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IP Country Fiche MALAWI





SECTION 1: COUNTRY OVERVIEW

1.1 GENERAL INFORMATION

Capital:	Lilongwe
Population:	21.5 million (2024)
Currency of government (official) fees:	Malawian Kwacha (MWK)
Language for filing IP applications:	English
GDP per capita:	645.16 USD (est. in 2022)
Human Development Index:	0.512 (est. in 2022)
Main exports:	tobacco, tea, tree nuts, raw beet, cane sugar, and unroasted coffee
Main imports:	oil, coal, consumer goods and fertilisers

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 and the Madrid Protocol
- Marrakesh VIP Treaty
- Paris Convention for the Protection of Industrial Property
- Patent Cooperation Treaty
- Patent Law Treaty
- Strasbourg Agreement on Patent Classification





- WIPO¹ Convention
- WTO/TRIPS²
- [Berne Convention for the Protection of Literary and Artistic Works](#)
- Strasbourg Agreement Concerning the International Patent Classification
- Convention Establishing the World Intellectual Property Organization

1.3. REGIONAL IP AGREEMENTS

Malawi is a signatory to the following regional agreements:

- **The AfCFTA** (the African Continental Free Trade Area) Agreement contains a Protocol on IP Rights, which aims to effectively protect and promote IP rights in Africa and may, therefore, have legal implications for Malawi when it comes into legal force. Malawi has signed and ratified the Agreement. Once enacted, the IP Protocol will ensure harmonised rules and principles for the promotion, protection, cooperation, and enforcement of IP rights.
- **COMESA** (the Common Market for Eastern and Southern Africa)
COMESA has a policy on IP rights that aims to promote the use of IP rights by COMESA Member States so they can shift from resource-based to knowledge and innovation-driven economies and promote copyright protection for socio-economic development. COMESA has no regional IP agreements, protocols or registration systems in place.
- **Lusaka Agreement** on the creation of the African Regional Intellectual Property Organization (ARIPO)
The Agreement was adopted by a Diplomatic Conference held in Lusaka, Zambia, on December 9, 1976. ARIPO was established mainly to pool the resources of its Member States in IP matters to avoid duplication of financial and human resources. It aims to achieve this by facilitating a voluntary centralised system for filing, registering and maintaining IP rights across its Member States, thus simplifying these processes in multiple countries. The Lusaka Agreement also

1 WIPO: World Intellectual Property Organization.

2 TRIPS Agreement: Agreement on Trade-Related Aspects of intellectual Property Rights theWorld Trade Organization (WTO).





serves as the foundational legal document for ARIPO, outlining its objectives, structure, and operational guidelines.

As Member State, Malawi is a signatory to the following ARIPO IP Protocols:

- [Banjul Protocol on Marks](#),
- [Harare Protocol on Patents and Industrial Designs](#),
- [Kampala Protocol](#)
- [Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore](#)

However, Malawi has not yet formally adopted (through ratification or accession) the Kampala and Swakopmund Protocols.

- **[SADC Treaty](#)** (establishing the Southern African Development Community)

The main objectives of SADC are to achieve economic development, peace and security, and growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa, and support the socially disadvantaged through Regional Integration. These objectives are to be achieved through increased Regional Integration, built on democratic principles, and equitable and sustainable development.

SADC has no regional IP agreements, protocols or registration systems in place. It has the SADC Industrialisation Strategy and Roadmap (2015–2063) which promotes the use and enforcement of IP rights to encourage research, development and innovation amongst SADC countries.

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, regional (ARIPO) and International [Patent Cooperation Treaty](#)
- 3) utility models: national, regional (ARIPO) and International [Patent Cooperation Treaty](#)
- 4) industrial designs: national and regional (ARIPO)
- 5) copyright and Related Rights: national
- 6) Plant Breeders Rights (National)³
- 7) Traditional Knowledge and Folklore (ARIPO)

³ <https://www.wipo.int/wipolex/en/legislation/details/22006>





8) Geographical Indications

IP protection is available in Malawi under these national laws:

- [Trade Marks Act, 2018 \(Act No. 2 of 2018\)](#)
- [Copyright Act, 2016 \(Act No. 26 of 2016\)](#)
- [Patents Act, 2016, \(Act No. 40 of 2016\)](#)
- [Registered Designs Act, 2016, \(Act No. 41 of 2016\); and](#)
- [Plant Breeder's Rights Act, 2018 \(Act No. 20 of 2018\)](#)

1.6. AVAILABLE IP PROTECTION ROUTES

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

1.6.1 National

The types of IP rights mentioned above, except Traditional Knowledge can be protected directly through the Malawi Department of the Registrar General within the Ministry of Justice and Constitutional Affairs.

1.6.2 Regional

The ARIPO regional route can be used in Malawi for:

- 1.6.2.1 the registration of trade marks under the Banjul Protocol on Marks;
- 1.6.3 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 to 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 markweb page](#).

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

Main advantages of the ARIPO trade mark system

It enables a right holder to secure trade mark protection that is enforceable in one or multiple Banjul Protocol states through a single trade mark application and streamlined registration process. 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.

It is cost effective when it involves multiple state designations, compared to the cost of registering the same trade mark separately in multiple countries and usually, using multiple IP agents

- There is no risk of a "central attack" similar to the Madrid system – the rejection of registration in one designated state does not automatically impact a right holder's rights in the remaining designated states.

Extending trade mark rights to other Banjul Protocol states is possible after filing an application or registering an ARIPO trade mark. To extend rights in this manner, a right holder must use the subsequent designation procedure provided in the Protocol. The procedure involves filing a subsequent designation application using a Form specified by ARIPO for this purpose. Depending on the targeted countries, registering an ARIPO trade mark may be faster than the timelines that apply in the Banjul Protocol state(s) of interest to the right holder.

Main challenges of the ARIPO trade mark system

- Not all ARIPO Member States have joined the Banjul Protocol – see the list of Banjul Protocol states [here](#). This results in limited geographic coverage. This is the opposite of the Madrid Protocol system, lessening the Banjul Protocol's appeal to right holders.





- The fact that not all Banjul Protocol States have implemented the Protocol in their national laws raises doubts about the enforceability of ARIPO trade marks in these countries.
- The ARIPO trade mark system's decentralised and unharmonized opposition procedure that is handled individually by Banjul Protocol states is challenging to the efficient handling of trade mark oppositions.
- ARIPO is currently engaging its stakeholders and technical partners to explore ways of resolving the challenges and to improve the effectiveness and appeal of its trade mark system.
- **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, to minimise costs. 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.
- Limit service specifications to the goods/services that you need to avoid or minimise surcharges on additional words – a surcharge of USD 5 per word applies for specifications containing 51 words and above.
- Leverage the Protocol's flexibilities. You do not have to designate all Banjul Protocol Member States or to select the same classes of goods/services for the states that are designated in an application. You may need an experienced IP agent to help you fully utilise these flexibilities.

Below are the filing fees for a simple trade mark application, filed online, which entails a 20% discount of filing fees:

Basis	Amount (USD)
Application and 1st designated class fee	80
Designation fees – one single-class state	50
Additional class fees – per class	<u>10</u>



Surcharge applicable to specifications per word from the 51st word this is not applicable for specifications of 50 words or less.	<u>5</u>
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Malawi is a signatory to 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 in Malawi.

Patent filings

- All Member States of ARIPO (except Somalia) are party to 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 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. In 2023, Designated patents applications figure was 415 which are ARIPO PCT-based applications. The pattern is similar for most ARIPO Member States. See the ARIPO Annual Reports available [here](#).

Substantive examination of patents and utility models

- ARIPO offers technical support to its Member States, including Malawi, to carry out 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.

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

1.6.4 International



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

- 1.6.4.1 the registration of trade marks under the Madrid System;
- 1.6.4.2 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](#).
- As a signatory to the PCT and an ARIPO Member State, 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).

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, and plant breeder's right 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.

1.7.6. When the national route provides special advantages, for example short registration timelines or fee cost savings. [When do I use the ARIPO regional route?](#)

This route is currently available for trade marks, patents, utility models, industrial





designs and traditional knowledge and Expressions of folklore.

1.7.7. When do I use the international route?

You can use this route if you require 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 wider territorial coverage which is beyond what is available under national and ARIPO's scope of protection for trade marks, patents and industrial designs.

- Member States carry out a substantive examination of applications after which ARIPO

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 ARIPOregion 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. In 2023, ARIPO received a total of 806 Patent applications. The pattern is similar for most ARIPO Member States. See the ARIPO Annual Reports from 2019 to 2023 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.

- You can conduct an online search at ARIPO through this [link](#)
- You can also access the Regional IP Database through this [link](#).

1.8.1. International



The WIPO international route can be used for the registration of trade marks under the Madrid System and for filing patents in accordance with the Patent Cooperation Treaty (PCT).

Trade marks: Madrid System

- Malawi is a signatory of the Madrid Protocol, which means it can be designated in an application to register an international trade mark under the Madrid Protocol.
- The Madrid system enables brand owners to register trade marks internationally using one application to designate countries across the globe provided these countries are signatories to the Madrid Protocol. 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 national or regional patent applications. More information about the PCT is available through this [link](#).
- Malawi can be designated as a PCT country or through the ARIPO regional block of which Malawi is a Member State.





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 do I use the national route?

- When the national route is the only available route for the protection of the IP right in question.

1.8.4 When do I use the ARIPO regional 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 do I use the international route?

- If you require IP protection that covers Malawi for international trade marks under the Madrid System; and
- For filing international patent applications using the WIPO PCT system.

SECTION 2: OVERVIEW OF IP ENFORCEMENT

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





Proven trade mark and copyright infringers can be ordered to pay a fine of up to Malawi Kwacha 10 million (approximately USD 8 000) in terms of the Malawi Trade Marks Act, 2018 and the Copyright Act, 2016.

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. Malawian law entitles right holders to take civil action against infringers to recover their lost revenue and/or to have the infringing products destroyed.

For copyrights, the Copyright Act, 2016 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. See section 94 and 95 of the Copyright Act.

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 up to 10 years. It is advisable for right holders to monitor their markets to identify infringers and to enforce their rights in infringement proceedings. These actions discourage infringement of IP rights.





SECTION 3: TYPES OF AVAILABLE IP PROTECTION

3.1 TRADE MARKS

WHAT YOU SHOULD KNOW ABOUT TRADE MARKS IN MALAWI.

- Foreigners need to appoint a local agent.
- Multi-class filing system.
- Signatory to the 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 (Section 25, Trademarks Act 2018).
- Appointment and recordal of licensees at the IP office is advisable.
- Opposition period is 30 days (Section 10, Trademarks Act 2018).

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 local 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 and it is not contrary to public order or morality.

3.1.4 What cannot be registered?

Section 8 of the Act provides that a trade mark cannot be registered if it:

- is incapable of distinguishing goods or services of one enterprise or





business from those of another enterprise or business;

- is identical with, or similar to, another registered trademark or other well-known mark whose application for registration as a trademark was filed prior to the filing date of the application for the goods concerned which are similar or identical to the goods covered by the prior application
- consists solely of a mark indicating the common name of the goods or services for which the application is made;
- 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;

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 trademark 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 60 days 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)

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, and renewable every 10 years.

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. Section 24 (2) of the Act.





3.2 PATENTS

WHAT YOU NEED TO KNOW ABOUT PATENTS IN MALAWI

- The national IP office carries out a formal examination of applications only.
- If requested, 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](#).

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
- The legal representative of any person who immediately before his death or disability was entitled to make such application. The Application may be made by any above – mentioned person either alone or jointly with any other person.

3.2.1 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](#).

3.2.3 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.

3.2.4 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.

3.2.5 Where can I file an application?

National applications must be filed at Department of the Registrar General, Ministry of Justice and Constitutional Affairs (also known as the national IP Office). Visit their website [here](#).

website [here](#)

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, by courier or in person. Online ARIPO application fees have a 20 % discount to encourage e-filings.

3.2.6 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](#).





3.2.7 How do I 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

3.2.8 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](#).

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/resources/fee-schedules>.

Application fees consist of three components, as follows:

Type of Fee	ARIPO Fee (USD)
Application fee, regardless of the number of states designated in the application	232 [Electronic filing fee, which includes a 20% discount on the paper filing fee]





State designation fee	100 per state (Multiplied by 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)
Total fees, assuming only Malawi is designated and payment of first annuity fee	382 [E-filing]
Total fees, assuming all 20 Harare Protocol states, including Malawi are designated and payment of first annuity fee	3,232 [E-filing]

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](#):

3.2.9 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 24–36 months on average to complete registration, assuming that there are no objections.





3.2.10 What is the duration of protection?

- National protection lasts 16 years from the filing date, (Section 29 of the Patents Act) 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.

3.2.11 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	<u>530</u>
20	100

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 UTILITY MODELS IN MALAWI

- 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

3.3.3 What qualifies for registration?

A registrable utility model must meet the following requirements:

- novelty: the invention must be a new
- 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?

You cannot register a utility model directly in Malawi.

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, by courier or in person. Online ARIPO application fees have a 20 % discount to encourage e-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)

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](#):

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/resources/fee-schedules>

Type of Fee	ARIPO Fee (USD)
Application fee	80
state designation fee	20 per state
Publication and Registration Fee	





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](#):

3.4 INDUSTRIAL DESIGNS

3.1.7 Who can register?

A creator or assignee of an registered 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. The applications are filed in person. You can find out more about the filing process from the office's website [here](#).

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, by courier or in person. Online ARIPO application fees have a 20 % discount to encourage e-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 \(registrargeneral.gov.mw\)](#)





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](#):

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)
Application fee, regardless of the number of states designated in the application	40
State designation fees	10 per state (multiplied by the number of designated states)
Total fees, assuming only Malawi is designated in the application	50
Total fees, assuming all 18 Harare Protocol states, including Malawi, are designated in the application	220

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](#):

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. See section 15 of the Registered Designs Act.

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

If you require the protection longer than 10 years then it is advisable to file using the national filing route.

3.4.10 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](#):

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

Annuity Year	ARIPO Fee
1	10
2	15
3	20
4	25
5	30
6	35
7	40
8	45
9	50
10	55





11	60
12	60
13	60
14	60
Late renewal fees	30% of the fees to be paid

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 2016.

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. See section 25 of the copyright Act

3.5.2 What qualifies for protection?

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

- a) works expressed by writing;
- b) musical works audio-visual works;
- c) works of architecture;





- d) photographic works;
- e) works of applied art;
- f) works deriving from Malawi national folklore;
- g) dramatic and phonogram musical works;
- h) other works derivative works provided for;
- i) expressions of folklore recognized and protected; and
- j) 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 translationsthereof;
- 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:

- a) works expressed by writing;
- b) musical works audio–visual works;
- c) works of architecture;
- d) photographic works;
- e) works of applied art;
- f) works deriving from Malawi national folklore;
- g) dramatic and phonogram musical works;
- h) other works derivative works provided for;
- i) expressions of folklore recognized and protected; and
- j) computer programmes.

3.5.5 What are examples of acts permitted in relation to copyrightworks?

The copyright Act in Section 48 permits certain acts that do not infringe copyright, which include:

- fair use: copyright in a work is not infringed by any fair dealing for the purposes ofresearch 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 personat 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?

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?

Section 35 of copyright Act provides for the duration of copyright protection 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.





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