duration of copyright protection is as follows:

- literary works, musical and artistic (except photographs): the lifetime of the author, (or last surviving author in the case of co-authored works) plus 50 years;
- other works: 50 years from the end of the year in which the work was made available to the public with the consent of the owner of the copyright;
- photographic works: 25 years from the date on which the work was made or was made available to the public;
- computer programs: 10 years from the date on which the work was made or was made available to the public;

### 3.5.8 Can I renew copyright after its term of protection expires?

- Copyright cannot be renewed once its term has expired. The work lapses into the public domain at the end of the term of protection.

