Kenya

RISK & COMPLIANCE REPORT

DATE: March 2017

JERSEY TRUST COMPANY

Executive Summary - Kenya	
Sanctions:	None
FAFT list of AML Deficient Countries	No
Higher Risk Areas:	Non - Compliance with FATF 40 + 9 Recommendations US Dept of State Money Laundering Assessment Not on EU White list equivalent jurisdictions Corruption Index (Transparency International & W.G.I.) World Governance Indicators (Average Score) Failed States Index (Political Issues)(Average Score)

Major Investment Areas:

Agriculture - products:
tea, coffee, corn, wheat, sugarcane, fruit, vegetables; dairy products, beef, pork, poultry, eggs

Industries:
small-scale consumer goods (plastic, furniture, batteries, textiles, clothing, soap, cigarettes, flour), agricultural products, horticulture, oil refining; aluminum, steel, lead; cement, commercial ship repair, tourism

Exports - commodities:
tea, horticultural products, coffee, petroleum products, fish, cement

Exports - partners:
Uganda 10.5%, Tanzania 10.2%, Netherlands 7.1%, UK 6.7%, US 5.8%, Egypt 5.2%, Democratic Republic of the Congo 4.5% (2012)

Imports - commodities:
machinery and transportation equipment, petroleum products, motor vehicles, iron and steel, resins and plastics

Imports - partners:
India 20.7%, China 15.3%, UAE 9.5%, Saudi Arabia 6.7% (2012)

Investment Restrictions:

The Kenyan government focuses its investment promotion on opportunities that earn foreign exchange, provide employment, promote backward and forward linkages, and transfer technology. The only significant sectors in which investment (both foreign and domestic) are constrained are those where state corporations still enjoy a statutory monopoly. These monopolies are restricted almost entirely to infrastructure (e.g., power, telecommunications, and ports), although there has been partial liberalization of these sectors.

According to the World Bank's 2010 *Investing Across Borders Report*, Kenya restricts foreign ownership in more sectors than most other economies in sub-Saharan Africa. Foreign ownership of insurance and telecommunications companies is restricted to 66.7 percent and 80 percent, respectively, although the government allows telecommunications companies a three-year grace period to find local investors to achieve the local ownership requirements. There is discussion of scrapping the local ownership policy in telecommunications entirely. Foreign equity in companies engaged in fishing activities is restricted to 49 percent of the voting shares under the Fisheries Act. In June 2007, the level of foreign ownership allowed for companies seeking a listing on the NSE was decreased from 75 to 60 percent. This change was not applied retroactively. 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.

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Section 1 - Background

Founding president and liberation struggle icon Jomo KENYATTA led Kenya from independence in 1963 until his death in 1978, when President Daniel MOI took power in a constitutional succession. The country was a de facto one-party state from 1969 until 1982 when the ruling Kenya African National Union (KANU) made itself the sole legal party in Kenya. MOI acceded to internal and external pressure for political liberalization in late 1991. The ethnically fractured opposition failed to dislodge KANU from power in elections in 1992 and 1997, which were marred by violence and fraud, but were viewed as having generally reflected the will of the Kenyan people. President MOI stepped down in December 2002 following fair and peaceful elections. Mwai KIBAKI, running as the candidate of the multiethnic, united opposition group, the National Rainbow Coalition (NARC), defeated KANU candidate Uhuru KENYATTA and assumed the presidency following a campaign centered on an anticorruption platform. KIBAKI's NARC coalition splintered in 2005 over a constitutional review process. Government defectors joined with KANU to form a new opposition coalition, the Orange Democratic Movement (ODM), which defeated the government's draft constitution in a popular referendum in November 2005. KIBAKI's re-election in December 2007 brought charges of vote rigging from ODM candidate Raila ODINGA and unleashed two months of violence in which as many as 1,500 people died. African Union-sponsored mediation led by former UN Secretary General Kofi ANNAN in late February 2008 resulted in a power-sharing accord bringing ODINGA into the government in the restored position of prime minister. The power sharing accord included a broad reform agenda, the centerpiece of which was constitutional reform. In August 2010, Kenyans overwhelmingly adopted a new constitution in a national referendum. The new constitution introduced additional checks and balances to executive power and significant devolution of power and resources to 47 newly created counties. It also eliminated the position of prime minister following the first presidential election under the new constitution, which occurred on March 4, 2013. Uhuru KENYATTA, the son of founding president Jomo KENYATTA, won the March elections in the first round by a close margin and was sworn into office on 9 April 2013.

SOUTH SUDAN
Admin. bdy.
Provisional bdy.
Ilemi Triangle
ETHIOPIA
Lake Turkana
Lodwar
Moyale
Marsabit
UGANDA
Wajir
GREAT RIFT VALLEY
SOMALIA
KENYA
Eldoret
Mount Kenya
Meru
Kisumu
Nakuru
Garissa
HIGHLANDS
Lake Victoria
NAIROBI
Machakos
SERENGETI PLAIN
Malindi
INDIAN OCEAN
TANZANIA
Mombasa
0 100 200 km
0 100 200 mi

Section 2 - Anti – Money Laundering / Terrorist Financing

FATF Status

Kenya is no longer on the FATF List of Countries that have been identified as having strategic AML deficiencies

Latest FATF Statement - 27 June 2014

The FATF welcomes Kenya's significant progress in improving its AML/CFT regime and notes that Kenya has established the legal and regulatory framework to meet its commitments in its action plan regarding the strategic deficiencies that the FATF had identified in February 2010. Kenya is therefore no longer subject to FATF's monitoring process under its on-going global AML/CFT compliance process. Kenya will work with ESAAMLG as it continues to address the full range of AML/CFT issues identified in its mutual evaluation report.

Compliance with FATF Recommendations

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in Kenya was undertaken by the Financial Action Task Force (FATF) in 2011. According to that Evaluation, Kenya was deemed Compliant for 1 and Largely Compliant for 1 of the FATF 40 + 9 Recommendations. It was Partially Compliant or Non-Compliant for all 6 of the Core Recommendations.

Key Findings from latest Mutual Evaluation Report (2011):

The AML system in the Republic of Kenya is still in an early stage of development and much work needs to be done with regard to the implementation of the AML measures, capacity building and awareness-raising within the reporting community and the general public. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Kenya's levels of compliance with the FATF 40+9 Recommendations (see the attached table on the Ratings of Compliance with the FATF Recommendations).

The Proceeds of Crime and Anti-Money Laundering Act 2009 (the POCAMLA) is the primary enactment which supports the AML legal framework in Kenya. The POCAMLA which was enacted in December 2009 became effective immediately after the onsite visit on 28 June 2010. Terrorist financing is not criminalised in Kenya.

The major profit generating crimes in Kenya include robbery and thefts, economic crimes, corruption, and drug offences. The Kenyan authorities are not aware of proceeds being laundered in any particular sector. However there is a general perception in the press that proceeds are being laundered in Kenya but this is not supported by any evidence or statistics. The threat from international terrorism is a serious concern for Kenya. As a country, Kenya has suffered the direct impact of terrorism having been a victim of the 1998 Al Qaida attack of the US Embassy in Nairobi and the 2002 Al Qaida attack in a tourist resort in Mombasa. Kenya is also under terrorist attack threat from the Somalia's insurgent group Al-Shabaab. The risk of domestic terrorism is perceived to be very low.

US Department of State Money Laundering assessment (INCSR)

Kenya is categorised by the US State Department as a Country/Jurisdiction of Primary Concern in respect of Money Laundering and Financial Crimes.

OVERVIEW

Kenya remains vulnerable to money laundering and financial fraud. It is the financial hub of East Africa, with its banking and financial sectors growing in sophistication. Kenya is also at the forefront of mobile banking. Money laundering occurs in the formal and informal sectors and derives from both domestic and foreign criminal operations. Criminal activities include transnational organized crime, cybercrime, corruption, smuggling, trade invoice manipulation, illicit trade in drugs and counterfeit goods, trade in illegal timber and charcoal, and wildlife trafficking.

VULNERABILITIES AND EXPECTED TYPOLOGIES

Although banks, wire services, and mobile payment and banking systems are increasingly available, there are also thriving unregulated networks of hawaladars and other unlicensed remittance systems that lack transparency and facilitate cash-based, unreported transfers that the government cannot track. Foreign nationals, including refugee populations, and ethnic Somali residents primarily use the hawala system to send and receive remittances internationally. Diaspora remittances to Kenya totaled $1.55 billion in 2015 and $862 million between January and September 2016. There are about 159,000 mobile-money agents in Kenya, most working through Safaricom's M-PESA system. There are also over 10 million accounts on M-Shwari, Safaricom's online banking service. These services remain vulnerable to money laundering activities.

Kenya is a transit point for international drug traffickers, and TBML continues to be a problem. Kenya's proximity to Somalia makes it an attractive location for the laundering of certain piracy- related proceeds. There is a black market for smuggled and grey market goods in Kenya, which serves as a transit country for the region. Goods reportedly transiting Kenya are not subject to customs duties, but authorities acknowledge many such goods are actually sold in Kenya. Trade in goods is often used to provide counter-valuation in regional hawala networks.

KEY AML LAWS AND REGULATIONS

Financial institutions engage in currency transactions related to international narcotics trafficking, involving significant amounts of U.S. currency, which is derived from illegal sales in the United States as well as in Kenya. Under the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) and other banking regulations, Kenyan financial institutions and entities reporting to the Financial Reporting Center (FRC), Kenya's FIU, are subject to KYC and STR rules and have enhanced due diligence procedures in place for PEPs.

Kenya and the United States cooperate on money laundering investigations on a case-by-case basis.

Kenya is a member of the ESAAMLG, a FATF-style regional body.

AML DEFICIENCIES

An automated system would improve the FRC's efficiency and ability to analyze suspicious transactions. Although the FRC receives STRs from some MVTS providers, this sector is more challenging to supervise for AML compliance.

The tracking and investigation of suspicious transactions within the mobile payment and banking systems remain difficult. For example, criminals could potentially use illicit funds to purchase mobile credits at amounts below reporting thresholds. The lack of rigorous enforcement in this sector, coupled with inadequate reporting from certain reporting entities, increases the risk of abuse.

In order to demand bank records or seize an account, the police must obtain a court order by presenting evidence linking the deposits to a criminal violation. The confidentiality of this process is not well maintained, which allows account holders to be tipped off, providing an opportunity to move their assets or contest the orders.

The government, especially the police, does not allocate adequate resources to build sufficient institutional capacity and investigative skill to conduct complex financial investigations independently. Bureaucratic and other impediments also may impede investigation and prosecution of these crimes. Kenya should fully satisfy its commitments on good governance, anti-corruption efforts, and improvements to its AML regime.

ENFORCEMENT/IMPLEMENTATION ISSUES AND COMMENTS

The POCAMLA legislation provides a comprehensive framework to address AML issues and authorizes appropriate sanctions for money laundering crimes. The Office of the Director of Public Prosecutions, which includes a division that specifically addresses money laundering and terrorist financing offenses, has used ancillary provisions in the POCAMLA to apply for orders to restrain, preserve, and seize proceeds of crime in Nairobi.

Kenya's constitution requires public officials to seek approval from the Ethics and Anti-Corruption Commission (EACC) prior to opening a bank account. The EACC denied permission to 146 government employees to open foreign bank accounts.

In March 2015, the Capital Markets Authority listed new guidelines requiring brokers to adhere to enhanced internal controls. The brokers are required to assess the risk levels of clients, by checking their backgrounds and assigning them risk ratings, and to report suspicious trades and transactions above $10,000 to the FRC.

In July 2015, the government made commitments to strengthen its AML regime by working toward gaining membership to the Egmont Group, working with international donors to conduct a risk assessment for money laundering, and working with development partners to facilitate the full implementation of its AML rules and regulations. Kenya agreed to accelerate its work to strengthen the capacity of the FRC and the central bank to track illicit financial flows and to increase bilateral information sharing and enforcement efforts. Despite some progress, Kenya has not yet fulfilled all of its commitments.

Current Weaknesses in Government Legislation (INCRS Comparative Tables):

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

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

EU White list of Equivalent Jurisdictions

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

World Governance indicators

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

Failed States Index

To view Failed States Index Ctrl + Click here

Offshore Financial Centre

Kenya is not considered to be an Offshore Financial Centre

Key Findings from other US State Department Reports:

Narcotics

Kenya is a significant transit country for a variety of illicit drugs, including heroin and cocaine, with an increasing domestic user population. Imports of precursor chemicals, to include those used for methamphetamine and psychotropic substances, are on the rise. Cannabis and miraa (khat) are grown domestically for both local use and export.

Stemming this flow of illicit drugs is a challenge for Kenyan authorities. Drug trafficking organizations take advantage of corruption within the Kenyan government and business community, and proceeds from drug trafficking contribute to the corruption of Kenyan institutions. High-level prosecutions or large seizures remain infrequent.

Kenya's geographical location can frustrate supply reduction strategies. Traffickers exploit Kenya's long Indian Ocean coastline and lack of adequate security controls at the port of Mombasa. Southwest Asian heroin is transported in multi-hundred kilogram quantities by small oceangoing vessels (dhows) across the Indian Ocean to the Kenyan coastline. Once the heroin arrives in Kenya, it is distributed to retail markets and user populations throughout Africa, Europe, and North America.

South American cocaine is brought into Kenya by commercial air couriers arriving on international flights to Nairobi. These couriers conceal the cocaine in their luggage, on their bodies, or internally through swallowing. The cocaine is further distributed to other African locations and Europe.

Precursor chemicals obtained primarily from sources in Asia are brought through Kenyan ports of entry. These precursors are then used to produce methamphetamine and psychotropic substances in clandestine labs within Kenya. As is the case with other categories of drugs, insufficient border controls allow drug trafficking organizations to transport synthetic drugs to users internationally.

Kenya has made significant progress in drug treatment and prevention. With U.S. support, the Community of Anti-Drug Coalitions of America has worked with Kenyan leaders from national, regional and municipal governments and a broad range of society to develop strategies that prevent drug use and reduce crime and violence. Kenya is also using U.S.-developed curriculum to train and professionalize the substance use treatment workforce.

Extradition between Kenya and the United States is governed by the 1931 U.S.-U.K. Extradition Treaty. There is no mutual legal assistance treaty in force between Kenya and the United States, though Kenya is a party to multilateral conventions that contain provisions regarding extradition and mutual legal assistance.

U.S. bilateral cooperation with Kenya on counternarcotics matters has included the creation of a vetted unit within Kenya's anti-narcotics policing unit and collaboration in the arrest and prosecution of several significant traffickers. The principal U.S. counternarcotics objective in Kenya is to interdict the flow of narcotics to the United States. Related objectives include limiting the corrosive effects of narcotics-related corruption in law enforcement, the judiciary, and political institutions, and combatting the damaging effects of narcotics trafficking and use on the public at large. The United States seeks to accomplish these objectives through law enforcement cooperation, the encouragement of a strong Kenyan government commitment to narcotics interdiction, and the strengthening of Kenyan counternarcotics and overall judicial capabilities.

Trafficking in Persons

Kenya is classified a Tier 2 (watch list) country.

Kenya is a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking. Within the country, Kenyan children are forced to labor in domestic service, agriculture, fishing, cattle herding, street vending, and begging. Children—both girls and boys—are also exploited in prostitution throughout Kenya, including in the coastal sex tourism industry; at times, their prostitution is facilitated by women in prostitution, "beach boys," and sometimes their parents. Kenyan children are exploited in prostitution by those working in sectors such as khat (a mild narcotic) cultivation areas, near Nyanza's gold mines, along the coast by truck drivers transporting stones from quarries, and by fishermen on Lake Victoria. Kenyans voluntarily migrate to other East African nations, South Sudan, Europe, the United States, and the Middle East—particularly Saudi Arabia, but also to Qatar, Kuwait, the United Arab Emirates (UAE), Lebanon, and Oman—in search of employment, where at times they are exploited in domestic servitude, massage parlors and brothels, or forced manual labor. Gay and bisexual Kenyan men are lured from universities with promises of overseas jobs, only to be forced into prostitution and sex trafficking in Qatar and the UAE. Nairobi-based labor recruiters maintain networks in Uganda that recruit Rwandan and Ugandan workers through fraudulent offers of employment in the Middle East and Asia. Kenyan women are subjected to forced prostitution in Thailand by Ugandan and Nigerian traffickers.

Children from Burundi, Ethiopia, Somalia, South Sudan, Tanzania, and Uganda are subjected to forced labor and sex trafficking in Kenya; Kenyan children may endure similar exploitation in these countries. The security situation in Dadaab—Kenya's largest refugee camp complex that is host to hundreds of thousands of refugees and asylum seekers—did not allow for full humanitarian access, assistance, or protective services. Somali refugees living in the Dadaab complex have reported the presence of al-Shabaab recruiters; a 2012 survey by a local NGO found that fear of recruitment into this armed group, particularly among children, was a key concern in the camps. Some children in Kenya-based refugee camps, the majority of whom are Somali, may endure sex trafficking, while others are taken outside the camps and forced to work on tobacco farms. Trucks transporting goods from Kenya to Somalia returned to Kenya with young girls and women placed into brothels in Nairobi or Mombasa. Indian women recruited to work in mujra dance clubs in Nairobi face debt bondage, which they are forced to pay off by dancing and performing sex acts.

The Government of Kenya does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government has not shown evidence of increasing efforts to address human trafficking compared to the previous year; therefore, Kenya is placed on Tier 2 Watch List for a third consecutive year. Kenya was granted a waiver from an otherwise required downgrade to Tier 3 because its government has a written plan that, if implemented, would constitute making significant efforts to bring itself into compliance with the minimum standards for the elimination of trafficking, and it has committed to devoting sufficient resources to implement that plan. During the reporting period, the government identified 47 victims in four of Kenya's 47 counties, as nationwide data was unavailable. In addition, the government reported prosecution of 30 trafficking cases and conviction of seven traffickers involved in the exploitation of children in forced begging and sex trafficking schemes. To better regulate overseas labor recruitment, the government conducted inspections of 389 of an estimated 500 active recruitment agencies before and after lifting a ban, in November 2013, on Kenyans departing to the Middle East as domestic workers. Nonetheless, the government failed to provide adequate protective services to adult victims trafficked within the country or identified in situations of forced labor or prostitution overseas. Although the Counter-Trafficking in Persons Act went into effect in October 2012, the government has not yet demonstrated sufficient political will to fully implement the act. In March 2014, the government nominated members to the Counter-Trafficking in Persons Advisory Committee—whose establishment is mandated by the Act—but the body has not yet met and failed to coordinate any government efforts in 2013. The Ministry of Foreign Affairs (MFA) and Department of Children's Services (DCS) engaged in public education outreach to sensitize the public—including labor recruitment agencies, potential labor migrants, children, parents, and school teachers—to human trafficking issues and awareness of the Counter-Trafficking Act. The police force remained without sufficient resources to enforce the anti-trafficking act. Law enforcement efforts and government funding remained inadequate in light of Kenya's significant trafficking problem.

Terrorist Financing 2015:

Overview: Kenya is a strong partner of the United States in the fight against terrorism throughout East Africa. Kenya faced an ongoing terrorist threat from the Somalia-based terrorist group al-Shabaab, against which the Kenya Defense Forces have engaged in military operations in Somalia since 2011 as part of the African Union Forces in Somalia (AMISOM). Kenya continued to face serious terrorism challenges within its own borders in 2015. Most notably, the April al-Shabaab attack on Garissa University College killed at least 147, mostly students, and there were other fatal attacks, particularly in Mandera, Garissa, and Lamu counties near the border with Somalia. There were no major terrorist incidents in Kenya's two largest cities, Nairobi and Mombasa. Reports of violations of human rights by Kenya's police and military forces during counterterrorism operations continued, including allegations of extra-judicial killings, disappearances, and torture.

Kenyan officials cooperated closely with the United States and other partner nations on counterterrorism issues, including investigating and prosecuting terrorism cases. Kenya is one of six countries participating in the President's Security Governance Initiative (SGI) announced at the 2014 U.S.-Africa Leaders' Summit. SGI focuses on the management, oversight, and accountability of the security sector at the institutional level. In Kenya, SGI program priorities include border security and management, administration of justice, and police human resource management.

The Kenyan government focused increased attention on preventing the flow of foreign terrorist fighters, including Kenyans and other nationals, to join al-Shabaab in Somalia, as well as on Kenyan national fighters returning from abroad. Kenyan officials and civil society representatives participated in global events focusing on countering violent extremism and stemming the flow of foreign terrorist fighters, including the February White House Summit on Countering Violent Extremism and the Leaders' Summit on Countering ISIL and Violent Extremism that took place on the margins of the UN General Assembly in September; both events were hosted by President Obama. The Kenyan government also fulfilled its pledge to host a regional CVE conference, which took place in June.

2015 Terrorist Incidents: The April al-Shabaab attack on Garissa University College left at least 147 people dead, most of them students, more than twice the death toll of the 2013 al-Shabaab attack on the Westgate Shopping Mall in Nairobi. The attack in Garissa was the worst single terrorist incident in Kenya since the 1998 bombing of the U.S. Embassy in Nairobi.

Mandera, Garissa, and Lamu counties near the border with Somalia all experienced multiple terrorist incidents during 2015. In July, presumed al-Shabaab attacks killed 14 people near a military camp and 11 quarry workers in Mandera County, and five people in a firebomb attack on a vehicle in Lamu County.

In other incidents, al-Shabaab fighters temporarily took over small villages in Kenya near the Somali border and threatened villagers. There were no major terrorist incidents in Nairobi or Mombasa. This was significant given a number of very high profile international events that took place in Kenya over the year, including the visits of President Obama and Pope Francis, as well as Kenya’s hosting of the Global Entrepreneurship Summit and the World Trade Organization Ministerial Conference in Nairobi.

Legislation, Law Enforcement, and Border Security: Kenya’s 2012 Prevention of Terrorism Act, 2011 Proceeds of Crime and Anti-Money Laundering Act, and 2010 Prevention of Organized Crime Act together provide a strong legal framework under which to prosecute acts of terrorism. In late 2014, President Uhuru Kenyatta signed into law the Security Laws (Amendment) Act of 2014 (SLAA), a set of provisions that altered 20 existing laws to further strengthen Kenya’s legislative framework to fight terrorism. Positive steps contained in the SLAA include the criminalization of participating in terrorist training, laying out the foundation for a coordinated border control agency, strengthening the mandate of Kenya’s National Counter-Terrorism Centre (NCTC), and broadening evidentiary standards to allow greater use of electronic evidence and recorded testimony in terrorism prosecutions. Civil society groups, the political opposition, and the Commission on Human Rights contested several provisions of the SLAA, including those that affected freedom of speech, non-governmental organizations (NGOs), and the rights of the accused and refugees, arguing they violated constitutionally guaranteed civil liberties and contravened Kenya’s international obligations. In February 2015, the High Court struck down eight provisions of the SLAA as unconstitutional.

The Kenyan judiciary demonstrated independence, exemplified by the actions of the High Court in relation to the SLAA, and competence in cases related to terrorism. However, the judiciary remained hampered by a lack of sufficient procedures to allow the effective use of plea agreements, cooperation agreements, electronic evidence, and other undercover investigative tools. Allegations of corruption in the judiciary, including in the High Court, have persisted.

In April, in the aftermath of the Garissa University College attack, the Inspector General of National Police Service released via the official Kenya Gazette a list naming 87 individuals and organizations, including financial institutions and NGOs, suspected of associating with terrorist organizations. Following the Gazette notice, the Central Bank issued orders to freeze the funds of those organizations and individuals and the NGO Coordination Board took steps to cancel the licenses of three NGOs: human rights groups Muslims for Human Rights (MUHURI) and Haki Africa, as well as the Agency for Peace and Development (APD). All three organizations challenged the deregistration decisions in court. In June, 13 money transfer organizations mainly serving the Somali community included in the Gazette Notice were reinstated by presidential decree. In September, authorities re-registered APD. In November, Haki Africa and MUHURI succeeded in a legal challenge to their inclusion in the list and the Kenyan High Court ruled that their funds should be unfrozen.

In line with the security sector reorganization outlined in the 2010 Kenyan Constitution, the Government of Kenya divided counterterrorism functions among the three branches of the National Police Service – the Kenya Police [including the paramilitary General Service Unit (GSU)], the Directorate of Criminal Investigations [including the investigative Anti-Terrorism Police Unit], and the Administration Police [including the Rural Border Patrol Unit] – as well as non-police agencies such as the National Intelligence Service and elements of the Kenya Defense Forces. Operational effectiveness remained impeded by limited interagency coordination, resources, and training, as well as corruption among some personnel and unclear command and control. The response to the attack at Garissa University College, while slowed by command, control, and logistics support issues, exhibited better interagency coordination between police and military elements than the 2013 Westgate attack, and police tactical units resolved the situation swiftly once deployed.

Kenyan security and justice sector officials participated in a range of U.S. government-sponsored capacity-building programs funded and implemented by the U.S. Departments of State, Homeland Security, Justice, and Defense. These programs included training in crisis response, border operations, investigations, and prosecutions. Notable among these was the Department of State's second annual East Africa Joint Operations Capstone exercise, a month-long crisis response training series hosted in Kenya for Kenyan, Ugandan, and Tanzanian law enforcement personnel; the exercise culminated in a large-scale simulation of a response to a terrorist incident, including a cross-border pursuit that also featured community engagement and human rights-related issues.

Border security remained a challenge for Kenya due to its vast, sparsely populated border regions and largely uncontrolled borders. This was exacerbated by security agency and other government resource gaps and corruption at multiple levels. However, there were signs of improved interagency cooperation, exemplified by the successful joint police-military-intelligence operation to rescue a kidnapped aid worker 30 km inside Somalia in October.

Kenyan officials emphasized the importance and challenges of border security in their ongoing discussions with U.S. counterparts, particularly in the context of the SGI, which has included successful exchange visits with U.S. border security officials that helped increase

Kenyan government interagency cooperation on border security, leading to the development of a draft Kenyan government border-control strategy. A lack of capacity on border security and inadequate systems of national identification hampered law enforcement agencies' ability to identify and detain potential terrorists entering and leaving Kenya. Terrorist screening watchlists, biographic and biometric screening, and other measures were largely in place at major Kenyan ports of entry, but screening procedures were sometimes inconsistently or minimally applied, particularly at smaller border posts. Large stretches of the Kenya's land borders are relatively uncontrolled. Kenya continued its partnership with the United States to strengthen Personal Identification Secure Comparison and Evaluation System (PISCES) border controls at major ports of entry.

The Kenyan government focused increased attention on preventing the transit of foreign terrorist fighters, including Kenyan nationals attempting to join al-Shabaab in Somalia, as well as Kenyan national fighters returning to the country from abroad. A high-level Kenyan government delegation and civil society representatives participated in the September Leader's Summit on Countering ISIL and Violent Extremism hosted by President Obama in New York on the margins of the UN General Assembly (UNGA), as well as participated in other UNGA side events regarding foreign terrorist fighters.

Kenyan security services detected and deterred terrorist plots during 2015 and responded to dozens of claimed, or presumed, terrorism-related incidents. Kenyan law enforcement did not repeat the widely-criticized large-scale security operations of 2014 that appeared to target communities. Nonetheless, Kenyan military, paramilitary, and police forces were accused of serious abuses. A draft report by the government-funded Kenya National Commission on Human Rights implicated Kenyan security forces in 25 extrajudicial killings and the disappearances of 81 civilians. The government took limited steps to address cases of alleged unlawful killings by security force members. Kenya's Independent Policing Oversight Authority (IPOA) continued to make progress in fulfilling its mandate by investigating multiple cases of police misconduct and referring more than 20 of these to the Office of the Director of Public Prosecutions.

At the end of 2015, several major terrorism cases remained ongoing, including the trial of four Kenyans and one Tanzanian charged in June in connection with the Garissa University College attack. That trial was postponed in August for administrative reasons, and had not resumed by year's end. In December, the Mombasa High Court sentenced British terrorist suspect Jermaine Grant to nine years on charges related to trying to obtain Kenyan citizenship illegally. At the end of the year, Grant still faced separate explosives-related charges in a second, ongoing trial.

Kenyan law enforcement agencies worked with regional organizations and the broader international community, including the United States, to increase its counterterrorism capacity and to secure land, sea, and air borders. Kenyan law enforcement has benefited from U.S.-funded trainings including, for example, those to increase its capacity to respond to incidents of terrorism and improve the capacity of airport security staff to better recognize man portable air defense systems (MANPADs).

Countering the Financing of Terrorism: Kenya is a member of the Eastern and Southern Africa Anti-Money Laundering Group, a Financial Action Task Force (FATF)-style regional body. The Kenyan government is working to implement relevant UN Security Council Resolutions to restrict terrorism financing. Kenya made further progress in implementing its anti-money laundering/countering the financing of terrorism regime in 2015 following its 2014 removal from the FATF's continuing monitoring process.

Kenya's Financial Reporting Center (FRC) made progress in becoming fully operational and continued to build its capacity to monitor the formal financial system. The organization has not yet appointed a permanent director. The FRC remained hampered by a lack of essential resources and faced challenges meeting minimum staffing, physical security, and information technology requirements. The FRC also lacks an electronic reporting system for suspicious transactions. The Central Bank of Kenya continued to encourage Kenyan citizens and residents to use the formal financial sector, which is subject to regulatory oversight and would increase overall financial transaction integrity, though use of unregulated informal financial mechanisms, including *hawalas*, continued.

Kenya's NGO Coordination Board came under fire in October for announcing the de-registration of more than 900 civil society organizations for allegedly failing to comply with mandated NGO financial reporting requirements. Following intense criticism from NGOs and others, including prominent politicians, the government reversed its decision and gave the groups more time to comply. The Kenyan government made a similar move to deregister more than 500 NGOS in 2014, which also was reversed following strong civil and political opposition.

Countering Violent Extremism: During 2015, the Kenyan government improved its engagement with civil society, particularly communities at risk of radicalization in the northeast of the country. It also increased its efforts and coordination with international partners to advance CVE efforts, including prevention of radicalization, counter-messaging, and the reintegration of foreign terrorist fighter returnees. The government made some gains in CVE efforts, including the large-scale redeployment of ethnic Somali police officers to their home counties in Northeast Kenya to improve public confidence in the police with communities at risk of radicalization. The government also undertook some small-scale efforts to rehabilitate and reintegrate former al-Shabaab fighters, facilitators and sympathizers, but efforts were constrained by the lack of a defined strategy, clear legal framework, or supportive public messaging. Senior Kenyan officials and civil society representatives participated in the White House Summit on Countering Violent Extremism in February and the Kenyan government hosted a regional CVE conference in June. Kenyan civil society organizations worked to address the drivers of radicalization and violent extremism in Kenya, often with assistance from the United States and other international partners.

International and Regional Cooperation: Kenya is an active member of the Partnership for Regional East Africa Counterterrorism and the AU, including on the Peace and Security Committee, and as a troop-contributing country to the African Union Mission in Somalia. Kenya remains engaged with the Intergovernmental Authority on Development (IGAD) and hosted an IGAD Security Sector Program validation workshop on a countering violent extremism study in October. Although not a member of the Global Counterterrorism Forum (GCTF), Kenya is an active participant in GCTF activities, agreed to serve as a pilot country for the GCTF-endorsed International CT/CVE Clearinghouse Mechanism, and hosted a GCTF Border Security Initiative workshop for the Horn of Africa in December. Kenya also organized and hosted a regional CVE conference as a follow-up to the White House February CVE Summit. These events were Kenya's major contribution to regional capacity building. In

December, Kenya was selected as a beneficiary of the Global Community Engagement and Resiliency Fund.

International Sanctions

Kenya is not currently subject to any International Sanctions

Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	26
World Governance Indicator – Control of Corruption	13

US State Department

Corruption in Kenya is pervasive and entrenched. Kenya is ranked amongst 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 2013 Global Corruption Perception Index ranks Kenya 136 out of 177 countries, a marginal increase from 139 of 176 in 2012. Kenya still ranks third among the five EAC countries, better than Burundi and Uganda. 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 amongst the 31 lowest-scoring countries.

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 recent PriceWaterhouseCoopers (PwC) report, about one in three Kenyan business leaders reported procurement-related fraud in the past 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 government did not implement these laws effectively, and officials often engaged in corrupt practices with impunity. Despite many scandals, no top officials were prosecuted successfully for corruption in 2013. 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.

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.

Report by Global Security

Political Climate

Poor governance and rampant corruption in Kenya have had a negative impact on efforts to attract investments and widespread poverty, rapid population growth, rising unemployment rates, and strained welfare services have long posed problems. Nevertheless, Kenya had been thought of as one of the more politically stable countries in Eastern Africa until ethnic disturbances in the wake of the December 2007 presidential elections. Tensions came to the fore following the contested election results, which led to unprecedented violence resulting in at least a thousand deaths and the displacement of hundreds of thousands in ethnically-based riots. The political situation was extremely volatile up to the point where rival political factions, President Mwai Kibaki of the Party of National Unity (PNU) and opposition leader Raila Odinga of the Orange Democratic Movement (ODM), reached a peace and power-sharing agreement in February 2008, formulated in the National Accord and Reconciliation Act 2008. Under the agreement, the Office of the Prime Minister has been reinstated and, while Kibaki remains President, Odinga has been made Prime Minister with the power to coordinate and supervise the functions of the government. This still fragile setup has created a platform for deepening checks and balances on executive discretion, something that Kenya has lacked for decades, and despite a month-long political deadlock between Kibaki and Odinga over the composition of the cabinet, the broad-based coalition government has brought about a return to relative political stability. However, according to Transparency International's Global Corruption Report 2009, this arrangement has inadvertently culminated in the absence of an effective opposition, severely compromising parliament's oversight role over the executive branch. In February 2010, President Kibaki overturned Prime Minister Odinga's decision to suspend ministers of education and agriculture over corruption scandals involving millions of dollars. This threw the coalition government into turmoil and poses the question whether the Prime Minister had the authority to suspend the two ministers, despite that both the President and the Prime Minister supposedly share equal power, both legally and constitutionally, as reported in 2010 articles by the BBC News and The Nationals.

On 27 August 2010, Kenya made a large step forward in the fight against corruption and ratified a new constitution that has been praised by the international community. The new constitution is founded on principles of 'good governance, integrity, transparency and accountability'. It will cement the separation of powers, discourage ethnic tensions, weaken the powers of the President and thus create an environment less susceptible to corruption. Further, the constitution calls for the creation of a new anti-corruption body, called the Ethics and Anti-Corruption Commission (EACC). The EACC was founded on 24 August 2011, consistent with the timeframe given in the constitution. Mumo Matemu, a lawyer and former commissioner at the Kenya Revenue Authority was appointed head of the new faction; however, a three-judge bench nullified his appointment 20 September 2012. The court cited that Matemu's past conducts as a legal officer whilst at the Agricultural Finance Corporation, questions his integrity. The fact that President Kibaki, Prime Minister Raila Odinga and Parliament have brushed aside his earlier exploits, raises suspicion that the EACC is nothing more than a front created only to satisfy international donors and that there is no political will to eradicate corruption. Another important addition is the enshrining of the Public Officer Ethics Act into the constitution. Public officials are now mandated to have 'high standards of professional ethics' and must declare their wealth. The government is now constitutionally mandated to be more transparent and this has led to concrete actions such as the launching of an Open Data Portal. Kenya is the first African country to make government data accessible to ordinary citizens via the Internet. The effects of these reforms are yet to be fully felt or reflected in surveys, however, Transparency International's Global Corruption Barometer 2010 discloses the belief among citizens that the government's fight against corruption has turned the corner, with 70% of the Kenyan households surveyed believe that the government's fight against corruption is 'somewhat/very' effective. The same source warns that there is still much to be done, especially in the police force who citizens perceive to be the most affected by corruption. For an in depth analysis on the constitution and anti-corruption in Kenya in general read this research paper by James Thuo Gathii.

The Kenyan government also went so far as to admit substantial national budget losses due to corruption, according to a December 2010 BBC News article. The news itself came as no surprise, but rather the public admission by senior officials of the Finance ministry has caught many off guard. The news article explains that government officials estimate that nearly a third of the national budget, approximately USD 4 billion, is lost annually through kickbacks, inflated project costs and the like. Another BBC News article from November 2010, reported the resignation of four high-ranking government officials after allegations of corruption. Though there long has been speculation of government officials engaged in corrupt behaviour, both the president and prime minister have been always been passive in investigating the accusations and sanctioning perpetrators. In fact, despite various high-profile scandals involving government officials, no politician has been fired or charged with corruption. Thus, according to the same article, the string of resignations had given the people of Kenya hope that the President Kibaki and Prime Minister Odinga were finally making good on their promise to fight corruption. With the development of the aforementioned public initiatives, government admission to economic devastation as a result of corruption, and the resignations of high-ranking officials, the Kenyan government seems to be gaining the upper hand in the war on corruption. Despite these positive advances, there are also indications of growing pessimism among the Kenyan public, partly because citizens have had to cope with an increased immediacy of corruption related scandals, such as those in the maize and oil sectors (see here for more information). For instance, in February 2010 BBC News described escalating anger and frustration among Kenyans with the government. International donors suspended financial aid due to money being siphoned off before reaching the intended projects. Tired of corruption and increasing friction in the coalition government, protesters took to the streets to voice their concerns. Corruption persists despite all the measures taken against it, such as the enactment of elaborate anti-corruption legislation and the establishment of anti-corruption institutions. Considering the present government setup, President Kibaki and Prime Minister Odinga have renewed government promises to curb corruption, aware of the fact that further high-level corruption scandals could lead to the dissolution of the coalition.

Business and Corruption

Kenya is the largest economy in Eastern Africa and has had a stable economic growth since President Kibaki first took office in 2002, mainly due to booming tourism and horticulture industries. However, the violence following the December 2007 elections negatively affected Kenya's economy, especially through extensive property loss and the disruption of transport of both workers and goods. Investors have been exerting greater caution in the wake of political and investment climate instability. Kenya's large informal sector, rising inflation, and a growing scarcity of employment opportunities have added to recent economic troubles. The Bertelsmann Foundation 2008 estimates that 50% of entrepreneurial and technological business takes place in the informal sector, and that its growth rate is higher than the formal economy. Furthermore, according to the Bertelsmann Foundation 2012, most enterprises start off in the informal sector and cannot afford the comparatively expensive process of registering with the state. Accordingly, in the World Bank & IFC Enterprise Surveys 2007, more than 40% of the surveyed companies identify the practices of competitors in the informal sector as a major business constraint. Although the government has introduced market reforms, the business climate in Kenya continues to be hampered by corruption, and according to Transparency International Global Corruption Barometer 2010, the private sector is said to influence public policy, laws and regulations through soliciting bribes and gifts. Furthermore, Transparency International's Global Corruption Report 2009 reports that the costs of corruption remain a deterrent to potential investors, and corruption is a major impediment both for existing businesses and those seeking to establish new businesses. In the Transparency International Global Corruption Barometer 2010, 15% of respondents gave corruption within the business and private sector in Kenya a score of 5 on a 5-point scale (1 'not and all corrupt' and 5 'extremely corrupt').

In the World Economic Forum Global Competitiveness Report 2011-2012, corruption continues to top the list of obstacles for doing business with 21% of the companies surveyed naming it as the most problematic factor. This is supported by the World Bank & IFC Enterprise Surveys 2007, in which over 38% of the surveyed companies consider corruption a major constraint to their operations. The same survey also indicates that it is almost impossible to do business in Kenya without making facilitation payments, as roughly 80% of the companies surveyed cite that they are expected to make informal payments to public officials to 'get things done'. According to Transparency International Kenya's Kenya Bribery Index 2008, private companies are increasingly exposed to demands for bribes; however, the average size of bribes paid by companies in 2008 was half it was in 2006. This decrease could be attributed to a decline in the bribery reported by state-owned companies, which accounted for the largest proportion of business-related bribes in previous surveys. This suggests that the corporate governance and procurement reforms undertaken in that sector are paying off. Also, more investors are reporting that they can now do business with less frequent political interference. Nevertheless, the use of agents to facilitate business operations and transactions in Kenya is widespread and poses a risk for companies, particularly at the entry and business start-up stage. Bribery through agents can lead to legal sanctions, including high fines and a maximum 10-year prison sentence. Therefore, investors are strongly recommended to develop, implement, and strengthen integrity systems and to conduct extensive due diligence when doing business in Kenya.

The majority of companies state that public procurement is an area of business where it is common to encounter corruption and demands for bribes. According to the World Bank & IFC Enterprise Surveys 2007, 71% of the responding companies cite that they expect to give gifts to secure a government contract, with the value of the gift amounting to an average of 8% of the contract in question. Companies are recommended to use a specialised public procurement due diligence tool in order to mitigate corruption risks involving procurement in Kenya. Indeed, many corruption scandals in Kenya have involved fraudulent or inflated public procurement deals, where funds have been redirected to top government politicians and officials.

Regulatory Environment

Kenya has struggled to attract foreign direct investment and the previous government sought to change this by introducing market-based reforms and providing more incentives for both local and foreign private investment, particularly in the export and import sectors and in telecommunications. The new government is continuing these policies and the focus on structural reforms, including privatisation and deregulation. Foreign investors seeking to establish a presence in Kenya generally receive the same treatment as local investors and are guaranteed ownership and the right to remit dividends, royalties and capital, but according to the US Department of State 2010, there are some exceptions. In addition, international observers cite lack of transparency and inconsistent application of commercial codes as persistent problems.

According to the US Department of State 2012, the most significant disincentives for investment in Kenya include governmental insufficiency and overregulation, poor transport infrastructure, expensive and irregular utilities, a weak telecommunications sector, and general insecurity and high cost associated with crimes. Nevertheless, the World Bank & IFC Doing Business 2008 ranked Kenya as one of the world's top ten reformers due to an ambitious licensing reform programme, which has so far succeeded in eliminating 110 licences and simplifying 8 others. Moreover, the government plans to eliminate over 300, and simplify nearly 600, licences. The changes have streamlined business start-up, cut both the time and cost of obtaining building permits, and facilitated cross-border trade. According to the same report, Kenya reported an increase of up to 33% in revenue after the reform. All in all, some of the main positive reforms include starting business, dealing with licences, registering property and getting credit. In addition, an Electronic Regulatory Registry, among others, has been launched to enhance transparency in accessing information on registered companies. The changes have streamlined business start-up, cut both the time and cost of obtaining building permits, and facilitated cross-border trade. According to data from the World Bank & IFC Doing Business 2012, starting a business in Kenya requires a company to go through 11 procedures, which takes an average of 33 days and costs 38% of GNI per capita. The de-licensing programme is envisaged to continue in order to minimise the possibilities for corrupt activities through bribes and facilitation payments to public officials. According to the Bertelsmann Foundation 2012, with the Investment Promotion Act 2004, the government significantly reformed the regulatory framework for setting up businesses, resulting in less red tape and corruption.

According to the US Department of State 2011, property rights are recognised and enforced. But in practice, the process of obtaining a land title can be cumbersome and the process is often non-transparent. Foreigners in Kenya can own land, although there are some restrictions to leasing and ownership of land classified as agricultural. Kenya has a comprehensive legal framework to ensure intellectual property rights protection, which includes the Industrial Property Act 2001, the Trade Marks Act 1957 (revised 1994), the Copyright Act 2001 and the Universal Copyright Convention 1971. Moreover, Kenya is a member of the World Intellectual Property Organisation (WIPO) and of the Paris Union (International Convention for the Protection of Industrial Property). Nevertheless, according to the US Department of State 2012, enforcement of intellectual property rights is weak. Kenya has commercial courts to deal with commercial disputes and there is a separate industrial court that hears disputes over wages and labour terms, the rulings of which cannot be appealed. Contractual rights are enforceable, but the process of doing so is often lengthy. The legal system is adversarial, and most disputes are resolved through litigation in court, although arbitration and alternative dispute resolution are increasingly popular. The Arbitration Act 1995 and Arbitration Rules 1997 form the regulatory framework of domestic arbitration options for companies. Kenya accepts binding international arbitration and has ratified to the New York Convention 1958 as well as being a member of the International Centre for Settlement of Investment Disputes (ICSID).

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Section 3 - Economy

Kenya hKenya has been hampered by corruption and by reliance upon several primary goods whose prices have remained low. Low infrastructure investment threatens Kenya's long-term position as the largest East African economy, although the Kenyatta administration has prioritized infrastructure development. International financial lenders and donors remain important to Kenya's economic growth and development. Unemployment is high at around 40%. The country has chronic budget deficits. Inflationary pressures and sharp currency depreciation peaked in early 2012 but have since abated following low global food and fuel prices and monetary interventions by the Central Bank. Recent terrorism in Kenya and the surrounding region threatens Kenya's important tourism industry. Kenya, in conjunction with neighboring Ethiopia and South Sudan, intends to begin construction on a transport corridor and oil pipeline into the port of Lamu in 2014.

Agriculture - products:
tea, coffee, corn, wheat, sugarcane, fruit, vegetables; dairy products, beef, pork, poultry, eggs

Industries:
small-scale consumer goods (plastic, furniture, batteries, textiles, clothing, soap, cigarettes, flour), agricultural products, horticulture, oil refining; aluminum, steel, lead; cement, commercial ship repair, tourism

Exports - commodities:
tea, horticultural products, coffee, petroleum products, fish, cement

Exports - partners:
Uganda 10.5%, Tanzania 10.2%, Netherlands 7.1%, UK 6.7%, US 5.8%, Egypt 5.2%, Democratic Republic of the Congo 4.5% (2012)

Imports - commodities:
machinery and transportation equipment, petroleum products, motor vehicles, iron and steel, resins and plastics

Imports - partners:
India 20.7%, China 15.3%, UAE 9.5%, Saudi Arabia 6.7% (2012)

Banking

The Banking industry in Kenya is governed by the Companies Act, the Banking Act, the Central Bank of Kenya Act and the various prudential guidelines issued by the Central Bank of Kenya (CBK). The banking sector was liberalised in 1995 and exchange controls lifted.

The CBK, which falls under the Minister for Finance docket, is responsible for formulating and implementing monetary policy and fostering the liquidity, solvency and proper functioning of the financial system.

The CBK is the primary regulator of financial institutions. As of June 2012, Kenya had 44 banking institutions (43 commercial banks and 1 mortgage finance company), five representative offices of foreign banks, six deposit-taking microfinance institutions (DTMs), 115 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 while 13 are foreign owned. The six DTMs, two CRBs and 115 forex bureaus are privately owned. The foreign owned financial institutions comprise of nine locally incorporated foreign banks and four branches of foreign incorporated banks. Total aggregate financial sector assets grew by 16 percent to Ksh 2.2 trillion (US$26 billion) in the year to June 2012. During the same period, financial sector pre-tax profits grew by 30 percent to more than Ksh 53 billion (US$627 million).

Stock Exchange

The Nairobi Stock Exchange (NSE) is the principal stock exchange of Kenya and Africa's fourth largest stock exchange in terms of trading volumes, and fifth in terms of market capitalization as a percentage of GDP . It began in 1954 as an overseas stock exchange while Kenya was still a British colony with permission of the London Stock Exchange. The NSE is a member of the African Stock Exchanges Association.

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 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. In late 2012, the CMA launched the development of a new, five-year capital markets master plan, which is being designed by market experts and participants, including private sector and government representatives

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. Beginning in 2005, the NSE started settling all equity trades through an electronic Central Depository System (CDS). 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 capital marketplace in East Africa.

The NSE consists of three segments: the Main Investments Market (MIMS), the Alternative Investments Market (AIMS), and the Fixed Income Securities Market (FISMS). The MIMS targets mature companies with strong dividend streams. The AIMS is more favorable to small and medium-sized companies, and allows firms to access lower-interest rate, longer-term sources of capital. The FISMS allows businesses, financial institutions, and governmental and supranational authorities to raise capital through the issuance of debt securities. Fees charged by the CMA on NSE participants are a significant entry barrier for new companies.

Small business entry into the stock market continues to lag, though the CMA plans to launch a new securities exchange for SMEs, which will have less onerous regulatory requirements. Though still a nascent industry, foreign and domestic private equity funds are increasingly active in Kenya, providing growth capital to entrepreneurs and helping turn around struggling businesses. Stockbrokers at the Nairobi Stock Exchange are seeking to reduce the ownership stake of the Ministry of Finance's Capital Markets Authority from 20 percent to 5 percent. The NSE is in the process of becoming a demutualized corporate entity, which itself will become a publicly-traded company.

Section 4 - Investment Climate

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 also stable at 86 Kenyan shillings to the U.S. dollar. 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. Kenya's debt to GDP ratio is rising; it recently crossed the 50 percent threshold. The ratio may lower as Kenya's GDP is statistically "rebased," which should revise estimates upwards by about 20 percent. However, 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 Ease of Doing Business report ranking Kenya 129 of 189 countries. Despite this, the United Nations Council on Trade and Development (UNCTAD) in a 2013 report lauded Kenya's progress towards improving investment conditions. 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 136 of 177 countries on Transparency International's corruption perceptions index. Allegations of irregularities in public tenders are frequent. A recent PriceWaterhouseCoopers report lists accounting fraud, procurement fraud, and bribery and corruption as areas of major concern, all of which affect over a quarter of businesses and some of which affect up to a third.

Insecurity is another notable problem. Most notable was an attack in September of 2013 on the prominent Westgate Shopping 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. Though tragic, this event did not have a major impact on the Kenyan economy. The exception is tourism, which is suffering heavily as security fears slow international tourist arrivals.

Despite these obstacles, American firms are operating successfully in many sectors in Kenya. Opportunities exist in retail, restaurants, technology, 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 is passed by Parliament.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude Toward FDI

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 $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 2014 Mining Bill currently under consideration in Parliament, 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 conjunction 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 (i.e. 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. However, 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. However, 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 FDI

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 of 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.

With the exception of takings in the public interest, the Constitution of Kenya provides protection against the expropriation of private property. The Land Acquisition Act governs compensation and due process in acquiring land, although land rights issues in Kenya remain contentious. See Section 7.1 for details.

Industrial Strategy

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.

Limits on Foreign Control

Liberalization of the Kenyan economy means there are few foreign ownership or control limitations. In several industries foreign ownership percentage is capped; they are: **insurance** (66.7 percent); **telecommunications** (80 percent); **mining** (65 percent); **shipping** (49 percent); **fisheries** (49 percent); and the **stock market** (75 percent). Many of these industries have a grace period of several years with which to seek local investors. In **construction** proposed rules may set the minimum local share to 30 percent. In the **mining** sector firms considering investments should pay careful attention to the 2013 Mining Bill currently before parliament, which among other things would give the GOK a free ten percent stake in any mining company seeking licenses in Kenya, as well as requiring a 20 percent local stake in the company within four years. A review of the law on foreign ownership limits is proposed by the Capital Markets Authority in its 10-year master plan (2014-2023). There is no prohibition on acquisition of Kenyan firms by foreign-owned firms nor are there regulations restricting joint venture arrangements between Kenyans and foreigners.

It should also be noted that foreigners cannot own land in Kenya, however there are a variety of land leasing arrangements with a maximum tenure of 99 years (renewable). The ability of foreigners to lease land classified as agricultural is restricted by the Land Control Act. Thus, the Land Control Act serves as a barrier to any **agribusiness** investment that may require land. Exemption to the Act can be acquired via a presidential waiver for which there is no clear guidance; the 99 year lease is a product of the 2010 Constitution and cannot be exempted.

Under the Firearms Act and the Explosives Act, manufacturing and dealing in firearms (including ammunition) and explosives requires special licenses from the Chief Firearms Licensing Officer and the Commissioner of Mines and Geology, respectively. Technology licenses are subject to scrutiny by the Kenya Industrial Property Institute (KIPI) to ensure that they are in line with the Industrial Property Act. Licenses are valid for five years and are renewable.

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 new 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 $2 to 3 billion per year that is needed 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 Ministry 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 in recent years. 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 within nine months no reply is received, the investor may proceed with the project.

Competition Law

The Competition Authority of Kenya regulates Kenyan competition law and its enforcement. They regulate mergers, abuse of dominance, and other competition and consumer-welfare related issues in Kenya. They have recently imposed a filing fee for mergers and acquisitions, set at one million shillings ($11,554) for mergers involving turnover of between one and 50 billion shillings ($11.6 million to $578 million), while two million shillings ($23,108) will be charged for larger mergers. All mergers and acquisitions require the Authority's authorization before they are finalized.

Investment Trends

Historically, the service sector contribution to Kenya's GDP has outpaced the other sectors. In 2013 agriculture was up 2.9 percent and represented 29.3 percent of Kenya's economy, while manufacturing was up 4.8 percent and was 8.9 percent of the overall picture and services were 53.3 percent of the economy, according to the CIA World Factbook. 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 2012 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	2013	136 of 177 countries	http://cpi.transparency.org/cpi2013/results/
Heritage Foundation's Economic Freedom index	2013	111 of 177 countries	http://www.heritage.org/index/ranking
World Bank's Doing Business Report "Ease of Doing Business"	2013	129 of 189 countries	http://doingbusiness.org/rankings
Global Innovation Index	2013	99 of 142 countries	http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener
World Bank GNI per capita	2012	$860	http://data.worldbank.org/indicator/NY.GNP.PCAP.CD

TABLE 1B - Scorecards: 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 2012 per capita gross national income (GNI) of $4,085 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/documents/reports/reference-2013001142401-fy14-guide-to-the-indicators.pdf

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. The CBK expects the shilling to strengthen this year on the back of a sovereign bond planned for issuance by the third quarter. According to CBK figures, the average exchange rate in 2013 was Ksh 86.13 to $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 Ksh 500,000 ($5,920) 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) also cites deficiencies in Kenya's Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) strategy. However, it notes a high-level political commitment to work with FATF and "significant progress" in improving its AML/CFT regime. On this basis, FATF's International Co-operation Review Group is conducting an on-site visit in May 2014.

3. Expropriation and Compensation

Kenya does not have a recent history of expropriatory actions, nor does it have policies in place that encourage expropriation. In fact, the 2010 Kenya 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 maintaining the license. In practice, KevInvest rarely revokes licenses.

4. Dispute Settlement

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

The 2010 constitution of Kenya establishes a separate judiciary with a Supreme Court, a Court of Appeal, a Constitutional Court, and a High Court. In addition, the subordinate courts, Magistrates, Khadis (Muslim succession and inheritance), and Courts Martial remain, as do the Commercial and Industrial Courts.

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 2014 Doing Business Report puts Kenya at 123 of 189 countries in the "resolving insolvency" category. This is down 22 rankings from 2013. 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 24.7 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. Additionally, in 2013 an act of parliament 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 can 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 both the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, also known as the ICSID Convention or the Washington Convention, and 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. Additionally, 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 (SEZs) 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 Ministry of Finance permanent secretary must approve such purchases.

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 Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC).

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 $100,000 and 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 above in sections 1.3 and 1.5 and below in section 7.1.

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."

Although precise data is not available, it is clear that far more than 10 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 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. However, 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 has pledged to take 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 constitutions 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, recently opened an office in Mombasa 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 within the last year. 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 new unit aims to apprehend illegal traders and staff of government agencies who collude with counterfeiters and smugglers.

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. New data from industry regulators indicate counterfeiters have set up modern facilities locally and have 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.

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/.

Embassy point of contact: Delia Day Quick QuickDD@state.gov

Local lawyers list: 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 4.1, and organizations such as the Competition Authority of Kenya outlined in section 1.8. In theory, the Kenyan regulatory framework should maintain equal footing for all investors. However, the reality is often different.

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 little 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 influences the outcome of public tenders. Kenya is neither a party nor an observer to 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. It also envisages an Act of Parliament that will prescribe a framework within which policies relating to procurement and asset disposal will be implemented. 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.

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. 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 (there are now nine of them); the rollout of mobile phone financial services enabling banks to leverage on 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 Ksh 851 billion ($9.8 billion) as at 2007 to Ksh 1.72 trillion ($19.8 billion) in May 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 Ksh 430 billion ($4.9 billion) from equity issuances over the last decade (2003-2013). Through the debt markets, the GOK has raised approximately Ksh. 1.9 trillion ($21.8 billion) domestically over a similar period.

Although equities trading 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 Ksh 20 billion ($228 million) bond that was oversubscribed; investors placed bids for nearly double (189 percent) the amount offered. Investors are waiting for a one billion Euro sovereign bond issuance that was promised in late 2013 and has yet to be offered, as a means to pay off long-term debt and finance development projects.

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 capital.

Money and Banking System, Hostile Takeovers

The Central Bank of Kenya (CBK) is the primary regulator of financial institutions. As of December 2013, Kenya had 44 banking institutions (43 commercial banks and 1 mortgage finance company), seven representative offices of foreign banks, nine 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 while 13 are foreign owned. The nine DTMs, two CRBs and 101 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 13.6 percent to Ksh 2.5 trillion ($29 billion) in the year to June 2013. During the same period, financial sector pre-tax profits grew by 16 percent to more than Ksh 61.5 billion ($707 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 Ksh 5.1 billion ($59 million), with South Sudan, Tanzania, and Uganda accounting for the majority of profits, according to CBK. In July 2012, Central Bank of Kenya (CBK) granted authority to Bank of China Limited (BOC) to open a representative office in Kenya. In February 2013, the Central Bank also licensed 2 foreign banks (Central Bank of India and Bank of Kigali) to open representative offices in Kenya, raising the number of banks with representative office to seven. In November 2012, Kenyan banks were authorized to open Yuan-denominated accounts to ease China-Kenya trade. China exported goods worth $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 29 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 2013, 23.3 million Kenyans were using mobile phone platforms to transfer money, according to CBK figures. There were over 103,165 agents facilitating transactions in excess of Ksh 1.7 trillion ($19.4 billion) in the fiscal year to June 2013. 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 76 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.

Company takeover is possible if the share buy-out is more than 90 percent, though 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, get rid 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. However, certain parastatals 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, 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 is a SOE that controls all 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. However 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 sometimes political. CEOs and Boards feel a hand over their heads and pressure to toe the political line." The parastatal taskforce recommended that the role of making 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 recently appointed 26 political supporters, many of whom lost recent elections, to key parastatal positions.

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. However, although parastatal boards have responsibility to exercise oversight over management, they “rarely gets to know what goes on in procurement. …management… withhold[s] information at will as there is no requirement under 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, though 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 does not currently have a sovereign wealth fund (SWF), but is planning one to manage income from recent oil and gas discoveries, as well as other resource exploitation such as mining. The framework is currently being drafted and will be based on the Santiago Principles, a set of best practices for SWFs. 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

OECD Guidelines for Multinational Enterprises

In Kenya the government has been hesitant to enact and enforce regulatory pressures aimed at encouraging Corporate Social Responsibility (CRS) 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. However, the legal system has remained slow to prosecute corporate malfeasance in this area.

Although the Kenyan government has been reluctant to impose regulations for fear of discouraging domestic investment there has been a recent trend to demand local content clauses in negotiating concession contracts and joint venture agreements. New legislation relating to the nascent extractive industries in Kenya, particularly oil and gas and mining, now contain local content and local equity participation rules.

12. Political Violence

Kenya faces challenges stemming from political violence. In the most notable incident, the disputed 2007 presidential election sparked a devastating episode of 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 $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 trial of the President, originally scheduled for February 2014, is indefinitely postponed pending resolution of a number of pre-trial motions.

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 with Muslim communities. In the fall of 2013, riots lasting several days followed the drive-by shooting that killed radical cleric Ibrahim "Rogo" Omar, who was accused of links with Somalia terrorist group al-Shabaab. 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 20. 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 within the High Court. This court will be composed of seven judges, will have 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 amongst 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 2013 Global Corruption Perception Index ranks Kenya 136 out of 177 countries, a marginal increase from 139 of 176 in 2012. Kenya still ranks third among the five EAC countries, better than Burundi and Uganda. 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 amongst the 31 lowest-scoring countries.

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 recent PriceWaterhouseCoopers (PwC) report, about one in three Kenyan business leaders reported procurement-related fraud in the past 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 government did not implement these laws effectively, and officials often engaged in corrupt practices with impunity. Despite many scandals, no top officials were prosecuted successfully for corruption in 2013. 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.

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.

14. Bilateral Investment Agreements and Taxation Treaties

Kenya does not have a bilateral investment trade 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, garment, 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 is also in the process of renewing an Economic Partnership Agreement with the EU, with both sides optimistic about negotiations concluding in upcoming months despite some remaining hurdles.

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 double access to electricity on the continent. In 2011 OPIC approved up to $310 million in financing for the expansion of Nevada-based Ormat's geothermal plant. In total, OPIC has earmarked approximately $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 2.149 million in 2012, and only increased by 3.1 percent between 2011 and 2012. Average wages for this sector are about $5,032 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 655,300 government workers in 2012. Education accounts for 392,900 employees, of which over 72 percent are employed in the public sector, according to the KNBS Economic Survey covering 2012. Agriculture, forestry, and fishing employ 348,900 workers, with 85 percent in the private sector, and manufacturing employs 277,900 employees (90% in the private sector). In 2013 Kenya's economy generated

742,800 jobs, an increase of 100,000 compared to 2012. However, 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 newly created 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. In the past year 44 strike notices affected more than 300,000 workers, though strikes were typically resolved peacefully. 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 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. 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 2012 cites 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 wishing 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. Recent policy changes mandate assured income of at least $24,000 annually for the issuance of a work permit and preclude issuance of permits to workers under 35 years old. Those in **agriculture**, **mining**, **manufacturing**, and **consulting** can circumnavigate 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 Ksh 200,000 ($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 (KenInvest) 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

By the end of 2012, Kenya had 45 designated Export Processing Zones (EPZs) in which 81 companies operated, employing 32,917 workers and producing roughly 8.2 percent of exports. The overwhelming majority of EPZ products are exported to the United States under the African Growth and Opportunity Act (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 2013, apparel exported through EPZs under AGOA increased from $246 million in 2011 to $262 million in 2012. 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).

Firms operating in Export Processing Zones (EPZ) 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.

Kenya is also a beneficiary of the African Growth and Opportunity Act, a US-sponsored export promotion program.

The Second MTP of the Vision 2030 economic development agenda calls for establishing special economic zones (SEZs) in Mombasa (2000 sq. km), Lamu (700 sq. km), and Kisumu (700 sq. km), and eventually to towns throughout the country. Special Economic Zones are intended to facilitate rapid industrialization in controlled enclaves. 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) (*Millions U.S. Dollars)*	2012	39,576	2012	40,697	http://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 (*Millions U.S. Dollars, stock positions)*	2011	25.81	2012	259	(BEA)
Host country's FDI in the United States (*Millions U.S. Dollars, stock positions)*	N/A	N/A	2012	-13	(BEA)
Total inbound stock of FDI as % host GDP (***calculate)***	2011	2.6% (1,047.4 million dollars)	2012	9.6 % (3,885 million dollars)	

- 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

Kenya, 2012

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: http://cdis.imf.org

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.

TABLE 4: Sources of Portfolio Investment

Kenya, 2012

Portfolio Investment Assets								
Top Five Partners (Millions, US Dollars)								
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: http://cpis.imf.org/

Section 5 - Government

Chiefs of State and Cabinet Members:

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

International organization participation:

ACP, AfDB, AU, C, CD, COMESA, EAC, EADB, FAO, G-15, G-77, IAEA, IBRD, ICAO, ICC (national committees), ICRM, IDA, IFAD, IFC, IFRCS, IGAD, ILO, IMF, IMO, IMSO, Interpol, IOC, IOM, IPU, ISO, ITSO, ITU, ITUC (NGOs), MIGA, MONUSCO, NAM, OPCW, PCA, UN, UNAMID, UNCTAD, UNESCO, UNHCR, UNIDO, UNIFIL, UNMISS, UNWTO, UPU, WCO, WHO, WIPO, WMO, WTO

Legal system:

Mixed legal system of English common law, Islamic law, and customary law; judicial review in a new Supreme Court established pursuant to the new constitution

Section 6 - Tax

Exchange control

The Foreign Exchange Control Act was repealed in 1995 and there are no restrictions in place.

Treaty and non-treaty withholding tax rates

Kenya has signed **12 agreements** (**12 DTC** agreements) providing for the exchange of information.

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5
Canada	DTC	27 Apr 1983	8 Jan 1987	Yes	No
Denmark	DTC	13 Dec 1972	15 Mar 1973	Yes	No
France	DTC	4 Dec 2007	not yet in force	Yes	Yes
Germany	DTC	17 May 1977	17 Jul 1980	No	No
India	DTC	12 Apr 1985	20 Aug 1985	Yes	No
Italy	DTC	15 Oct 1979	not yet in force	Yes	No
Mauritius	DTC	7 May 2012	not yet in force	Yes	Yes
Norway	DTC	13 Dec 1972	9 Oct 1973	Yes	No
South Africa	DTC	26 Nov 2010	not yet in force	Yes	Yes
Sweden	DTC	28 Jun 1973	28 Dec 1973	No	No
United Arab Emirates	DTC	11 Nov 2011	not yet in force	Yes	Yes
United Kingdom	DTC	31 Jul 1973	1 Jan 1974	No	No

Methodology and Sources

Section 1 - General Background Report and Map

(Source: CIA World Factbook)

Section 2 - Anti – Money Laundering / Terrorist Financing

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

Section 3 - Economy

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

(Source: CIA World Factbook)

Section 4 - Foreign Investment

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

(Source: US State Department)

Section 5 - Government

Names of Government Ministers and general information on political matters.

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

Section 6 - Tax

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

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

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