Kenya

RISK & COMPLIANCE REPORT

DATE: March 2018

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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
SOMALIA
GREAT RIFT VALLEY
KENYA
Eldoret
Mount Kenya
Meru
Kisumu
Nakuru
Garissa
HIGHLANDS
Lake Victoria
NAIROBI
Machakos
SERENGETI PLAIN
TANZANIA
Malindi
Mombasa
INDIAN OCEAN
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, and is at the forefront of mobile banking. Money laundering occurs in the formal and informal sectors, deriving from 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

Financial institutions engage in currency transactions connected to international narcotics trafficking, involving significant amounts of U.S. currency, which is derived from illegal sales in the United States and in Kenya.

Banks, wire services, and mobile payment and banking systems are increasingly available in Kenya. Nevertheless, unregulated networks of hawaladars and other unlicensed remittance systems 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 transmit remittances internationally. Diaspora remittances to Kenya totaled U.S. $1.21 billion between January and September 2017. There are about 165,900 mobile-money agents in Kenya, most working through Safaricom's M-Pesa system. There are also over 14 million accounts on M-Shwari, a mobile lender. These services remain vulnerable to money laundering activities.

Kenya is a transit point for the region and for international drug traffickers, and TBML continues to be a problem. Kenya's proximity to Somalia makes it an attractive location for laundering certain piracy-related proceeds, and there is a black market for smuggled and grey market goods. 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

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 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. Criminals could potentially use illicit funds to purchase mobile credits at amounts below reporting thresholds. Lack of rigorous enforcement in this sector, coupled with inadequate reporting from certain reporting entities, increases the risk of abuse.

To demand bank records or seize an account, police must obtain a court order by presenting evidence linking the deposits to a criminal violation. Confidentiality of this process is not well maintained, allowing account holders to be tipped off and providing an opportunity to move assets.

The government, especially the police, should allocate adequate resources to build sufficient institutional capacity and investigative skills to conduct complex financial investigations independently. Bureaucratic and other impediments also may hinder the investigation and prosecution of these crimes. While Kenya has made strides in implementing an AML framework, challenges remain to achieving comprehensive, effective implementation of AML laws and regulations. Kenya should fully satisfy its commitments on good governance, anti- corruption efforts, and improvements to its AML regime.

Despite some progress, Kenya has not yet fulfilled all of its commitments to join the Egmont Group.

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 has used ancillary provisions in the POCAMLA to apply for orders to restrain, preserve, and seize proceeds of crime in Nairobi. In 2016, the judiciary established the Anti-Corruption and Economic Crimes Division in the High Court.

Kenya's constitution requires public officials to seek approval from the Ethics and Anti-Corruption Commission (EACC) prior to opening a bank account. In 2016, the EACC denied permission to 146 government employees to open foreign bank accounts.

In March 2017, Kenya enacted the Proceeds of Crime and Anti-Money Laundering (Amendment) Act 2017. The legislation includes new legal sanctions for economic crimes and measures to identify, trace, freeze, seize, and confiscate crime proceeds. Persons can be fined up to approximately U.S. $47,400 (5 million Kenyan shillings), and corporate bodies up to approximately U.S. $237,100 (25 million Kenyan shillings), with up to approximately U.S. $94,900 in additional fines for failure to comply. It also establishes an Assets Recovery Agency to handle all cases of recovery of crime proceeds.

Extradition between the United States and Kenya is governed by the 1931 U.S.-U.K. Extradition Treaty. The United States and Kenya do not have a bilateral MLAT; however, Kenya is a party to relevant multilateral law enforcement conventions that have mutual legal assistance provisions. The U.S. and Kenya can also make and receive requests for assistance on the basis of domestic laws.

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 country.

Kenya is a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking. Within the country, children are subjected to forced labor in domestic service, agriculture, fishing, cattle herding, street vending, and begging. Girls and boys are also exploited in prostitution throughout Kenya, including in sex tourism on the coast; at times, their exploitation is facilitated by women in prostitution, "beach boys," or family members. Children are also exploited in sex trafficking by people working in 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, Angola, Europe, the United States, and the Middle East—particularly Saudi Arabia, Lebanon, Kuwait, Qatar, United Arab Emirates (UAE), and Oman—in search of employment, where at times they are exploited in domestic servitude, massage parlors and brothels, or forced manual labor. NGOs reported that internally displaced persons, particularly those who live close to a major highway or local trading center, are most vulnerable to trafficking. Gay and bisexual Kenyan men are deceptively recruited from universities with promises of overseas jobs, but are forced into prostitution in Qatar and 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 East Africa and South Sudan are subjected to forced labor and sex trafficking in Kenya; Kenyan children may endure similar exploitation in these countries. Kenya's largest refugee camp complex, Dadaab, hosts hundreds of thousands of refugees and asylum-seekers, and the security situation limits some humanitarian access, assistance, and protective services. A 2012 survey by a local NGO found fear of recruitment into terrorist organization al-Shabaab, especially of children, was a concern of a small percentage of respondents. Some children in Kenya-based refugee camps may endure sex trafficking, while others are taken from the camps and forced to work on tobacco farms. Trucks transporting goods from Kenya to Somalia returned to Kenya with girls and women subsequently 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 meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The Counter-Trafficking in Persons

Advisory Committee (advisory committee) met regularly and began developing a data collection mechanism to improve tracking of anti-trafficking efforts across Kenya's 47 counties. The advisory committee established and implemented its annual work plan; its accomplishments in 2015 included developing standard operating procedures for prosecutors and training approximately 50 trainers from key anti-trafficking officials. The government reported substantially increased trafficking prosecutions and convictions. In 2015, the government identified 153 child trafficking victims in only three of Kenya's 47 counties. The government allocated seven million Kenyan shillings (approximately $70,000) to the victim assistance fund for the first time during the reporting period. The government developed national referral mechanism (NRM) guidelines to assist stakeholders in referring potential victims of trafficking to services. The Ministry of Labor (MOL) developed new policies for Kenyans seeking employment opportunities abroad to ensure their work contracts comply with specific standards set within the ministry; however, the policies were not implemented by the end of the reporting period. The government did not provide adequate protective services to adult victims subjected to trafficking within the country or identified in situations of forced labor or prostitution overseas. In September 2015, an MOL taskforce provided a report to the cabinet secretary concluding that unskilled workers were the most vulnerable to exploitation and made recommendations for ways to address this issue as well as ways to regulate recruitment agencies, especially unregistered ones. Government funding and resource limitations remained a concern.

Terrorist Financing 2016:

Overview:

Kenya is a strong counterterrorism partner of the United States throughout East Africa. Kenya faces 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 Mission in Somalia (AMISOM). Kenya remained a target of al-Shabaab terrorist attacks, most of which occurred along the northern border region with Somalia. ISIS also claimed responsibility for at least one attack that occurred in Nairobi. Kenyan security services expanded efforts to counter terrorist threats to urban and rural areas in Kenya, some resulting in the reported arrests of suspected operatives associated with al-Shabaab and ISIS. 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, including investigating and prosecuting terrorism cases. Kenya is one of six countries participating in the President's Security Governance Initiative (SGI), focusing 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, with countering violent extremism (CVE) a cross-cutting issue for all three focus areas.

The Kenyan government worked to prevent the transit of foreign terrorist fighters, including Kenyan nationals, attempting to join al-Shabaab in Somalia or ISIS in Iraq, Libya, or Syria.

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. The Security Laws (Amendment) Act of 2014 (SLAA) altered 20 laws to strengthen Kenya's legislative framework to fight terrorism, including: criminalization of participating in terrorist training; establishing a framework 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.

The Kenyan judiciary continued to demonstrate independence, exemplified by the High Court's actions in 2015, when it struck down some provisions of the SLAA as unconstitutional and demonstrated capacity to handle cases related to terrorism. The judiciary remained hampered, however, by insufficient procedures to effectively use plea agreements, cooperation agreements, electronic evidence, and undercover investigative tools. Allegations of corruption in the judiciary, including in the High Court, have persisted.

Government counterterrorism functions were divided among the three branches of the National Police Service – the Kenya Police (including the paramilitary General Service Unit), the Directorate of Criminal Investigations (including the investigative Anti-Terrorism Police Unit, the Bomb Disposal Unit, and the Cyber Forensics Investigative Unit), and the Administration Police (including the Rural Border Patrol Unit) – as well as non-police agencies, such as the National Intelligence Service (NIS) and elements of the Kenya Defense Forces. In May, the government relocated NCTC, NIS, and the National Security Council to the Office of the President. Interagency coordination improved, particularly in information sharing; however, shortages in resources and training, corruption among some personnel, and unclear command and control hindered operational effectiveness. The government continued, with donor support, to work on a single crisis response command center – a result of lessons learned from the 2015 attack at Garissa University College in which al-Shabaab terrorists killed at least 147 people.

Kenyan officials participated in a range of U.S. government-sponsored capacity-building programs funded and implemented by the Departments of State, Defense, Homeland Security, and Justice. Programs included training in crisis response, border operations, investigations, and prosecutions. Notable among these was the Department of State's third annual East Africa Joint Operations Capstone exercise, a month-long crisis response training series hosted in Kenya for Kenyan, Tanzanian, and Ugandan law enforcement personnel. The exercise culminated in a large-scale simulated response to a terrorist incident in multiple locations over a 20-hour period, and included community engagement and human rights-related issues, as well as a senior-level tabletop exercise.

Border security remained a challenge for Kenya due to vast, sparsely populated border regions and largely uncontrolled land borders. This was exacerbated by security agency and other government resource gaps and corruption at multiple levels.

Kenyan officials emphasized the importance and challenges of border security in their discussions with U.S. counterparts. SGI-supported exchange visits with U.S. border security officials helped to improve Kenyan interagency coordination efforts and refinement of a country border control strategy, as well as legislative changes. Gaps in border security and national identification systems 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 and airports. Kenya continued its partnership with the United States to strengthen traveler screening using the Personal Identification Secure Comparison and Evaluation System (PISCES) at major ports of entry.

The Kenyan government worked to prevent the transit of foreign terrorist fighters, including Kenyan nationals attempting to join al-Shabaab in Somalia or ISIS and those returning from fighting with these groups abroad. In October, Kenyan prosecutors obtained the first conviction under the 2015 SLAA, which criminalized travel to receive terrorist training. Under the ruling, a Kenyan man was sentenced to 10 years imprisonment after being arrested in Somalia and returned to Kenya.

Kenyan security services detected and deterred terrorist plots during 2016 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 certain communities. Nonetheless, there were numerous allegations in 2016 that the government or its agents committed arbitrary and unlawful killings, particularly of known or suspected criminals, including terrorists. We refer you to the Department of State's *Country Reports on Human Rights Practices for 2016*, https://www.state.gov/j/drl/rls/hrrpt/ for further information.

Kenya's Independent Policing Oversight Authority continued to make progress in fulfilling its mandate by investigating multiple cases of police misconduct and referring cases to the Office of the Director of Public Prosecutions.

At the end of 2016, several major terrorism cases were ongoing, including the trial of four Kenyans and one Tanzanian citizen charged in connection with the 2015 Garissa University College attack. That trial resumed in January after an administrative postponement in 2015, but was suspended again in October after the Tanzanian defendant was found mentally unfit to stand trial. The trial of British terrorist suspect Jermaine Grant on explosives charges continued. Grant was sentenced in 2015 in a separate trial to nine years imprisonment on charges related to trying to obtain Kenyan citizenship illegally.

The Kenyan government cooperated with the United States to investigate the October 27 attack on a police officer outside the U.S. Embassy in Nairobi and to increase security at the embassy. Kenyan law enforcement agencies worked with regional organizations and the broader international community, including the United States, to increase their counterterrorism capacity and to secure land, sea, and air borders.

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 implements relevant UN Security Council resolutions, including 1373 and the ISIL (Da'esh) and al-Qa'ida sanctions regime. It has made progress on its anti-money laundering/countering the financing of terrorism (AML/CFT) regime since its June 2014 removal from review by the FATF for strategic deficiencies.

Kenya's financial intelligence unit, the Financial Reporting Center (FRC), continued to build its capacity to monitor the formal financial system. The government has not yet appointed a permanent director to the FRC, which remained hampered by a lack of essential resources and faced challenges meeting minimum staffing, physical security, and information technology requirements. The FRC also lacked an electronic reporting system for analyzing 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, to increase overall financial transaction integrity through greater financial inclusion, but the use of unregulated informal financial mechanisms, including *hawalas*, continued.

Non-governmental organizations are required to report suspicious transactions to the FRC, but compliance is not always enforced.

International Sanctions

Kenya is not currently subject to any International Sanctions

Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	28
World Governance Indicator – Control of Corruption	17

Kenya's competitiveness is held back by high corruption levels that penetrate every sector of the economy. A weak judicial system and frequent demands for bribes by public officials lead to increased business costs for foreign investors. Widespread tax evasion hinders Kenya's long-term economic growth, and fraud in public procurement is rampant. Corruption, active and passive bribery, abuse of office and bribing a foreign public official are criminalized under the Anti-Corruption and Economic Crimes Act 2003, in addition to the Bribery Act of 2016 which strengthens the fight against the supply-side of corruption. Facilitation payments are criminalized and there are rules for what types of gifts public officials are allowed to accept. Adequate enforcement of Kenya's anti-corruption framework is an issue as a result of weak and corrupt public institutions. **Information provided by GAN Integrity.**

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 is the economic and transport hub of East Africa. Kenya's real GDP growth has averaged over 5% for the last seven years. Since 2014 Kenya has been ranked as a lower middle income country because its per capita GDP crossed a World Bank threshold. While Kenya has a growing entrepreneurial middle class and faster growth, its economic and development trajectory is threatened by weak governance and corruption. Unemployment and under-employment are high, but reliable numbers are hard to find.

Agriculture remains the backbone of the Kenyan economy, contributing 25% of GDP. About 80% of Kenya's population of roughly 42 million work at least part-time in the agricultural sector, including livestock and pastoral activities. Over 75% of agricultural output is from small-scale, rain-fed farming or livestock production.

Inadequate infrastructure continues to hamper Kenya's efforts to improve its economic growth to the 8-10% range so that it can meaningfully address poverty and unemployment. The KENYATTA administration sought external investment in infrastructure development. International financial institutions and donors remain important to Kenya's economic growth and development, but Kenya has also successfully raised capital in the global bond market. Kenya issued its first sovereign bond offering in mid-2014. Nairobi has contracted with a Chinese company to construct a new standard gauge railway connecting Mombasa and Nairobi, with completion expected in 2017. The country is in the process of devolving some state revenues and responsibilities to the counties. 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. Chronic budget deficits, including a shortage of funds in mid-2015, hampered the government's ability to implement proposed development programs, but the economy is back in balance with many indicators, including foreign exchange reserves, interest rates, inflation, and FDI moving in the right direction.

Tourism holds a significant place in Kenya's economy. Multiple terror attacks by the Somalia-based group al-Shabaab in the time since the 2013 attack on Nairobi's Westgate mall, which killed at least 67, had a negative effect on international tourism earnings, but the sector is starting to recover. Kenya's success in hosting a series of incident-free high-profile events in the second half of 2015, including the visit of US President Obama, has helped improve the outlook for tourism.

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

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

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

Exports - partners:
Uganda 11.2%, US 8.3%, Tanzania 8.1%, Netherlands 7.4%, UK 6%, Pakistan 4.2% (2015)

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

Imports - partners:
China 30%, India 15.5%, UAE 5.7%, US 4.8%, Japan 4.7% (2015)

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 pan-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, solid aviation connections within Africa and to Europe and Asia, and the Mombasa Port is the major trade gateway for much of East Africa. 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 corruption and ease of doing business, although Kenya has made significant progress on the latter since 2013 as reported by the latest World Bank Group's Doing Business 2016. Kenya also faces a significant security risk from terrorism and crime.

Key macroeconomic fundamentals are strong. Inflation is stable in the range of five to eight percent. The exchange rate is largely stable, although it has depreciated from an average of 87.92 Kenyan shillings (2014) to 98.6 Kenyan shillings (2015) to the U.S. dollar as the U.S. dollar strengthened internationally. The exchange rate has continued to display relatively less volatility compared with regional currencies. The Central Bank of Kenya (CBK) adopted a tight monetary policy stance in June 2015 in order to anchor inflationary expectations and to moderate demand pressures in the economy attributed largely to exchange rate movements. It raised the Central Bank Rate (CBR) from 8.5 percent to 10.0 percent in June, and further to 11.5 percent in July 2015. It raised the Kenya Banks' Reference Rate (KBRR) to 9.87 percent in July, from 8.54 percent. The CBK retained the two rates at these levels for the rest of 2015 with the exception of a temporary spike to over 24 percent in September 2015, before it returned to its historic baseline.

The United Nations Council on Trade and Development (UNCTAD) 2014 World Investment Report states that Kenya is becoming a favored regional business hub, not only for oil and gas exploration but also for manufacturing and transport. The report noted overall increases in FDI of 15 percent to $6.2 billion in the East African region as a result of rising flows to Ethiopia and Kenya. The World Bank Group's Doing Business 2016 report ranked Kenya as the third most improved country, Kenya moved up 21 places to 108 of the 189 economies reviewed on business regulatory reforms.

2015 was also an active year for Kenya in improving the environment for foreign investment. Highlights include:

- Passage of the new Companies Act (2015) which modernized registration and operating procedures for public and private corporations;
- Passage of the Business Registration Services Bill (2015) which created a one stop shop agency for business registration;
- Passage of the Insolvency Act (2015) to modernize the legal framework for bankruptcies;

- Continued progress by the Kenya Investment Authority (KenInvest) and the Business Environment Delivery Unit to reduce bureaucracy and simplify the business registration process; and
- Progress on legislative modernization as the Energy, Mining, and Petroleum Bills make their way through the enactment process. In particular, revisions to the Mining Bill (2014) during the last year point to a more positive investment climate for the extractives industries.

Despite its advances in ease of doing business, corruption and some remaining weaknesses in the legislative frameworks continue to undermine Kenya's business environment. Corruption remains a major impediment to investment, with Kenya ranking 139 of 168 countries on Transparency International's 2015 corruption perceptions index. Allegations of irregularities in public tenders are frequent, and corruption scandals appear almost daily in local media. Foreign companies continue to complain of significant delays in work permits.

The risk of terrorism and insecurity has hindered the economy since a series of high-profile terrorist incidents beginning with an attack on Nairobi's Westgate Mall in 20013, killing 67. Kenya's tourism industry cites the fear of terrorist attacks and international perceptions about the risk of Ebola in Africa as explanations for the decline suffered since 2013, as well as the slow pace of the industry's recovery.

Despite these obstacles, American firms are operating successfully in many sectors in Kenya, and more American firms are seeking to set up their operations in the country. The sectors offering the most opportunities to investors are: energy, extractives, transportation, infrastructure, light manufacturing, retail, restaurants, technology, health care, mobile banking, and finance.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2015	139 of 168	transparency.org/cpi2015/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	108 of 189	doingbusiness.org/rankings
Global Innovation Index	2015	92 of 141	globalinnovationindex.org/content/page/data-analysis
U.S. FDI in partner country ($M USD, stock positions)	2014	$383	BEA data available at http://bea.gov/international/direct_investment_ multinational_companies_comprehensive_ data.htm
World Bank GNI per capita	2014	$1,290	data.worldbank.org/indicator/NY.GNP.PCAP.CD

Millennium Challenge Corporation Country Scorecard

The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a per capita gross national income (GNI) of $4,125 or less. Kenya is better than the median on more than half of the MCC's 20 indicators, including on the democratic rights indicators. Kenya is also above the median on at least one indicator in each of the three broad groupings: Economic Freedom, Investing in People, and Ruling Justly. It falls short, however, on the important control of corruption indicator. A list of countries/economies with MCC scorecards and links to those scorecards is available here: http://www.mcc.gov/pages/selection/scorecards. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: http://www.mcc.gov/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

Kenya has a steadily improving environment for foreign direct investment (FDI). 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. Difficulty in obtaining work permits make it harder to employ expatriates in Kenya (Please refer to section 15 on labor issues for further details). The minimum foreign investment to qualify for Government of Kenya (GOK) investment incentives and an investment certificate is $100,000, a potential deterrent to foreign small and medium enterprise investment, especially in the services sector, which is normally not as capital-intensive as other sectors. Investment Certificate benefits, including entry permits for expatriates, are outlined in the Investment Promotion Act 2004. Investors should be aware that foreigners cannot own land in Kenya, though they can lease it in 99-year increments. The cumbersome and opaque process required to acquire land raises concerns about security of title, particularly given past abuses relating to the distribution and redistribution of public land.

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 guides, published in cooperation with the International Chamber of Commerce (ICC). According to these guides, Kenya faces several key challenges, most notably the absence of a reliable and affordable power supply, dilapidated transportation infrastructure, and burdensome tax administration. UNCTAD observed that at the time of writing, over 50 percent of investor facilitation revolved around foreign work permits. A 2013 follow-up report tracking progress in implementing recommendations from these reviews noted 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.

The 2013 African Development Bank report titled The State of Kenya's Private Sector, 2013 (http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/The_State_of_Kenya_s_Private_Sector_-_Recommendations_for_Government-Development_Partners_and_the_Private_Sector.pdf) notes that the business climate has improved over the last decade. Political uncertainty, corruption, infrastructural deficits, and an untapped informal sector are recurring challenges that prevent the private sector from reaching its full potential. The report mentioned 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 characterizes Kenya's business climate as "mediocre but improving."

Laws/Regulations on Foreign Direct Investment

The major regulations governing FDI are found in the Investment Promotion Act (2004). Other important documents that provide the legal framework for FDI include the 2010 constitution of Kenya, the Companies Ordinance, the Private Public Partnership Act (2013), and the Foreign Investment Protection Act. GOK membership in the World Bank's Multilateral Investment Guarantee Agency (MIGA) provides an opportunity to insure FDI against non-commercial risk. On the legal side, the Employment and Labor Relations Court (formerly the Industrial Court), and the Milimani Commercial Courts have jurisdiction over economic and commercial affairs. KenInvest is Kenya's official investment promotion agency (www.investmentkenya.com). When President Kenyatta signed the new Companies Act (2015), it contained language requiring a foreign company to demonstrate at least 30 percent of shareholding by Kenyan citizens by birth. However, the Attorney General immediately suspended this clause with support from the President's office and the Cabinet Secretary of Industrialization, Investment, and Trade – who all expressed surprise that the clause had entered the bill in a late draft and was not recognized before signature. The clause is expected to remain suspended until the GOK can amend the Act. There is no executive or other interference in the court system that affects foreign investors, and foreign investors are free to obtain financing locally or internationally.

Business Registration

In September 2015, President signed into law The Business Registration Services (BRS) Act (2015) and the Companies Act (2015), intended to ensure Kenya becomes an enticing destination for investors. The act establishes a state corporation known as the Business Registration Service to ensure effective administration of the laws relating to the incorporation, registration, operation and management of companies, partnerships and firms. The BRS also devolves to the counties business registration services such as registration of business names and promoting local business ideas/legal entities, thus reducing costs of registration. The Companies Act (2015) deals with specifics of registration and management as they pertain to public and private corporations.

KenInvest has developed an online database known as eRegulations (http://www.investmentkenya.com/) which is designed to provide investors and entrepreneurs with full transparency on investment-related procedures in Kenya. At each step, the system tells you where to go, who to see, what you must bring, what you have to pay, what you will get, what is the legal justification, and even who to complain to in case you have a problem. According to UNCTAD's Global Enterprise Registration Network (http://www.GER.co), the KenInvest portal makes Kenya one of only 25 countries to earn a perfect rating on its information portal.

In 2014, the GOK also established a Business Environment Delivery Unit aimed at addressing challenges facing investors in the country. The unit has representatives from all ministries and focuses on lessening bureaucracy related to setting up and doing business in the country. Separately, the Business Regulatory Reform Unit operates a web site (http://www.businesslicense.or.ke/) which provides information on how to access detailed information on relevant business licenses and permits, including requirements, costs, application forms and contact details for the relevant regulatory agency.

Industrial Promotion

The government does not steer investment to specific geographic locations but encourages investments in sectors that create employment, generate foreign exchange, and create forward and backward linkages with rural areas. Kenya puts significant effort into assuring the health and growth of its tourism industry. Endeavoring to grow its manufacturing capacity, the government also offers incentives for the production of goods for export. More information on both is available in section 5.2.

An investment guide to Kenya, also referred to as iGuide Kenya, can be found at http://www.theiguides.org/public-docs/guides/kenya/about#. iGuides, designed by UNCTAD and the International Chamber of Commerce, provide investors with up-to-date information on business costs, licensing requirements, opportunities and conditions in developing countries.

KenInvest has also published *A Practical Guide to Doing Business* which gives a quick overview of Kenya's investment climate, taxation, types of businesses organizations, and accounting practices. See link: http://www.investmentkenya.com/resources/19-publications

The *Kenya Mining Investor Handbook* is the first guidebook for investors interested in the mining sector of Kenya: http://www.mining.go.ke/resources.html.

Limits on Foreign Control and Right to Private Ownership and Establishment

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.

The Capital Markets Authority allows foreign investors to increase their investment with prior written approval if the shares reserved for local investors are not fully subscribed. 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 Nairobi Securities Exchange was decreased from 75 to 60 percent. This change was not applied retroactively.

Privatization Program

Kenya is undertaking privatization efforts for parastatal organizations in a wide range of sectors. 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. However, Kenya has been slow to open public infrastructure such as telecommunications, power, and rail to competition because the government considers state-owned companies that control infrastructure as “strategic” enterprises.

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

Screening of FDI

There is little screening of investment in Kenya, and it has not been discriminatory. KenInvest asks companies to undergo an optional investment registration process that includes health, safety, and environmental impact assessments. However, 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, processing, or any project sited by a body of water or in a conservation area are required to carry out an environmental impact assessment (EIA) and obtain an EIA license prior to project implementation. Upon submission of the EIA, NEMA is required to respond within six months. If no reply is received within nine months, the investor may proceed with the project.

Competition Law

In August 2011, the Finance Minister put the Competition Act of 2010 into effect, thereby replacing the outdated Monopolies and Price Control Act and the Monopolies and Prices Commission. Specifically, the Act created the Competition Authority of Kenya (CAK). All mergers and acquisitions require the Authority’s authorization before they are finalized, and the CAK regulates abuse of dominant position and other competition and consumer-welfare related issues in Kenya.

In 2014, CAK imposed a filing fee for mergers and acquisitions set at one million shillings ($9,700) for mergers involving turnover of between one and 50 billion shillings ($9.7 million to $485 million), while two million shillings ($19,400) will be charged for larger mergers. All mergers and acquisitions require CAK's authorization.

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. Between July 2014 and July 2015, the shilling declined 15 percent but has been stable since then as Kenya successfully navigated through some financial volatility overseas, a strengthening dollar, and a domestic fiscal squeeze. In 2015, foreign exchange reserves continue to grow and now provide more than five months of import cover. Lower oil prices continue to support Kenya's current account position. The average inflation rate was 6.6 percent in 2015 and the rate on 91-day treasury bills had fallen to 9.81 percent in December 2015, after a spike to over 21 percent in October. According to CBK figures, the average exchange rate in 2015 was Ksh 98.6 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 greater than Ksh 500,000 for residents or $5,000 or the equivalent in foreign currencies for non-residents 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. However, the Central Bank of Kenya Act (Cap 491) Act states that all foreign exchange dealers are required to obtain and retain appropriate documents for all transactions above the equivalent of $10,000. As of June 2014, the Central Bank of Kenya had licensed 17 money remittance providers following the operationalization of the Money Remittance Regulations in April 2013.

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. Kenya's ongoing progress in creating the legal and institutional framework to combat money laundering and the financing of terrorism resulted in the The inter-governmental Financial Action Task Force (FATF) announcing that Kenya would be removed from the FATF Watchlist in June 2014.

3. Expropriation and Compensation

The 2010 constitution guarantees safety from expropriation except in cases of eminent domain or security concerns subject to the payment of prompt and fair compensation. The Land Acquisition Act governs compensation and due process in acquiring land, although land rights issues in Kenya remain contentious and can cause significant delays in projects. See “Real Property” in section 7 for details.

4. Dispute Settlement

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

Although Kenyan media regularly features reports of corruption in the judiciary, the Kenyan courts are generally staffed with competent and independent judges. The 2010 constitution establishes an independent judiciary with a Supreme Court, a Court of Appeal, a Constitutional Court, and a High Court. The legal system is based on English Common Law. The previously existing subordinate courts remain in place – Magistrates, Khadis (Muslim succession and inheritance), Courts Martial, and Commercial and Industrial Courts. In 2014, the judiciary renamed the Industrial Court as the Employment and Labor Relations Court. 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. 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.

Bankruptcy

The World Bank Group’s Doing Business 2016 report puts Kenya at 144 of 189 countries in the “resolving insolvency” category. This is up 10 rankings from 2015. In September 2015, the GOK published the Insolvency Act (2015) which repeals the Bankruptcy Act and updates the legal structure relating to insolvency of natural persons and incorporated and unincorporated bodies. Section 720 grants the force of law to the United Nations Commission on International Trade Law (UNCITRAL) Model Law. Creditors' rights are comparable to those in other common law countries, and monetary judgments typically are made in Kenyan shillings. In Kenya, bankruptcy is not criminalized. Similarly, the new Insolvency Act (2015) increased the rights of borrowers and prioritizes the revival of distressed firms. The new law states that a debtor will automatically be discharged from debt after three years.

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 more common, particularly with respect to government tenders. Please refer to sections 7 and 12 for more information.

International Arbitration

The government does accept binding international arbitration of investment disputes with foreign investors. The Kenyan Arbitration Act (1995) as amended in 2010 is anchored entirely on the UNCITRAL Model Law. Moreover, legislation introduced in 2013 established the Nairobi Centre for International Arbitration (NCIA). The NCIA seeks to serve as an independent, not-for-profit international organization for commercial arbitration, and may offer a quicker alternative to the court system.

In June 2014, the Kenya Revenue Auithority (KRA) launched an Alternative Dispute Resolution (ADR) mechanism aiming to provide taxpayers with an alternative, fast-track avenue for resolving tax disputes. Once operational, the KRA claims the ADR mechanism will provide a cheaper alternative for foreign investors and also provide an alternative to the lengthy court processes 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. Kenya signed the ICSID Convention on May 24, 1966, and became a Contracting State on February 2, 1967. Kenyan became a Contracting State in the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards on February 10, 1989. As it relates to arbitration over property issues, the Foreign Investments Protection Act specifically cites Article 75 of the Kenyan Constitution, which provides that "[e]very person having an interest or right in or over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court."

Duration of Dispute Resolution – Local Courts

The private sector cites weak institutional capacity, inadequate transparency, and inordinate delays in dispute resolution in lower courts. The resources and time involved in settling a dispute through the Kenyan courts often render them ineffective as a form of dispute resolution. International investors anecdotally relate a perceived "home field advantage" enjoyed by Kenyans in their national justice system.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

Kenya is a World Trade Organization (WTO) member. It has not notified the WTO of any measures that are not in conformity with itsTrade Related Investment Measures (TRIMS) obligations.

Investment Incentives

Kenya's Special Economic Zones (SEZ) and Export Processing Zones (EPZ) offer special geographically-based incentives. More information is provided in Section 16. Further information on government programs to attract investment is available through KenInvest (www.investmentkenya.com).

The government allows all locally financed materials and equipment (excluding motor vehicles and goods for regular repair and maintenance) for use in construction or refurbishment of tourist hotels to be zero-rated for purposes of VAT calculation. The National Treasury permanent secretary must approve such purchases. An additional measure enacted to boost the ailing tourism industry makes one week vacations paid by employers on behalf of employees a tax deductible expense. Aircraft and aircraft parts, tractors, inputs for solar manufacturing, and services relating to goods in transit are fully exempt from VAT. Investors in metal manufacturing and products and the hospitality services sectors are able to deduct from their taxes a large portion of the cost of buildings and capital machinery.

The government's Manufacturing Under Bond (MUB) program, established in 1986, is meant to encourage manufacturing for export. The program provides a 100 percent investment allowance on plant machinery and equipment and buildings as well as materials imported for production of duty-free products sold domestically and exported. 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.

The Finance Act (2014) amended the Income Tax Act to reintroduce after 29 years the capital gains tax (CGT) on transfer of property situated in Kenya. Under this provision, gains derived on sale or transfer of property by an individual or company are subject to tax at the rate of five percent. The effective date of this provision was January 1, 2015, and sales and transfer of property related to the oil and gas industry are taxed up to 37.5 percent.

The Finance Act (2014) also reintroduced the withholding VAT system by government ministries, departments and agencies. Abolished in 2011, the reintroduced system again excludes the Railway Development Levy (RDL) imports for persons/goods/projects; the implementation of an official aid-funded project; diplomatic missions, institutions or organizations gazetted under the Privileges and Immunities Act; and the United Nations or its agencies.

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 outside of proposed bills to govern the burgeoning energy sector, they are primarily 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). There are no government imposed conditions on permission to invest. For information on work permits for foreign nationals please see section 16. For more information on local content and social responsibility requirements in proposed legislation for the oil and gas and extractives industries, see section 10.

Data Storage

The GOK does not impose any data storage requirements for investors or others. However, the lack of developed cybercrimes legislation can cause tension over how the GOK expects to be able to interact with locally generated content stored outside the country. The GOK has pressured online service providers to violate their privacy policies when it believes that it should have access to or control over certain locally generated content held by the company.

6. Protection of Property Rights

Real Property

The legal infrastructure around land ownership and registration has changed in recent years. Land issues delayed several major infrastructure projects in 2015. 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 constitution also prohibits foreign ownership of land and converts foreign-owned freehold interests into 99 year leases at a “peppercorn rate” (a nominally low rate used to satisfy the requirements for the creation of a legal contract). However, the government has not yet effectively implemented this provision of the constitution.

The 2010 constitution and subsequent land legislation created the National Land Commission, an independent government body mandated to review historical land injustices and provide oversight of the government’s land policy and management. The creation of the Commission has had the unintended side-effect of introducing coordination and jurisdictional confusion between it and the Ministry of Land, Housing, and Urban Development. Work continues on the National Land Information Management System, though fully digitized, border-to-border cadastral data is still many years in the future.

Intellectual Property Rights

The major intellectual property enforcement issues in Kenya related to counterfeit products are corruption, lack of penalty enforcement, failure to impound imports of counterfeit goods at the ports of entry (especially in Mombasa), and the reluctance of brand owners to file a complaint with the Anti-Counterfeiting Agency (ACA). The prevalence of “gray market” products – genuine products that enter the country illegally without paying import duties – also presents a challenge, especially in the mobile phone and computer sectors.

ACA, the lead agency for IPR enforcement, opened an office in Mombasa in December 2014 and in Eldoret and Kisumu in 2015, 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. ACA is currently working on an amendment to the Anti-Counterfeit Act (2008) that would impose a minimum penalty of Ksh 2 million ($194,000). 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. Currently, Kenya does not post information on seizures of counterfeit goods publicly.

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 KEBS standardization mark. 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 but must also carry an ISM. Once the product qualifies for a Confirmation of Conformity, KEBS will issue the ISM free of charge.

For additional information regarding the IPR environment in Kenya, also see USTR's Special 301 Reports at https://ustr.gov/issue-areas/intellectual-property/Special-301. For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

Resources for Rights Holders

Contact at U.S. Embassy Nairobi:
David Pemberton
Economic Officer
+254 (0)20-363-6048
ICSKenya@state.gov

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

7. Transparency of the Regulatory System

Transparency of Kenya's regulatory system is good and improving as outdated laws receive updates. Proposed laws and regulations pertaining to business and investment are published in draft form for public input and stakeholder deliberation before they are passed into law in Parliament Kenya's business registration and licensing are systems fully digitized and transparent. Computerization of other GOK processes to increase transparency and close avenues for corrupt behavior is on-going, albeit slowly. The Kenyan regulatory system is governed by the 2010 constitution, the judicial system outlined in section 4, and organizations such as the Competition Authority of Kenya, outlined in section 1.8.

Kenya is a member of UNCTAD's international network of transparent investment procedures, https://kenya.eregulations.org/. Foreign and national investors can find there detailed information on administrative procedures applicable to investment and income generating operations, including the number of steps, name and contact details of the entities and persons in charge of procedures, required documents and conditions, costs, processing time and legal bases justifying the procedures.

Many GOK laws have granted significant discretionary and approval powers to their administrators, which can create uncertainty among investors. While some government agencies have either amended laws or published clear guidelines for decision making criteria, others have lagged in making their transactions transparent. For instance, foreign work permit processing continues to be in disarray with overlapping and sometimes contradictory regulations. American companies have complained about delays of up to 7 months and non-issuance of permits that appear to be compliant with known regulations.

The GOK is working to address tendering and procurement corruption. Section 227 of the Constitution of Kenya provides for the establishment of a system for procurement of goods and services that is fair, equitable, transparent, competitive and cost-effective. The Public

Procurement and Disposal Act (2014) prescribes a framework for procurement and asset disposal. With the support of the World Bank and in collaboration with the Kenya ICT Board, the Public Procurement Oversight Authority (PPOA) is developing a web-based Market Price Index and an e-Procurement system. The International Budget Partnership found that as of 2014, the majority of counties had yet to establish County Budget and Economic Forums (CBEF), a measure of the Public Finance Management Act (2012) meant to ensure wide participation in public finances.

8. Efficient Capital Markets and Portfolio Investment

Foreign investors are able to obtain credit on the local market; however, the number of available credit instruments is relatively small. Legal, regulatory, and accounting systems are generally transparent and consistent with international norms. The Kenyan National Treasury is seeking to launch its mobile money platform government bond to retail investors locally. The name of the product is M-Akiba, through which local Kenyans will be able to purchase bonds as small as $30 on their mobile phones.

Though small by Western standards, Kenya’s capital markets are the deepest and most sophisticated in East Africa. The Kenyan capital market has grown rapidly in recent years and has also exhibited strong capital raising capacity. The bond market, however, 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. As of February 2016, the domestic government bond market denominated in local currency represents a total of $14 billion dollars, of which only five percent is comprised of international institutional investors.

The Central Bank of Kenya (CBK) 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 the Central Depository System (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.

Money and Banking System, Hostile Takeovers

The CBK is the primary regulator of financial institutions, with the current focus on banking regulation. As of December 2015, Kenya had 43 banking institutions – 42 commercial banks and one mortgage finance company, while two banking entities entered “receivership” in September/October 2015 – seven representative offices of foreign banks, twelve deposit-taking microfinance institutions (DTMs), 107 foreign exchange bureaus, and two credit reference bureaus (CRBs). Out of the 43 banking institutions, 29 are locally owned – three with public shareholding and 26 privately owned – and 13 are foreign owned. The twelve DTMs, two CRBs and 79 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. Some major international banks operating in Kenya include Bank of India, Barclays, Citibank, and Standard Chartered. These are listed as commercial banks on the CBK website.

The total population with access to financial services, either through conventional or mobile banking platforms is now 77 percent. According to the World Bank, M-Pesa, Kenya's largest mobile banking platform, processes more transactions within Kenya each year than Western Union does globally. As of September 2015, 37.8 million Kenyans were using mobile phone platforms to transfer money, according to CBK figures. There were over 135,724 agents facilitating transactions in excess of Ksh 2.7 trillion ($2.6 billion) in the 2014/2015 fiscal year, a sum equivalent to half of Kenya's GDP in the same period. The National ICT Masterplan 2017 envisages the sector contributing at least 10 percent of GDP growth by 2017, up from 8.4 percent recorded in 2014. As of February 2016, Kenyan mobile money platform SimbaPay has received approval to operate in five European countries catering to the Kenyan diaspora, allowing them to bank in Kenya from abroad.

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

9. Competition from State-Owned Enterprises

In 2013, the Presidential Task Force on Parastatal Reforms (PTFPR) published a list of all state-owned enterprises (SOEs) and recommended proposals to reduce the number of State Corporations from 262 to 187 in order to eliminate redundant functions between parastatals, close or dispose of non-performing organizations, consolidate functions wherever possible, and reduce the workforce. However, progress is slow. The taskforce's report can be found at http://www.cofek.co.ke/Report%20of%20The%20Presidential%20Task%20force%20on%20Parastatal%20Reforms.pdf.

In general, competitive equality is the standard applied to private enterprises in competition with public enterprises. Certain parastatals, however, have enjoyed preferential access to markets. Examples include Kenya Reinsurance (Kenya-Re), which enjoys a guaranteed market share; Kenya Seed Company, with fewer marketing barriers than its foreign competitors; and the National Oil Corporation of Kenya (NOCK), 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.

Beyond energy and agriculture, SOE competition with private enterprise is expected and encouraged in Kenya. Energy remains the most publicly-owned sector in Kenya while most SOE's in the agricultural sector have been accorded material advantages such as preferential access to land and raw materials inputs. Commodity SOEs generally spend on-par with private companies, and SOEs do not tend to spend far more than the private sector on R&D. Research and standardization SOEs often have a proportionally large R&D budget, and may use funding from donors.

On procurement from the private sector, SOEs are guided by the Public Procurement (Preference and Reservations) (Amendment) Regulations (2013). The amendment reserves 30 percent government supply contracts for youth, women, and SMEs.

Kenya is neither a party to the Government Procurement Agreement (GPA) within the framework of the World Trade Organization (WTO) nor an Observer Government.

OECD Guidelines on Corporate Governance of SOEs

The PTFPR's October 2013 report references the 2005 OECD guidelines and recommends a more comprehensive set of guidelines for State Owned Enterprises. In response, the Government Owned Entities Bill (2014) is currently under internal review and stakeholder consultations. The Bill will bring Kenya more in line with OECD guidelines.

According to the PTFPR report, "Appointment of CEOs and Boards are [sic] sometimes political. CEOs and Boards feel a hand over their heads and pressure to toe the political line." Although President Kenyatta has publicly called for reform in the way parastatals are managed, he continues to lean toward appointing political supporters. However, in 2015, to address governance and management challenges in parastatals, President Kenyatta launched a new Code of Governance for State Corporations under the name "Mwongozo." The Code addresses matters of effectiveness of boards, transparency and disclosure, accountability, risk management, internal controls, ethical leadership, and good corporate citizenship. As part of the on-going parastatals reform program, Mwongozo aims to ensure that sustainability, performance and excellence becomes the norm of Kenya's Government Owned Entities.

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

Sovereign Wealth Funds

Kenya is in the process of establishing a sovereign wealth fund through the Kenya National Sovereign Wealth Fund Bill (2014). The fund will receive income from privatization proceeds, dividends from state corporations, all oil, gas and minerals revenues due to the national government, revenue from other natural resources, and funds from any other source. The bill is still undergoing internal review and stakeholder consultations. 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. According to the working draft of the bill, "Investments shall be directed to both local and foreign markets except to the extent restricted under this Act or under the investment Guidelines."

10. Responsible Business Conduct

The Environmental Management and Coordination Act (1999) establishes a legal and institutional framework for the management of the environment while The Factories Act (1951) safeguards labor rights in industries. The legal system, however, has remained slow to prosecute corporate malfeasance in both areas.

The GOK has been hesitant to enact and enforce regulatory pressures aimed at encouraging Corporate Social Responsibility (CSR) for fear of discouraging investment. It is not an adherent to the OECD Guidelines for Multinational Enterprises on Responsible Business

Conduct, and it is not yet an Extractive Industry Transparency Initiative (EITI) implementing country. 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 proposed Petroleum Bill (2015) and Mining Bill (2014) contain statements on local content, local participation, and local training, but the Bills do not establish a clear regulatory framework or monitoring and evaluation mechanisms and would likely need clarifying amendments before local resourced based conflict issues are enforceable. Similarly, the Draft National Energy and Petroleum Policy (2015) does not provide the administrative and institutional structure necessary to implement local content laws or policy.

11. Political Violence

The disputed 2007 presidential election sparked ethnically-charged political violence, resulting in approximately 1,200 deaths and the displacement of more than 300,000 people. Property damage was in the millions of dollars, and GDP growth dropped to 0.2 percent in 2008 before increasing to 3.3 percent in 2009 and 8.4 in 2010. Security expenditures represent a substantial operating expense for businesses in Kenya.

Kenya's current constitution was approved in 2010 in a violence-free referendum. Elections in 2013 were relatively peaceful as well. The next national elections are scheduled for August 2017. Various stakeholders continue to work to mitigate tensions and issues that have in Kenya's past led to electoral violence.

The United States maintains a travel warning for Kenya due to the threat of terrorism and crime. Instability in Somalia has heightened security concerns and led to increased security measures aimed at businesses and public institutions around the country. In the coastal regions, tensions flare occasionally within and between ethnic communities. Regional conflict also threatens Kenya's stability, most notably in Somalia and South Sudan. Kenya has faced increased refugee flows from South Sudan since the outbreak of violence in December 2013.

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). Calls for Kenya to leave Somalia increased in some quarters of Kenyan society after a January 2016 al-Shabaab attack on a Kenyan Defense Forces base in Ceel Adde, Somalia killed a large number of Kenyan soldiers. Despite the attack, the Government of Kenya has maintained its commitment to remaining in Somalia.

12. Corruption

Corruption in Kenya is pervasive and entrenched, and Kenya is ranked among the world's most corrupt countries. Transparency International's (TI) 2015 Global Corruption Perception Index ranks Kenya 139 out of 168 countries, essentially flat compared to its 2014 ranking. Lack of political will, little progress in prosecuting past corruption cases, and the slow pace of reform in key sectors were reasons cited why Kenya is still ranked among the lower scoring countries. Corruption is an impediment to FDI with local media reporting 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.

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

According to a 2014 PricewaterhouseCoopers (PwC) report, about one in three Kenyan business leaders reported procurement-related fraud in the previous two years. Four out of every 10 Kenyan CEOs reported being asked to pay bribes to win a tender or get business. Asset misappropriation remains the most common economic crime in Kenya, affecting 77 percent 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 but no top officials were prosecuted successfully for corruption in 2015. In March 2015, however, President Kenyatta made public a list of 124 government officials under investigation for corruption crimes, including five cabinet secretaries, and suspended these officials pending investigations. In November 2015, Kenyatta formally dismissed five cabinet secretaries from the government.

In July 2015, during a visit to Nairobi, President Obama along with President Kenyatta announced a 29-point "*Kenya-U.S. Joint Commitment to Promote Good Governance and Anti-Corruption Efforts in Kenya*" (Joint Commitment). In the Joint Commitment, Kenya agreed to take measures to institutionalize good governance, raise public awareness about corruption, implement international standards related to corruption and money laundering, increase the use of technology to fight graft, and build the capacity of institutions to end impunity. Implementation of the Joint Commitment is ongoing.

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

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Kenya is a signatory to the UN Convention Against Corruption (UNCAC), and in 2015 completed a peer review process of its UNCAC compliance. A report of that review can be accessed here:

https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2015_09_28_Kenya_Final_Country_Report.pdf

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

Resources to Report Corruption

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Ethics and Anti-Corruption Commission
P.O. Box 61130 00200 Nairobi, Kenya
Phones: +254 (0)20-271-7318, (0)20-310-722, (0)729-888-881/2/3
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Transparency International Kenya
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13. Bilateral Investment Agreements

Bilateral Taxation Treaties

Kenya does not have a bilateral investment agreement with the United States. However, Kenya is a beneficiary of the African Growth and Opportunity Act (AGOA), which provides duty-free access to the U.S. market for Kenyan textile, apparel, and other export goods. More information on AGOA is available in section 16. Kenya is also 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 has signed bilateral investment agreements with Burundi, China, Finland, France, Germany, Iran, Italy, Libya, The Netherlands, Slovakia, Switzerland, and the United Kingdom, although only those with France, Germany, Italy, The Netherlands, Switzerland, and the United Kingdom have entered into force. The EAC signed an Economic Partnership Agreement with the EU in 2014.

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 Value Added Tax 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. Disputes over tariffs and taxation are resolved through the judicial system, which is subject to delays and uncertainty.

14. Foreign Trade Zones/Free Ports/Trade Facilitation

Kenya is a beneficiary of the African Growth and Opportunity Act (AGOA), a U.S.-sponsored export promotion program which Congress renewed in 2015 for an additional 10 years. Kenya officially overtook Lesotho as the largest textile exporter to the United States under the AGOA preferential trade agreement in 2013. Kenya's Export Processing Zones earned Kenya $543 million, or 10 percent, of all exports, the bulk of which consisted of textile and apparels exported to the United States which contributed Ksh 24 billion ($279 million) to the economy. Eighty percent of textile and apparel originates from EPZ-based firms. Textiles and apparel represents Kenya’s third largest export behind tea and horticulture. EPZs were introduced in Kenya over two decades ago and now account for 3.2 percent of GDP. Approximately 50 percent of all firms in the zones are fully owned by foreigners (mainly from India) while the rest are locally owned or joint ventures with foreigners.

By the end of 2014, Kenya had 52 designated Export Processing Zones (EPZs) in which 84 companies operated, employing 46,501 workers and producing roughly 5 percent of exports. The overwhelming majority of EPZ products are exported to the United States under AGOA. The majority of the exports are textile products, mainly apparel, and more recently handicrafts. According to the Kenya National Bureau of Statistics’ Economic Survey 2015, apparel exported through EPZs under AGOA increased from $279 million in 2013 to $300 million in 2014. A number of expatriates owned and served in mid and senior management positions at EPZs. Most EPZ firms operate in factory space managed by the EPZ Authority (EPZA).

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

The GOK is currently in the process of adding special economic zones (SEZs) to work in parallel with EPZs. Special economic zones are broader and open to local economies; hence goods produced are consumed both internally and externally. The SEZs will allow for a wider range of commercial ventures, including primary activities such as farming, fishing and forestry, and will not be restricted to the enclaves. The addition will allow for a more flexible market orientation with higher domestic sales, in addition to the focus on exports. The establishment of SEZs will also allow for the existence of free ports and trade zones across the coastal strip, science and technology parks, agricultural free zones, and tourism development zones.

The Second Medium Term Plan of the Vision 2030 economic development agenda calls for establishing SEZs in Mombasa (2000 sq. km), Lamu (700 sq. km), Kisumu (700 sq. km), and eventually to towns throughout the country. In February 2014, the Kenyan Cabinet announced it approved the establishment of a free trade zone in the port city of Mombasa to stimulate local, regional and international trade, as well as investments. The zone would be the first of its kind in Kenya.

15. Foreign Direct Investment and Foreign Portfolio Investment Statistics

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

	Host Country Statistical source		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	**Year**	**Amount**	**Year**	**Amount**	
Host Country Gross Domestic Product (GDP) ($M USD)	2014	$ 60,938	2014	$ 59,850	UNCTAD data available at http://unctadstat.unctad.org/wds
Foreign Direct Investment	**Host Country Statistical source**		**USG or international statistical source**		**USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other**
U.S. FDI in partner country ($M USD, stock positions)	N/A	N/A	2014	$383	BEA data available at http://bea.gov/international/direct_investment_ multinational_companies_comprehensive_data.htm
Host country's FDI in the United States ($M USD, stock positions)	N/A	N/A	2014	$-8	BEA data available at http://bea.gov/international/direct_investment_ multinational_companies_comprehensive_data.htm
Total inbound stock of FDI as % host GDP	N/A	N/A	2014	7.3%	UNCTAD data available at http://unctadstat.unctad.org/wds

Table 3: Sources and Destination of FDI

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

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations *(US Dollars, Millions)*					
Inward Direct Investment			**Outward Direct Investment**		
Total Inward	3,885	100%	Total Outward	803	100%
U.K	1,086	28%	Uganda	395	49%
Mauritius	675	17%	Mauritius	293	37%
Netherlands	652	17%	South Africa	52	6%
France	315	8%	Mozambique	37	5%

South Africa	309	8%	Italy	12	2%
"0" reflects amounts rounded to +/- USD 500,000.					

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

Table 4: Sources of Portfolio Investment

Portfolio Investment Assets								
Top Five Partners (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: IMF Coordinated Portfolio Investment Survey. Figures are from 2012 (latest available).

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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