# Madagascar

RISK & COMPLIANCE REPORT

DATE: January 2017

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| Executive Summary | |
|---|---|
| **Sanctions:** | None |
| **FAFT list of AML Deficient Countries** | No |
| **Higher Risk Areas:** | Non - Compliance with FATF 40 + 9 Recommendations<br>Weakness in Government Legislation to combat Money Laundering<br>Not on EU White list equivalent jurisdictions<br>Corruption Index (Transparency International & W.G.I.)<br>World Governance Indicators (Average Score)<br>Failed States Index (Political Issues)(Average Score) |

**Major Investment Areas:**

**Agriculture - products:**

coffee, vanilla, sugarcane, cloves, cocoa, rice, cassava (tapioca), beans, bananas, peanuts; livestock products

**Industries:**

meat processing, seafood, soap, breweries, tanneries, sugar, textiles, glassware, cement, automobile assembly plant, paper, petroleum, tourism

**Exports - commodities:**

coffee, vanilla, shellfish, sugar, cotton cloth, clothing, chromite, petroleum products

**Exports - partners:**

France 23.1%, China 6.5%, US 6.5%, Singapore 5.8%, Canada 5.4%, India 5.3%, Germany 5.3%, Indonesia 5.2%, South Africa 4.4% (2012)

**Imports - commodities:**

capital goods, petroleum, consumer goods, food

**Imports - partners:**

China 17.2%, France 12.1%, South Africa 5.3%, Bahrain 5.1%, India 5%, Mauritius 4.7%, Kuwait 4.4% (2012)

**Investment Restrictions:**

Officially, the de facto government of Madagascar (GOM) welcomes foreign investment. However, political turmoil, weakness in the judicial system and the banking sector, the high cost and low quality of electric power, corruption, a lack of transparency in decision-making, limited road, rail and port infrastructure, and the high cost of air transport make investing in Madagascar a challenge.

There is no law or regulation authorizing private firms to adopt articles of incorporation or association that limit or prohibit foreign investment, participation or control. Furthermore, there is no official or private practice to restrict foreign investment, participation, or control of domestic enterprises. There is no mandatory screening of foreign investment, and there is no discrimination against foreign investors at the time of the initial investment or after the investment is made, such as through special tax treatment, access to licenses, approvals, or procurement. There are no sectors/matters in which foreign investors are denied national treatment.

## Contents

## Section 1 - Background

Formerly an independent kingdom, Madagascar became a French colony in 1896 but regained independence in 1960. During 1992-93, free presidential and National Assembly elections were held ending 17 years of single-party rule. In 1997, in the second presidential race, Didier RATSIRAKA, the leader during the 1970s and 1980s, was returned to the presidency. The 2001 presidential election was contested between the followers of Didier RATSIRAKA and Marc RAVALOMANANA, nearly causing secession of half of the country. In April 2002, the High Constitutional Court announced RAVALOMANANA the winner. RAVALOMANANA achieved a second term following a landslide victory in the generally free and fair presidential elections of 2006. In early 2009, protests over increasing restrictions on opposition press and activities resulted in RAVALOMANANA handing over power to the military, which then conferred the presidency on the mayor of Antananarivo, Andry RAJOELINA, in what amounted to a coup d'etat. Numerous attempts have been made by regional and international organizations to resolve the subsequent political gridlock by forming a power-sharing government. Madagascar's independent electoral commission and the UN originally planned to hold a presidential election in early May 2013, but postponed the election until late July 2013, due to logistical delays.

## Section 2 - Anti – Money Laundering / Terrorist Financing

### FATF status

Madagascar is not on the FATF List of Countries that have been identified as having strategic AML deficiencies

### Compliance with FATF Recommendations

Madagascar has not yet undertaken a Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards.

### US Department of State Money Laundering assessment (INCSR)

Madagascar was deemed a 'Monotor' Jurisdiction by the US Department of State 2016 International Narcotics Control Strategy Report (INCSR).

Key Findings from the report are as follows: -

**Perceived Risks:**

Madagascar is neither a regional financial center nor a major source country for drug trafficking; however, Madagascar's inadequately monitored 3,000 miles of coastline leave the country vulnerable to smuggling and associated money laundering. Criminal proceeds laundered in Madagascar derive mostly from domestic criminal activity, not generally related to the narcotics trade. The major sources of laundered proceeds in 2015 are tax evasion, tax appropriation, and customs fraud. Illegal mining and mineral resources smuggling, illegal logging, public corruption, and foreign currency smuggling are also areas of concern.

The deterioration in the rule of law initiated by the leaders of the 2009 coup d'état continues to facilitate trafficking of natural resources (rosewood, gold, precious stones) and persons as well as foster corruption throughout society (tax evasion, smuggling of goods, etc.). The current president was democratically elected in December 2013, and since then has publicly and privately proclaimed an emphasis on combatting corruption. The government has not successfully prosecuted any anti-corruption cases aside from low level individuals. The smuggling of gold, gemstones (predominantly to the Gulf), and protected flora and fauna (predominantly to Asia) generates funds that are laundered through the financial system or through informal channels into which the government has limited reach. There is a significant black market for smuggled or stolen consumer goods, especially in port cities. Trade-based money laundering occurs in Madagascar, involving both customs fraud and contraband.

Members of the former regime profited from, facilitated, and even directed criminal activity and money laundering. Media reports that they continue to do so.

Offshore banks and international business companies are permitted in Madagascar. Along with domestic banks and credit institutions, offshore banks are required to request authorization to operate from the Financial and Banking Supervision Committee, which is affiliated with the Central Bank.

DO FINANCIAL INSTITUTIONS ENGAGE IN CURRENCY TRANSACTIONS RELATED TO INTERNATIONAL NARCOTICS TRAFFICKING THAT INCLUDE SIGNIFICANT AMOUNTS OF US CURRENCY; CURRENCY DERIVED FROM ILLEGAL SALES IN THE U.S.; OR ILLEGAL DRUG SALES THAT OTHERWISE SIGNIFICANTLY AFFECT THE U.S.: NO

CRIMINALIZATION OF MONEY LAUNDERING:
"All serious crimes" approach or "list" approach to predicate crimes: All serious crimes
Are legal persons covered: criminally: YES civilly: YES

KNOW-YOUR-CUSTOMER (KYC) RULES:
Enhanced due diligence procedures for PEPs: Foreign: YES Domestic: YES
KYC covered entities: Banks

REPORTING REQUIREMENTS:
Number of STRs received and time frame: 152: January 1 - November 19, 2015
Number of CTRs received and time frame: Not applicable
STR covered entities: Banks, financial intermediaries and advisors, money changers, casinos and gaming establishments, real estate dealers, postal services, insurance companies, mutual fund companies, and stockbrokers

MONEY LAUNDERING CRIMINAL PROSECUTIONS/CONVICTIONS:
Prosecutions: 7 in 2015
Convictions: 3 in 2015

RECORDS EXCHANGE MECHANISM:
With U.S.: MLAT: NO Other mechanism: YES
With other governments/jurisdictions: YES

Madagascar is not a member of a FATF-style regional body (FSRB).

**ENFORCEMENT AND IMPLEMENTATION ISSUES AND COMMENTS:**

Law N° 2014-005 (effective July 2014) provides the courts the ability to freeze assets without prior notice based upon credible suspicions of involvement in money laundering, trafficking, illicit or terrorist activities, and extends a requirement for banks to record and report to the authorities transactions suspected to relate to the financing of terrorism. Additionally, the law allows the Malagasy Financial Intelligence Service (SAMIFIN), Madagascar's financial intelligence unit, to immediately block transactions from accounts suspected of association with terrorism.

While the police sometimes investigate crimes related to money laundering and other financial crimes, they lack necessary training and expertise. Moreover, the judicial system does not have the sophistication, resources, or political will to successfully prosecute most money laundering offenses.

Underground finance and informal value transfer systems should be recognized and investigated. Madagascar should train police and customs authorities to proactively recognize money laundering at the street level and at the ports of entry. Additionally, prosecutors should be trained to manage complex financial crime and money laundering cases. Madagascar should pursue membership in an FSRB.

### Current Weaknesses in Government Legislation (2013 INCRS Comparative Tables):

According to the US State Department, Madagascar does not conform with regard to the following government legislation: -

**Record Large Transactions** - By law or regulation, banks are required to maintain records of large transactions in currency or other monetary instruments.

**Arrangements for Asset Sharing** - By law, regulation or bilateral agreement, the jurisdiction permits sharing of seized assets with third party jurisdictions that assisted in the conduct of the underlying investigation.

**Ability to freeze assets without delay** - The government has an independent national system and mechanism for freezing terrorist assets in a timely manner (including but not limited to bank accounts, other financial assets, airplanes, autos, residences, and/or other property belonging to terrorists or terrorist organizations)

**Criminalised Financing of Terrorism** - The jurisdiction has criminalized the provision of material support to terrorists and/or terrorist organizations.

**Reports Suspected Terrorist Financing** - By law or regulation, banks and/or other covered entities are required to record and report transactions suspected to relate to the financing of terrorists, terrorist groups or terrorist activities to designated authorities.

### EU White list of Equivalent Jurisdictions

Madagascar is not currently on the EU White list of Equivalent Jurisdictions

### World Governance indicators

To view historic Governance Indicators Ctrl + Click here and then select country

### Failed States Index

To view Failed States Index Ctrl + Click here

## Offshore Financial Centre

Madagascar is not considered to be an Offshore Financial Centre

## Reports

### US State Dept Narcotics Report

No report available

### US State Dept Trafficking in Persons Report 2014 (introduction):

Madagascar is classified a Tier 2 (watch list) country - a country whose government does not fully comply with the Trafficking Victims Protection Act's minimum standards, but is making significant efforts to bring themselves into compliance with those standards.

Madagascar is a source country for men, women, and children subjected to forced labor and women and children subjected to sex trafficking. International observers and NGO reports indicate that sex and labor trafficking of Madagascar's citizens has continued to increase, particularly due to a lack of economic development and a decline in the rule of law since the political crisis that began in March 2009. Thousands of Malagasy women are employed as domestic workers in Lebanon, Kuwait, and Saudi Arabia; a smaller number of workers have also departed for Jordan, Mauritius, and Seychelles in search of jobs. Many of the women who migrate are single mothers who come from rural areas and are illiterate, making them vulnerable to deception and abuse at the hands of recruitment agencies and employers. Trafficking victims returning from Lebanon, Kuwait, and Saudi Arabia reported rape, psychological abuse, physical torture and violence, sexual harassment and assault, harsh working conditions, confinement to the home, confiscation of travel documents, and withholding of salaries. At least five deaths were reported among this population during the year. During the reporting period, Malagasy women and girls were recruited to work in domestic service in China; some of these women and girls were subsequently subjected to forced labor and sold as brides. Malagasy men have been subjected to forced labor aboard Chinese-flagged fishing vessels in South Africa's territorial waters.

Malagasy children, mostly from rural areas, are subjected to domestic servitude, prostitution, forced begging, and forced labor in mining, fishing, and agriculture within the country. Most child sex trafficking occurs with the involvement of family members, but friends, transport operators, tour guides, and hotel workers also facilitate the trafficking of children. Informal employment agencies recruit child domestic servants who are subsequently subjected to forced labor. Parents force their children into various forms of prostitution to earn money to support their families; in some cases, parents have directly negotiated prices with clients when prostituting their children. Some children are fraudulently recruited for work in the capital as waitresses, maids, and masseuses before being coerced into prostitution. NGOs reported an increase in the prevalence of child prostitution since the installation of formal mining projects in Toamasina and, more strikingly, in the informal mining sectors in Illakaka. NGOs also reported that child sex tourism continued to increase during the last year, particularly in the coastal cities of Toamasina, Nosy Be, Toliary, Antsiranana, and Mahajunga, as well as in the capital, Antananarivo. There was also a significant increase in the exploitation of younger children in the commercial sex trade, with cases involving children as young as 8-years-old. The main clients of prostituted boys and girls in Madagascar are Malagasy men. Most child sex tourists are French (including from Mayotte) and Italian nationals, with some reports of sexual exploitation by other Western nationals. There were also isolated cases of Comorian nationals engaging in child sex tourism in Nosy Be during the reporting period.

The Government of Madagascar does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Despite these efforts, the government did not demonstrate evidence of overall increasing anti-trafficking efforts compared to the previous reporting period; therefore, Madagascar is placed on Tier 2 Watch List for the second consecutive year. Since the March 2009 coup, combating human trafficking has not been a priority for the regime's leadership, despite the growing size of the problem both internally and transnationally. However, during the reporting period, technical experts helped secure the first seven convictions reported under the 2007 anti-trafficking law, and key ministries partnered with international organizations and NGOs to increase prevention efforts. Despite widespread corruption and alleged complicity of government officials in trafficking offenses, the government failed to investigate or prosecute officials responsible for these offenses. It lacked formal procedures to proactively identify trafficking victims among vulnerable populations and did not systematically provide services or refer victims to NGOs for care. For a fifth year, the government did not engage with the Government of Lebanon regarding protection and legal remedies for exploited Malagasy workers and, in most cases, failed to assist with the return of Malagasy victims to Madagascar.

### Latest US State Dept Terrorism Report - 2009

Despite several steps taken in 2008 to counter terrorism, progress stalled in 2009 due to a political crisis that weakened government operations. Following an unconstitutional change of government in March, the United States had limited engagement with the de facto authorities, who did demonstrate a willingness to cooperate in law enforcement matters, however. The government budget suffered due to a suspension of foreign aid programs, negatively affecting public investment throughout the island.

To combat terrorist threats, the government previously created the Central Counterterrorism Service within the Ministry of Interior to work with INTERPOL and to provide information within the framework of regional and international cooperation. It also created a special counterterrorism branch within the Central Intelligence Service. These entities continued to function during the year, but did not fulfill their full roles.

The Financial Intelligence Unit (SAMIFIN) launched in June 2008 to combat money laundering, including terrorist finance, remained nominally operational, but its work was seriously limited by budget constraints.

Although the Malagasy government took steps to create a coast guard to improve maritime security and border control in 2008, no further progress was made in 2009, and the coast guard was not yet operational. Parliament was disbanded after the March coup, so no action was taken on a draft 2008 bill that would have implemented the provisions of several universal counterterrorism instruments, including UN Security Council Resolution 1373.

Political unrest and limited resources severely constrained Madagascar's ability to confront a potential terrorist threat. The Malagasy authorities lacked the capacity to effectively monitor suspect organizations, control suspicious financial transactions, identify terrorist suspects, and control the movement of people and goods across its borders.

## International Sanctions

None applicable

## Bribery & Corruption

| **Index** | **Rating (100-Good / 0-Bad)** |
|---|---|
| Transparency International Corruption Index | 26 |
| World Governance Indicator – Control of Corruption | 24 |

## Corruption and Government Transparency - Report by US State Department

In 2012, Transparency International ranked Madagascar 118th out of 175 countries surveyed with a score of 32/100 on the Corruption Perception Index (CPI), indicating a severe corruption problem. While giving or accepting a bribe is a criminal act and is subject to trial by court, complicated administrative procedures introduce delays and uncertainties increasing possibilities for corruption. Corruption is most pervasive in the following areas: judiciary, police, tax, customs, land, trade, mining, industry, environment, education, and health. The Independent Anti-Corruption Bureau (BIANCO) is the agency formally responsible for combating corruption, and Transparency International has an office in the country. Corruption at high levels exists in nearly all sectors.

Smuggling of precious stones, hardwood, and animals increasingly drains Madagascar's natural resources and breeds criminality. In April 2010, the de facto regime adopted a decree to prohibit all exports of rosewood and precious timber. Despite this ban, containers of rosewood continue to be shipped. In September 2011, the de facto regime decided to include rosewood in Annex III of the Convention on International Trade in Endangered Species (CITES).

Madagascar created a Financial Intelligence Unit (SAMIFIN) in mid-2008 to carry out research and financial analysis related to money laundering. In 2012, SAMIFIN received 61 suspicious transaction reports and referred 23 cases to public prosecutors.

Madagascar signed and ratified the UN Anticorruption Convention and the African Union Convention against Corruption. It has not yet signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Transparency International has operated in Madagascar since 2002.

There is no requirement for companies to establish internal codes of conduct that, inter alia, prohibit bribery of public officials. However, some foreign companies have begun to orient their internal controls and ethics and compliance programs to prevent bribery.

## Section 3 - Economy

After discarding socialist economic policies in the mid-1990s, Madagascar followed a World Bank- and IMF-led policy of privatization and liberalization that has been undermined since the start of the political crisis. This strategy placed the country on a slow and steady growth path from an extremely low level. Agriculture, including fishing and forestry, is a mainstay of the economy, accounting for more than one-fourth of GDP and employing 80% of the population. Exports of apparel boomed in recent years primarily due to duty-free access to the US; however, Madagascar's failure to comply with the requirements of the African Growth and Opportunity Act (AGOA) led to the termination of the country's duty-free access in January 2010 and a sharp fall in textile production. Deforestation and erosion, aggravated by the use of firewood as the primary source of fuel, are serious concerns. The current political crisis, which began in early 2009, has dealt additional blows to the economy. Tourism dropped more than 50% in 2009 compared with the previous year, and many investors are wary of entering the uncertain investment environment. Growth was slow during 2010 to 2013 although expansion in mining and agricultural sectors is expected to contribute to more growth in 2014. International organizations and foreign donors are expected to resume development aid to Madagascar once RAJAONARIMAMPIANINA appoints a new government.

**Agriculture - products:**

coffee, vanilla, sugarcane, cloves, cocoa, rice, cassava (tapioca), beans, bananas, peanuts; livestock products

**Industries:**

meat processing, seafood, soap, breweries, tanneries, sugar, textiles, glassware, cement, automobile assembly plant, paper, petroleum, tourism

**Exports - commodities:**

coffee, vanilla, shellfish, sugar, cotton cloth, clothing, chromite, petroleum products

**Exports - partners:**

France 23.1%, China 6.5%, US 6.5%, Singapore 5.8%, Canada 5.4%, India 5.3%, Germany 5.3%, Indonesia 5.2%, South Africa 4.4% (2012)

**Imports - commodities:**

capital goods, petroleum, consumer goods, food

**Imports - partners:**

China 17.2%, France 12.1%, South Africa 5.3%, Bahrain 5.1%, India 5%, Mauritius 4.7%, Kuwait 4.4% (2012)

## Banking

Madagascar has relatively rudimentary financial markets and a very low rate of bank penetration. High interest rates, stringent requirements for collateral and guarantees, limited competition among banks, and reluctance to finance foreign trade or working capital even when secured by letters of credit make financing very expensive and difficult to access. The difficulty of increasing working capital through bank borrowing is a severe constraint on local firm's ability to expand. Banks maintain that many prospective borrowers lack reliable and transparent balance sheets and that long-term financing is difficult because they lack a long-term deposit policy. A substantial portion of domestic credit is effectively extended to the public sector because banks invest surplus funds in largely risk-free government treasury bills (bons de trésor). Only well- known and significant operators can get credit in Madagascar. The credit granted is mainly for the purchase of traditional agricultural products such as vanilla, coffee, and cloves. In case of pre-financing by foreign importers, local exporters still have to pay high interest rates to their banks. Generally speaking, the financing possibilities that are available to local firms are quite limited.

## Section 4 - Investment Climate

### Openness To, and Restrictions Upon, Foreign Investment

Officially, the de facto government of Madagascar (GOM) welcomes foreign investment. However, political turmoil, weakness in the judicial system and the banking sector, the high cost and low quality of electric power, corruption, a lack of transparency in decision-making, limited road, rail and port infrastructure, and the high cost of air transport make investing in Madagascar a challenge. According to the Economic Development Board of Madagascar (EDBM), few foreign investors showed investment interest in 2012, but there was no available data on the real flow of FDI.

Prior to a March 2009 coup d'état, the Bretton Woods institutions had generally endorsed the government's macro-economic regime, although they questioned certain non-transparent budget and tax decisions in late 2008. Effective March 17, 2009, the World Bank's operations in Madagascar have been guided by its Operation Policy OP 7.30 for dealing with de facto governments, and no fund withdrawal requests have been processed since that date except those dealing with nutrition, HIV/AIDS, food security, and environmental protection. As a result of the coup, the USG terminated the Millennium Challenge Account (MCA) program on May 19, 2009 and AGOA eligibility on December 23, 2009, as the country no longer met the criteria regarding rule of law, good governance, and political pluralism. On October 26, 2012, the Board of the Extractive Industries Transparency Initiative (EITI) extended Madagascar's suspension from the EITI due to the African Union's continued non-recognition of the government.

Since April 2009, the African Union and the Southern African Development Community (SADC) have engaged in mediation efforts with the regime, ousted President Ravalomanana, and other key opposition leaders. Since the September 2011 signing of SADC's Roadmap for Ending the Crisis in Madagascar, a consensus Prime Minister, an expanded Cabinet, a new parliament, and a transitional independent national electoral commission (CENIT) have been appointed. Key provisions of the roadmap remain unfulfilled, however, including those calling for the return of all political exiles and for respect for human rights and media freedom.

There is no law or regulation authorizing private firms to adopt articles of incorporation or association that limit or prohibit foreign investment, participation or control. Furthermore, there is no official or private practice to restrict foreign investment, participation, or control of domestic enterprises. There is no mandatory screening of foreign investment, and there is no discrimination against foreign investors at the time of the initial investment or after the investment is made, such as through special tax treatment, access to licenses, approvals, or procurement. There are no sectors/matters in which foreign investors are denied national treatment. There is no legal requirement that nationals own shares of foreign investment.

In its October 2012 economic update, the World Bank noted that due to the three and half years of political crisis, the economy has severely stalled, poverty has sharply increased, and social outcomes have worsened. Most recent projections anticipated an inflation rate of 8.5% and a growth rate of 2.5% in 2012.

Increasing corruption by officials and direct supporters of de facto President Andry Rajoelina have progressively deterred major foreign investment in Madagascar and discouraged the companies already invested in the country.

The judicial system does not function independently of the de facto government. In some sectors, such as extractive industries, bureaucrat bodies intended to govern the sector have been dismantled by the de facto government.

| Measure | Year | Index/Ranking |
|---|---|---|
| TI Corruption Index | 2012 | 32/100 |
| Heritage Economic Freedom | 2012 | 62.4/81 |
| World Bank Doing Business | 2013 | 142 out of 185 countries |

**Conversion and Transfer Policies**

In 1998, the GOM lifted all restrictions on current payment and transfers and accepted the obligations of Article VIII of the IMF articles of Agreement, which provides for the complete elimination of exchange controls. There are no restrictions on converting or transferring funds associated with foreign investment, including remittances of investment capital, earnings, loan repayments, lease payments into a freely usable currency and at a legal market clearing rate. There are no plans to change remittance policies that have tightened or relaxed access to foreign exchange for investment remittances. When delays occur in conversion or funds transfer, they are due to temporary shortages of foreign exchange. There is no limitation on the inflow or outflow of funds for remittances of profits, debt service, capital, and returns on intellectual property or imported inputs. There are no surrender requirements for profits earned overseas.

Exporters and foreign investors may maintain bank accounts in foreign currencies. Madagascar uses exchange rate policy to counter underlying currency market pressures and keep commodity prices stable.

**Expropriation and Compensation**

There are no recent cases of expropriation actions by the GOM. However, local investors fear a return of monopoly or the nationalization of key sectors (particularly telecommunications and mining). There are no laws that force local ownership.

**Performance Requirements/Incentives**

As a signatory of the WTO Agreement, Madagascar is bound by the WTO TRIMS (Trade Related Investment Measures). Performance requirements are not imposed as conditions for establishing or maintaining investments, except in the Export Processing Zones (EPZ) regime under which firms must export 95 percent of output to qualify for EPZ investment incentives. Foreign or local investors can benefit from tax exemptions provided their EPZ projects fall into the following categories: (1) investment in export-oriented manufacturing industries; (2) development or management of industrial free zones; or (3) provision of services to EPZ companies.

The EPZ law approved in December 2007 granted the following advantages and tax incentives to EPZ companies: (1) the EDBM is in charge of EPZ companies' approval and has to deliver an eligibility certificate within 20 days of deposit of file; (2) 15 years tax exemption for EPZ companies; (3) no VAT or customs duties on imports of raw materials; (4) no registration taxes; (5) no customs tax on exported goods; (6) income tax on expatriation not exceeding 30 percent of the taxable basis; and (7) free access to foreign currency deposited in the company's foreign currency bank account.

There is no requirement restricting the mobility of foreign investors. The regime for visas, residence, and work permits is neither discriminatory nor excessively onerous. Since the creation of the EDBM, processing of residence and work permits has been streamlined.

There is no requirement that investors purchase from local sources, or export a certain percentage of output (except for EPZ companies), or only have access to foreign exchange in relation to their exports. There is no requirement that nationals own shares of foreign companies, that the share of foreign equity is reduced over time, or that technology is transferred on certain terms. There are no government-imposed conditions on permission to invest (although investors must apply for such permission), including location in a specific geographical area, specific percentage of local content or local equity, substitution for imports, export requirements or targets, employment of host country nationals, or technology transfer. Investors are not required to disclose proprietary information to the government as part of the regulatory approval process. U.S. and other foreign firms are able to participate in government-financed and/or subsidized research and development programs on a national treatment basis. There are officially no discriminatory or preferential export or import policies that would affect foreign investors, nor discriminatory tariff or non-tariff barriers. In April 2011 and again in January 2013, the de facto regime rejected market-based economic principles by imposing a fixed retail price on fuel distributors.

**Right to Private Ownership and Establishment**

Foreign and domestic private entities may establish and own business enterprises and engage in all forms of remunerative activity. They may freely establish, acquire, and dispose of interests in business enterprises. The government remains a minority shareholder in some privatized companies, such as in the Malagasy Telecommunications Company (Telma), and continues to own Air Madagascar, but competitive equality is the official standard applied to all private enterprises with respect to access to markets, credit, and other business operations such as licenses and supplies.

**Protection of Property Rights**

Secured interests in property are recognized, but not entirely enforced in the country. Banks and insurance companies use mortgages on commercial property to guarantee loans.

A prohibition on land ownership by foreigners impedes access to real property, and the entire issue remains highly controversial and problematic on a cultural level despite legal advances. A system of long-term leases—up to 99 years—was established in 2008 following the adoption of investment law 2007-036 to address the issue, but there have been long delays and few successes so far in the approval of land leases for foreigners. The new investment law grants land and properties to companies registered in Madagascar under certain conditions fixed by EDBM, which issues authorization documents. In addition, MCA's contribution to the land tenure issue improved the land rights process prior to early termination of the program in late 2009 due to the political crisis.

Madagascar is a member of the World Intellectual Property Organization (WIPO) and is a signatory to the WTO TRIPS agreement on trade related aspects of intellectual property. Two government offices share responsibility for the protection of intellectual property rights: the Malagasy Office for Industrial Property (OMAPI) and the Malagasy Copyright Office (OMDA). Protection of intellectual property rights is uneven. Officially, authorities protect against infringement, but in reality, enforcement capacity is quite limited due to resource constraints, absence of political will, and weakness of the judicial system. Major brands are generally respected, but pirated copies of movie DVDs, music CDs and tapes, electronic equipment and spare parts are sold openly. Some television stations regularly show pirated copies of first-run U.S. and European movies. Madagascar has not yet signed the WIPO Internet treaties.

**Transparency of the Regulatory System**

Excessive complexities and inconsistently applied regulations impede investment and can be a breeding ground for corrupt practices. The lack of transparency in government regulatory decisions has generated numerous complaints from investors. Although regulatory decisions can impede start-up in particular industries, the normal business registration process has been streamlined by EDBM and generally takes less than two weeks.

Some investors, especially in the mining sector, have encountered difficulty and/or delays in obtaining necessary operating permits as a result of irregularities in the regulatory system. Ambatovy, a USD 6 billion laterite nickel mining project that represents the largest foreign direct investment in Madagascar, faced significant obstacles and political inference before obtaining a temporary, six-month operating permit from the de facto regime.

Tax, labor, environment, health, and safety standards are generally not used to impede foreign investment. Bureaucratic procedures and red tape are often sources of corruption. There are no informal regulatory processes managed by non-governmental organizations or private sector associations. Proposed laws and regulations are not published in draft form for public comment. The only opportunity for comment on proposed laws and regulations is at the parliamentary level.

Accounting systems are transparent and consistent with international norms, and there are no private sector and/or government/authority efforts to restrict foreign participation in industry standard-setting consortia or organizations.

**Efficient Capital Markets and Portfolio Investment**

In spite of the general underdevelopment of the banking system, banks are free to support the flow of resources in the product and factors markets. The assets of the country's largest bank total an estimated USD 400 million. Credit is usually allocated on market terms, and the private sector/foreign investors can obtain credit on the local market. However, many of the EPZ companies use the services of banks in neighboring Mauritius, where the sector is more developed.

Within Malagasy law, there is an effective regulatory system established to encourage and facilitate portfolio investment. There are no cross-shareholding arrangements used by private firms to restrict foreign investment through mergers and acquisitions. There are no visible private sector and/or government efforts to restrict foreign participation in industry or control of domestic enterprises.

**Competition from State-Owned Enterprises (SOEs)**

Private enterprises are allowed to compete with public enterprises under the same terms and conditions with respect to access to markets, credit, and other business operations, such as licenses and supplies. The main SOEs are the National Malagasy Air Transport Company (Air Madagascar) and the Malagasy Water and Energy Company (Jiro Sy Rano Malagasy, or JIRAMA). SOEs have boards of directors for which seats are specifically allocated to senior government officials, private operators, or politically affiliated individuals.

A sovereign wealth fund (SWF) or asset management bureau (AMB) does not exist in the country.

SOEs are required by law to publish an annual report, and they are also required to submit their books to independent audit.

**Political Violence**

As in 2009 and 2010, Madagascar experienced political violence and civil unrest in 2012. The ongoing political crisis continues to create the conditions for possible future instability. At various times, small improvised explosive devices have been detonated in the capital but have caused only superficial damage. A 2012 military operation against organized cattle rustlers in the south has impacted economic operations and has led to numerous accusations of human rights violations against the de facto regime. The army put down an attempted mutiny at a military base near the capital in July. Street demonstrations are forbidden by the de facto regime, but opposition political gatherings are permitted indoors.

Public safety remains fairly adequate, although petty crimes have increased as the economic and political crisis has worn on. Standard warnings to guard against street crime and theft from vehicles and to minimize or avoid nighttime road travel apply, particularly in rural areas.

Madagascar, being an island, has no belligerent neighbors.

**Bilateral Investment Agreements**

According to the International Centre for the Settlement of Investment Disputes (ICSID) and the U.N. Conference on Trade and Development (UNCTAD), Madagascar has concluded bilateral investment agreements with Belgium, Canada, China, France, Germany, Mauritius, Norway, Sweden, Switzerland, and Thailand,. Madagascar has also signed double taxation treaties with France and Mauritius. The Malagasy government previously expressed interest in negotiating a bilateral investment treaty with the United States. Initial discussions began in late 2008, but stalled due to the unconstitutional change of government in March 2009.

**Foreign Trade Zones/Free Ports**

The incentives available in the EPZ are described in "Performance Requirements/Incentives." There is no distinction between foreign and domestically owned firms in terms of eligibility for EPZ treatment, which has been granted by the EDBM since December 2007.

**Foreign Direct Investment Statistics**

During 2012, QMM/Rio Tinto continued its mining and exportation of ilmenite (titanium-iron oxide) and related products. Ambatovy, a Canadian-Japanese-Korean partnership, concluded its construction of the nickel and cobalt mine and began exploitation/exportation. As the two companies are the largest contributors of foreign direct investment in the country, and with the Ambatovy project's investment phase coming to an end, foreign exchange inflows fell in comparison to 2011.

According to the Central Bank of Madagascar, FDI inflows for 2011 amounted to USD 940.8 million, and during the first quarter of 2012, it amounted to USD 256.6 million.

FDI inflows and stocks during the past three years (in USD)

| | **2009** | **2010** | **2011** | **2012 (First quarter)** |
|---|---|---|---|---|
| **FDI inflows** | 1,294,699,549 | 807,984,845 | 940,799,278 | 256,581,621 |
| **FDI stock** | 3,944,971,013 | 4,499,344,642 | n.a | n.a |

*Source*: *Central Bank of Madagascar*

| | **2009** | **2010** | **2011 (First Semester)** |
|---|---|---|---|
| Extractive activities | 1,058,167,950 | 695,275,196 | 308,726,655 |
| Agriculture | 7,233,929 | (429,435) | (622,203.79) |
| Fishing and Fish farming | 9,616,269 | 17,739,742 | (17,757,498.54) |
| Manufacturing | 50,934,020 | 21,216,118 | 8,103,463 |
| Gas, electricity, water production and distribution | 132,920 | 117,583 | (9,876) |
| Construction and Public Work | 16,318,518 | 27,402,022 | 33,821,220 |
| Commerce | 15,812,398 | 9,406,664 | 5,950,440 |
| Hotels and Restaurants | 19,166,079 | 18,455,467 | (444,431) |
| Transportation | 5,567,314 | 1,457,011 | (7,244,229) |
| Finance | 30,510,312 | 29,344,703 | 53,470,020 |
| Real Estate and services to enterprises | 3,864,912 | 5,367,933 | 1,491,313 |
| Oil distribution | 33,424,333 | 29,753,689 | 25,139,995.85 |
| Telecommunication | 43,868,797 | 8,435,324 | (24,300,514.55) |

| | | | |
|---|---|---|---|
| Others | 81,797 | (35,786) | (24,690.63) |
| **Total** | 1,294,699,549 | 863,506,232 | 386,299,665 |

## Section 5 - Government

### Chiefs of State and Cabinet Members:

For the current list of Chief of State and Cabinet Members, please access the following - Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments

### Legal system:

civil law system based on the old French civil code and customary law in matters of marriage, family, and obligation

### International organization participation:

ACP, AfDB, AU (suspended), CD, COMESA, EITI (candidate country), FAO, G-77, IAEA, IBRD, ICAO, ICC (national committees), ICRM, IDA, IFAD, IFC, IFRCS, ILO, IMF, IMO, InOC, Interpol, IOC, IOM, ISO (correspondent), ITSO, ITU, ITUC (NGOs), MIGA, NAM, OIF (suspended), OPCW, PCA, SADC (suspended), UN, UNCTAD, UNESCO, UNHCR, UNIDO, UNWTO, UPU, WCO, WFTU (NGOs), WHO, WIPO, WMO, WTO

## Section 6 - Tax

### Exchange control

There are no restrictions on converting or transferring funds associated with foreign investment, including remittances of investment capital, earnings, loan repayments, lease payments into a freely usable currency and at a legal market clearing rate.

### Treaty and non-treaty withholding tax rates

Madagascar has concluded 2 tax treaties

## Methodology and Sources

**Section 1 - General Background Report and Map**

(Source: CIA World Factbook)

**Section 2 - Anti – Money Laundering / Terrorist Financing**

| | **Lower Risk** | **Medium Risk** | **Higher Risk** |
|---|---|---|---|
| FATF List of Countries identified with strategic AML deficiencies | Not Listed | AML Deficient but Committed | High Risk |
| Compliance with FATF 40 + 9 recommendations | >69% Compliant or Fully Compliant | 35 – 69% Compliant or Fully Compliant | <35% Compliant or Fully Compliant |
| US Dept of State Money Laundering assessment (INCSR) | Monitored | Concern | Primary Concern |
| INCSR - Weakness in Government Legislation | <2 | 2-4 | 5-20 |
| US Sec of State supporter of / Safe Haven for International Terrorism | No | Safe Haven for Terrorism | State Supporter of Terrorism |
| EU White list equivalent jurisdictions | Yes | | No |
| International Sanctions<br>UN Sanctions / US Sanctions / EU Sanctions | None | Arab League / Other | UN , EU or US |
| Corruption Index (Transparency International)<br>Control of corruption (WGI)<br>Global Advice Network | >69% | 35 – 69% | <35% |
| World government Indicators (Average) | >69% | 35 – 69% | <35% |
| Failed States Index (Average) | >69% | 35 – 69% | <35% |
| Offshore Finance Centre | No | | Yes |

**Section 3 - Economy**

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: CIA World Factbook)

**Section 4 - Foreign Investment**

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: US State Department)

**Section 5 - Government**

Names of Government Ministers and general information on political matters.

(Source: CIA World Factbook / https://www.cia.gov/library/publications/world-leaders-1/index.html)

**Section 6 - Tax**

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: OECD Global Forum on Transparency and Exchange of Information for Tax Purposes PKF International)

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