KENYA

INVESTMENT CLIMATE STATEMENT

2015

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Executive Summary

Kenya has a generally positive investment climate that has made it attractive to international firms seeking a location for their regional or African operations. The investment climate is characterized by stable monetary and fiscal conditions and a legal environment that makes few distinctions between foreign and domestic investment. Kenya has a strong telecommunications infrastructure, a robust financial sector, and solid aviation connections both within Africa and to Europe and Asia. Its port at Mombasa is the major trade gateway for much of East Africa. Kenya has a well-educated population and a growing urban middle class. Increasing integration among the members of the East African Community as well as Kenya's membership in other regional trade blocks provide growing access to a large regional market outside of Kenya. Key challenges for investors are Kenya's consistently low rankings on international measures of the ease of doing business and corruption. Kenya also faces a rising threat of insecurity from terrorism and crime.

Key macroeconomic fundamentals are strong. Inflation is stable in the range of 5-7 percent. The exchange rate is largely stable although it has depreciated from 86.3 Kenyan shillings (2013) to 90.6 Kenyan shillings (2014) to the U.S. dollar as the U.S. dollar strengthened internationally. The Central Bank of Kenya (CBK) has held interest rates steady at 8.5 percent, although many banks do not pass lower rates promoted by CBK monetary policy on to consumers, which creates a drag on investment. Kenya has also maintained relatively stable fiscal policies with manageable debt levels and deficits. In 2014, Kenya's national accounts were statistically "rebased," which revised GDP estimates upwards by about 25 percent. After rebasing, Kenya's debt to GDP ratio dropped from 52.0 to 43.1 percent in net terms. Kenya's interest payments on debt are starting to cut into its budget, which the revision will not help. Kenya's spending on public debt repayment was 70 percent higher than its spending on development in 2013. An ongoing concern is the large public sector wage bill, which the government is attempting to control.

The ease of doing business in Kenya remains weak, with the World Bank's 2014 Ease of Doing Business report ranking Kenya 136 of 189 countries. Despite this, the United Nations Council on Trade and Development (UNCTAD) in its 2014 World Investment Report noted overall increases in FDI by 15 percent to USD 6.2 billion in the East African region as a result of rising flows to Ethiopia and Kenya. The report states that Kenya is becoming a favored business hub, not only for oil and gas exploration but also for manufacturing and transport. Perhaps the single greatest barrier to foreigners doing business in Kenya is Kenya's restrictive and erratic application of its work permit policies; the report notes that over 50 percent of investor facilitation revolves around foreign work permits.

Corruption remains a major impediment to doing business in Kenya. Kenya ranked 145 of 175 countries on Transparency International's 2014 corruption perceptions index. Allegations of irregularities in public tenders are frequent. Insecurity remains an issue. Most notable, terrorists attacked Garissa University College in April 2014, killing 147 people and wounding another 79. It was the deadliest attack in Kenya since the 1998 bombing of the U.S. Embassy in Nairobi. An attack in September of 2013 on the prominent Westgate Shopping Mall that left 71 people dead and over 175 wounded. These attacks, both linked to the Somali terrorist group al-Shabaab, demonstrated the effect on Kenya of instability in neighboring Somalia.

Despite these obstacles, American firms are operating successfully in many sectors in Kenya. Opportunities exist in retail, restaurants, technology, health care, energy, transportation, mobile banking, and finance. Interest in extractive resources has risen sharply following oil and gas finds in Kenya. Unfortunately the mining sector is expected to suffer if a restrictive mining bill currently under debate in the Senate is passed this year.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

Kenya is an increasingly strong partner for foreign direct investment (FDI) but some hurdles still remain. Foreign investors seeking to establish a presence in Kenya generally receive the same treatment as local investors, and multinational companies make up a large percentage of Kenya's industrial sector. There is little discrimination against foreigners in investment, ownership, or access to government-financed research, and the government's export promotion programs do not distinguish between local and foreign-owned goods.

Barriers to FDI in Kenya are shrinking as reforms are put in place, but they still exist. Inconsistent administration of work permit applications makes it somewhat difficult to employ expatriates in Kenya. See section 16, Labor, for details. The minimum foreign investment to qualify for Government of Kenya (GOK) investment incentives and an investment certificate is USD 100,000, which is likely to deter foreign small and medium enterprise investment, especially in the services sector, which is normally not as capital-intensive as other sectors. Investors should be aware that foreigners cannot own land in Kenya, though they can lease it in 99-year increments. Investors in mining should be aware of the Mining Bill 2014, currently under consideration in the Senate, which contains a number of practices, policies, and conditions that create strong disincentives to foreign investment in the sector.

Other Investment Policy Reviews

One component of Kenya’s reform effort was a comprehensive policy review by UNCTAD that resulted in the 2005 and 2012 UNCTAD Investment Guide[s] to Kenya, published in cooperation with the International Chamber of Commerce (ICC). According to these guides, Kenya faces several key challenges, most notably the absence of a reliable and affordable power supply, dilapidated transportation infrastructure, and burdensome tax administration. UNCTAD observes that over 50 percent of investor facilitation revolves around foreign work permits. A 2013 follow-up report tracking progress in implementing recommendations from these reviews notes that since 2005, Kenya’s performance in legislative and regulatory reform has been impressive and solid progress has been experienced on nearly all areas which touch on the investment framework.

Highlights touch on the new competition framework, modernization of tax administration (e.g. online filing), simplification of business licenses and introduction of performance contracts. The report states that the adoption of a new Constitution and the consolidation of both political and economic stability will eventually provide renewed opportunities to put Kenya high on the FDI map. More needs to be done in the following areas: addressing foreign permits issues; moving forward with privatization of state enterprises and the development of Public Private Partnership

(PPP) policy; developing an investment policy and implementing the FDI strategy; creating an advocacy network; and fostering regional integration.

The 2013 African Development Bank report titled The State of Kenya's Private Sector, 2013 (http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/The_State_of_Kenya_s_Private_Sector_-_Recommendations_for_Government-Development_Partners_and_the_Private_Sector.pdf) notes that the business climate has improved over the last decade. Political uncertainty, corruption, infrastructural deficits, and an untapped informal sector are recurrent challenges that prevent the private sector from reaching its full potential. Political uncertainty, especially around elections, and its associated volatility is arguably the main limitation on sustained private sector investment and growth. A widespread perception of corruption, political interference, and patronage in business remains challenging to operations and planning. The report mentions that Kenya's transport infrastructure and logistics systems (including customs, goods clearance and weighbridge processes) are persistently weak for a regional trade and transport hub. High energy costs and weak and interrupted supply of power is crippling to business, especially in manufacturing.

The report highlights challenges in the regulatory environment associated primarily with outdated company legislation, business permit procedures and local ownership requirements in selected industries. Balkanisation of business regulation and taxes across 47 counties may occur due to the GOK's failure to incorporate Regulatory Impact Assessments (RIA) into the legislative process to ensure regulatory rigor and consistency across national and county governments, perpetuating uncertainty and increasing the complexity and cost of doing business. With these criticisms, the report characterizes Kenya's business climate as "mediocre but improving."

Laws/Regulations of Foreign Direct Investment

The Government of Kenya has been implementing reforms established under the 2010 constitution, which establishes a three-branch bicameral democratic republic that is set up in a similar manner to the American political system. One of the most important changes in the new constitution is the establishment of a devolutionary system that sees much more power and funding given to local governments in Kenya's 47 counties. Kenyan authorities say that the new institutions will create a strong and stable environment for business, even as teething problems create tension among the branches and corruption remains an issue.

The major regulations governing foreign direct investment are found in the Investment Promotion Act of 2004. Other important documents that provide the legal framework for FDI include the 2010 constitution of Kenya, the Companies Ordinance, the 2013 Private Public Partnership Act, and the Foreign Investment Protection Act. GOK membership in the World Bank's Multilateral Investment Guarantee Agency (MIGA) provides an opportunity to insure FDI against non-commercial risk. On the legal side, the Employment Relations Court and Milimani Commercial Courts have jurisdiction in the economic arena. The Kenya Investment Authority (KenInvest, www.investmentkenya.com) is Kenya's official investment promotion agency.

The Constitution of Kenya provides protection against the expropriation of private property. The exercise of eminent domain is permitted subject to the payment of prompt and fair compensation. The Land Acquisition Act governs compensation and due process in acquiring land, although land rights issues in Kenya remain contentious. See “Real Property” in section 7 for details.

Industrial Promotion

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Limits on Foreign Control

Under Kenya Vision 2030, Kenya aims to be a middle-income rapidly industrializing country by 2030, offering all its citizens a high quality of life. Its first Medium Term Plan (MTP) was implemented between 2008 and 2012. The Second MPT (http://www.usaid.gov/sites/-default/files/documents/1860/1)%20Second%20Medium%20Term%20Plan%202013%20-%202017.pdf) outlines the policies, programs and projects which the ruling Jubilee Coalition intends to implement from 2013 to 2017 in order to deliver accelerated and inclusive economic growth; higher living standards; better education and health care; increased job creation—especially for youth; commercialized agriculture providing higher rural incomes and affordable food; an improved manufacturing sector; and more diversified exports. The second MTP focuses on infrastructure development and driving growth through public private partnership arrangements. More information can be obtained from KenInvest.

Privatization Program

Kenya is undertaking privatization efforts for parastatal organizations in a wide range of sectors. Privatization may be accomplished through public offering of shares, public-private partnerships, negotiated sales, the sale of assets, and other methods as approved by its cabinet. The affected sectors include agribusiness; agricultural, construction, and heavy equipment; education; energy and mining; finance; food processing and packaging; industrial equipment and supplies; and travel. Parastatals such as the National Bank of Kenya, the Kenya Electricity Generating Company (KenGen), the Kenya Pipeline Company, the Kenya Ports Authority, and various hotels and sugar, cement, dairy, wine, and meat processing firms are involved.

The Private Public Partnership (PPP) Act 2013 provides the legal framework to enable the structured, methodical and staged deployment of PPPs in infrastructure development in Kenya. The World Bank estimates that Kenya has an infrastructure funding gap of approximately USD 2 to 3 billion per year to address infrastructure requirements in the next 10 years. The GOK intends to bridge the current development funding gap through PPP deals. On December 31, 2013, the GOK published an approved list of 47 National Priority PPP projects. More information on Kenyan PPP projects can be found at the National Treasury PPP Unit's website http://pppunit.go.ke. Investors are cautioned that the tendering process for contracts has been criticized as opaque and prone to corruption. The GOK has efforts in place to improve and automate it, but their future efficacy is unknown.

Screening of FDI

There is little screening of investment in Kenya, and it has not been discriminatory. KenInvest asks companies to undergo an optional investment registration process that includes health, safety, and environmental impact assessments. While optional, registration is mandatory for those seeking investment incentives.

Investors in Kenya are required to comply with environmental standards. The National Environment Management Authority (NEMA) oversees these matters and is the principal environmental regulatory agency. Developers of projects involving manufacturing or processing, or any project sited by a body of water or in a conservation area are required to carry out an environmental impact assessment (EIA) and obtain an EIA license prior to project implementation. Upon submission of the EIA, NEMA is required to respond within six months. If no reply is received within nine months, the investor may proceed with the project.

Competition Law

The Competition Authority of Kenya regulates Kenyan competition law and its enforcement. It regulates mergers, abuse of dominant position, and other competition and consumer-welfare related issues in Kenya. It has recently imposed a filing fee for mergers and acquisitions, set at one million shillings (USD 11,554) for mergers involving turnover of between one and 50 billion shillings (USD 11.6 million to USD 578 million), while two million shillings (USD 23,108) will be charged for larger mergers. All mergers and acquisitions require the Authority's authorization before they are finalized. The transfer of property between two entities relating to incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring transactions which the Treasury Cabinet Secretary deems in his discretion to be in the public interest are exempt from capital gains tax.

Investment Trends

Historically, the service sector contribution to Kenya's GDP has outpaced the other sectors. In 2013 agriculture was up 5.1 percent and represented 26.3 percent of Kenya's economy, while manufacturing was up 5.9 percent and was 10.4 percent of the overall picture and services were 52.3 percent of the economy. The recent focus on extractive resources, including oil, gas, and minerals, is creating a paradigm shift in the types of FDI moving into Kenya – from market seeking FDI to resource seeking FDI. The implementation of key economic reforms is contributing to a structural transformation. These reforms include the policy and legal framework for Public Private Partnerships (PPPs) enacted in 2013 and the passage of the legislative framework for establishment of Special Economic Zones.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	145 of 175 countries	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	136 of 189 countries	doingbusiness.org/rankings
Global Innovation Index	2014	85 of 143 countries	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	USD 1,160	data.worldbank.org/indicator/NY.GNP.PCAP.CD

Millennium Challenge Corporation Country Scorecard

The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a per capita gross national income (GNI) or USD 4,125 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here: http://www.mcc.gov/pages/selection/scorecards. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: http://www.mcc.gov/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015.

2. Conversion and Transfer Policies

Foreign Exchange

Kenya is an open economy with a liberalized capital account and a floating exchange rate. The Central Bank of Kenya (CBK) engages in volatility controls; however, this form of currency management is strictly aimed at smoothing temporary market fluctuations. Despite the CBK expectation that the shilling will strengthen this year on the back of a sovereign bond issued in 2014, the global appreciation of the U.S. dollar remains a key risk to the currency. Regionally, the shilling strengthened against all the other currencies. The currency is likely to remain under pressure due to relatively lower foreign exchange inflows and an increase in imports occasioned by the ongoing infrastructure projects. Lower oil prices continue to support Kenya's current account position. The trend is likely to hold into the year as global oil prices are expected to trade at the USD 50-60 per barrel levels from a high of the USD 110 less than a year ago. According to CBK figures, the average exchange rate in 2014 was KES 87.92 to USD 1.

Remittance Policies

Kenya's Foreign Investment Protection Act (FIPA) guarantees capital repatriation and remittance of dividends and interest to foreign investors, who are free to convert and repatriate profits including un-capitalized retained profits (proceeds of an investment after payment of the relevant taxes and the principal and interest associated with any loan). Kenya has no restrictions on converting or transferring funds associated with investment. Kenyan law requires the declaration to customs of amounts above KES 500,000 (USD 5,687) as a formal check against money laundering. Foreign currency is readily available from commercial banks and foreign exchange bureaus and can be freely bought and sold by local and foreign investors.

Kenya is listed as a country of primary concern for money laundering and financial crime by the State Department's Bureau of International Narcotics and Law Enforcement. The inter-governmental Financial Action Task Force (FATF) has repeatedly cited deficiencies in Kenya's Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) regime. Kenya's ongoing progress in creating the legal and institutional framework to combat money laundering and the financing of terrorism resulted in the FATF announcing that Kenya would be removed from the FATF Watchlist in June 2014.

3. Expropriation and Compensation

Kenya does not have a recent history of expropriation actions, nor does it have policies in place that encourage expropriation. The 2010 constitution guarantees safety from expropriation except in cases of eminent domain or security concerns. In these cases, the constitution calls for prompt and fair compensation. The Kenyan government may revoke a foreign investment license if an untrue statement is made while applying for the license; the provisions of the Investment Promotion Act or of any other law under which the license is granted are breached; or if there is a breach of the terms and conditions of the general authority. The Investment Promotion Act of 2004 provides for revocation of the license in instances of fraudulent representation to KenInvest by giving a written notice to the investor granting 30 days from the date of notice to justify retaining the license. In practice, KevInvest rarely revokes licenses.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

The 2010 constitution establishes a separate judiciary with a Supreme Court, a Court of Appeal, a Constitutional Court, and a High Court. In addition, the previously existing subordinate courts remain – Magistrates, Khadis (Muslim succession and inheritance), and Courts Martial, as do the Commercial and Industrial Courts. In 2014, the Judiciary renamed the Industrial Court the Employment and Labor Relations Court.

From a governance perspective, the Kenyan courts have been described as “emerging.” Judges are generally competent, and the judiciary has flexed its muscles in some well-handled and important cases. There have also been growing pains, however, as the new judiciary struggles to build capacity and assert itself in the face of some attempted influence by other branches. For instance, the legislature cut funding to the judiciary after the judiciary sided with county governors in an authority dispute between the legislature and the executive. The Chief Justice of Kenya is required under the constitution to issue an annual “State of the Judiciary and Administration of Justice Report”.

The Foreign Judgments (Reciprocal Enforcement) Act provides for the enforcement in Kenya of judgments given in other countries that accord reciprocal treatment to judgments given in Kenya. Kenya has entered into reciprocal enforcement agreements with Australia, the United Kingdom, Malawi, Tanzania, Uganda, Zambia, and Seychelles.

Without such an agreement, a foreign judgment is not enforceable in the Kenyan courts except by filing suit on the judgment. Kenyan courts generally recognize a governing-law clause in an agreement that provides for foreign law. A Kenyan court would not give effect to a foreign law if the parties intended to apply it in order to evade the mandatory provisions of the Kenyan law with which the agreement has its most substantial connection, and which the court would normally have applied.

Foreign advocates are not entitled to practice in Kenya unless a Kenyan advocate instructs and accompanies them, although a foreign advocate may practice as an advocate for the purposes of a specified suit or matter if appointed to do so by the Attorney General. All advocates in private practice are members of the Law Society of Kenya (LSK). Advocates in public service are not required to join LSK.

Bankruptcy

Bankruptcies are governed by the Bankruptcy Act (2009); creditors' rights are comparable to those in other common law countries. Monetary judgments typically are made in Kenyan shillings.

The World Bank’s 2015 Doing Business Report puts Kenya at 134 of 189 countries in the “resolving insolvency” category. This is down 11rankings from2014. The report states that 4.5 years are typically required to close an estate in Kenya, at a cost of 22 percent of the estate. Estates are sold as a going concern, and the recovery rate is 27.1 cents on the dollar.

Investment Disputes

There have been very few investment disputes involving U.S. and international companies in the last decade, with only one that has engaged the attention of Embassy Nairobi. There is no particular pattern to the disputes. Commercial disputes are far more common, particularly with respect to government tenders. See sections 8 and 13 for more information.

International Arbitration

The government does accept binding international arbitration of investment disputes with foreign investors. Legislation in 2013 established the Nairobi Centre for International Arbitration (NCIA). The NCIA seeks to serve as an independent, not-for-profit international organization for commercial arbitration, and may offer a quicker alternative to the court system. While it remains to be seen whether this center will be effective in establishing Nairobi as a neutral arbitration hub, arbitration at other international arbitration centers is popular with multinational businesses operating in Kenya.

ICSID Convention and New York Convention

Kenya is a member of the International Center for Settlement of Investment Disputes (ICSID), and is a signatory to the 1958 New York Convention on the Enforcement of Foreign Arbitral Awards.

Duration of Dispute Resolution

The private sector is dissatisfied with their legal options in Kenya because of weak institutional capacity and inadequate transparency. The resources and time involved in settling a dispute through the Kenyan courts often render them ineffective as a form of dispute resolution. International investors anecdotally relate a perceived “home field advantage” enjoyed by Kenyans in their national justice system. In the words of one contact, “people doing business here do not see the courts as a viable way to solve investment disputes.”

5. Performance Requirements and Investment Incentives

WTO/TRIMS

Kenya is a World Trade Organization (WTO) member. It has never been cited for violating Trade Related Investment Measures.

Investment Incentives

Kenya's Special Economic Zones (SEZ) and Export Processing Zones (EPZ) offer special geographically-based incentives. More information is provided in Section 17.

The government’s Manufacturing Under Bond (MUB) program is meant to encourage manufacturing for export by exempting participating enterprises from import duties and VAT on imported plant, machinery, equipment, raw materials, and other imported inputs. The program also provides a 100 percent investment allowance on plant, machinery, equipment, and buildings. Participating companies must export goods produced under the MUB system. If not exported, the goods are subject to a surcharge of 2.5 percent and imported inputs used in their production are subject to all other tariffs and other import charges. The program is open to both local and foreign investors and is administered by the Kenya Revenue Authority.

Investors in the manufacturing and hotel sectors are able to deduct from their taxes a large portion of the cost of buildings and capital machinery. The government allows all locally financed materials and equipment (excluding motor vehicles and goods for regular repair and maintenance) for use in construction or refurbishment of tourist hotels to be zero-rated for purposes of VAT calculation. The National Treasury permanent secretary must approve such purchases. After being suspended for over 29 years, the Finance Act 2014 amended the Income Tax Act to reintroduce capital gains tax (CGT) on transfer of property situated in Kenya. Therefore, gains derived on sale or transfer of property by an individual or company are subject to tax at the rate of five percent. Prior to the amendment, the regulations on capital gains had been suspended. The effective date of this provision was January 1, 2015. To boost the ailing tourism industry, one week vacations paid by employers on behalf of employees were made tax deductible. Aircrafts and aircraft parts, tractors and inputs for solar manufacturing are now exemptible from VAT. Services relating to goods in transit are exempted from VAT. The Finance Act 2014 reintroduced the withholding VAT system by government ministries, departments and agencies, which had been abolished in 2011. It excluded the Railway Development Levy (RDL) imports for persons/goods/projects: the implementation of an official aid-funded project; diplomatic missions, institution or organization gazetted under the Privileges and Immunities Act; and the United Nations or its agencies. The government permits some VAT remission on capital goods, including plants, machinery, and equipment for new investment, expansion of investment, and replacement. The investment allowance under the Income Tax Act is set at 100 percent. Materials imported for use in manufacturing for export or for production of duty-free items for domestic sale qualify for the investment allowance. Approved suppliers, who manufacture goods for an exporter, are also entitled to the same import duty relief. The program is also open to Kenyan companies producing goods that can be imported duty-free or goods for supply to the armed forces or to an approved aid-funded project.

Research and Development

There is no differentiation between local and foreign investors in access to government-sponsored research.

Performance Requirements

The government encourages investments in sectors that create employment, generate foreign exchange, and create forward and backward linkages with rural areas. The law applies local content rules but only for purposes of determining whether goods qualify for preferential duty rates within the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC). There are no government imposed conditions on permission to invest. For information on work permits for foreign nationals please see section 16.

Data Storage

The GOK does not impose any data storage requirements for investors or others.

6. Right to Private Ownership and Establishment

Private enterprises, both foreign and domestic, can freely establish, acquire, and dispose of business enterprises according to the Companies Act.

According to the World Bank, there are no additional procedures specifically required of foreigners to establish a business. On average, it takes as long to establish a domestic enterprise as a foreign-owned limited liability company in Kenya. Obtaining an optional Investment Certificate from the Kenya Investment Authority (for investments of USD 100,000 or more) helps speed up the administrative start-up procedures, including the provision of various work permits. The certificate is valid for a 12-month period during which a foreign investor is permitted to begin operations and apply for all the general and sector-specific licenses. There is no minimum capital requirement and investors are allowed to hold foreign currency bank accounts.

Foreign investors are free to obtain financing locally or internationally. As noted above, there is no discrimination against foreign investors in access to government-financed research, and the government's export promotion programs do not distinguish between local and foreign-owned goods.

Land ownership in Kenya is a contentious issue and is discussed in section 1 under the headings “Laws/Regulations of Foreign Direct Investment” and “Limits on Foreign Control” and in section 7 under the heading “Real Property.”

7. Protection of Property Rights

Real Property

Ownership of real property in Kenya is highly contentious, and the legal infrastructure around land ownership and registration has changed in recent years. The 2010 constitution and subsequent land legislation mandates that all land leases convert from 999 years to 99 years. The state has the power to review leasehold land at the expiry of the 99 years, and can deny lease renewal and confiscate the land if it determines the land has not been used productively. The conversion to 99-year leases with this government prerogative to review land use has sent a negative signal to existing foreign landholders and potential investors. The constitution also prohibits foreign ownership of land and converts foreign-owned freehold interests into 99 year leases at a “peppercorn rate.” The government has not yet effectively implemented this provision of the constitution.

Although precise data is not available, it is clear that far more than ten percent of land in Kenya does not have clear title. There are over 7,000 pending disputes over competing land titles, and many more are expected to emerge. The 2010 constitution and subsequent land legislation created the National Land Commission, an independent government body mandated to review historical land injustices and provide oversight of the government's land policy and management. The work of the National Land Commission has stalled due to disagreements with the Ministry of Land over which body has the power to register land and issue new land titles. The National Land Commission took the Ministry of Land to the Supreme Court to resolve gaps in the law allocating key land powers to the two bodies. The dispute has also prevented effective implementation of the constitutional provisions on foreign ownership of land.

Intellectual Property Rights

The major intellectual property enforcement issues in Kenya related to counterfeit products include: corruption; failure to investigate firms and individuals accused of counterfeiting; failure to impound imports of counterfeit goods at the ports of entry (especially in Mombasa); lack of cooperation among the different Kenya law enforcement agencies involved in anti-counterfeiting activities as well as with private sector entities; and the reluctance of brand owners to file a complaint with the Anti-Counterfeiting Agency (ACA) even after seizures of counterfeit products labeled with their brand. The manufacturers are concerned they will lose consumer trust and that the public will stop buying all products with their brand whether counterfeit or not.

ACA, the lead agency for IPR enforcement, opened an office in Mombasa in December 2013, but continues to operate with a very limited budget and a small staff. It is also constrained by the lack of implementing regulations to execute its mandate effectively. Although the agency has made several high-profile seizures of counterfeit goods shipments, Kenya's law enforcement agencies have failed to implement the new laws and regulations consistently or effectively even though penalties under the Anti-Counterfeiting Act are more punitive than under previous IPR legislation. Cases rarely get to court and convictions are rarer still.

To improve on the process of case management in the courts, a series of judiciary sensitization workshops on intellectual property rights and anti-counterfeit laws were conducted by the Judiciary Training Institute in collaboration with the Anti-Counterfeit Agency in 2014. Plans to set up an International Crimes Division at the High Court are at an advanced stage.

In December 2013, the Kenya Revenue Authority (KRA) set up a 300-man team (significantly larger than ACA's staff of 70) to attack the illegal counterfeiting and smuggling activities that cost the government billions of shillings in lost tax revenues. The unit's mandate is to apprehend illegal traders as well as staff of government agencies who collude with counterfeiters and smugglers and it has had some initial success. In 2015, the Kenya Revenue Authority (KRA) approved the merger of Kenya's domestic taxes into a single department as part of a wider reform program aimed at supporting increased revenue collection. Kenya plans to enact laws establishing the Customs and Border Protection Agency this year. This is in line with the East African Customs Protocol which is expected to improve the flow of goods and strengthen EAC member's revenue collection through the Single Customs Territory (SCT) by providing for collection of duties at the first point of entry. Under the SCT, members of the EAC jointly collect taxes at the port of entry. Mombasa port has started implementing the East Africa Customs Union where each EAC member is in charge of domestic taxes like VAT, excise and property taxes. Import duties are currently been handled by Kenya-based customs officials from the destination countries who clear goods destined for their countries, hence reducing the motivation for dumping of cargo in the countries of transit. Importers lodge the import declaration forms in their home country and pay relevant taxes first to facilitate the export process. A road manifest is issued against the import documents submitted electronically. In the future, import duties will be handled by a regional customs body that will assign the revenue collected to the country of destination.

In an attempt to combat the importation of counterfeits, the Ministry of Industrialization and the Kenya Bureau of Standards (KEBS) decreed in 2009 that all locally manufactured goods must have a standardization mark issued by KEBS, and several categories of imported goods, specifically food products, electronics, and medicines, must have an import standardization mark (ISM). Under this new program, U.S. consumer-ready products may enter the Kenyan market without altering the U.S. label under which the product would normally be marketed in the United States but must also carry an ISM. Once the product qualifies for a Confirmation of Conformity, KEBS will issue the ISM free of charge.

Recent trends demonstrate that counterfeiters are adopting more sophisticated technology to operate. Data from industry regulators indicate counterfeiters have set up modern facilities locally and elaborate distribution networks that push products across the region with sales figures that rival genuine manufacturers. As a result, millions of employment opportunities are at stake as genuine businesses face a resultant drop in sales that threatens their viability. Eveready East Africa Limited (Kenya) closed its dry cell batteries manufacturing plant in Nakuru County in 2014, citing its inability to compete with counterfeits of its products.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

Resources for Rights Holders

Contact at Mission:

Delia Day Quick
Economic Officer
+254-(0)20-363-6050
QuickDD@state.gov

For a list of local attorneys, please see http://nairobi.usembassy.gov/attinkenya2.html

8. Transparency of the Regulatory System

The regulatory system of Kenya is governed by the 2010 constitution, the judicial system outlined in section 4, and organizations such as the Competition Authority of Kenya outlined in section 1 under the heading "Competition Law."

Many of the GOK laws have granted significant discretionary powers to their administrators, which creates uncertainty among investors in their dealings with government agencies. While some government agencies have either amended laws or published clear guidelines and decision making criteria on current policies and regulations, other agencies have lagged in making their transactions transparent. For instance, foreign work permit processing continues to be in disarray with overlapping and sometimes contradictory regulations. Computerization of GOK processes to increase transparency and close avenues for corrupt behavior is on-going, albeit slowly.

One example of framework failings is the often-criticized tendering process for GOK projects and Public Private Partnerships. United States firms have experienced limited success in bidding on government projects in Kenya, despite technical proficiency and reasonably priced bids. Foreign firms, some without track records, that have won government contracts have typically partnered with well-connected Kenyan firms. Corruption often appears to influences the outcome of public tenders. Kenya is neither a party to nor an observer of the WTO Agreement on Government Procurement.

The GOK is working to address tendering and procurement corruption. Section 227 of the Constitution of Kenya provides for the establishment of a system for procurement of goods and services that is fair, equitable, transparent, competitive and cost-effective. The Public Procurement and Disposal Act 2014 prescribes a framework for procurement and asset disposal. With the support of the World Bank and in collaboration with the Kenya ICT Board, the Public Procurement Oversight Authority (PPOA) is developing a web-based Market Price Index and an e-Procurement system. Additional measures underway at the PPOA include implementation of an internal procurement performance monitoring tool, improvements to the process for reviewing tendering complaints, and development of general and sector-specific procurement manuals.

In response to appeals from the business community, the GOK has eliminated or simplified many business licenses, going from 694 in 2007 to just 16 today. The review of licensing requirements is ongoing, but no further licenses have been eliminated to date. In 2009, the Kenyan government launched an e-Registry, which sped up the registration of new companies, cut regulation costs, and enhanced transparency by allowing easy access to information on registered companies. The 47 new county governments also impose various registration and licensing schemes and vary widely in their use of electronic registration systems.

Proposed laws and regulations pertaining to investment are published in draft form for public input and stakeholder deliberation before they are passed into law in Parliament. The GOK is in the process of finalizing a Public Participation Bill whose main objective is to lay down mechanisms for ensuring that the public is properly consulted and findings disseminated thereafter. To ensure public participation in public finances in every county, the Public Finance Management Act 2012 provides for the establishment of County Budget and Economic Forums (CBEFs). These are meant to have been operationalized in each and every county to serve as the primary institution for ensuring public participation in public finances. They are integral to the Kenyan government’s strategy to improve accountability and public participation at the county level. The International Budget Partnership found that as of 2014, the majority of counties had yet to establish a CBEF, with only four out of 47 counties having a functional one. A draft Business Regulatory Bill has been developed to provide for regulation of business activities, and the establishment of a business quality review committee.

9. Efficient Capital Markets and Portfolio Investment

Foreign investors are able to obtain credit on the local market; however, the number of credit instruments is relatively small. Legal, regulatory, and accounting systems are generally transparent and consistent with international norms. Several initiatives have been undertaken over the last five years aimed at achieving the three envisaged goals of stability, efficiency and financial inclusion. These initiatives include: the introduction of the agent banking mechanism in May 2010 where banks were allowed to engage third parties to provide certain banking services; the introduction of credit reference bureaus to collect, collate, analyze and disseminate credit information among credit providers; licensing of deposit taking microfinance institutions (DTMs) to target the lower end of the market, through the Microfinance Act 2006; the rollout of mobile phone financial services enabling banks to leverage mobile phone technology to present convenience and lower costs for their customers without compromising quality of service; and lowering the cost of doing business through the establishment of more currency centers.

Though small by Western standards, Kenya's capital markets are the deepest and most sophisticated in East Africa. Investors trade stocks and bonds on the Nairobi Securities Exchange. The Kenyan capital market has grown rapidly in recent years with equity market capitalization growing from KES 851 billion (USD 9.8 billion) as at 2007 to KES 1.921 trillion (USD 22.3 billion) in 2013. The market has also exhibited enormous capital raising capacity with some equity issues being as much as 500 percent oversubscribed and raising in excess of KES 430 billion (USD 4.9 billion) from equity issuances over the last decade (2003-2013). Through the debt markets, the GOK has raised approximately KES. 1.9 trillion (USD 21.8 billion) domestically over a similar period.

Although trading of equities is fairly robust, the bond market is still underdeveloped and dominated by trading in government debt securities. Long-dated corporate bond issuances are uncommon, leading to a lack of long-term investment capital. Listed companies, including banks, are therefore heavily reliant on short-term debt, which is relatively expensive and exposes borrowers to undue short-terms risks. In the fall of 2013 Kenya issued a KES 20 billion (USD 228 million) domestic bond that was oversubscribed; investors placed bids for nearly double (189 percent) the amount offered. In June 2014 Kenya issued a two billion Euro sovereign bond as a means to pay off long-term debt and finance development projects. The National Treasury received bids totaling KES 696 billion (USD 8 billion) from foreign investors against a target of KES 174 billion (USD 2 billion). In December 2014, the GOK raised an extra KES 68 billion (USD 750 million) against Sh270 billion (USD 3 billion) in bids by re-opening its debut Eurobond to finance infrastructure projects, including a new standard gauge railway line, the Lamu Port South Sudan Ethiopia Transport corridor (LAPPSET), roads and power generation.

The Capital Markets Authority (CMA), in conjunction with the Central Bank of Kenya, regulates and supervises relevant financial institutions and intermediaries, and oversees the development of Kenya's capital markets. The CMA is working with regulators in EAC member states through the Capital Market Development Committee (CMDC) and East African Securities Regulatory Authorities (EASRA) on a regional integration initiative, and has successfully introduced cross-listing of equity shares. The combined use of both CDS and an automated trading system has moved the Kenyan securities market to globally accepted standards. Kenya is a full (ordinary) member of the International Organization of Securities Commissions, (whose members represent 90 percent of the world's capital markets), which solidifies its status as a primary market.

Money and Banking System, Hostile Takeovers

The Central Bank of Kenya (CBK) is the primary regulator of financial institutions. As of December 2014, Kenya had 44 banking institutions (43 commercial banks and one mortgage finance company), seven representative offices of foreign banks, ten deposit-taking microfinance institutions (DTMs), 107 forex bureaus and two credit reference bureaus (CRBs). Out of the 44 banking institutions, there are 31 locally owned banks – three with public shareholding and 28 privately owned – and 13 foreign owned banks. The ten DTMs, two CRBs and 80 forex bureaus are privately owned. The foreign owned financial institutions are comprised of eight locally incorporated foreign banks and four branches of foreign incorporated banks. Total aggregate financial sector assets grew by 20 percent from KES 2.5 trillion (USD 29 billion) to KES 3.0 trillion (USD 34 billion) in the year to June2014. During the same period, financial sector pre-tax profits grew by 15.5 percent to more than KES 71 billion (USD 808 million), according to CBK figures. Some major international banks operating in Kenya include Bank of India, Barclays, Chase, Citibank, and Standard Chartered. These are listed as commercial banks on the CBK website.

By the end of 2013, 10 Kenyan banks – including Kenya Commercial Bank, Commercial Bank of Africa, and Bank of Africa – had subsidiaries operating in the EAC and South Sudan. These subsidiaries registered profit before tax of KES 5.1 billion (USD 59 million), with South Sudan, Tanzania, and Uganda accounting for the majority of profits, according to the CBK. In July 2012, the CBK granted authority to Bank of China Limited (BOC) to open a representative office in Kenya. In 2014, the Central Bank also licensed two foreign banks (Mauritius Commercial Bank Limited and Rabobank Nederland of Netherlands) to open representative offices in Kenya, raising the number of banks with representative offices to eight. In November 2012, Kenyan banks were authorized to open Yuan-denominated accounts to ease China-Kenya trade. China exported goods worth USD 1.9 billion to Kenya in 2012, making it Kenya’s second largest source of imports behind India.

Only 33 percent of Kenyans have formal access to financial services through commercial banks and the government-owned Post Bank. With the advent of mobile money and its recent linkages to the formal banking system, however, the number of Kenyans with access to electronic financial services has grown rapidly. With 31.2 million cell phone subscriptions, the vast majority of Kenyan adults now have cell phone access, which they use for everything from voice and SMS communication to banking, insurance, internet access, and other services. According to the World Bank, M-Pesa processes more transactions within Kenya each year than Western Union does globally. As of June 2014, 25.93 million Kenyans were using mobile phone platforms to transfer money, according to CBK figures. There were over 120,781 agents facilitating transactions in excess of KES 2.2 trillion (USD 25 billion) in the fiscal year to June 2014. The CBK said the increase in mobile money transfers was fuelled by a high number of consumers moving money in their bank accounts using mobile phones. Safaricom’s M-Pesa, which has a 66.43 percent market share, has mobile banking arrangements with 25 banks, which has contributed to greater accessibility of the service. Customers have also increased the use of bank platforms through a wide array of services. Mobile money platforms have been used to offer medical insurance, microloans, transfer money to a pre-paid credit card, and even to pay parking, electricity, and water bills. The National ICT Masterplan 2017 envisages the sector contributing at least 10 percent of GDP by 2017, up from 7.4 percent recorded in 2013.

The Central Bank of Kenya had licensed five money remittance providers by the end June 2014, following the operationalization of the Money Remittance Regulations in April 2013. The respective amendments to the Central Bank of Kenya Act in 2012 reduced barriers and lowered the cost of sending and receiving money and increased transparency; fostered competition, enhanced innovations and increased access to money remittance products and services to the low income group; created an enabling environment; and increased the flow of remittances through formal delivery channels. Reflecting these developments, remittance inflows to Kenya increased by USD 137 million or 11 percent to USD 1.43 billion in 2014 compared with USD 1.29 billion in 2013. The 12 month average flow during the same period sustained an upward trend to USD 119.0 million from USD 107.5 million over the same period. Inflows from North America accounted for 47.4 per cent of total inflows and increased by 8.5 percent to USD 677.6 million in 2014 compared with USD 624.4 million in 2013.

Company takeover is possible if the share buy-out is more than 90 percent, although it is rarely seen in practice.

10. Competition from State-Owned Enterprises

In 2013, the Presidential Task Force on Parastatal Reforms published a list of all state-owned enterprises (SOEs) and recommended proposals to reduce the number of State Corporations from 262 to 187 in order to eliminate redundant functions between parastatals, close or dispose of non-performing organizations, consolidate functions wherever possible, and reduce the workforce. The Kenyan parastatals are organized as regulatory bodies, research and academic institutions, or as commercial enterprises. The taskforce's report can be found at http://www.cofek.co.ke/Report%20of%20The%20Presidential%20Task%20force%20on%20Parastatal%20Reforms.pdf, with an inventory of Kenyan SOEs available on page 41.

In general, competitive equality is the standard applied to private enterprises in competition with public enterprises. Certain parastatals, however, have enjoyed preferential access to markets. Examples include Kenya Reinsurance (Kenya-Re), which enjoys a guaranteed market share; Kenya Seed Company, with fewer marketing barriers than its foreign competitors; and the Kenya National Oil Corporation (KNOC), which benefits from retail market outlets developed with government funds. Some state corporations have also benefited from easier access to government guarantees, subsidies, or credit at favorable interest rates. In addition, "partial listings" on the Nairobi Securities Exchange offer parastatals the benefit of financing through equity and GOK loans (or guarantees) without being completely privatized, often while retaining GOK controlling ownership.

The Kenyan government seems determined to remove itself from competition with private enterprise, except in certain strategic areas. The government substantially divested the telecom sector from 2002 to 2007, which now benefits from competition. The sugar industry has been partially privatized and will be fully privatized with the next round of divestitures.

The energy industry remains the most publicly owned sector in Kenya. Kenya Power and Light is an SOE that controls all retail distribution of power in Kenya. About 90 percent of generation is handled by the Kenya Electricity Generating Company, with the balance handled by various independent power producers. SOEs are also heavily involved in the refinement, distribution, and sale of fuel for power generation. The primary port in Mombasa is government owned and plans for privatization have been put off due to political considerations reflecting resistance from labor unions. Most SOE's in the agricultural sector have been accorded material advantages such as preferential access to land and raw materials inputs due to entrenched contract farming schemes. Beyond these sectors, competition with private enterprise is expected and encouraged in Kenya.

There are no barriers to private and foreign corporations accessing government-funded research, nor do SOEs spend far more than the private sector on R&D, although this depends somewhat on the type of SOE. Commodity SOEs generally spend on-par with private companies, while regulatory SOEs have hardly any R&D budget. Research and standardization SOEs often have a proportionally large R&D budget, and may use funding from donors.

OECD Guidelines on Corporate Governance of SOEs

The Presidential Taskforce on Parastatal Reforms (PTPR) published a report in October 2013 that references the 2005 Organization for Economic Cooperation and Development (OECD) guidelines. The report made recommendations for a more comprehensive set of guidelines for SOE governance in Kenya, to be called the Uniform Code of Governance and Leadership. This code is currently being developed and will bring Kenya more in line with OECD guidelines. The Code will be subjected to stakeholder consultation before adoption.

According to a 2009 summary of stakeholder views published in the PTPR report, "Appointment of CEOs and Boards are [sic] sometimes political. CEOs and Boards feel a hand over their heads and pressure to toe the political line." The parastatal taskforce recommended that the authority to make appointments to strategic parastatals be given to a yet-to-be-created Government Investment Corporation. Although President Kenyatta has publically called for reform in the way parastatals are managed, he appointed 26 political supporters, many of whom lost recent elections, to key parastatal positions in 2014.

For procurement from the private sector, SOEs are guided by the Public Procurement (Preference and Reservations Amendment) Regulation Act of 2013. The amendment reserves 30 percent government supply contracts for youth, women and SMEs, and has new regulations designed to enforce this mandate. Although parastatal boards have responsibility to exercise oversight over management, they "rarely gets [sic] to know what goes on in procurement. …management… withhold[s] information at will as there is no requirement under [the] Public Procurement and Disposal Act for management to provide information." This again comes from the 2009 stakeholder views summary in the PTPR report.

SOEs have reporting lines and financial accountability to Parliament, various boards and advisory councils and Kenya's Cabinet. The Office of the Auditor General (OAG) is mandated to provide statutory audit to all the SOEs, although it can, and frequently does, delegate this to private audit companies. SOE's are subjected to the same taxes and the same value added tax rebate policies as their private sector competitors.

Sovereign Wealth Funds

Kenya is in the process of establishing a sovereign wealth fund to manage the income from recent oil and gas discoveries, as well as other resource exploitation, such as mining. The Kenya National Sovereign Wealth Fund (KNSWF) Bill is currently undergoing internal review and stakeholder consultations with the Commission for the Implementation of the Constitution (CIC). The fund will have the triple goal of shielding the economy from cyclical changes in commodity prices, saving for future generations, and supporting infrastructure investment.

11. Corporate Social Responsibility

In Kenya the government has been hesitant to enact and enforce regulatory pressures aimed at encouraging Corporate Social Responsibility (CSR) due to fears of discouraging investment. Inefficient legal systems and uncertain regulatory frameworks also limit the scope of government influence over CSR. Nonetheless, good examples of CSR abound as major foreign enterprises drive CSR efforts by applying international standards relating to human rights, business ethics, environmental policies, community development, and corporate governance. Private sector companies affiliated with American, European, and Japanese multinationals embrace transparency and accountability as key to conducting business in a socially responsible manner.

The GOK, like many governments in developing countries, has been accused of easing business regulations and refusing to enforce standards and regulations relating to CSR as an inducement for foreign investment. There is notable legislation in Kenya that influences CSR including The Environmental Management and Coordination Act of 1999, established to provide a legal and institutional framework for the management of the environment, and The Factories Act of 1951, which safeguards labor rights in industries. The legal system, however, has remained slow to prosecute corporate malfeasance in these areas.

Although the Kenyan government has been reluctant to impose regulations for fear of discouraging foreign investment in the extractives sector, there has been a recent trend to demand local content clauses in negotiating concession contracts and joint venture agreements. The proposed Petroleum Bill 2015 contains local content and local equity participation rules, but does not establish the regulatory framework, monitoring or evaluation mechanisms, or means of enforcement for the regulations. Similarly, the Draft National Energy and Petroleum Policy 2015, currently in its sixth draft, does not provide the administrative and institutional structure necessary to implement local content laws or policy. The Mining Bill 2014, currently under review by the Senate, has been widely criticized by civil society organizations as lacking sufficient provisions for community participation, consent, and compensation.

OECD Guidelines for Multinational Enterprises

Kenya does not, as a matter of policy, encourage or discourage foreign and local enterprises from following generally accepted CSR principles such as the OECD Guidelines for Multinational

Enterprises and the United Nations Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in 2011.

12. Political Violence

Kenya faces challenges stemming from political violence. In the most notable incident, the disputed 2007 presidential election sparked ethnically-charged political violence, resulting in approximately 1,200 deaths and the displacement of more than 600,000 people. Property damage was in the millions of dollars and agriculture alone suffered USD 300 million in damages. A number of prominent Kenyan politicians were identified as instigators, and four Kenyans, including then Member of Parliament William Ruto and then Deputy Prime Minister Uhuru Kenyatta – currently Deputy President and President, respectively – have been formally charged with crimes against humanity at the International Criminal Court. The Deputy President's trial began in September 2013 and is ongoing. The charges against the President were withdrawn by the prosecutor without prejudice to refile on December 5, 2014.

Kenya's current constitution was approved in 2010 by a two-thirds majority in a violence-free referendum. Elections in 2013 were relatively peaceful as well. Restructuring of many key national institutions and transitioning of many powers and functions to newly-established county governments is on-going. This process is expected to take many years to implement fully.

The United States maintains a travel warning for Kenya due to the threat of terrorism and violent crime. In the coastal regions, tensions flare occasionally within Muslim communities. In June 2014 a terrorist attack left over 50 people dead in Mpeketoni town – a trading center and tourist hub in Lamu County. Kenya's stability also faces threats from its neighbors, most notably Somalia and South Sudan. From South Sudan, Kenya faces insecurity and a destabilizing refugee population fleeing the country following the outbreak of violence in December 2013. Instability in Somalia has heightened security concerns and led to increased security measures at businesses and public institutions around the country. Bombings, kidnappings, and grenade attacks have targeted Kenyans and foreigners in northern Kenya, Nairobi, and Mombasa.

In September 2013 terrorists carried out an attack on the high-end Westgate Mall that left 71 people dead and over 175 wounded. The attack, linked to Somali terrorist group al-Shabaab, clearly demonstrated the effect on Kenya of instability in neighboring Somalia. Security expenditures represent a substantial operating expense for businesses in Kenya. Kenya and its neighbors are working together to mitigate the threats of terrorism and insecurity through African-led initiatives such as the African Union Mission in Somalia (AMISOM) and the nascent Eastern African Standby Brigade (EASBRIG).

In November 2012 the Judicial Service Commission approved the establishment of a special division, staffed with seven judges, within the High Court with jurisdiction over crimes such as money laundering, cybercrime, human trafficking, piracy and transnational organized crime. Appeals will be directed to the Court of Appeal with a final appeal to the Supreme Court. It is also tasked with dealing with those responsible for the 2007-2008 post-election violence. The International Crimes Division (ICD) will deal with the "middle and lower level" perpetrators of international crimes committed in Kenya during the post-election violence period.

13. Corruption

Corruption in Kenya is pervasive and entrenched. Kenya is ranked among the world's most corrupt countries. The 2013 Ibrahim Index of African Governance ranked Kenya 21 out of 52 countries on quality of governance, an improvement of four places from 2012. Transparency International's 2014 Global Corruption Perception Index ranks Kenya 145 out of 174 countries, an increase from 136 of 177 in 2013. The Corruption Perceptions Index measures the perceived levels of public sector corruption in countries worldwide. Lack of political will, little progress in prosecuting past corruption cases, and the slow pace of reform in key sectors were reasons cited why Kenya is still ranked among the lowest scoring countries.

In TI's East African Bribery Index 2014 released in December 2014, the Kenyan police ranked as the most bribery prone institution, accounting for almost half of all bribes paid at 43.5 percent. Land Services was second at 11.9 percent followed closely by the judiciary at 11.6 percent. Thirty-one percent of Kenyan respondents said they paid a bribe because it was the only way to access services. Eighty-one percent described the level of corruption as "high" and felt it had increased in the past year. When asked to predict the level of corruption in the next year, 51 percent said corruption would likely go up. Almost 60 percent of respondents said they felt government anti-corruption efforts were insufficient. Fifty-seven percent said they had done nothing to fight corruption in the past year, with about 90 percent admitting that they did not report bribery to the authorities.

Corruption is an impediment to FDI. U.S. Transparency International's Global Corruption Barometer 2013 found the police, the judicial system, the registry and permit service, and the land service to be the country's most corrupt institutions. Bribes, extortion, and political considerations influenced the outcomes in large numbers of civil cases. Local media reported on allegations of high-level corruption related to energy, airport construction, and infrastructure contracts awarded to foreign firms that allegedly did not comply with public procurement laws.

According to a 2014 PriceWaterhouseCoopers (PwC) report, about one in three Kenyan business leaders reported procurement-related fraud in the previous two years. Four out of every 10 Kenyan CEOs reported being asked to pay bribes to win a tender or get business. Asset misappropriation remains the most common economic crime in Kenya, affecting 77 per cent of businesses. Accounting fraud affects 38 percent of firms, procurement fraud 31 percent, bribery and corruption 27 percent, and cybercrime 22 percent of firms.

Kenyan law provides for criminal penalties for official corruption; however, the previous and current governments did not implement these laws effectively, and officials often engage in corrupt practices with impunity. Despite many scandals, no top officials were prosecuted successfully for corruption in 2014. Official-level corruption often came in the form of land seizures and conflict of interest in government procurement.

Kenya's framework for dealing with corruption is defined by the 2003 Anti-Corruption and Economic Crimes Act, the 2003 Public Officers Ethics Act, the 2004 Code of Ethics Act for Public Servants, the 2005 Public Procurement and Disposal Act, the 2007 Supplies Practitioners Management Act, and the 2012 Leadership and Integrity Bill. The Ethics and Anti-Corruption Commission (EACC) monitors and enforces compliance with the above legislation.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Kenya is not a signatory to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Kenya is a signatory to the East African Community's Protocol on Preventing and Combating Corruption.

Resources to Report Corruption

• Mumo Matemu, MBS
• Chairperson – Commissioner
• Ethics and Anti-Corruption Commission
• P.O. Box 61130 00200 Nairobi, Kenya
• Phones: 020-2717318, 020-310722
• Email: mmatemu@integrity.go.ke

Watchdog Contact for Corruption
• Samuel Kimeu
• Executive Director
• Transparency International Kenya
• Phone: 0722296589
• Email: skimeu@tikenya.org

14. Bilateral Investment Agreements

Kenya does not have a bilateral investment agreement with the United States. However, Kenya has been a part of a Trade and Investment Framework Agreement with the United States as part of COMESA since 2001, and as part of the EAC since 2008. Kenya is also a beneficiary of the African Growth and Opportunity Act, which helps it export textile, apparel, and other goods to the United States.

Kenya has signed bilateral investment agreements with Burundi, China, Finland, France, Germany, Iran, Italy, Libya, the Netherlands, Slovakia, Switzerland, and the United Kingdom, although only those with France, Germany, Italy, the Netherlands, Switzerland, and the United Kingdom have entered into force. The EAC signed an Economic Partnership Agreement with the EU in 2014.

Bilateral Taxation Treaties

Kenya does not have a bilateral taxation treaty with the United States. Tax administration in Kenya is a significant concern for investors. In 2013, reforms in taxation ushered in by the new VAT Act 2013 to enhance tax administration and improve efficiency reduced the list of exemptions from 400 to 40 and reoriented taxation toward consumption rather than production. Despite this, filing taxes in Kenya remains burdensome, and the reduction in exemptions has increased the tax burden and consequently the cost of business in Kenya.

15. OPIC and Other Investment Insurance Programs

OPIC is actively engaged in funding programs in Kenya and is a key agency partner in President Obama's Power Africa initiative, which aims to add more than 30,000 megawatts of generating capacity and increase access by adding 60 million new home and business connections across Africa. In 2011, OPIC approved up to USD 310 million in financing for the expansion of Nevada-based Ormat's geothermal plant. In total, OPIC has earmarked approximately USD 500 million in finance or insurance projects in education, energy, healthcare, telecommunications, and microfinance lending.

16. Labor

Kenya has not officially published complete labor statistics since 2009. All official and non-official reporting cites a 40 percent unemployment rate from the 2009 KNBS census, with unemployment and underemployment for youth approaching 60-70 percent. Employment in Kenya's formal wage sector was only 2.27 million in 2013 and only increased by 5.1 percent between 2012 and 2013. Average wages for this sector are about USD 5,778 (KES 497,488) annually. The formal wage sector employs less than 20 percent of the working-age population, with the informal sector increasing its share of overall employment. Both the government and informal workers realize the importance of contributions from the informal sector to the economy. Many programs aim to provide greater worker protections and financial inclusion opportunities to informal workers.

Although Kenya's large informal sector makes reporting difficult, in the formal sector government is the largest employer, with an estimated 688,500 government workers in 2013. Education accounts for 400,800 employees, of which over 72 percent are employed in the public sector, according to the KNBS Economic Survey covering 2013. Agriculture, forestry, and fishing employ 346,700 workers, with 88 percent in the private sector, and manufacturing employs 280,300 employees (91% in the private sector). Kenya's economy generated 742,800 jobs in 2013, an increase of 100,000 compared to 2012. Only 116,800 of these – 15.7 percent – were in the formal sector. Job creation was attributed to overall economic growth, especially in labor-intensive sectors such as wholesale and retail trade, and construction.

The Ministry of Labor, Social Security and Services is currently reviewing and ensuring that Kenya's labor laws are consistent with the 2010 constitution. Kenya's labor laws comply, for the most part, with internationally recognized standards and conventions. The Labor Relations Act (2007) provides that workers, including those in export processing zones (EPZs), are free to form and join unions of their choice. The law permits workers in collective bargaining disputes to strike but requires the exhaustion of formal conciliation procedures and seven days' notice to both the government and the employer. Anti-union discrimination is prohibited. All labor laws are intended to apply to all groups of workers. Many informal workers have formed associations or unions that provide certain levels of worker protection and education, but these associations may not have bargaining power for collective bargaining agreements. The government did not retaliate against striking workers. The Ministry of Labor, Social Security and Services typically referred disputes to mediation, fact-finding, or binding arbitration at the Employment and Labor Relations Court, formerly the Industrial Court, a body of up to twelve judges appointed by the Judicial Service Commission.

The law provides for equal pay for equal work. Regulation of wages is part of the Labor Institutions Act, and the government has established basic minimum wages by occupation and location. Workweek and overtime violations also were reported during the year. Workers in some enterprises, particularly in EPZs and road construction, claimed that employers forced them to work extra hours without overtime pay to meet production targets. In addition employers often did not provide nighttime transport, leaving workers vulnerable to assault, robbery, and sexual harassment.

The government also continued to implement a multitude of programs for the elimination of child labor with dozens of partner agencies and has actively pursued the elimination of forced labor. However, over 32 percent of children in Kenya continue to engage in child labor in agriculture and fishing. Trade unionists complained that employers bribed some government labor inspectors to avoid penalties for labor violations. The extremely low salaries and the lack of vehicles, fuel, and other resources made it very difficult for labor inspectors to do their work and left them vulnerable to bribes and other forms of corruption. Employers in all sectors routinely bribed labor inspectors to prevent them from reporting infractions, especially in the area of child labor. The Labor Commissioner's Report for 2013 notes that "under-staffing and in particular of technical officers (inspectorate staff) has affected efficient delivery of services."

Visas and Work Permits

Work permits are required for all foreign nationals intending to work in Kenya. International companies have complained that the visa and work permit approval process is slow and sometimes bribes are solicited to speed up the process. In 2015, the Directorate of Immigration Services has made administrative additions to the list of requirements for Work permits and Special passes applications. The additional administrative requirements such as clearance letters for both permits and Special passes are an additional layer which is likely to lead to delays in processing of work permits and Special passes. This is because these clearance letters are processed from other government institutions. Apart from the general requirements, the following additions were made: the application form will now be stamped with the institution's official stamp in addition to being signed; copies of both academic and professional certificates have to be certified; and the Department of Immigration must receive a Clearance letter from the relevant ministry or institution. Recent policy changes mandate assured income of at least USD 24,000 annually for the issuance of a work permit. Firms in agriculture, mining, manufacturing, and consulting can avoid this with a special permit. The Kenyan government issues permits for key senior managers and personnel with special skills not available locally. Firms seeking to hire expatriates must demonstrate that the requisite skills are not available locally through an exhaustive search, although the Ministry of Labor plans to replace this requirement with an official inventory of skills that are not available in Kenya. A permit can cost up to KES 200,000 (USD 2,370). Firms must also sign an agreement with the government describing training arrangements for phasing out expatriates.

A company holding an investment certificate granted by registering with the Kenya Investment Authority and passing health, safety, and environmental inspections becomes automatically eligible for three class D entry permits for management or technical staff and three class G, I, or J permits for owners, shareholders, or partners.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

Kenya is a beneficiary of the African Growth and Opportunity Act, a US-sponsored export promotion program. Kenya officially overtook Lesotho as the largest textile exporter to the U.S. under the Africa Growth and Opportunity Act (AGOA) preferential trade agreement in 2013. Kenya's Export Processing Zones earned Kenya USD 543 million, or 10 percent, of all exports, the bulk of which consisted of textile and apparels exported to the U.S. contributing KES 24 billion (USD 279 million). Eighty percent of textile and apparel originates from EPZ-based firms. Textile and apparel represents Kenya’s third largest export behind tea and horticulture, overtaking coffee in 2013. EPZs were introduced in Kenya over two decades ago and now account for 3.2 percent of GDP. Approximately 50 percent of all firms in the zones are fully owned by foreigners (mainly from India) while the rest are locally owned or joint ventures with foreigners.

By the end of 2013, Kenya had 50 designated Export Processing Zones (EPZs) in which 81 companies operated, employing 40,204 workers and producing roughly 4.8 percent of exports. The overwhelming majority of EPZ products are exported to the United States under AGOA. The majority of the exports are textile products, mainly apparel, and more recently, handicrafts. According to the Kenya National Bureau of Statistics’ Economic Survey 2014, apparel exported through EPZs under AGOA increased from USD 262 million in 2012 to USD 279 million in 2013. A number of expatriates owned and served in mid and senior management positions at EPZs. Most EPZ firms operate in factory space managed by the EPZ Authority (EPZA).

The GOK has an ambitious target of expanding AGOA exports by three fold (USD 1 billion) and creating employment for an additional 100,000 people by 2016. The proposed Textile City, to be set up at the Athi River EPZ, is also expected to attract more than 100 textile investments by December 2016.

Firms operating in Export Processing Zones are provided a 10-year corporate tax holiday and 25 percent tax rate for 10 years thereafter (the statutory corporate tax rate is 30 percent, but the overall tax rate is 44.1 percent); a 10-year withholding tax holiday on dividend remittance; duty and VAT exemption on all inputs, including imported inputs, provided that at least 80 of the finished goods are exported with only 20 percent going to the East African Community (except motor vehicles); 100 percent investment deduction on capital expenditures for 20 years; stamp duty exemption; exemption from various other laws; exemption from pre-shipment inspection; availability of on-site customs inspection; and work permits for senior expatriate staff. Kenya’s EPZ law allows manufacturers and service providers output in the domestic market. Manufacturers are liable for all taxes on products sold domestically, however, plus a 2.5 percent surcharge.

The GOK is currently in the process of converting EPZs into special economic zones (SEZs). Special export zones are broader and open to local economies; hence goods produced are consumed both internally and externally. The SEZs will allow for a wider range of commercial ventures, including primary activities such as farming, fishing and forestry, and will not be restricted to the enclaves. The conversion will allow for a more flexible market orientation with higher domestic sales, in addition to the focus on exports. The establishment of special export

zones will also allow for the existence of free ports and trade zones across the coastal strip, science and technology parks, agricultural free zones, and tourism development zones.
The Second MTP of the Vision 2030 economic development agenda calls for establishing special economic zones in Mombasa (2000 sq. km), Lamu (700 sq. km), Kisumu (700 sq. km), and eventually to towns throughout the country. In February 2014, the Kenyan Cabinet announced it approved the establishment of a free trade zone in the port city of Mombasa to stimulate local, regional and international trade, as well as investments. The zone would be the first of its kind in Kenya.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	**Year**	**Amount**	**Year**	**Amount**	
Host Country Gross Domestic Product (GDP) ($M USD)	2013	55,243	2013	55.2	www.worldbank.org/en/country

Foreign Direct Investment	**Host Country Statistical source***		**USG or international statistical source**		**USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other**
U.S. FDI in partner country ($M USD, stock positions)	2011	2.36	2013	255	http://bea.gov/international/factsheet/factsheet.cfm?Area=418
Host country's FDI in the United States ($M USD, stock positions)	2011	123	2012	-13	http://bea.gov/international/factsheet/factsheet.cfm?Area=418
Total inbound stock of FDI as % host GDP	2011	2.6% (1,047.4 million dollars)	2012	9.6 % (3,885 million dollars)	BEA

Sources of Kenya statistical data used.*Kenya National Bureau of Statistics**Kenya Investment Authority as quoted by WTO in http://www.wto.org/english/tratop_e/tpr_e/tp371_e.htm

Table 3: Sources and Destination of FDI

N/B Total inward data for China PR Hong Kong and Japan were suppressed by reporting economy to preserve confidentiality. Information was unavailable for many countries.

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations *(US Dollars, Millions)*					
Inward Direct Investment			**Outward Direct Investment**		
Total Inward	3,885	100%	Total Outward	803	100%
U.K.	1,086	28%	Uganda	395	49%
Mauritius	675	17%	Mauritius	293	37%
Netherlands	652	17%	South Africa	52	6%
France	315	8%	Mozambique	37	5%
South Africa	309	8%	Italy	12	2%
"0" reflects amounts rounded to +/- USD 500,000.					

Source: IMF Coordinated Direct Investment Survey. Figures are from 2012 (latest available).

Table 4: Sources of Portfolio Investment

Portfolio Investment Assets								
Top Five Partners (US Dollars, Millions)								
Total			**Equity Securities**			**Total Debt Securities**		
All Countries	3,885	100%	All Countries	2,817	100%	All Countries	833	100%
U.K.	1,086	27%	U.K.	974	35%	Netherlands	353	42%
Mauritius	675	17%	Mauritius	618	22%	France	174	21%
Netherlands	652	17%	Netherlands	299	11%	U.K.	112	13%
France	315	8%	South Africa	290	10%	Mauritius	57	7%
South Africa	309	8%	Germany	181	6%	Switzerland	55	7%

Source: IMF Coordinated Portfolio Investment Survey. Figures are from 2012 (latest available).

19. Contact for More Information

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