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AN INVESTMENT GUIDE TO KENYA

Opportunities and conditions
June 2005

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UNCTAD

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Notes

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References to "dollars" ($) are to United States dollars, unless otherwise indicated. References to "tons" are to metric tons.

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Three good reasons to invest in Kenya

• People

When one asks foreign investors in Kenya what they consider the country's greatest asset, the answer is almost always "People". Several of the FDI stories in Chapter III illustrate this point. One foreign investor in insurance, for example, speaks of the calibre of his workforce providing his company with the prospect of becoming a "world-class service provider". It is not uncommon to hear the Kenyan workforce described as "skilled, hard-working and enterprising", an assessment of employees rare elsewhere in Africa. This asset is one reason why Kenya has remained the leading economy in the region despite the difficulties it has faced over the 40 years since independence. It is also why Kenya has the potential to be the regional hub for a variety of services such as auditing, marketing, logistics and education.

• Market access

Kenya is one of the three members of the East African Community (EAC), the others being Tanzania and Uganda. The EAC has established an integration process that might see political federation by 2013. The EAC customs union came into effect on 1 January 2005, and internal trade will be fully free in five years in this market of 93 million consumers. Investing in Kenya also provides investors with access to the Common Market for Eastern and Southern Africa (COMESA), which has 385 million consumers. As a member of the African, Caribbean and Pacific States (ACP), Kenyan exports have privileged access as well to the European Union – as they do to the United States under the provisions of the African Growth and Opportunity Act (AGOA).

• Opportunities

Climate and soil are ideally suited in some parts of Kenya for the development of agricultural produce for export, and the country has established a track record in this area. Kenya is the world's second largest exporter of tea, and its horticulture sector is now its top export earner. The climate, says one foreign investor in horticulture, is the best thing about the country. The climate, along with the coastline and the abundance of wildlife, is also a great asset for tourism. Kenya has a fairly well-developed tourism infrastructure (hotels, lodges, tour operators, air transport), and the attractions of the Maasai Mara and the Mombasa coast are widely known, although many other areas with tourism potential remain unexploited. Yet other opportunities can be found in manufacturing, where Kenya has a well-established base for exports to the East African region, and in services, which can draw on the country's well-educated workforce.

Preface

The Millennium Development Agenda of the international community emphasizes the potential role of the private sector in helping countries reach their development goals and targets. Foreign direct investment is recognized as an important factor in this context, since it brings to host countries capital, technology, innovation, management know-how, as well as access to supply chains and new markets. Under the right policy conditions and institutional frameworks, it can thus contribute to economic development and growth.

The United Nations Conference on Trade and Development (UNCTAD) and the International Chamber of Commerce (ICC) launched this series of investment guides in 1998. The idea was to help bring together two parties with complementary interests: companies seeking new locations and countries seeking new investors. This is not necessarily a straightforward exercise, for firms are driven by their global strategies as much as by a search for specific commercial opportunities, while countries pursue broad economic and social objectives in which foreign investment is only one element among many in the complex process of upgrading competitiveness and enhancing livelihoods.

These investment guides are the products of dialogue, including that among and between the representatives of business and government during the workshops that accompany the preparation of the guides. The guides in their turn are meant to contribute to the dialogue, helping to strengthen and sustain it. In the long run, such dialogue can make a real difference to investment conditions.

An Investment Guide to Kenya is the thirteenth publication in this series. We hope that it will be useful in the efforts of the Government and the business community in Kenya to attract greater flows of investment and that the flows in turn will benefit the country.

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ICC

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The cooperation of the Investment Promotion Centre (IPC), was essential to the success of this project. Our thanks are owed to Julius Kipngetich, its former Managing Director, and Luka Obbanda, its Acting Managing Director now. Our thanks are also owed to the Kenya Private Sector Alliance (KEPSA) and its former President, Manu Chandaria.

This guide was prepared, with the assistance of consultants and advisers both external and internal, by a project team led by Vishwas P. Govitrikar. Valuable input or feedback was provided by a number of people, including Quentin Dupriez, Sophie Frediani, Gayling May and Anne Miroux. Photographs were provided by Bata Shoe Company (Kenya), General Motors East Africa, Export Processing Zones Authority (Kenya), Kenya Tourism Board and Serena Hotels. Administrative support was provided by Katia Vieu. The guide was edited by Talvi Laev and designed and typeset by Nelson Vigneault. Karl P. Sauvant provided overall guidance.

Note to the reader

This document is published as part of the UNCTAD–ICC series of investment guides. The publications in this series are intended for the use of foreign investors who are largely unfamiliar with the countries covered. They are thus designed to offer overviews of potential locations for investment, rather than to constitute exhaustive works of reference or provide detailed practical instruction. They do, however, offer pointers to sources of further information in the private as well as the public sector.

There are two other features of these publications that the reader will find worth noting. One is that they are third-party documents, intended to offer a balanced and objective account of investment conditions. Their principal advantage in drawing the attention of investors to the countries they cover is credibility. The other feature is that both their general structure and some of their specific content are the result of consultations with the private sector.

The executive summary is followed by a brief introductory chapter. Then come the three chapters that account for the bulk of the contents. "The operating environment" describes the general conditions in which investors must operate: macroeconomic conditions, infrastructure, human resources, etc. "Areas of opportunity" offers a description of areas of potential interest to foreign investors. "The regulatory framework" focuses on regulations governing investment and foreign direct investment in particular. The fifth and final chapter provides a summary of the perceptions of the private sector in the country, both foreign and domestic.

The primary source of further information for an investor wishing to explore investing in Kenya is the Investment Promotion Centre (IPC) – see the box on page 52. Contact details of selected sources of further information, including websites, are provided in appendix 3. Appendix 2 provides a list, including contact details, of some 70 major foreign investors in Kenya.

The UNCTAD–ICC series of investment guides

PUBLISHED

- *An Investment Guide to Ethiopia,* 1999; revised edition in new format, 2004
- *Guide de l'investissement au Mali,* 2000; revised edition in new format, 2004
- *An Investment Guide to Bangladesh,* 2000
- *An Investment Guide to Uganda,* 2001; revised edition, 2004
- *An Investment Guide to Mozambique,* 2002
- *An Investment Guide to Nepal,* 2003
- *An Investment Guide to Cambodia,* 2003
- *Guide de l'investissement en Mauritanie,* 2004
- *An Investment Guide to Mauritania,* 2004
- *An Investment Guide to Kenya,* 2005
- *An Investment Guide to Tanzania,* 2005
- *An Investment Guide to East Africa,* 2005

(The first editions of the guides to Ethiopia and Mali were published in cooperation with PricewaterhouseCoopers.)

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Kenya and the East African region offer excellent investment opportunities in a wide range of sectors. GM has operated effectively in the region for over 27 years in an industry that has been totally transformed through liberalization and changes in consumer behaviour. The basis for our sustained success is a combination of factors in Kenya: an educated work force, a moderate climate, and recent improvements in banking and telecommunication. The formation of the East African Community in January 2005 provides even greater opportunities for those considering Kenya to invest in. Come to Kenya and invest in the future of Africa!

William Lay, Chief Executive Officer, General Motors East Africa

Executive summary

When Kenya became independent in 1963, it was the leading economy in the region. Over 40 years later, it retains that position, but in a very different world and after many ups and downs. In the late 1960s and early 1970s, it opted for an import substitution strategy that led to the creation of a much more diversified economy. But then came a long period of stagnation, in which governance deteriorated, infrastructure was neglected and foreign investment fell. Real income per capita actually declined between 1990 and 2002. One should note, however, that the Kenyan economy has never suffered from the shocks that others in the region have known. There has been no civil strife and no massive state intervention in the economy.

Besides, there were some very positive signs in the 1990s. The successful 1996 privatization of Kenya Airways was one of these. Within three years, the company had become the "African Airline of the Year", and it remains the airline of choice for many travellers to East Africa today. Tourism, too, flourished in the 1990s, and horticulture emerged as the leading export earner. All of this was capped by the peaceful political transition in December 2002, which brought the National Rainbow Coalition (NARC) to power. The new government aroused high hopes in Kenya, not least in the business community, and much was expected of it in the way of reform. Over the past two and a half years, there *have* been reforms, though not enough of them and not at a speed to content the private sector.

In 2005, Kenya presents a mixed picture. It remains the dominant economy in the region. Governance has improved, and the Government has taken strong measures against corruption in the judiciary in particular. The economy is growing again, though not very fast. A new investment law has been passed, strengthening the investment agency and facilitating investment licensing. However, the same legislation has put in place a high new minimum capital requirement that could preclude some desirable small investments (see Chapter IV). A privatization bill is before parliament but making less than rapid progress. A new constitution is in the making but is taking far longer than expected. A rational overall assessment would be cautiously optimistic about the speed of change.

Why Kenya?

Given this mixed picture, why should investors consider locating in Kenya? There are several very good reasons. First and foremost, prospective investors should note that investing in Kenya now gives them access to a regional market of over 90 million: the East African Community (EAC). The EAC Customs Union Protocol came into effect on 1 January 2005. A three-band common external tariff with a maximum rate of 25% for finished goods now applies to imports into the region. *Within* the region, trade will be fully free in five years. Until then, imports from Kenya into Tanzania and Uganda will continue to bear a declining tariff, which is basically a recognition of the fact that EAC trade is largely unidirectional, goods moving *from* Kenya *to* Tanzania or Uganda. The Customs Union is no more than a way station on the path of regional integration. The ultimate goal, to be achieved by 2013 (if the schedule recommended by the EAC's Fast-tracking Committee is adhered to), is political federation. Given that Kenya is already the main exporter of goods in the region and a *de facto* regional hub for a variety of services, the EAC integration process makes it a very promising investment location indeed. One should note, too, that Kenya is a member of the Common Market for Eastern and Southern Africa (COMESA), with some 385 million consumers, and a member of the African, Caribbean and Pacific States (ACP), which gives it preferential access to the EU market, among others.

But there is far more to Kenya than its membership in trading blocs. One of its greatest assets is *people*. There is hardly a country in Africa, and certainly none in East Africa, in which investors speak more highly of the workforce. First, Kenyan workers are among the best educated in Africa, with literacy rates well over 80%, relatively high secondary school enrolment and rising rates of tertiary enrolment. Next, the work ethic is strong in Kenya, and workers tend to have a much more enterprising approach to their tasks than elsewhere in Africa. Foreign investors routinely speak of their employees as their greatest asset. Yet another advantage for prospective investors is the well-developed business infrastructure. Partly for historical reasons and partly because of higher educational levels, Kenya has substantial resources in such areas as business support services. A number of international firms (e.g. Deloitte Touche Tohmatsu and Ayton Young & Rubicam) have made Kenya their regional hub.

Opportunities

The principal opportunities in Kenya lie in the fields of agriculture, tourism and certain types of manufacturing and services. The great success story of the past decade is horticulture, in particular floriculture, and even here opportunities remain to be exploited. For all its successes, Kenya has no more than 1% of the EU-15 market share in edible vegetables and only a tenth of that in edible fruit. The US market is virtually untouched, though exploiting it would require direct flight connections, which do not yet exist. Foreign investors have played a key role in this area, with their market links and ability to meet buyers' exacting standards. The tea subsector, which has been restructured, offers opportunities as well. It employs nearly 2 million people and accounts for about a quarter of Kenya's export earnings. 293,670 tons of tea were produced in 2003 and nearly 90% exported, for a value of $440 million.

Tourism is another major opportunity area. Kenya has substantial natural assets for tourism: well-known ones like the Maasai Mara and the Mombasa coast, as well as relatively unexploited areas like Lake Victoria and the Rift Valley. It also has a well-developed tourism infrastructure. The travel advisories issued by countries like the United Kingdom after the 1998 incident in Nairobi and the 2002 one in Mombasa (see the box "Security in East Africa" in Chapter I) have not been as damaging as was feared. In 2003, the number of international visitors exceeded 1 million. It is a substantial advantage in this context that Nairobi is a major air transport hub in Africa, with direct flights from many tourism source countries, and with good internal connections, including some 60 Nairobi-Mombasa flights a week on Kenya Airways alone.

Other opportunities lie in manufacturing, ranging from vehicle assembly and spare-parts manufacturing in the automotive sector to making apparel for export under the provisions of the US Africa Growth and Opportunity Act (AGOA), although the latter has some built-in constraints (see the box on AGOA in Chapter III). There are opportunities as well in a number of other manufactures such as pharmaceuticals, paper products, edible oils and leather goods. Finally, there are opportunities in infrastructure, in particular those related to port facilities, water supply, energy and telecommunications. Opportunities in infrastructure are, however, related to the Government's privatization plans, which have not moved with dispatch.

Difficulties facing investors

The great strengths and advantages of Kenya as a location for investment are balanced by some serious difficulties. The one that tops any list of investor concerns is the state of the country's infrastructure. Roads are a problem everywhere in East Africa once one gets beyond the perimeter of the main urban centres, but they pose particular obstacles in Kenya. Much larger percentages of investors declare themselves dissatisfied with road conditions in Kenya than they do in Tanzania or Uganda, let alone South Africa or Egypt, Kenya's natural competitors in Africa. Railways are not in much better shape, with the Kenya Railways Corporation running at only one-third of its cargo capacity. Privatization is the chosen solution, and the Governments of Kenya and Uganda agreed in 2004 on joint concessioning of their two railway systems. Electricity supply is erratic and fixed-line telecommunication facilities inadequate – though the latter have now been compensated for to some extent by the remarkable growth of mobile telephone subscriptions, which at over 5 per 100 people are the highest in all of East Africa.

Two other difficulties vie for attention with infrastructure: security and governance. Despite the bombings in 1998 and 2002 (see the box "Security in East Africa" in Chapter I), it is not mainly the insecurity arising from possible terrorist threats that really worries investors. It is the insecurity created by domestic, and especially urban, crime. The Government has taken a variety of measures to control crime, such as the drafting of a new licensing policy for firearms and changes in the police force (including the appointment of a new chief drawn from the army), but the effects have not thus far been obvious. The other issue, and the fount of all Kenya's problems according to some, is governance. In the 1990s, Kenya acquired a reputation for corruption that it seems stuck with, although here one can point to some successes and some striking countermeasures, such as the dismissal or retirement of a very substantial number of magistrates and judges held to have been engaged in corrupt activities. The private sector, however,

is still not satisfied with the new Government's performance, which it thinks has been longer on promise than delivery (see the box "Combating corruption in Kenya" in Chapter I).

Investment trends

For a long time, Kenya has been a remarkable *under*performer in attracting foreign direct investment. At nearly $5 per $1,000 of gross domestic product (GDP), or $38.4 million in total, it was a respectable performer by *regional* standards in the late 1980s. In the first half of the 1990s, FDI dropped to $1.5 per $1,000 of GDP, while most of Kenya's neighbours surpassed it, several substantially. FDI rose to $3.8 in the late 1990s, when Ethiopia attracted six times as much per $1,000 of GDP and Tanzania and Uganda eight times as much. What is astonishing about this performance is that Kenya is at bottom a much stronger and more diversified economy than any of its neighbours.

Perhaps this phase is now over. In 2003, Kenya finally managed to outdo its late 1980s performance and attract nearly $6 of FDI per $1,000 of GDP ($82 million in total). To make the country more attractive to investors, the Government is currently reviewing its investment policy, a policy review by UNCTAD being one of the elements in this effort.

Prospects and challenges

Perhaps the best summary of Kenya's prospects is that they are as bright as Kenya chooses to make them. This may, of course, trivially be said of any investment location, but it has a special aptness in the Kenyan case, given the country's enormous advantages. Kenya has a strategic location, a port and a coastline, a broad manufacturing base, the best business infrastructure in the region, an able and enterprising workforce, excellent resources for agriculture and tourism – the list is not endless, but it *is* long. The success of Kenya Airways is a striking example of what is possible given the will. There are other examples, large and small. The challenges to be met are serious but hardly insuperable: improving infrastructure and governance above all. An investor with an interest in any of the major opportunity areas mentioned above would be most unwise to ignore the potential of this intriguing country.

Kenya at a glance

Official name	Republic of Kenya
Political system	Unitary state with multiparty democracy
Head of state and government	President Mwai Kibaki
Political parties	National Rainbow Coalition (NARC) is the ruling party with 127 seats. Kenya African National Union (KANU) is the official opposition with 68 seats. Others include the Forum for the Restoration of Democracy (FORD) and Sisi Kwa Sisi.
Next election date	2007
Surface area	582,646 sq. km
Population	32 million
Population density	55 per sq. km
GDP per capita (2003)	$320 (at purchasing power parity, $1,035)
Currency	Kenya Shilling (KSh)
Exchange rates (May 2005)	$1 = KShs 77.07 €1= KShs 96.65 ¥100 = KShs 71.3 Rand 1 = KShs 11.7 TShs 14.45 = KSh 1 UShs 22.80 = KSh 1
Official language	English is the official language and Kiswahili is the national language. In addition, Kenya's 42 communities have their own languages.
Principal religions	Christian (78%), Muslim (10%), indigenous African and other (12%).
Time zone	GMT + 3
Climatic conditions	Kenya lies on both sides of the equator and enjoys a varied climate ranging from tropical to temperate. The Central Highlands and the Rift Valley have the most pleasant climate, with temperatures ranging from the low teens to the mid-twenties Celsius. Rainfall in this area varies from 20 mm in July to 200 mm in April.
Main cities/towns and their populations	Nairobi (capital) 2,143,254 Mombasa 655,000 Kisumu 504,000

Source: UNCTAD, drawing on various sources.

Source: Map of Kenya by the United Nations Cartographic Section, 2004.

Source: UNCTAD, based on map of Africa by the United Nations Cartographic Section, 2004.

Country and people

Kenya lies on both sides of the equator on the east coast of Africa. The country borders Somalia, Ethiopia and Sudan to the north, Uganda to the west, Tanzania to the south and the Indian Ocean to the east. The country's port of Mombasa serves most of the Eastern and Central African landlocked countries, including Burundi, Ethiopia, parts of Northern Tanzania, Rwanda, Sudan and Uganda.

The population is 32 million (2003), with approximately 6 million people living in the urban areas. The population growth rate is 2.7 per cent per year. English is the official language and Kiswahili the national language. The Constitution of Kenya guarantees freedom of religion and worship. Christians are the majority (about 78%), Muslims constitute about 10% of the population, and about 12% subscribe to indigenous beliefs or other religions. The main ethnic groups include the Kikuyu, who form the largest group with not quite a quarter of the population, the Luhya, the Luo, the Kalenjin and the Kamba. The well-known Maasai number less than 1%, as do the various non-African groups (Europeans, Asians, etc.)

Kenya occupies an area of 582,646 square kilometres (225,000 square miles). Agriculture is the dominant sector of the economy. Horticulture, agro-processing, fishing and livestock hold substantial potential for further development, while natural attractions such as mountains, lakes, rivers and game parks, combined with a climate that ranges from the tropical to the temperate (in the highlands), offer tremendous opportunities for tourism.

History and government

Kenya was under British rule from 1896 to 1963, when it became independent. It has had a stable government for over 40 years and became a multiparty democracy in 1992. There was a peaceful political transition in December 2002 when the National Rainbow Coalition (NARC) government came into power. The National Assembly has 222 members, of whom 210 are elected and 12 nominated by their parties. In addition to its elected seats, the National Rainbow Coalition (NARC) has 7 nominated seats; the Kenya African National Union (KANU) 4; and FORD People 1. There are also two members *ex officio,* who do not vote: the Speaker of the National Assembly and the Attorney General.

One of the NARC Government's preoccupations since coming to power has been delivering on its promise to provide a new constitution for Kenya. Much was achieved over the 2003–2004 period, including civic education, public hearings and a National Constitutional Conference. The Constitution of Kenya Review Commission has finalized its report and prepared a draft of the new constitution, which are both to be presented to parliament in 2005. Within 120 days after the Commission's presentation to parliament, the Attorney General is to publish the draft as amended by parliament, and within a further 90 days the Electoral Commission is to hold a national referendum on the new constitution. There have been concerns in the investor community that important legislation – for example, regarding investment and privatization – was being delayed on account of the constitution. However, the investment bill has in fact passed – in December 2004 (see Chapter IV) – and the privatization bill may do so soon.

Since independence, Kenya has followed a mixed economic development strategy. The roles of the public and private sectors have evolved over time, and there has been a shift in emphasis from public to private investment. Since 1993, the Government has initiated various economic reforms to make the economy more responsive to private-sector growth. The NARC Government's strategy is to promote economic growth through a public-private partnership, where the Government plays mainly a facilitating role in the economy.

Kenya is a member of the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC). The country hosts the headquarters of the United Nations Environmental Programme (UNEP) and UN-abitat, as well as many other regional headquarters, both intergovernmental and corporate.

Box I.1. The EAC Treaty

The treaty establishing the East African Community (EAC) was signed on 30 November 1999 and came into force on 7 July 2000 upon ratification by the three partner states: Kenya, Tanzania and Uganda.

The treaty consists of a long preamble (on the background of East African cooperation) and 153 articles divided into 29 chapters. It lays down the basic principles, objectives and functioning of the Community (chapters 2 and 28–29) and describes its structures (chapters 3–10) and the proposed fields of cooperation (chapters 11–27).

According to Articles 2 and 5 of the treaty, the broad purpose of the Community is to further cooperation in the political, economic and social fields, among others. The concrete objectives are to establish a Customs Union, a Common Market, a Monetary Union and a Political Federation. Chapters 11 to 27 of the treaty identify three main areas of cooperation: economic development (including trade liberalization, monetary and financial matters, and the free movement of persons, capital, goods and services); services, science and technology (including infrastructure, health and education); and political and legal matters. Partner states may conclude such protocols as necessary, spelling out the aims, scope and institutional mechanisms of cooperation (Article 151). The Customs Union was established through the adoption of a protocol that came into force on 1 January 2005.

The treaty creates seven main organs to enable the Community to fulfil its mission (Articles 9 to 72): the Summit (the highest organ of the Community), the Council, the Co-ordination Committee, the Sectoral Committees, the East African Court of Justice, the East African Legislative Assembly and the Secretariat. The Community is headquartered in Arusha (Article 136). Its official language is English, but it recognizes Kiswahili as a lingua franca (Article 137).

The treaty (Article 3) provides rules and conditions governing membership, including: acceptance of the Community's fundamental principles, such as the equality of sovereign states, potential contribution to the Community, geographic proximity, and compatibility of social and economic policies with those of the Community. Decisions, directives and regulations of the Community are binding on partner States. A member State failing to observe the fundamental principles and objectives of the treaty may be suspended from the Community (Article 146) or expelled, in case of gross and persistent violation (Article 147).

The treaty also establishes the primacy of Community organs, institutions and law over national ones on matters pertaining to the implementation of the treaty (Article 8).

Source: UNCTAD, based on the East African Community Treaty of 1999 and the EAC Secretariat, *Important Aspects of the Treaty for the Establishment of the East African Community*, May 2002.

Market size and access

Since the 1980s, Kenya's economy has performed below its potential, with low economic and employment growth and a decline in productivity. Per capita income in constant 1982 dollars actually declined from $271 in 1990 to $239 in 2002. The Government is aware that reversing this economic trend is essential.

Kenya's major trading partners are the COMESA and EAC members, the European Union, Japan, the United Arab Emirates and the United States. It is the largest single exporter to the EAC and COMESA.

Geographically, Kenya is well placed to be the financial and air transport hub of the region, making the country an ideal investment destination for investors targeting regional markets. The country's strategic location provides easy access to the EAC market, with a population of over 93 million, and COMESA, with a population of 385 million.

In March 2004, Kenya, together with Tanzania and Uganda, signed the East African Community Customs Union Protocol, which came into force in January 2005. This agreement is a major breakthrough in establishing the region as a single market and investment area. The Protocol makes provisions that bind Kenya, Tanzania and Uganda to remove existing barriers to trade (tariff and non-tariff) in order to move towards the institution of a full free trade regime in five years. The Protocol provides for a three-band external tariff (0% for raw materials, 10% for intermediate goods and 25% for finished goods).

Membership in the African, Caribbean and Pacific States (ACP) and the Generalised System of Preferences (GSP) enables eligible agricultural products from Kenya to qualify for preferential tariffs on exports to member countries. Kenya also has access to the US market, provided by the African Growth and Opportunity Act (AGOA).

Kenya is also a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA), which offers insurance against non-commercial risk, and of the International Centre for the Settlement of Investment Disputes (ICSID) between foreign investors and the Government.

The country's legal system is flexible, and investors have a choice of entry mechanisms. The most common methods of investing in Kenya include the setting up of a new corporate body, a joint venture with existing investors, and the acquisitionof the whole or part of an existing local company.

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COUNTRY	POPULATION	GDP [a]	GDP PPP [b]	GDP PER CAPITA [c]	GDP PER CAPITA PPP [d]
	millions 2003	$ billions 2003	$ billions 2003	$ 2003	$ 2003
Burundi	7	0.7	4.5	139	627
Ethiopia	69	6.6	49.1	115	716
	32		*33.0*		*1 035*
Rwanda	8	1.6	10.4	301	1 268
Sudan	34	17.8	68.7	347	2 046
Tanzania	36	9.9	21.9	221	611
Uganda	25	6.2	37.2	366	1 471
Zambia	10	4.3	9.2	437	883

Source: Adapted from the World Bank (2004a).
[a] At current $. [b] At current international $. [c] At constant 1995 $. [d] At current international $.
Note: PPP = Purchasing power parity.

Government priorities

The NARC Government's overriding priority is to revive the economy and reduce poverty, as outlined in its Economic Recovery Strategy for Wealth and Employment Creation, 2003 to 2007. A number of related priorities follow from this:

- Governance and the rule of law: A new constitution is in the process of being adopted, to provide for a better framework for governance, as is other legislation such as the Public Procurement and Disposal of Public Assets Bill. The Financial Management and Accountability Bill passed in 2004.

- Public finance: Efforts are being made to improve revenue collection by initiating tax reforms, reviewing non-budgetary flows and ensuring the integrity of the budgetary process.

- Combating corruption: Corruption has long been a major issue in Kenya and a key concern of the private sector. NARC's election manifesto called for zero tolerance of corruption. Special anti-corruption legislation has been enacted and a new body set up to ensure that it is properly implemented (see Box 1.2).

- Privatization: The Economic Recovery Strategy's interim investment programme has laid out a parastatal reform plan to restructure 136 of the existing state corporations and statutory boards during this period (see the following section on privatization and the box on Kenya Airways in Chapter II).
- Security: Recognizing that insecurity is a serious issue for investors as well as the public generally, the Government is putting a number of concrete measures in place (see box on Security in East Africa below).

Box I.2. Combating corruption in Kenya

In the 1990s, corruption became an increasingly prominent issue in Kenya. It was thought to be so widespread and so deeply entrenched under the last Government, headed by President Daniel Arap Moi, that multilateral donors suspended all aid between 2000 and 2003. An anti-corruption drive was one of the major planks in the election platform of the National Rainbow Coalition (NARC) that came to power in December 2002 under the leadership of (now) President Mwai Kibaki. In 2003, the new Government set in motion a variety of reforms that impressed the donor community and led to a resumption of aid.

Among the actions of the new Government were the passing of the Anti-Corruption and Economic Crimes Act (2003) and the Public Officers Ethics Act (2003); the introduction of several pieces of legislation considered critical to the fight against corruption, including the Anti-Money-Laundering Bill and the Public Procurements Bill; the creation of the Anti-Corruption Commission, headed by Aaron G. Ringera, a retired judge; and the creation of a Department of Governance and Ethics in the Office of the President, headed by John Githongo, the founding Executive Director of the Kenyan Chapter of Transparency International.

In addition to these broad institutional and legislative measures, the Government set up a Judicial Commission of Inquiry into the Goldenberg affair, which involved the fictitious export of gold and diamonds from Kenya in the early 1990s and may have cost the public treasury as much as $1 billion. It also took decisive action against corruption in the judiciary. Following a report by the Integrity and Anti-Corruption Committee of the Judiciary (headed by Justice Ringera), 70 magistrates were dismissed, and 23 High Court judges and 4 Court of Appeal judges took voluntary retirement. There are yet other judges who face disciplinary tribunals.

Transparency International Kenya (TI Kenya) carried out its third national survey on bribery in December 2003, one year after the new Government took office. Some 2,400 persons were interviewed in the eight provinces, roughly equal numbers in urban and rural areas and among men and women. A summary description of the results would be "very encouraging", for the survey showed a significant decline in the incidence of bribery, one more strongly marked in rural than in urban areas. (Many more Kenyans live in rural than in urban areas.) There was also a serious reduction in the cost of bribery to citizens: from an average of nearly KShs 4,000 per person per month to something over KShs 1,200, with the rural reduction being much sharper. (These amounts are roughly equivalent to $50 and $15 – in a country with a per capita GDP of $320.) As to the entities perceived as most likely to demand a bribe, the police ranked at the top in 2003 as in 2002, followed by defence, parastatals, immigration and revenue. Most of these areas showed significant improvement in popular perception, with immigration the most improved.

As the TI Kenya survey shows, there is cause to be optimistic about corruption in Kenya. The actions of the Government in its first year of office did send the signal that corruption was no longer to be treated simply as an unfortunate fact of life. Against this may be set the widespread private-sector perception in late 2004 (when UNCTAD was carrying out its consultations) that corruption was one of the principal problems facing investors in Kenya and that the Government's anti-corruption drive had lost steam. These concerns were no doubt reinforced by the resignation of John Githongo in February 2005, which was received with concern by both civil society and the donor community.

Corruption is illegal and for that reason difficult to measure. Most surveys thus depend on the *perception*[1] of corruption, which may not always reliably indicate its actual incidence. In 2002, for example, PricewaterhouseCoopers carried out a survey of "economic crime" that covered 189 major companies in Kenya, Tanzania and Zambia. The survey found that, while companies believed that corruption was the most prevalent economic crime in the country (84%), only 24% had actually been victims of corruption. The most common economic crime was in fact embezzlement, experienced by nearly half the companies. Interestingly, of the three countries, Kenya reported the fewest instances of corruption.

Perhaps the most reasonable assessment is that corruption in Kenya is *declining but persistent*.

[1] TIK's above-mentioned bribery survey is innovative in that it measures people's actual experiences, and not simply their perceptions, of bribery.

Source: UNCTAD, drawing on information supplied by various sources including the Kenya Anti-Corruption Commission, Transparency International Kenya (2004 and 2005), PricewaterhouseCoopers (2003), et al.

Box I.3. Security in East Africa

Security, for both people and property, is critical to investors, and there are various ways in which it can be threatened – or *seem* to be threatened. (This is an area in which perception is nearly as influential as reality.) Broadly speaking, one might see insecurity as arising in three different ways in the East African Community (EAC): international terrorism, problematic borders and urban crime.

On 7 August 1998, bombs exploded at the US embassies in Dar es Salaam and Nairobi. The casualties were large – over 200 dead and some 5,000 wounded – and left no doubt that these were terrorist attacks, particularly when combined with the fact that they were simultaneous attacks in different cities with identical targets. Since then, there has been only one major incident of this kind: a suicide bomber killed 15 people in an Israeli-owned Mombasa hotel in Kenya in November 2002. (There were also rockets fired at an Israeli jet as it took off from Mombasa airport at about the same time, but these did no harm.) Although some western countries (e.g. Canada, France, the United Kingdom and the United States) still regard the region as highly threatened by international terrorism, the reality on the ground seems more reassuring. This fact is reflected even in the changing actions and advice of such countries as the United Kingdom. In May 2003, the United Kingdom advised all its citizens to avoid Kenya and directed British Airways to suspend flights to the country. By June, these warnings and restrictions had been lifted, although travellers are still advised to be on their guard.

A number of measures have been taken by EAC Governments to increase security in the region. In 2002, Tanzania enacted the *Prevention of Terrorism Act*, which criminalizes support for terrorist groups operating in Tanzania. Similar legislation in Kenya, the *Suppression of Terrorism Bill 2003*, is still under consideration, being thought to violate the Kenyan Constitution and international human rights treaties to which Kenya is party. The Government of Kenya has also formed an Anti-Terrorist Police Unit and stationed two army battalions on the Kenya-Somalia border. Other countries are contributing to these efforts as well. In 2003, the United States created a $100 million *East Africa Counterterrorism Initiative*, which includes military training, coastal security and measures to strengthen control of the movement of people and goods across borders. A separate programme aims at combating money laundering. The United States is also funding a police development programme in Ethiopia, Tanzania and Uganda and a training programme for Kenya's law enforcement agencies. Finally, it has set up a computer system in selected airports in Ethiopia, Kenya and Tanzania (to be extended in 2005 to Djibouti and Uganda) that enhances control of the movement of people and goods.

Unstable, porous or conflicted borders are a second source of insecurity in the region. One problematic border is that between Kenya and Somalia. The 2002 attacks in Mombasa are thought to have been planned in Somalia, and much crime in Kenya is thought by Kenyans to have its origins in arms smuggling from Somalia. Another difficult border is that between Uganda and Sudan, where a conflict has raged between Ugandan troops and the so-called Lord's Resistance Army since the late 1980s and led to appalling violations of human rights. The Government of Uganda has now referred the matter to the new International Criminal Court. In western and northwestern Tanzania, there are tensions between local communities and refugees from Rwanda and Burundi. These have been linked to the proliferation of small arms, and UNDP Tanzania has launched a programme to control proliferation. Arms trafficking is actually a major concern in East Africa: there are thought to be some 3.2 million illicit weapons in the region. Given this, the decision taken in 2004 by 11 East African countries to create an Eastern African Standby Brigade (EASBRIG) is a very welcome step. The EASBRIG is to be one of the five formations of the African Standby Force, established by the African Union in 2002 to carry out peacekeeping operations. The headquarters of the EASBRIG will be in Addis Ababa and its secretariat in Nairobi.

Urban crime is a third source of insecurity in East Africa. (While rural crime obviously exists, its nature tends to be different and generally to impinge less on foreign investors.) The level of urban crime in Kenya is one of the highest in Africa. According to the World Bank, almost 70% of investors reported "major" or "very severe" concerns about crime, theft and disorder in Kenya, as opposed to 25% in Tanzania and 27% in Uganda. Many countries, e.g. France and the United Kingdom, warn visitors to Kenya against crime, particularly in Nairobi. (It should be noted that urban crime is by no means directed specifically at foreigners.) To counter this, the Government has launched two major initiatives. One is a project called "Safer City and Home for All" initiated by the City Council of Nairobi with funding from UNDP Kenya and consisting of a three-year citywide crime prevention strategy and action plan. Another step the Government has taken is drafting a new firearms licensing policy that would see the withdrawal of a majority of gun licences issued to individuals. Urban insecurity is far less of a problem in Tanzania and Uganda, although rural and urban crime are increasing in both countries.

Source: UNCTAD, based on a variety of sources including Institute for Security Studies (undated); Alusala (2004); Shinn (2004).

Privatization

The then Government of Kenya established a parastatal reform committee in July 1991 to implement the privatization process. This was followed in July 1992 by a policy paper on Public Enterprise Reform and Privatization, declaring that the Government would sell its equity in 207 parastatals classified as non-strategic and retain shares in 33 strategic ones. Since 1992, however, the privatization process has moved very slowly. In 2003, soon after the present Government came to power, the process began moving somewhat faster again.

The desired benefits of the privatization programme include improvement of infrastructure, reduction of the demand for government resources, generation of additional government revenues, broadening of the base of ownership in the Kenyan economy and enhancement of capital market development.

According to the Economic Recovery Strategy, 136 of the existing state corporations and statutory boards are to be restructured. The restructuring process can take any of three modes: rationalization, mergers or legislative reform. The process begins with the making of a specific proposal for privatization by the Privatization Commission, which submits it to the Minister of Finance for approval by the Cabinet. After Cabinet approval, a notice of the proposed privatization appears in the Kenya Gazette for public information. In implementing a proposal, the Commission is assisted by a valuation report provided by an expert appointed by the Commission.

The Privatization Bill currently before Parliament is expected to establish a transparent and accountable process. The methods of privatization envisaged by the Privatization Bill are the public offering of shares; concessions, leases and management contracts; negotiated sales resulting from the exercise of preemptive rights; sale of assets, including liquidation; and any other method approved by the Cabinet. Privatization is to be competitive so as to obtain a fair price, and both Kenyans and non-Kenyans are eligible to participate in it.

(This does not affect the application of any other law that may impose restrictions on non-Kenyans. In addition, the bill provides that, for a specific privatization, the Minister may direct the Commission to limit participation to Kenyans or a specific category of Kenyans, or ensure that there is a specified minimum level of participation by Kenyans, or facilitate participation by Kenyans either immediately or in the future. However, if shares are sold as part of a privatization, neither the Government nor the public entity that sells the shares may extend credit or provide financing for the purchase of the shares.)

The bill is being complemented by the reforms of sector-specific legislative frameworks to facilitate private-sector participation. Investment opportunities through privatization can be found in telecommunication, geothermal energy development, ports, railways, roads, housing, energy, sugar, tourism, banking and insurance.

Kenya has immense potential in the areas of horticulture, floriculture and tourism. With improved enforcement of law and order, and good governance, more investment in these sectors could be attracted very quickly. These are labour-intensive sectors and investors will find the workforce they are looking for in Kenya. Vitacress for its part is planning for growth.

Willem Dólleman, Managing Director,
Vitacress Kenya Ltd.

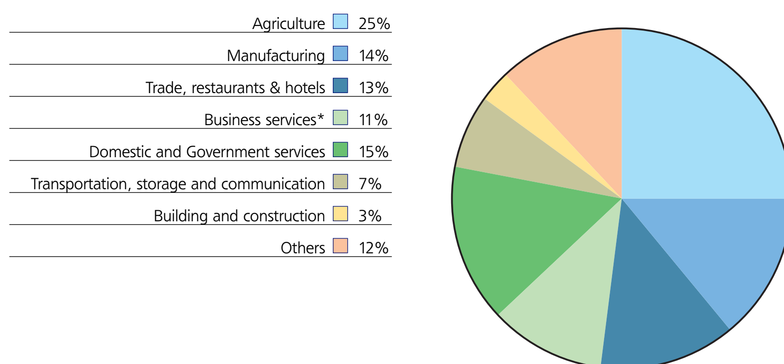
Economic environment

The Government of Kenya is taking a variety of steps to create an enabling environment for both foreign and domestic investment. This is in line with the Government's Economic Recovery Strategy for Wealth and Employment Creation (2003–2007), which is focused on the promises contained in the manifesto of the ruling party, the National Rainbow Coalition (NARC). Priorities are investment in infrastructure and improving access to education and health services. Also at the top of the agenda are fighting corruption and promoting good governance.

Kenya's economy showed signs of recovery in 2003, after five years of poor performance, and posted real economic growth of 1.8%, as compared to 1.2% in 2002. At the same time, however, the overall inflation rate increased from 2% in 2002 to 9.8% in 2003.

Agriculture remains the dominant sector, it contributed 24% to the GDP in 2003. Nevertheless, other sectors like manufacturing, tourism and business services also make significant contributions (Figure II.1). Growth in agriculture increased to 1.5% in 2003, up from 0.7% in 2002, while the manufacturing sector grew by 1.4% in 2003, up from 1.2% in 2002 and 0.8% in 2001.

This modest positive growth was mainly attributable to tight fiscal and monetary policies, stable exchange rates, low demand for imports, low food prices and stable petroleum prices. Considering sub-Saharan Africa's (excluding South Africa) GDP growth of 3.6% in 2003 (Republic of Kenya, Ministry of Planning and National Development, Central Bureau of Statistics, 2004), Kenya's economic performance can be said to be no more than fair.



Source: Republic of Kenya, Ministry of Planning and National Development, Central Bureau of Statistics, 2004.
* Business services include finance, insurance and real estate, among others.

Trade and investment

Trade

Trade reform in Kenya started in the early 1990s. Quantitative restrictions were replaced with tariffs. The trade policy reforms were complemented by liberalization of the exchange rate and new export incentives, aimed at increasing external competitiveness.

Kenya's principal exports are tea, horticultural products, coffee and pyrethrum. In 2003, horticulture was the largest export earner, contributing 26.7% of the total, and tea was the second largest with a contribution of 24%. Kenya is the fourth largest producer and second largest exporter of tea in the world, accounting for about 10% of the total global production (Tea Board of Kenya, 2003). In the past, coffee was also an important export earner, but its share has been declining for a number of years – from 11% of exports in 1998 to 5% in 2003 (Economic Survey, 2004). The decline in coffee exports has been the result of a number of factors including declining international coffee prices in the late 1980s, increased competition and worsening market access conditions in Kenya's principal export market (the European Union), and a lack of diversification and value addition.

The dominant imports into Kenya are crude petroleum and petroleum products, industrial machinery and road motor vehicles, which together constitute over 50% of total imports. Domestic export earnings improved only moderately in 2003 (4%, as compared to 8.2% in 2002), while the value of imports rose by 9.3%, thus increasing the trade deficit (see Figure II.2).

The African region continues to be the dominant overall export market, followed by the European Union. The share of exports to the African region was nearly 47% of the total in 2003. Exports to COMESA constituted 71.4% of total exports to the African region, with exports to Tanzania and Uganda constituting 54.9%.

Foreign direct investment (FDI)

Kenya has long been a serious underperformer when it comes to attracting FDI. From the mid-1980s to the end of the millennium, when FDI flows to developing countries surged, Kenya averaged about $30 million yearly. In the three following years, flows to Kenya averaged $38 million as against annual flows of well over $200 million to each of its neighbours, Tanzania and Uganda. That an economy which is at bottom much stronger and more diversified than many in Africa should do so poorly is, however, not surprising when this performance is considered against the backdrop of over two decades of misgovernance and neglect of basic assets such as the transport infrastructure.

Source: Republic of Kenya, Ministry of Planning and National Development, Central Bureau of Statistics, 2004.
[a] In December 2003, $1 = KShs 76.

But this chapter of Kenya's recent economic history may now be regarded as closed. The NARC government is determined to make the policy changes needed to create a more hospitable environment for FDI and for investors generally. (As one step in this process, it has asked for a review of its investment policy by UNCTAD, which will be available later this year.)

The legal framework for FDI is provided by the Companies Ordinance (Chapter 486), the Partnership Act (Chapters 20 and 30), the Foreign Investment Protection Act (Chapter 518) and the recently passed (December 2004) Investment Promotion Act, 2004 (see Chapter IV). To attract investment, the Government has enacted several reforms, which include abolishing export and import licensing, except for a few items listed in the Imports, Exports and Essential Supplies Act (Chapter 502); rationalizing and reducing import tariffs; revoking all export duties and current account restrictions; freeing the Kenya shilling's exchange rate; allowing residents and non-residents to open foreign currency accounts with domestic banks; and removing restrictions on borrowing by foreign as well as domestic companies.

Infrastructure and utilities

Power supply and energy

The power sector was reformed in the late 1990s, creating a regulatory body, a generating company (the state-owned KenGen) and a transmission and distribution company (the partly state-owned KPLC). Although in principle the country produces enough power for its needs (for example, just over 1,200 megawatts in 2003 when the peak demand was just over 800 megawatts), it has a high percentage of transmission and distribution losses (see Table II.2). The supply is unreliable and power outages relatively frequent. Four independent power producers have been licensed, who have power purchase agreements with KPLC and account for about 20% of the total capacity. Thus far, there are no plans to loosen KPLC's monopoly over transmission and distribution, although the company has made a loss every year for the past four years. The Government proposes to restructure KPLC first and improve its performance (UNCTAD forthcoming).

Kenya's commercial sector depends heavily on oil for its energy needs, which has serious foreign exchange implications. Oil and petroleum products accounted for about half of the import bill in 2003.

DI FLOWS TO EAST AFRICA: 1986–2003

COUNTRY	1986–1990		1991–1995		1996–2000		2001		2002		2003	
	in $ per $1,000 of GDP	in $ millions	in $ per $1,000 of GDP	in $ millions	in $ per $1,000 of GDP	in $ millions	in $ per $1,000 of GDP	in $ millions	in $ per $1,000 of GDP	in $ millions	in $ per $1,000 of GDP	in $ millions
	Annual average											
Burundi	1.0	1.2	0.7	0.7	3.8	2.8	0.0	0.0	0.0	0.0	0.0	0.0
Ethiopia	0.3	2.0	1.5	8.2	24.2	155.1	3.0	19.6	12.4	75.0	9.0	60.0
	4.7	*38.4*	*1.5*	*12.8*	*3.8*	*39.8*			*2.2*	*27.6*		
Rwanda	7.1	15.9	1.9	3.6	2.4	4.3	2.2	3.8	4.3	7.4	2.8	4.7
Sudan	- 0.4	- 4.4	2.7	22.1	21.5	246.4	42.6	574.0	46.9	713.2	77.1	1 349.2
Tanzania	0.1	0.3	9.0	46.4	31.6	260.4	50.0	467.2	25.5	240.4	25.8	248.0
Uganda	- 0.3	- 0.6	12.5	54.2	33.0	200.9	40.5	228.6	43.0	249.3	45.7	283.3
Zambia	35.5	112.5	16.0	53.7	47.9	161.4	19.7	71.7	21.7	82.0	23.6	100.0
MEMORANDUM												
Developing countries	9.0	27 870.2	16.5	80 793.7	32.7	205 856.8	33.6	219 720.7	24.0	157 611.9	23.8	172 032.5
Sub-Saharan Africa (47 countries)	6.0	1 560.5	9.6	2 849.5	20.5	6 783.0	45.2	14 696.2	26.3	8 858.5	25.2	10 587.4
LDCs in Africa (34 countries)	6.4	561.3	10.9	828.1	33.6	3 014.3	60.5	5 827.7	50.1	5 187.2	59.0	7 012.8
COMESA (20 countries)	12.4	1 401.4	13.6	1 542.6	21.0	3 393.3	23.8	4 277.3	21.4	3 935.4	23.1	4 071.7

Source: UNCTAD, FDI/TNC database.

Telecommunications

Kenya has a fairly well developed postal and telecommunication network, though the sector suffers from several bottlenecks. Chief among these are inadequate capital for the investment necessary for network expansion, frequent vandalism of equipment, and a shortage of material, especially for the line plant. Fixed-line access is provided by Telkom Kenya, a state-owned enterprise whose monopoly lapsed in 2004. It is supposed to be privatized, but little has happened so far. On the other hand, competition is being introduced, with a second national operator to be licensed that will be able to provide both domestic and international service. Foreign ownership in telecoms is restricted to 70%.

Fixed-line teledensity is low at 1 per 100 inhabitants, though better than average for the region, and Internet use is the highest in the region (see Table II.3). The cost is relatively high. The number of mobile phone subscribers has continued to increase, from 630,000 subscribers in 2001 to 1.068 million in 2002 and 1.097 million in 2003. Over 80 towns had access to a mobile network, and all major roads were also covered by the end of 2002.

In response to competition, the Postal Corporation of Kenya began providing Internet services in 2003 at various post offices countrywide, including remote areas. It is also planning to provide Very Small Aperture Technology (VSAT) to enable it to develop and market electronic products, including electronic money orders, hybrid and e-mail services, and logistical and distribution services. It further intends to implement a counter-automation programme to replace the existing manual processes.

ECTRIC POWER

COUNTRY	CONSUMPTION PER CAPITA (in kwh)		TRANSMISSION AND DISTRIBUTION LOSSES (as percentage of output)		ELECTRICITY PRODUCTION (in thousands of kwh)	
	1991	2001	1991	2001	1991	2001
Burundi	..	73	..	..	..	..
Ethiopia	18	22	10	10	1 209	1 814
	117	*117*			*3 227*	*4 391*
Rwanda	..	23	..	..	..	..
Sudan	49	67	24	15	1 661	2 560
Tanzania	54	58	22	25	1 822	2 806
Uganda	..	66	..	..	..	..
Zambia	731	598	4	3	9 047	8 178

Source: Adapted from the World Bank (2004a) and UNDP (2004).

TELECOMMUNICAT

COUNTRY	FIXED TELEPHONE LINES per 100 inhabitants		AVERAGE COST OF TELEPHONE CALL TO UNITED STATES ($ per 3 minutes)	CELLULAR MOBILE SUBSCRIBERS Per 100 inhabitants	CELLULAR MOBILE SUBSCRIBERS As % of total telephone subscribers	INTERNET Users per 10,000 inhab.	INTERNET Estimated PCs per 100 inhab.
	1993	2003	2002	2003	2003	2003	2003
Burundi	0.3	0.3	4	0.90	72.8	19.7	0.2
Ethiopia	0.3	0.6	7	0.14	18.4	10.8	0.2
	0.9	*1.0*		*5.02*	*82.9*		
Rwanda	0.2	0.3	11[b]	1.60	85.2	30.6	..
Sudan	0.3	2.7	4[c]	1.95	41.9	90.1	0.6
Tanzania	0.3	0.4	5	2.52	85.7	70.8	0.6
Uganda	0.1	0.2	4	3.03	92.7	48.8	0.4
Zambia	0.9	0.8	6	2.15	73.2	60.9	0.9

Source: Adapted from the ITU (2004) and the World Bank (2004a).
[a] In early 2005, the cost was $4.98.
[b] Figure for 1999.
[c] Figure for 2001.

Water, sewerage and health services

The goal of the Government is to ensure that all Kenyans have access to safe drinking water within a reasonable distance. Current estimates indicate that nearly 75% of the country's urban population has access to safe drinking water, while only 50% of the rural population does (Economic Survey, 2004). However, these proportions are actually declining as a result of the non-performance of some existing water supply schemes. This has necessitated a change in water policy towards participatory management, as embodied in the Water Act of 2002.

The Act proposes participatory management of water supplies in rural areas and privatization in urban and county council areas. The new policy specifies the Government's role as regulation and supervision of water resources, while welcoming stakeholders and beneficiary communities to participate in the implementation, financing, operation and maintenance of water resources and supply facilities. The purpose is to attract investment in the water sector and provide adequate water and sanitation services to meet the demand.

Domestic and industrial waste management has remained a serious environmental problem in most urban areas. In Nairobi, only 45% of the garbage generated is collected by the public collectors, while the private collectors deal with a further 7%, leaving 48% to be dumped randomly. This can be attributed to inadequate financial resources, inadequate disposal vehicles and dumping sites, and low participation by both individuals and companies in solid waste management. There are efforts under way to privatize waste management completely in Nairobi, which is expected to lead to greater efficiency.

The vision of the health sector in Kenya is to create an enabling environment for the provision of sustainable quality healthcare that is acceptable, affordable and accessible. The Government plans to decentralize decision making, resource allocation and management to district levels, so as to allow greater participation by communities in the management of health services. Health conditions are about average for the region, although the number of physicians per 100,000 people is much higher than the regional average (see Table II.4).

COUNTRY	LIFE EXPECTANCY AT BIRTH	HIV PREVALENCE, PERCENTAGE OF PEOPLE AGED 15-49	PHYSICIANS [a] PER 100,000 PEOPLE	PUBLIC EXPENDITURE ON HEALTH AS % OF GDP
	2002	2002	1990-2002	2001
Burundi	42	6	1	2
Ethiopia	42	..	3	1
		7		2
Rwanda	40	5	..	3
Sudan	58	2	16	1
Tanzania	43	9	4	2
Uganda	43	4	5	3
Zambia	37	16	7	3

Source: Adapted from UNDP (2004) and the World Bank (2004a).
[a] Data are for the most recent year available during the period specified.

Transport

Road transport

The current road network comprises a variety of roads, ranging from forest and farm tracks to multi-lane urban and suburban highways. The system is divided into classified and unclassified roads, with a total network of 151,000 kilometres. Out of the classified network of 62,667 kilometres, about 12% is to bitumen standard, another 40% to gravel standard and the remaining 48% to earth standard. The classified road network falls under the Roads Department of the Ministry of Public Works, while the unclassified network falls under County Councils, the Ministry of Environment and Natural Resources, the Ministry of Tourism and other organizations.

The road network in Kenya has suffered from decades of neglect and in some areas is a strong disincentive to serious economic activity. A business environment survey by the World Bank in 2000 found that 91% of those surveyed described the quality of roads and public works in Kenya as bad or very bad, as compared to 1% in Egypt, 7% in South Africa, 44% in Tanzania and 24% in Uganda (World Bank 2000).

Air transport

Kenya has three major international airports: Jomo Kenyatta International Airport (JKIA), Mombasa International Airport (MIA) and Eldoret International Airport. Wilson Airport in Nairobi is a major airport for domestic charters. JKIA, which is a major hub in East Africa, is currently undergoing major renovation to bring it up to international standards. There has been a striking increase in the freight and passengers carried (see Table II.5). Flights handled at JKIA and MIA increased by 8.3% to 67,787 flights in 2002 as compared to 62,572 flights in 2001. International flights increased by 13% to 36,030 in 2002 from 31,898 in 2001. There was a smaller increase in domestic air travelling of 3.5% to 31,757 flights in 2002 from 30,674 flights in 2001.

The privatization of Kenya Airways in 1996 (see box II.1 below) was a major factor in the increased traffic passing through JKIA. Another factor is the increased horticulture exports to the EU (see FDI story on horticulture in Chapter III). More than a dozen European and Asian airlines currently fly into JKIA. Kenya Airways itself operates direct flights to Amsterdam and London in Europe and Bangkok, Dubai, Hong Kong and Mumbai in Asia. There are no direct flights to the United States, which is something of a constraint on taking advantage of export opportunities in garments and potentially in horticulture.

Box II.1. A first for Africa: The privatization of Kenya Airways

The sale of a major state-owned organization is usually a highly charged political event. The sale by the Government of Kenya of 77% of the shares in Kenya Airways to private investors in 1996 was no exception. There was much speculation that the process would fail. It did not.

The operation had already been commercialized in 1991. The privatization process itself worked well, and the outcome was a multi-faceted success. The Kenyan Treasury received $76 million from the sale of 77% of the shares. Over 113,000 Kenyans bought a total of 22% of the shares. Kenyan financial institutions bought a further 12%, while international financial investors subscribed for 14%. KLM Royal Dutch Airlines bought 26% of the shares.

The alliance agreements between Kenya Airways and KLM, signed on 15 December 1995, produced immediate benefits for both partners: shared codes, shared reservation systems, joint marketing, and the joint purchasing of aircraft, fuel, spares and insurance. Kenya Airways' service standards and reliability began improving and, in 1999, an industry journal named Kenya Airways the "African Airline of the Year". By 2003, the company had made a profit of $16 million on revenues of $322 million. There are now 60 Nairobi-Mombasa flights a week and a much-expanded regional network.

Source: UNCTAD, based on Tiller (1997), the Kenya Airways website (www.kenya-airways.com), et al.

Railways

Kenya Railways Corporation (KRC), a state-owned enterprise, operates the 2,700-kilometre network that connects Mombasa to Tororo on the Ugandan border via Nairobi. It has the capacity to handle up to 7 million tons of cargo a year but actually handles only a third of this. As elsewhere in East Africa, railways in Kenya are in a dilapidated state. The Government recognizes that privatization is needed and is in the process of undertaking it. In July 2004, it signed a Memorandum of Understanding with the Government of Uganda, approving the joint concessioning of the KRC with the Uganda Railways Corporation for a 25-year period. At least 20% of the shares are to end up in the hands of Kenyan investors and another 20% in the hands of Ugandan investors. Five companies have been fully prequalified and are to submit bids by April 2005. All are foreign-owned.

The KRC handles much transit traffic to and from landlocked countries in the East African region. The main commodities ferried include agricultural goods, cement, coffee, dairy products, fluospar, grains, paper, petroleum products, salt, soda ash, sugar and timber. The KRC also runs a block-train freight service from Mombasa to Kampala. The corporation operates container-carrying trains (railtainers) daily between Kipevu (Mombasa) and the inland container depot at Embakasi (Nairobi) and conversely. There are plans to extend the railway line to Southern Sudan; German investors have shown an interest in this.

Ports

Mombasa is Kenya's principal port and one of the two key ports in the region, the other being Dar es Salaam. There have long been complaints about delays at Mombasa and about the lack of transparency in the customs clearing process. However, the past five years have seen improvements, and delays have decreased, although traffic has increased considerably. The port is managed, along with eight other minor ports, by the Kenya Ports Authority (KPA), which is a parastatal.

Containerized trade has grown remarkably. Between 2002 and 2003, containerized traffic rose from about 305,000 twenty-foot equivalent units (TEUs) to 380,000 TEUs, representing 24.5% growth, one of the highest growth rates in the world. This meant that the Mombasa Container Terminal had a capacity utilization of 152%, the designed capacity being 250,000 TEUs a year.

Modernization of the country's cruise tourism complex is also in the offing. The project entails the development of a purpose-built cruise passenger terminal by rehabilitation and modernization of some conventional cargo sheds at berths 1 and 2 and the contiguous berths. There are also plans to upgrade Mombasa's port and privatize some of the services. The Kenya Ports Authority (KPA) reform programme envisages the transformation of KPA into a landlord port authority, with most cargo handling and complementary services being ceded to the private sector.

R TRANSPORT AND R

COUNTRY	AIR TRANSPORT: FREIGHT Million tons per km		AIR TRANSPORT: PASSENGERS CARRIED Thousands		ROADS: TOTAL NETWORK Thousands of km	
	1990	2002	1990	2002	1990	2000
Burundi	..	..	8	12[a]	..	14
Ethiopia	67	84	620	1 103	28	32
	52	***118***			***61***	***64***
Rwanda	..	..	8	..	13	12
Sudan	13	33	454	409	10	12
Tanzania	1	2	292	138	56	88
Uganda	22	21	116	41	..	27
Zambia	30	1[b]	407	47	35	91

Source: Adapted from the World Bank (2004a).
[a] Figure for 1998. [b] Figure for 2001.

Human resources

Kenya has a population of about 32 million people, about 52% of whom constitute the working population. The country has the highest literacy rate in the region (88% for men and 79% for women) and the highest secondary school enrolment (see Table II.6). These differences are wider at older ages than at younger ones. The urban-rural differences also display the expected pattern, so that more rural people are illiterate (14% of men and 25% of women) than their urban counterparts (6% of men and 11% of women). Enrolment in post-secondary institutions has been rising and indicates the growing availability of skilled labour.

Public spending on education increased from about $834 million in 2002–2003 to about $1.007 billion in 2003–2004, an increase of 21%, as the new Government implemented a free primary education programme and awarded higher salaries to teachers. Enrolment increased between 2002 and 2003 by 17.6% for primary schools and 5.3% for secondary schools.

The labour laws of Kenya are embodied in its Employment Act (revised 1984) and the Regulation of Wages and Conditions of Employment Act (revised 1980). The provisions covered by the Employment Act include those regarding wages, leaves, housing, health and welfare, local and foreign contracts of service, the employment of women and youth, and other administrative matters. The Regulation of Wages and Conditions Act provides for the establishment of Wage Advisory Boards, Wage Councils and various wage regulations. (For minimum wages, see Table II.7.)

Wages are paid in the manner specified in the written contract of employment. They may be paid in daily, weekly or monthly instalments. For piece-rate work, the employee is paid in proportion to the actual work completed. Wages can also be paid in accordance with any agreement entered into by a trade union of which the employee is a member.

The normal working hours consist of not more than 52 hours of work per week. No person under the age of 16 may be required to work for more than six hours a day. Every employee is also entitled to an annual leave with full pay of not less than 21 working days after every year of continuous service and not less than 1.75 days per month when employment is terminated after two or more months of continuous service. The annual leave is in addition to all public holidays, weekly rest days and sick leave as fixed by law or by written agreement. The country has about 10 public holidays a year.

Employment in Kenya is predominantly rural, and the majority of workers are engaged in small-scale or subsistence farming and pastoral activities. The recent poor performance of the Kenyan economy has adversely affected employment creation in all sectors of the economy. However, employment in the informal sector has been growing faster than in the formal sector.

It should be noted that both foreign and domestic investors (and particularly the former) speak very highly of the Kenyan workforce, which they regard as able, enterprising and motivated. When asked to name the best features of Kenya as a location for investment, investors rank "people" at the top (see the FDI stories in Chapter III and the summary of investor perceptions in Chapter V).

TABLE II.6. EDUCATION

COUNTRY	NET ENROLMENT RATIO [a]				ADULT LITERACY RATE
	Primary		Secondary		
	Total % of relevant age group	Female % of relevant age group	Total % of relevant age group	Female % of relevant age group	% of people aged 15 and above
	2001–2002	2001–2002	2001–2002	2001–2002	2002
Burundi	53	48	8	7	50
Ethiopia	46	41	15	11	42
	70	*71*	*24*	*24*	
Rwanda	84	85	..	..	69
Sudan	46[b]	42[b]	..	..	60
Tanzania	54	54	17[c]	5	77
Uganda	109[c]	106[c]	14[c]	13[c]	69
Zambia	66	66	20	18	80

Source: Adapted from UNDP (2004).
[a] The net enrolment ratio is the ratio of enrolled children of the official age for the education level indicated to the total population of that age. Net enrolment ratios exceeding 100% reflect discrepancies between these two data sets.
[b] Figure for 1999–2000 school year.
[c] Figure for 2000–2001 school year.

…ASIC MINIMUM WAGES IN …
EXCLUDING HOUSING ALLOWANCE, IN KSHS

	NAIROBI & MOMBASA AREA			ALL OTHER AREAS		
	2001	2002	2003	2001	2002	2003
General labourer	3 288	3 518	3 905	1 754	1 877	2 083
Miner, stone cutter, waiter, cook	3 551	3 800	4 218	2 027	2 169	2 408
Night watchman	3 668	3 925	4 357	2 093	2 240	2 486
Machine attendant	3 726	3 987	4 426	2 811	3 008	3 339
Machinist	4 253	4 551	5 052	3 254	3 482	3 865
Plywood machine operator	4 438	4 749	5 271	3 386	3 623	4 022
Pattern designer	5 065	5 420	6 016	3 948	4 224	4 689
Tailor, driver (medium vehicle)	5 581	5 972	6 629	4 574	4 894	5 432
Dyer, crawler, tractor driver, salesman	6 162	6 593	7 318	5 189	5 552	6 163
Saw doctor, caretaker (building)	6 820	7 297	8 100	5 932	6 347	7 045
Cashier, driver (heavy commercial)	7 421	7 940	8 812	6 547	7 005	7 776
Artisan (ungraded)	4 438	4 749	5 271	3 386	3 623	4 022
Artisan Grade III	5 581	5 972	6 629	4 582	4 903	5 442
Artisan Grade II	6 162	6 593	7 318	5 189	5 552	6 163
Artisan Grade I	7 421	7 940	8 813	6 547	7 005	7 776
Average	5 172	5 534	6 142	4 081	4 367	4 848

Source: Republic of Kenya, Ministry of Planning and National Development, Central Bureau of Statistics, 2004.
Note: In mid-2005, KShs 77.07 = $1.

The financial sector and business support services

The banking sector

The banking sector has been fairly stable. The number of commercial banks dropped to 48 in 2001, 44 in 2002 and 43 in 2003, while the number of non-bank financial institutions declined from three in 2002 to two in 2003. Foreign-exchange bureaus increased from 48 in 2002 to 52 in 2003.

The market shares of the banking institutions continued to be dominated by the 10 largest commercial banks, which accounted for 76.4% of all deposits held by banking institutions in 2003 – a slight decline from 77.1% in 2002. In 2003, the banking sector was relatively well capitalized, with an estimated average risk-weighted capital adequacy ratio of 17.2%, which is well above the 12% minimum requirement. This ratio has largely been attributed to increased profits.

According to the Market Intelligence (MI) Banking Survey of 2004, the top banks (ranked by assets) were Barclays Bank of Kenya, Standard Chartered, Kenya Commercial Bank, Citibank and the Co-operative Bank of Kenya. Smaller banks among the top 10 include the CFC (formerly Credit Finance Corporation), Investment and Mortgages Bank, and the National Industrial Credit Bank (NIC).

With weak economic performance compounded by poor lending practices (characterized by poor risk assessment and political lending), local banks in particular have ended up with very high non-performing loans. In 2002, non-performing loans were estimated at 30% of total loans. In 2003, they had declined to 25.6% and were mainly concentrated in 10 institutions that accounted for 58% of the banking sector's total loan portfolio. The two government-controlled banks, Kenya Commercial Bank and the National Bank of Kenya, hold 46.4% of the portfolio of non-performing debts.

The banks' interest rates on deposits are very low, and not remunerative enough to encourage savings. On the other hand, lending rates have remained high, giving the banks high interest spreads. Non-performing loans have been cited as one of the principal causes of the high interest spreads. Another has traditionally been the relatively high Treasury Bill rate, which serves as the interest rate benchmark. On a positive note, in 2003, lending rates came down substantially from an average of about 20% in 2002 to between 10% and14% in 2003. In addition, the Treasury Bill rate declined to below 1% in September 2004 from highs of 10% to 14% in recent years.

A joint IMF–World Bank Financial Sector Assessment Program (FSAP) was undertaken for Kenya in mid-2003. The Government has begun implementing some of the recommendations, which are aimed at addressing the major weaknesses in the financial system, with an initial focus on banks in distress and a strengthening of the regulatory system. The Government has proposed major revisions to the Banking Act and the Central Bank of Kenya Act which would, among other things, bring the legislation into line with the market orientation of the Government's economic policies. With the help of the World Bank, the Government has also set up a Bank Restructuring and Privatization Unit at the Ministry of Finance to restructure publicly owned banks and prepare them for privatization.

Monetary and exchange rate policies

The monetary policy of the Central Bank of Kenya (CBK) aims at containing the underlying inflation rate below 5%. This is undertaken through reserve money targeting, with broad money (M3X) as the intermediate target, and open market (repurchase and reverse repurchase) operations as the main instruments. The CBK uses a broad set of indicators to monitor future inflationary pressures and to gauge the appropriateness of the policy stance.

Kenya has a floating-rate regime that has served the economy well. The Government is committed to maintaining this regime, limiting its exchange rate interventions to smoothing short-term volatility, offsetting the variability in donor flows affecting external debt payments, and meeting the net foreign reserve targets. There is a commitment to making full use of exchange rate flexibility in response to both medium- and long-term exogenous shocks.

The Capital Markets Authority

The Capital Markets Authority (CMA) has played a major role in spearheading reform in capital markets, aimed at increasing investor confidence. Kenya's stock market was reorganized into four independent segments in 2001: Main Investments Market Segment; Alternative Investments Market Segment; Fixed Income Securities Market Segment; and Futures and Options Market Segment. The first three of these are already operational.

In 2003, the players in the market included the Nairobi Stock Exchange (securities exchange), the Central Depository and Settlement Corporation, 6 investment banks, 13 stock-brokers, 18 investment advisors, 8 fund managers, 1 credit rating agency, 1 capital venture fund, 2 collective investment schemes, 3 authorized securities dealers and 4 authorized depositories or custodians. The number of listed companies in late 2004 was 48.

The insurance industry

The insurance industry has also remained stable, with only one insurer being placed under statutory management in 2002. The $870 million industry has faced a number of challenges including reduced investment income, undercutting of premium rates, fraudulent practices and narrow investment portfolios.

In 2003 there were 42 registered insurance companies, of which 39 were licensed to conduct business, 2 operated as closed funds and 1 was under statutory management. Other insurance intermediaries were 187 licensed brokers, 1,057 registered insurance agencies, 18 loss assessors, 23 risk surveyors, 171 insurance loss adjustors and 5 risk managers. Foreign equity in insurance has a ceiling of 66.7%.

The penetration ratio of life insurance (premiums as a percentage of GDP) is very low at 0.81%. The industry is heavily skewed towards the non-life insurance business, which accounts for 72% of total premiums, with life insurance generating the balance of 28%. This implies that the growth potential of the life insurance business is great. If well developed, the business has considerable scope to mobilize savings.

For a discussion of trade insurance, see box II.2. See also the box "FDI story: Investing in horticulture" in chapter III.

Box II.2. African Trade Insurance Agency (ATI)

The African Trade Insurance Agency (ATI) is an inward investment guarantee agency, as well as an import and export credit agency, of which Kenya, Tanzania and Uganda are among the seven founding members. ATI is a unique multilateral institution engaged in providing financial instruments and insurance and reinsurance for trade, project and investment transactions. Its products secure policyholders against political and financial risks. ATI's mandate is to increase trade and investment flows into and among its member states so as to facilitate sustainable private-sector-led economic growth. It was established by a sovereign treaty to which only African states (and eligible international corporate members) may accede. Unlike other national and multilateral agencies, ATI uses its member states' own capital (provided to it under sovereign agreements between ATI, the World Bank (IDA) and individual states), held in its trust funds offshore, as underwriting capital from which to pay insured losses. The agency enjoys diplomatic immunities and privileges in its member states and is supported by the World Bank and by major public- and private-sector players in the export credit and investment insurance market.

Source: UNCTAD, based on information provided by ATI.

Taxation

The Kenyan tax system comprises the following taxes.

Corporate tax

This is a direct tax on profits made by corporate bodies such as limited companies, trusts, clubs, societies, associations and cooperatives. It has its legal basis in the Income Tax Act, Chapter 470. The Act defines and details the determination of taxable income and rates of taxation. The rate differs between resident and non-resident companies. (A resident company is one incorporated in Kenya.) Companies listed on the Nairobi Stock Exchange (NSE) are also taxed at slightly lower rates than other companies in order to encourage listing (see Table II.9). In addition, investors in export-processing zones enjoy a 10-year tax holiday, followed by a 25% corporate tax rate for the following 10 years.

PERSONAL INCO

	TAX BANDS (IN KSHS PER ANNUM)[a]	RATE (IN %)
First [b]	121 968	10
Next	114 912	15
Next	114 912	20
Next	114 912	25
Over	466 704	30

Source: Adapted from the KPMG Tax Data Card: East Africa, 2004–2005.
[a] $1 = KShs 77.07 in May 2005. [b] Personal relief (exemption) of KShs 13,944 p.a.

Personal income tax

The income tax is a direct tax levied on income from business, employment, rent, dividends, interest and pensions, among others. It is paid by any person resident in Kenya, a resident being defined as someone who has a permanent home in Kenya and has spent any part of the working year in the country, or as someone who, without a permanent home in Kenya, has spent 183 days or more working in the country in the year of assessment. A foreign employee of a non-Kenyan firm who is resident in Kenya is subject to tax on all emoluments. Pay as You Earn (PAYE) is the method of collection for individuals in gainful employment. The employer deducts a certain amount of tax from his/her employee's salary or wages on each payday and then remits it (Income Tax Act, Chapter 470).

Trade taxes

Trade taxes are basically taxes on exports and imports. The importance of trade taxes in the overall tax collection has been declining owing to emerging trading blocs and liberalization – for example, the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA). Nevertheless, trade taxes still account for about 13% of total revenue in Kenya.

The structure of import duties is aimed at discouraging imports of luxury goods and consumer durables, which attract higher duty rates, while encouraging imports of intermediate goods, raw materials and capital goods, which attract lower duty rates. Rates used to range between zero and 100%. The upper limit has now been lowered under the East African Community (EAC) Treaty, with effect from 1 January 2005. The EAC common external tariff is 25%, although the three partner states are allowed to levy higher duties on a "sensitive" list of products. Investors in Kenyan export processing zones (EPZs) are exempted from paying import duties.

TABLE II.9. CORPORATE TAXES IN EAST AFRICA (2005)

	KENYA		TANZANIA		UGANDA	
CORPORATE TAX RATES (IN %)						
Resident companies	30[a]		30		30	
Non-resident companies/branches	37.5		30		30	
WITHHOLDING TAXES (IN %)[b]	RESIDENT	NON-RESIDENT	RESIDENT	NON-RESIDENT	RESIDENT	NON-RESIDENT
Dividends	5	10	10[c]	10[c]	15	15
Management, technical or professional fees	-	20	-	20	6[d]	15
Royalties	5	20	15	15	-	15
Interest:						
- *Housing bonds*	10	10	10	10	-	-
- *Bearer instrument*	25	25	10	10	15	15
- *Others*	15	15	-	15	15	15
Mining companies:						
- *Management or technical fees*	-	20	5	15	-	-
- *Dividends*	-	10	10	10	-	-
VALUE-ADDED TAX						
Registration thresholds (annual)	KShs 3 000 000		TShs 40 000 000		UShs 50 000 000	
Rates (in %)						
- *Standard*	16		20		17	
- *Hotel and restaurant services*	14		N/A		N/A	
Penalties (monthly)	2[e]		See note[f]		2[g]	
CAPITAL DEDUCTIONS (IN %)						
Investment deduction:						
- *Plant/machinery*	100		50[h]		50[h]	
- *Buildings*	100		-		-	
First year allowance	-		50		-	
Industrial building allowance:						
- *Manufacturing*	2.5		-		5	
- *Hotels*	4		-		5[i]	
- *Commercial*	-		5		5[i]	
Farmworks allowance [j]	33⅓		20[k]		20[k]	

Source: Adapted from KPMG (2004).
[a] 25% for the first five years upon listing with at least 30%, and 27% for the first three years upon listing with at least 20%, listed in a security exchange approved under the Capital Markets Act (CMA).
[b] This table shows only the most common withholding taxes. For a full list, see KPMG (2004).
[c] 5% for listed companies.
[d] Applies only to taxpayers not up to date with the filing of tax returns.
[e] 2% per month for late payment and KShs 10,000 or 5% of tax due, whichever is higher, for late returns.
[f] For late payment of VAT, the Central Bank lending rate plus 5%; for late submission of the VAT return, for the first month, the greater of TShs 50,000 or 1% of the VAT payable and, for subsequent months, the greater of TShs 100,000 or 2% of the VAT payable.
[g] Greater of 2% or UShs 200,000 in cases of late returns; otherwise 2% compounded.
[h] 50% for urban areas and 75% for rural areas.
[i] Granted upon approval by the Finance Minister.
[j] Structures necessary for the proper operation of the farm.
[k] Allowance granted on reducing balance.

Excise taxes

Excise taxes are levied on alcoholic beverages, tobacco products, petroleum products, motor vehicles, carbonated drinks and mineral water, cosmetics, jewellery and cell phone airtime. The taxes are imposed under the Customs and Excise Act (Chapter 472).

Over 90% of the total excise tax revenue is from alcohol, tobacco and petroleum products. All excisable goods with the exception of petroleum products were previously taxed on an *ad valorem* basis, but now beer and cigarettes are taxed on a specific basis.

Value-added tax (VAT)

VAT is a consumption tax levied on designated goods and services, whether locally produced or imported. It was introduced in 1990 to replace the sales tax and is administered under the VAT Act, Chapter 476. There were 15 rates (with a top rate of 210%) when the tax was introduced, but these rates have been reduced to three in order to simplify tax administration. (See Table II.8. above.) Investors in EPZs do not pay VAT on raw materials, machinery or other inputs.

EXCISE TAX RA

COMMODITY	RATE
Alcoholic beverages:	
Stout and porter	60%
Malt beer	85%
Non-malt beer	15%
Tobacco products	130%

Source: Budget Speeches and Finance Bills, 2000–2004.

The private sector in Kenya

By East African standards, Kenya has a very substantial private sector, including a significant number of foreign investors. (For a sampling of foreign investors in Kenya, see Appendix 2.) The country has always been a market economy, and it escaped both the dislocation caused in Uganda by the expulsion of the Asians in the late 1970s and the problems created by the socialist experiment in Tanzania from the 1960s through the 1980s. The import substitution policies of the 1960s and 1970s led to considerable diversification of the economy, and foreign investment was relatively high at around $80 million in 1980 – a figure unmatched, with one exception, until 2003. The domestic private sector has been concentrated in certain kinds of manufacturing (mainly food-related) for both the domestic and the regional market. FDI has recently played key roles in the horticulture industry (for export to the European Union) and certain service areas: transport, tourism and mobile telephony.

Key players in voicing private-sector concerns include the following bodies.

The Kenya Private Sector Alliance (KEPSA)

The Kenya Private Sector Alliance, formed in 2003, is the umbrella organization of over 200 private-sector organizations in Kenya. Its objectives include the following: to enable the private sector to have a strong impact on socio-economic development through a collective effort; to create a harmonized approach to cross-sectoral issues; to ensure the formulation of policies that encourage both domestic and foreign investment; and to pursue regional, continental and international economic opportunities.

The Federation of Kenya Employers (FKE)

The Federation of Kenya Employers was registered under the Trade Unions Act in January 1959 as an association representing the collective interests of employers. Its major objectives are to harmonize and defend employers' interests and to raise the social consciousness of employers so as to enable them to realize the full potential of their enterprises by promoting increased labour productivity, sound management techniques, better industrial relations, fair labour practices, effective work organization and stronger staff motivation.

The Kenya Association of Manufacturers (KAM)

The Kenya Association of Manufacturers is the leading organization of industrialists in Kenya. It was constituted in 1959 to unite industrialists under a powerful umbrella organization to encourage investment, uphold standards, and represent their views and concerns to the Government. Ordinary membership is restricted to persons, firms and companies directly engaged in manufacturing, processing or any other productive method. Associate membership is extended to other companies and firms that, by the very nature of their business, have a direct interest in the expansion of industry, including financial institutions, insurance companies and consulting firms.

The Eastern Africa Association (EAA)

The Eastern Africa Association was established in 1964. Members include companies from India, South Africa, the United Kingdom and the United States, among others. The EAA is headquartered in London and acts as a channel of communication between foreign investors and Eastern African governments. It interprets the policies and objectives of governments to its members and, in turn, explains the views and needs of investors, prospective investors and foreign businesses generally to governments. It has a strong presence in the EAC but is also present in a number of other countries, including Ethiopia, Madagascar and Rwanda.

The East African Business Council (EABC)

The East African Business Council is the umbrella organization for businesses in East Africa. It has three categories of membership. One category consists of chambers of commerce, manufacturers' associations, employers' federations and organizations in the banking, tourism, insurance, agriculture and transport sectors. A second category is that of investment promotion centres, export promotion councils and EPZs. The third category is that of companies.

The National Economic and Social Council (NESC)

It is broadly acknowledged that one key reason policy implementation has been weak in Kenya is that there are no clear channels through which stakeholders can provide feedback to the Government on its implementation record. Achieving the goals the new Government has set itself requires a strengthening of partnerships among government, business and civil society. It is with this recognition that the National Economic and Social Council (NESC) was formed to serve as an advisory body to the Government. The Council is mandated to provide timely, accurate and independent economic and social advice with a view to improving the management of the economy. It also provides a consultative platform that can improve coordination between the Government and the private sector through ongoing engagement.

The specific responsibilities of the Council include the following:

- To create a forum in which government, business and labour unions can identify and discuss policy issues and make recommendations consistent with the development aspirations of the country.
- To appraise the various programmes and activities of the Government in the light of Government policy.
- To improve the targeting and addressing of strategic objectives with a focus on the most critical social and economic needs.
- To utilize private-sector and civil society capacities and synergies through collaboration, engagement and networking in order to promote efficiency and effectiveness in economic planning.

Doing business in East Africa

Table II.11 is adapted from the World Bank's website section on the business climate. Note to start with that Kenya has the smallest and Tanzania the largest informal economy. This is unsurprising, since Kenya has the best-developed private sector in the region. Note next that on three of the five indicators in the table – starting a business, hiring and firing workers, and registering property – Kenya does quite well. It is the least expensive of the three EAC countries to start a business in, the least expensive and time-consuming to register property in, and less rigid in its employment practices than sub-Saharan Africa as a whole. However, the weakness of its cumbersome legal system is reflected in its performance on the other two indicators. It is procedurally more complex to enforce a contract in Kenya than elsewhere in the EAC or in the OECD. It is also much more time-consuming and expensive. Closing a business is extremely time-consuming – 4.5 years, as against 3.6 in sub-Saharan Africa and 1.7 in the OECD – and the recovery rate is barely 15 cents on the dollar, as against about 17 cents in sub-Saharan Africa, 36 cents in Uganda and 72 cents in the OECD.

TABLE II.11. DOING BUSINESS IN EAST AFRICA

ECONOMY CHARACTERISTICS (2003) VARIABLE	KENYA	TANZANIA	UGANDA	SSA[a] AVERAGE	OECD AVERAGE
GNI per capita (at PPP)[b]	1,020	610	1,440	1,770	26,000
Informal economy (% GNI, 2003)	34.3	58.3	43.1	42.3	16.8
Population (millions)	31.9	34.9	25.3	19.5	41.5

STARTING A BUSINESS (2004)

The challenges of launching a business in East Africa are shown below through four measures: procedures required to establish a business, the associated time and cost, and the minimum capital requirement.

INDICATOR	KENYA	TANZANIA	UGANDA	SSA AVERAGE	OECD AVERAGE
Number of procedures	12	13	17	11	6
Time (days)	47	35	36	63	25
Cost (% of income per capita)	53.4	186.9	131.3	225.2	8.0
Minimum capital[c] (% of income per capita)	0.0[c]	6.8	0.0	254.1	44.1

HIRING AND FIRING WORKERS (2004)

The first three indices cover the availability of part-time and fixed-term contracts, working time requirements, minimum wage laws, and minimum conditions of employment. The overall Rigidity of Employment Index is an average of these three indices. Higher values represent greater rigidity in all indices.

INDICATOR	KENYA	TANZANIA	UGANDA	SSA AVERAGE	OECD AVERAGE
Difficulty of Hiring Index	22	56	0	53.2	26.2
Rigidity of Hours Index	20	80	20	64.2	50.0
Difficulty of Firing Index	30	60	0	50.6	26.8
Rigidity of Employment Index	24	65	7	56.0	34.4
Firing costs (weeks of wages)	47	38	12	59.5	40.4

REGISTERING PROPERTY (2004)

The ease with which businesses can secure rights to property is measured below, using the following indicators: the number of procedures necessary to transfer a property title from the seller to the buyer, the time required, and the costs as a percentage of the property's value.

INDICATOR	KENYA	TANZANIA	UGANDA	SSA AVERAGE	OECD AVERAGE
Number of procedures	7	12	8	6	4
Time (days)	39	61	48	114	34
Cost (% of property per capita)	4.0	12.6	5.5	13.2	4.9

ENFORCING CONTRACTS (2004)

The ease or difficulty of enforcing commercial contracts in East Africa is measured below, using three indicators: the number of procedures counted from the moment the plaintiff files a lawsuit until actual payment, the associated time, and the cost (in court and attorney fees) expressed as a percentage of debt value.

INDICATOR	KENYA	TANZANIA	UGANDA	SSA AVERAGE	OECD AVERAGE
Number of procedures	25	21	15	35	19
Time (days)	360	242	209	434	229
Cost (% of debt)	41.3	35.3	22.3	43.0	10.8

CLOSING A BUSINESS (2004)

The time and cost required to resolve bankruptcies is shown below. Costs include court costs as well as the fees of insolvency practitioners, lawyers, accountants, etc. The Recovery Rate measures the efficiency of foreclosure or bankruptcy procedures, expressed in terms of how many cents on the dollar claimants recover from the insolvent firm.

INDICATOR	KENYA	TANZANIA	UGANDA	SSA AVERAGE	OECD AVERAGE
Time (years)	4.5	3.0	2.1	3.6	1.7
Cost (% of estate)	18	23	38	20.5	6.8
Recovery rate (cents on the dollar)	14.7	21.3	35.5	17.1	72.1

Source: Adapted from the World Bank (2004b).
[a]"SSA" is "sub-Saharan Africa".
[b]"GNI" is "gross national income", while "PPP" is "purchasing power parity".
[c]The minimum capital requirement for foreign investors has just been set in Kenya at $500,000. See the section "Institutional framework" in Chapter IV.

Investment climate: Key factors for foreign investors

Strengths	Opportunities
• Relatively large pool of skilled and enterprising workers • Central location in the region, with a coastline and a port • A well-established local and foreign private sector • Political stability	• Tourism • Horticulture, floriculture and other agricultural produce for export • Manufacturing, including agro-processing, for the region • Development of a regional services hub
Weaknesses	**Threats**
• Weak physical infrastructure • Persistent corruption • High cost of doing business	• Urban crime and insecurity • Unstable border with Somalia

When I was first asked to come to Kenya in 1994, my picture of Kenya (like that of most outsiders) was of a misgoverned country with limited resources. The reality on the ground turned out to be very different: a community of people with amazing resources and a real passion to go forward and develop themselves. Yes, there were and still are problems in Kenya, but if one comes here with a positive attitude and focuses on niche markets, the underlying talents of the people can transform any idea into a solid opportunity.

Stewart Laird Henderson

Chief Executive Officer, Old Mutual Kenya

Kenya has a number of advantages as a location for investment: uninterrupted political stability since independence, a strategic location with easy access to regional and world markets, and a substantial and varied private sector. Following the peaceful political transition in 2002, the Government of Kenya prepared an Economic Recovery Strategy for Wealth and Employment Creation for the period 2003–2007, which is meant to address deficiencies in governance and infrastructure and make the country more attractive to investors.

The country has a surface area of 582,646 square kilometres, of which around three quarters is arid and semi-arid land. The remainder, however, is well suited to agriculture and demonstrably productive. The country lies on both sides of the equator and varies in altitude from sea level to more than 5,000 metres above sea level (Mount Kenya). In the low-lying districts, particularly along the coast, the climate is tropical, hot and humid. On the plateau and in the highlands, it is more temperate.

Agriculture and related activities (horticulture, tea, coffee, pyrethrum, livestock, sugar, cotton, oil crops, fishery) and tourism are the areas in which the Government most wants to attract FDI. Other areas with investment opportunities include mining (minerals and oil exploration), manufacturing for both the domestic and the regional markets (textiles and apparel, paper products, steel and iron, vehicle parts and assembly, electronics and electrical equipment, plastics, chemicals and pharmaceuticals), infrastructure (port facilities, roads, waterways and waste management) and energy (hydropower and geothermal).

Priority areas

Agriculture

Agriculture is the leading sector in the Kenyan economy, accounting for about 24% of the GDP (Republic of Kenya, Ministry of Planning and National Development, Central Bureau of Statistics, 2004). It is the largest contributor of foreign exchange (about 60% of total export earnings), from horticulture, floriculture, tea and coffee. Agriculture also provides a livelihood to about 75% of the population. Given its importance and its demonstrated capacity as a foreign exchange earner, this sector is a natural investment area.

Crops grown in Kenya include tea, coffee, maize, sugarcane, cotton, pyrethrum, beans, peas, peanuts, carrots, kale, wheat, sorghum, millet, onions, tomatoes, potatoes, sisal and oil crops. Investment opportunities in agriculture can be found in upstream and downstream activities, by-products processing and services, and agricultural produce for export.

Under upstream (processing) activities, there are opportunities in the provision of fertilizers and chemicals, better high-yielding seeds and plant materials, irrigation systems (water pumps, steel pipes and hose pipes), pesticides, refrigerated storage and transport, agricultural tools and equipment, air freight, assembly of tractors, generators and motors, extension services, and spare parts and accessories.

1. AGRICULT … LATED PROD … YA'S SEVEN

NYANZA	WESTERN	RIFT VALLEY	CENTRAL	EASTERN	COASTAL	NORTH-EASTERN
Rice, cotton, maize, bananas, sorghum, millet, beans, sugarcane, tea and coffee	Maize, sugarcane, groundnuts, cotton, cassava and sorghum	Maize, potatoes, wheat, barley, tea, coffee, pyrethrum, flowers and various horticultural crops	Maize, potatoes, beans, rice, coffee, tea, flowers, fruits and various horticultural crops	Maize, beans, bananas, tea, coffee, peas, fruits and various horticultural crops	Rice, maize, coconuts, cotton, cashew nuts and various horticultural crops	Mainly cattle

Source: UNCTAD.

Under downstream activities, there are opportunities in the provision of pest control and fumigation; fresh juices, concentrates and flavours; jams and marmalades; canned foods, fruits and vegetables; starch making; maize milling and packaging; edible oils; instant tea and coffee; confectionary products (biscuits and bread); sisal mop and cushion covers; cleaning and shining materials; crisps from potatoes and cassava; pepper powder and sauces; food seasoning; and garlic powder and other spices.

Opportunities in by-product processing include paper, building blocks and tiles, animal feeds (seed cake, husks), coal (coffee husks, saw dust, etc.) and soft boards. Under services, there are artificial insemination services; agricultural extension services; veterinary services; dipping services; farmers' training; and the transport, storage and drying of harvested agricultural produce (IPC, 2001).

Horticulture

Horticulture (including floriculture) is one of the great success stories of recent years. It has led exports, generated employment and attracted investment. There are now about 250,000 hectares under horticulture, with annual production worth more than $600 million. Foreign investors (especially Dutch and British) have played a significant role in export successes, as the success depends substantially on contacts with European buyers, the ability to meet their demanding standards for safety and quality, and success in organizing logistics (see box III.1). Local smallholders have also played a significant role in this sector. Although their role is less important than it was 10 years ago, as the large commercial farms have grown in size and numbers, they still supply much of the produce through linkages with exporters, who have provided extension services. This labour-intensive business has supported substantial employment in rural areas. Floriculture alone is estimated to employ some 50,000 people directly and a larger number indirectly. There are still many opportunities in this area. Kenya has no more than 1% of the EU-15 market share in edible vegetables and only 0.1% in edible fruits (UNCTAD forthcoming). The US market is almost unexplored, although that is mainly a function of the absence of direct flights from Kenya to the United States.

Box III.1. FDI story: Investing in horticulture

Horticulture has overtaken tourism to become the second biggest foreign exchange earner in Kenya, after tea. (Horticulture here includes flowers as well as fruits and vegetables.) Vitacress Kenya Ltd., now 10 years old, is part of this larger success story.

The company began operations in 1994 after its founding by Willem Dólleman, Gordon Murray and Vitacress Salads. Mr. Dólleman, a native of the Netherlands who came to East Africa in 1978 to work for a Dutch seed house and then stayed on, owns 30% of Vitacress Kenya and runs the operation. Mr. Murray, who supplied the land (350 hectares in Timau, 225 kilometres north of Nairobi), owns another 30%. Vitacress Salads, the largest watercress grower and marketer in the United Kingdom and Portugal, owns the remaining 40%. The total equity is about $6 million. The company has 1,500 employees, of whom only four are expatriates. The annual turnover is now $10 million.

The company mainly grows salad onions, broccoli, garden peas, sweet corn and baby leaf lettuce. The produce is sold to Marks & Spencer and Sainsbury in the United Kingdom. Vitacress Kenya does more than grow its vegetables; it also processes them to supermarket specifications, including packing and labelling. The produce is harvested early in the morning, processed by noon, trucked to Nairobi in the afternoon, flown to Europe overnight and placed on supermarket shelves the next morning.

Mr. Dólleman assesses the investor's environment as fairly risky, with poor infrastructure and complicated bureaucracy. (The company pays altogether 32 taxes!) What most needs attention in Kenya is the transport infrastructure. The port at Mombasa is a major problem, with delays and "facilitation fees". The railway is dilapidated and the roads are very poorly maintained, even in the Naivasha area, famous for its floriculture. Mr. Dólleman is also unhappy at the lack of local management. It is not so much that ability and qualifications are lacking. It is rather that Africans with the right skills cannot be persuaded to work in a farming environment. If this were not so, the company would have even fewer expatriate employees.

Overall, though, Mr. Dólleman thinks that Kenya abounds in opportunities for investors, specifically in horticulture and tourism, and that both areas would become far more attractive if roads and security were improved. In his view, perhaps the best thing about Kenya is its climate, and the Nairobi airport with its many flights by European airlines is also a strong plus. Vitacress Kenya itself plans to keep growing. If the circumstances were right, the company might diversify into floriculture.

Source: UNCTAD, based on information provided by Vitacress Kenya Ltd.

Tea

Tea has been one of Kenya's leading export commodities and accounted for about 24% of export earnings in 2003. It is also a major source of employment, with over 2 million people in tea farming, manufacturing and marketing, and in retail outlets and transport. 293,670 tons of tea were produced in the year 2003. Out of this, 262,175 tons with a value of $440 million were exported (Tea Board of Kenya, 2004).

Following the restructuring and liberalization of the tea subsector in 2000, major investment opportunities have become available in connection with tea plantations and with processing and packaging of tea for export, especially under the manufacturing-under-bond and EPZ schemes.

Coffee

Coffee has been an important export earner in the past, but its share of earnings has declined, falling from 11% in 1998 to 5% in 2003. The year 2003 saw the production of 61,225 tons of coffee (Republic of Kenya, Ministry of Planning and National Development, Central Bureau of Statistics, 2004).

Kenyan coffee could fetch higher prices if higher quality standards were achieved, mainly through improved crop husbandry and proper pulping, drying, storage, milling and grading. Opportunities for increased earnings for both local farmers and the economy as a whole could be created through increased value addition and aggressive promotion. Opportunities also exist in coffee processing and packaging, the growing of robusta coffee, and the manufacture of coal from coffee husks.

Pyrethrum

Pyrethrin is produced by pyrethrum, an aromatic plant of the daisy family that has been grown in Kenya since the 1920s. Pyrethrum powder, which contains pyrethrin, is probably the most widely used natural insecticide.

Pyrethrum is an important crop in Kenya's economy, as it offers a livelihood to approximately 200,000 households with an estimated 1 million individuals. It is also a major foreign exchange earner for the country, ranking fifth after horticulture, tea, tourism and coffee. For over 60 years, Kenya has been the leading world producer of natural pyrethrum: the country produces between 65% and 75% of all pyrethrum traded in the world in any given year (IPC, 2001).

The current value of pyrethrum exports is around $25 million a year. The Pyrethrum Board of Kenya has a monopoly on buying dry pyrethrum flowers from farmers, processing them and marketing the products. The local market consumes about 5% of the national pyrethrum production, while 95% is exported to North America and Western Europe. It is anticipated that the market will expand to encompass South America, South-East Asia and Africa (IPC, 2001).

Investment opportunities exist in seed production, plantation farming, and processing of pyrethrin insecticides and pesticides.

Livestock

The livestock sector contributes about 10% of GDP, accounts for over 30% of the farm-gate value of agricultural commodities, employs over 50% of the agricultural labour force, and earns some foreign exchange through the export of hides and skins, dairy products, live animals and canned beef (IPC, 2001).

Opportunities for investment in this sector include the production and marketing of meat and its by-products; processing of leather to meet not only domestic but also foreign demand; rearing of wild animals and production of game meat (e.g. ostrich and crocodile farming); poultry farming; provision of credit to the subsector; and the provision of affordable technologies and equipment for small-scale processing.

The dairy industry

The dairy subsector contributes 3% of the GDP. It is regulated by the Kenya Dairy Board, which is a parastatal mandated to develop, promote and regulate the industry. Currently there is a cattle population of about 13 million head, of which 3.3 million are dairy cattle and 9.7 million beef cattle (mainly zebu). Total annual milk production for 2003 was 3.1 billion litres. Small-scale farmers

numbering close to 625,000 produce 80% of the milk. This production depends on rain-fed agriculture and hence fluctuates, resulting in a surplus during the flush period from July to September. The inaccessibility of quality breeding services, animal health services and animal feeds has undermined the quality of the breeding stock.

Only 14% of the total production is marketed through milk-processing establishments, while 56% is marketed raw. There are 34 active milk processors that process close to 1 million litres per day, while the total capacity is estimated at 2.5 million litres per day. Kenya exports dairy products to the EAC region, East and Central Africa, Europe and the Middle East. The main export product is long-life (UHT) milk. Kenya has developed standards for all the dairy products produced within the EAC and COMESA regions. It is also among the developing countries from which EU member states are authorized to import milk and milk-based products.

Investment opportunities exist in the production of high-value dairy products such as powdered milk, cheese and butter; the provision of affordable small-scale processing and packaging technologies which can tap the milk currently being directed to the informal sector; the provision of quality animal breeding and health services and animal feeds; the provision of credit facilities; and the training of small-scale traders and farmers in clean milk production and handling and value addition.

Sugar

Kenya currently produces about 70% of its domestic consumption of sugar. The country has six major factories with a total annual production capacity of 550,000 to 600,000 tons. The companies operate under the umbrella of the Kenya Sugar Board, a public body charged with promoting and fostering the efficient development of sugarcane for the production of white sugar. The sugar subsector has been liberalized and price controls removed, although import controls (e.g. the 100% suspended duty on sugar imports) are still in place.

Some of the key problems affecting the industry are inefficiency, low productivity, weak management, distortions in the market, inadequate credit facilities for sugarcane development, and persistent droughts and fires. There is a need to improve the factories by increasing their efficiency through the installation of diffusers and reviving the non-operational ones. If efficiency is increased, Kenya has the potential to become self-sufficient in sugar and even to produce a surplus for export (IPC, 2001).

Opportunities exist in production of industrial refined sugar (currently imported); construction of new factories, especially in the coastal region, which, because of its early maturity period, is ideal for sugarcane production; provision of loans or credit to the small and medium-scale outgrowers; investing in any of the five factories where the Government is in the process of divesting; rehabilitation of sugar plantations and factories; and generating power and producing soft boards from sugarcane by-products.

Oil crops

Kenya imports over 95% of its total edible oil requirements (mainly palm oil from Malaysia), which are estimated to be 200,000 tons and cost the country $90 million p.a. (IPC, 2001). Many oilseeds can be commercially grown in Kenya, but the main ones are sunflower, simsim, soya beans, rapeseed, coconut, castor and groundnuts.

A strong oilseed-processing industry would be needed to stimulate the local production of oilseeds and bring the installed capacities into full use. The Government has put into place fiscal measures to encourage the import of oilseeds as raw materials rather than processed products (crude and refined oils). Opportunities for investment include oil crop plantations, oil processing and high-quality packaging for export.

Fishery

The fisheries subsector contributes about 5% of GDP and employs over 60,000 people directly, with an additional 5,000 people indirectly dependent on the industry (IPC, 2001). There are three types of fish farming in Kenya: warm-water farming (tilapia, bass and common carp); cold mountain farming (trout); and coastal saltwater farming (mainly prawns). Lake Victoria produces over 90% of the fish in Kenya, the dominant species being the Nile perch, which is used for filleting. There are 25 fish-processing factories in Kenya, with a total processing capacity of 25,000 tons yearly.

There are opportunities in the fishery sector in deep-sea fishing, including technical support; financing of processing plants; fish farming, particularly of prawns in the coastal region; and export-oriented investment that targets the European market.

Tourism

The tourism sector is critical to the Kenyan economy. It was the leading foreign exchange earner before it was overtaken by horticulture and tea, and accounted for 15.9% of export earnings and 9% of exchequer revenue in 2003. Tourism receipts in 2002 were just under $300 million (see Table III.3) and increased to $344 million in 2003. This increase was encouraging, as it occurred despite the travel advisories issued by countries like the United Kingdom. The United Kingdom has since lifted its advisory (see the box on security in Chapter I).

Kenya offers some of the finest natural attractions in the world, combined with a network of hotels and game lodges that give visitors good value for their money (see Box III.2). With its national parks, game reserves, marine parks, biosphere reserves, archaeological sites and pearly beaches, Kenya is a natural tourism magnet. The most popular tourist attractions in Kenya are the wildlife and the beaches. Others include museums, snake parks and historical sites. However, many of these resources remain largely unexploited.

Kenya received 1,146,100 international visitors in 2003, of whom vacationers accounted for 60%, business visitors 16% and transit visitors 19%.

AJOR AGRI EXPORTS (

COMMODITY	1999	2000	2001	2002	2003
Coffee (unroasted)	71 581	86 982	63 608	49 479	58 650
Fish and fish preparations	15 951	16 855	18 536	18 252	19 462
Horticulture (fruits, flowers and vegetables)	200 624	193 918	193 230	262 931	346 136
Maize (raw)	40 520	448	420	158 763	3 128
Tea	260 177	217 282	270 473	272 707	262 175
Pyrethrum extract	623	165	235	81	123
Sisal	16 830	16 753	17 857	19 482	21 723
Wheat flour	21 288	11 049	8 845	1 793	345

Source: Republic of Kenya, Ministry of Planning and National Development, Central Bureau of Statistics, 2004.

TABLE III.3. INTERNATIONAL TOURISM

COUNTRY	NUMBER OF ARRIVALS		RECEIPTS			
	Thousands		Percentage of total exports		Millions of current $	
	1995	2002	1995	2002	1995	2002
Burundi	34	36[a]	1	3	1	1
Ethiopia	103	148[a]	3	8[a]	26	75[a]
			16	*9*	*486*	*297*
Rwanda	..	113[a]	3	23	2	31
Sudan	63	52	3	3[a]	19	56[a]
Tanzania	285	550	20	47	259	730
Uganda	160	254	12	26	78	185
Zambia	163	565	..	11[a]	47	117[a]

Source: Adapted from the World Bank (2004a).
[a] Figure for 2001.

Germany leads among the main tourist-generating countries, followed by the United Kingdom, Italy, the United States and France (in that order). These are the traditional tourist markets for Kenya. The Government's policy now is to diversify both products and markets. Marketing attention is particularly being directed to the Far East – China, Hong Kong (China), Japan, the Republic of Korea, and so on. In 2004, Kenya Airways launched direct flights from Nairobi to Hong Kong via Bangkok.

Efforts are also being made by the Ministry of Tourism and Wildlife, the Kenya Tourist Board and other stakeholders to penetrate the domestic tourism market. Churches and educational institutions are also promoting leisure, educational, retreat and research travel. All of these are expected to contribute to the expansion of eco-tourism activities at the local level and encourage inter-regional travel. Once the domestic tourism market is developed, it can act as a safety net against any slump or disruption in the international market. Kenya is also being promoted as a Meetings, Incentives, Conferences and Exhibitions (MICE) venue.

In addition, the Government, in cooperation with tourism stakeholders, has embarked on the formulation of a new tourism policy and a tourism development plan. The legislation and regulatory framework affecting private-sector operations is being reviewed to provide a more hospitable environment for investors. A tourist police unit and an anti-terrorism squad are already in place.

As a result, there are a number of investment opportunities in the sector. In addition to the traditional beach and safari products, the Ministry of Tourism and Wildlife would like to see the industry diversify into new products, circuits and source markets. There is scope to open new tourist circuits; promote new products such as conference tourism, sports tourism, retirement tourism, eco-tourism, cultural tourism and cruise tourism both on the coast and in Lake Victoria; and invest in lodges and hotels to cater for visitors on the new circuits.

Box III.2. FDI story: Investing in tourism (hospitality)

Serena Hotels is a chain operating in the East African region, with its main focus on Kenya, where it has seven properties (in Nairobi, Mombasa, Amboseli and Mara, among others). In Tanzania, it owns five properties (in Lake Manyara, Ngorongoro, Serengeti and elsewhere), and in Uganda it recently bought the old Nile Hotel, which is undergoing renovation and will open for business as the Kampala Serena in February 2006. The Serena hotels and lodges are distinguished by the quality of their service and their attention to local tradition in architecture and decor. In Kenya, Serena Hotels have had an average annual turnover since the mid-1990s of about KShs 1.2 billion (about $15 million). The number of employees is 1,100, including *one* expatriate. The company recognizes its employees as its greatest single asset.

The Serena chain is owned by Tourism Promotion Services Limited (TPSL). TPSL has operated in Kenya since 1971 and floated nearly 39 million shares on the Nairobi Stock Exchange in 1997. The shares, then valued at KShs 13 each, now trade at KShs 50 each. TPSL is in turn majority-owned by TPS Holdings, a company incorporated in Kenya and in turn majority-owned by the Aga Khan Fund for Economic Development (AKFED), which is incorporated as a commercial entity under Swiss law. AKFED, founded in 1984, is the only for-profit entity in the Aga Khan Development Network (AKDN), also based in Switzerland, and sees its aim as going beyond profits to encompass employment creation, human resource development, and the preservation of natural and cultural assets. AKDN has a history in East Africa going back to the late nineteenth century.

According to Mr. Mahmud Jan Mohamed, Managing Director of Serena Hotels in East Africa, tourism boomed in the 1970s and 1980s in Kenya, leading, among other things, to an oversupply of hotels and an undersupply of quality. The situation changed in the 1990s, as the economy was liberalized, inflation rose and Government expenditures on such items as infrastructure fell. (The terrorism incidents in Nairobi and Dar es Salaam in 1998 and in Mombasa in 2002 did not help tourism either – see the box on security in Chapter I.) Since then, the industry has recovered, although the investor's environment remains difficult on account of corruption, insecurity, poor infrastructure and the high cost of doing business. Nairobi in particular, with its severe image problem, represents a lost opportunity, according to Mr. Jan Mohamed.

As to what needs Government attention, Mr. Jan Mohamed thinks more focus is needed on developing new areas of potential interest to tourists – for example, Lake Victoria and the North Rift Valley – as well as on changing the image (and in part the reality) of Kenya as an insecure and expensive place. There *have* been improvements, in tourism management and in the promotion of Destination Kenya, but much more needs to be done. The company sees the main advantages for an investor in East Africa as the workforce and the weather in Kenya and good tourism planning and management in Tanzania. TPSL welcomes the movement towards regional integration in East Africa, although the pace can be frustratingly slow. It would also like to see much more quality foreign investment in the tourism business.

Source: UNCTAD, based on information provided by Serena Hotels.

Other opportunities

Mining

According to the Ministry of Environment and Natural Resources, Kenya has unexplored potential for the discovery of minerals, although several important minerals spread over various localities in the country are currently being mined.

Broadly, Kenya's mining map comprises four belts. One is the under-exploited, gold-rich Greenstone belt in western Kenya (which is linked to the lucrative mining belts currently under heavy exploitation in Tanzania). Another is the Mozambique belt, which passes through central Kenya and is the source of Kenya's unique gemstones. The Rift belt is the best known; its resources include soda ash, fluorspar and diatomite, as well as Kenya's considerable geothermal resources. Finally, the coastal belt captures the Tiomin investment, as well as ongoing offshore oil exploration efforts.

Oil exploration

Kenya uses a huge chunk of its hard-earned foreign exchange on oil imports, which could productively go elsewhere if oil were found locally. In a bid to find oil within its borders, the Government set up the National Oil Corporation of Kenya under the Ministry of Energy in 1985 and vested in it the responsibility for petroleum exploration and production.

Kenya's petroleum potential lies in four largish sedimentary basins: Anza, Mandera, Tertiary Rift and Lamu. Since exploration started in 1954, 30 wells have been drilled in the four basins. The seismic, gravity and aeromagnetic data and cores with drill cuttings retrieved during exploration from 1960 onwards are available for use by explorers.

Oil exploration is governed by the Petroleum (Exploration and Production) Act (Chapter 308), which includes a Production Sharing Contract (PSC) model. Kenya has no signature bonuses and no tax payments, as corporate taxes are payable by the Government through its "take". Kenya is an ideal location for investors interested in frontier exploration acreage opportunities. The Government may elect to participate in any development area up to a maximum of 10%. The percentage is negotiable.

Promotional efforts have generated new interest in the offshore Lamu basin and resulted in the signing of seven PSCs. Over 8,000 kilometres of 2D seismic data have been acquired offshore, and the prospects look encouraging. Some acreage, released under the existing PSCs, is available to investors. On the onshore basin, all 13 blocks are currently available for leasing, as is one block offshore.

Manufacturing

In 2002–2003, the manufacturing sector contributed about 19% of Kenya's GDP (Republic of Kenya, Central Bank of Kenya, 2004). Kenya has traditionally been an exporter of a variety of manufactures to the East African region. For major manufactured exports, see table III.4 below. More recently, it has begun to export garments to the US market (see the following section). A wide range of opportunities for direct and joint-venture investment exist in the manufacturing sector, including the manufacture of textiles and garments, the assembly of automotive components and electronics, and the manufacture of tyres, plastics, paper, chemicals, pharmaceuticals, and metal and engineering products for the domestic and export markets.

Box III.3. Kenya's oil prospects

East Africa's Indian Ocean coast stretching from Madagascar to Kenya, previously thought to hold some gas but little oil, is now being flagged as a potential hot spot. Already the United Kingdom's Dana Petroleum and Australia's Global Petroleum have teamed up to explore the four blocks allocated to them in Lamu. Three other blocks have been jointly allocated to two Australian firms, Pan Continental Oil & Gas and Afrex, which will start sinking the first test well in 2005. Another Australian company, Woodside Energy, has been active in the Lamu area collecting seismic data that will be crucial in the first phase.

Source: *Africa Oil and Gas* magazine, April 2004.

TABLE III.4. EXPORTS OF MAJOR MANUFACTURED PRODUCTS

COMMODITY	UNIT	1999	2000	2001	2002	2003
Animal and vegetable oils	Tons	31 651	23 056	29 161	43 064	47 534
Essential oils	Tons	36 380	16 212	17 771	23 624	78 878
Footwear	Thousand pairs	30 113	28 747	33 570	37 614	106 845
Insecticides and fungicides	Tons	2 156	1 859	2 379	1 725	1 531
Iron and steel	Tons	77 372	64 891	91 900	96 663	90 326
Leather	Tons	3 899	5 915	3 847	4 334	4 898
Malt beer	Thousand litres	7 978	2 142	880	535	17 269
Pharmaceutical products	Tons	3 621	3 149	3 549	3 974	3 871
Metal containers	Tons	1 969	645	822	1 131	1 880
Metal scrap	Tons	2 096	2 332	2 268	2 210	2 884
Paper and paperboard	Tons	14 074	13 874	14 671	15 066	30 974
Petroleum products	Million litres	765	1 155	845	338	3
Textile yarn	Tons	1 361	2 814	2 142	2 192	1 854
Tobacco and tobacco manufactures	Tons	6 706	8 452	13 659	15 078	12 368
Wire products	Tons	3 629	2 301	2 294	2 322	2 196
Wood manufactures	Tons	1 814	2 110	2 182	2 153	1 664

Source: Republic of Kenya, Ministry of Planning and National Development, Central Bureau of Statistics, 2004.

Textiles and apparel

Within two years of qualifying for the African Growth and Opportunity Act (AGOA), Kenya's exports of clothing and investment in the textile sector have experienced a remarkable growth. There is a cotton-textile-apparel supply chain in place, but only the apparel part of it can be said to be thriving or competitive. Cotton production is insufficient, and the capacity to produce high-quality fabric is lacking. The option of sourcing fabric from other AGOA-eligible sub-Saharan African countries is limited, since the region does not meet the fabric requirements of its apparel subsector because of supply constraints and poor quality. For quality fabrics to be supplied locally and competitively, substantial capacity building in the lower parts of the cotton-textile chain would be required (see Box III.6 on AGOA and export opportunities).

Metal, steel and iron

The country possesses a broad-based metal products industry with various independent engineering, foundry and metalwork shops. Opportunities exist in the development of a nucleus foundry making precision castings that can then be processed into precision components, aluminium cans, high-strength reinforcement bars, ductile iron rolls, and so on.

Vehicle parts and assembly

The number of new motor vehicle registrations has been increasing, with about 34,000 vehicles registered in 2003 (Republic of Kenya, Ministry of Planning and National Development, Central Bureau of Statistics, 2004). Products such as tyres, tubes, batteries, springs, radiators, brake pads, cables, rubber components and filters are now produced locally, with a number of firms fabricating bodies for commercial vehicles. General Motors East Africa (see box III.4 below) has a supply chain development programme and buys close to $20 million worth of local supplies. There are opportunities in the manufacture of components for use by local assemblers and for export to regional markets.

Electronics and electrical equipment

Although Kenya's electronics industry is still in its infancy, a number of firms in the assembly, testing, repair and maintenance of electronic goods are in operation and are rapidly increasing their scope to meet the growing demands of the industry. Investment potential can be found in the production of motors, circuit breakers, transformers, switch gears, irrigation pumps, capacitors, resistors, insulation tape, electrical fittings, integrated circuit boards, and a wide range of other electronic goods.

Plastics, chemicals and pharmaceuticals

The plastics industry is well developed and produces goods made of polyvinyl chloride (PVC), polyethylene, polyestyrene and polypropylene. A number of pharmaceuticals are produced locally in the form of tablets, syrups, capsules and injectables, but the bulk is imported. Many opportunities in the manufacture of chemicals, pharmaceuticals and fertilizers remain unexploited. These include the production of PVC granules from ethyl alcohol; formaldehyde from methanol; melanine and urea; mixing and granulating of fertilizers; cuprous oxychloride for coffee bean disease; caustic soda and chlorine-based products; carbon black; activated carbon; precipitated calcium carbonate; textile dyestuff; ink for ballpoints; and gelatin capsules.

Box III.4. FDI story: Investing in manufacturing (automotive)

General Motors East Africa has been in Kenya since 1977. (It was known as General Motors (Kenya) Ltd. until March 2004.) The company is a manufacturing and marketing operation, with 57% of the shares owned by General Motors, a US company, 38% held by the Government of Kenya and the remaining 5% held by the Itochu Corporation of Japan. The annual turnover is about $120 million and the number of employees 400, of whom only three are expatriates, including the Managing Director and the Chief Financial Officer.

GM East Africa came to Kenya because the country offered attractive import substitution incentives in the 1970s. It was the first company to spread modern manufacturing into Africa (Egypt, Kenya, Tunisia). It assembles vehicles and manufactures parts in Kenya, and markets products assembled in Kenya and elsewhere in Africa. For example, it recently sold 50 pick-up trucks made in Egypt to Rwanda. Its distribution network covers Kenya, Tanzania and Uganda (the three members of the East African Community) as well as Burundi and Rwanda. In addition to using imports for its assembly, GM East Africa buys substantial quantities of local supplies (worth $19 million in 2003) and has put in place an extensive supply chain development programme.

Asked how he assesses the investment climate, Mr. William Lay, the Managing Director, says he thinks this is a good time to get into Kenya. Locally produced buses in particular offer a good opportunity. Kenyan-made vehicles enjoy a substantial advantage, in his view, given the nature of Kenya's roads. As for the trend in key areas (e.g. infrastructure or governance), Mr. Lay thinks it is positive but slow. The main challenges GM East Africa has itself faced over the years have had to do with the unpredictability of Government policies and fluctuations in the Kenya shilling's exchange rate.

Mr. Lay shares the priorities of most investors in Kenya: security, infrastructure, the cost of energy. Difficulties related to these not only put off potential investors, they also affect the scale and productivity of existing enterprises. Agriculture, for instance, is a key industry and one that has enjoyed considerable export success in recent years; yet it is also seriously and adversely affected by the dilapidated infrastructure, especially road conditions.

The company has a 30% market share in commercial vehicles sold in the East African Community: buses, pick-up trucks and matatus (a privately operated cross between a taxi and a bus). The locally assembled Isuzu matatus in particular have been a great success. The company strongly welcomes the planned regional integration that has begun with the EAC Customs Union Protocol coming into effect on 1 January 2005, although it is concerned that implementation will be slow. Overall, GM East Africa has a very positive vision of its future. It sees itself as being in for the long haul and plans to increase its investment so as to remain the regional market leader. (In August 2004, it announced plans to expand its plant in Nairobi.) As for Kenya's greatest asset as an investment location, it is clearly, in Mr. Lay's view, its human capital: a well-educated workforce with a strong work ethic.

Source: UNCTAD, based on information provided by General Motors East Africa.

Infrastructure

Port facilities

The Government's reform programme envisages the transformation of the Kenya Ports Authority (KPA) into a landlord authority where KPA will relinquish most cargo handling and complementary services to the private sector. Investment opportunities therefore exist in conventional cargo operations (stevedoring of non-bulk liquid containerized cargo, which is about 10% of the total port traffic); container transport (investment in dedicated wagons, locomotives and communication equipment); cruise ships; dockyard facilities; a bunkering pipeline; a second container terminal; the development of a second port; inland container depots; computerization; estate management; and equipment and gear.

The annual consumption of liquefied petroleum gas (LPG) is about 40,000 tons, while the potential demand is estimated at about twice as much. The supply and distribution of LPG has been constrained by the limitations of import handling and storage facilities. There is also a need for additional tankage for handling fuel products.

Water

Though the Government has put great effort into developing water supplies countrywide, the coverage is still not satisfactory and, even in the areas where there *are* water supplies, they are in urgent need of rehabilitation and augmentation. Current estimates of the water supply coverage indicate that 75% of the urban population has access to safe drinking water while only about 50% of the rural population does – from various schemes including piped water, boreholes, protected springs, pans and dams. (Ministry of Trade and Industry, 2002.)

One major area needing improvement is the management of the water utilities, and private-sector involvement is welcome to improve their efficiency and accountability. There are still quite a number of urban centres that require the development of new facilities, as the existing facilities can no longer cope with the demand. With the new policy advocating the user-pays and polluter-pays principles, the development of these facilities could be undertaken as viable business ventures.

Waste management

In recent years, all urban centres have recorded an increase in both the levels and the diversity of municipal waste. The treatment works installed in most urban centres were initially intended for simple human and vegetable waste. Today, most installations cannot cope with the volumes of effluent or the complex mixtures discharged into them. There is thus ample scope for additional capacity and new treatment approaches to cope with the ever-increasing types of wastes, which means investment opportunities at the local authority level.

Energy

The Government has formulated a power development strategy to build a reliable and self-sufficient system by exploiting the country's hydropower potential and enhancing the transmission and distribution system. The aim is to provide electricity to all parts of the country, and the electric power subsector is being restructured accordingly, to attract private investment and improve operational efficiency. There are currently four independent power producers who account for about a fifth of the total electricity production.

Since the liberalization of power generation in 1994, projects earmarked for development by the least-cost-development criterion have been offered for implementation on the basis of international competitive tenders. These projects cover geothermal energy, hydropower, oil-based thermal energy and the like.

Insurance

Although the insurance industry is well represented in Kenya, with some 40 firms in operation, the penetration ratio is very low, premiums being less than 1% of GDP. According to at least one foreign investor, the calibre of employees also creates opportunities for competitive world-class service provision (see Box III.5).

Box III.5. FDI story: Investing in insurance

Old Mutual Kenya (OMK) is a subsidiary of UK-based Old Mutual plc, a leading international financial services group with 2003 revenue of a little under $20 billion. The company was set up in Cape Town in 1845 and moved its head office to the United Kingdom in 1999. OMK is in the life insurance, asset management and unit trust business. Old Mutual plc has invested $18 million in OMK, which is 63% of the total equity, the rest being held by over 2,000 Kenyans. The parent company sold its first insurance policy in Kenya in 1902 and opened an office in the late 1920s. OMK had $625 million in assets under management in mid-2004 and has seen 40% growth over the last year. There are 46 employees, two of them expatriates, and 128 exclusive or "tied" agents.

Mr. Stewart Henderson, the Chief Executive Officer, says Kenya offers a good niche market for the company, although the investor's environment is difficult in several ways. For example, the regulatory framework for the insurance industry is obsolete – the Company Act dates from 1948. OMK is helping to modernize it. It has faced a serious challenge in getting the Unit Trust Act enacted and getting the Retirement Benefits Authority Act changed from a Chilean model to a capitalist one. Security is another major concern, though Mr. Henderson (who is himself South African) thinks Nairobi is not as bad as Johannesburg. The law is not upheld as it should be and corruption in the judiciary is widespread, as indicated by the recent withdrawal of US anti-corruption assistance in the face of inadequate efforts by the Government. Like most investors, Mr. Henderson cites the cost of doing business, primarily a function of poor infrastructure, as a big disincentive.

In the end, he thinks investors' difficulties can all be traced to governance, which is what overwhelmingly needs the Government's attention. Kenya's investment potential is large but blocked. When Mr. Henderson is asked what he likes best about the country, his answer is 'people'. The ability and creativity of Kenyans is the country's principal asset. OMK takes great pride in its team and the calibre of its staff and management, who are meeting customer needs in a dynamic environment.

Though there are some 40 insurance companies in Kenya, Mr. Henderson sees no threatening competition. The standards of OMK's performance, ethics and corporate governance are the company's principal advantage against its competitors. As for the company's initiatives and plans, it has recently launched a fairly radical product on the African market, one that offers different components to the investor, ranging from savings to pure risk such as death, disability, accident or funeral coverage on an individual cost-transparent basis. The product is very versatile and the first of its kind outside of South Africa. In the medium term, the company is looking to expand regionally, including as far as Egypt. Mr. Henderson also believes that the skill and enterprise of his workforce offer the company the opportunity to turn into a world-class player as a service provider, managing unit trusts and other financial services. OMK welcomes the movement towards regional integration in East Africa.

Source: UNCTAD, based on information provided by Old Mutual Kenya.

EPZs and related matters

Export processing zones (EPZs)

The EPZ Act (Chapter 517 of the Laws of Kenya) was passed in 1990 and created the Export Processing Zones Authority (EPZA) as the regulatory body. By 2004, there were 36 EPZs in operation or under development. Most are close to Nairobi or Mombasa, with the largest at Athi River, 25 kilometres from Nairobi. The number of companies the EPZs attracted grew slowly to 18 by 1998 and then rose sharply as the African Growth and Opportunity Act (AGOA – see Box III.6) was passed by the US Congress in 2000. By 2004, there were 70 companies in the EPZs, employing 40,000 people. Most of these companies were in the garment industry, although the largest single investment is by a company in the currency and security printing business (De La Rue, $48 million).

The Kenyan EPZs offer investors a variety of advantages, including the fiscal incentives described below. They also offer administrative speed and simplicity (the single-licence facility) and superior infrastructure without the quality and reliability problems that can hamper investors elsewhere in Kenya.

Fiscal incentives

Fiscal incentives offered by the government to EPZ investments and registered and approved venture-capital-fund investments include 10 years' tax holiday and a flat 25% tax for the next 10 years; exemption from all withholding taxes during the first 10 years; exemption from import duties on machinery, raw materials, and inputs; no restrictions on management or technical arrangements; and exemption from stamp duty and from the VAT on raw materials, machinery and other inputs.

Manufacturing under bond

This scheme was established in 1986 and is aimed at encouraging investors to manufacture for export. At the moment, the designated locations for the scheme are Nairobi, Mombasa, Kisumu, Thika, Eldoret, Nakuru and Nyeri. All applications under the scheme are processed by the Kenya Investment Authority (see box IV.1). Approved enterprises operating in the designated areas enjoy the following benefits: exemption from duty and VAT on imported plant, machinery, equipment, raw materials and other inputs; 100% investment allowance on plant, machinery, equipment and buildings; and exemption of the products from export taxes and levies.

Duty remission facility

The Export Promotion Programmes Office was set up in 1992 under the Ministry of Finance to administer the duty remission facility. Materials imported for use in manufactures for export or for the production of raw materials for use in export manufactures are eligible for duty and VAT remission. The programme 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.

Box III.6. AGOA and export opportunities

The *African Growth and Opportunity Act* (AGOA) was signed into law on 18 May 2000. It is meant to encourage market forces in African countries by offering these countries the most preferential access to the US market available outside of free trade agreements. The Act covers some 6,400 items, including textiles and apparel. The *AGOA Acceleration Act*, signed into law on 12 July 2004 and known as AGOA III, extends this preferential access until 30 September 2015. It also extends the third-country fabric provision[1] by three years, from September 2004 to September 2007.

Eligibility for AGOA benefits is determined annually on the basis of a review by a committee chaired by the United States Trade Representative (USTR). The criteria require that the country have established or be making progress towards establishing, *inter alia*, a market economy, the rule of law, policies to reduce poverty, and a system to combat corruption. In 2004, 37 sub-Saharan countries qualified, including the three members of the East African Community: Kenya, Tanzania and Uganda.

Trade between sub-Saharan Africa and the United States is not large, with the former accounting for less than 1% of US merchandise exports and less than 2% of imports, but it is increasing. In 2003, US imports from sub-Saharan Africa rose by 43% to $25.6 billion. Of this, 55% were AGOA imports, most of them in turn being petroleum products. Of the remainder, textile and apparel products accounted for $1.2 billion. AGOA provides duty-free and quota-free treatment for eligible apparel articles made in qualifying sub-Saharan African countries through 2015. Among the qualifying articles are apparel made of US yarns and fabrics; apparel made of sub-Saharan African (regional) yarns and fabrics, subject to a cap; apparel made in a designated lesser-developed country of third-country yarns and fabrics, subject to a cap; and eligible hand-loomed, handmade or folklore articles and ethnic fabrics.

Of the EAC members, Kenya has advantages in this field, as is suggested by the 30-plus companies, mainly from Asia, that have set up shop in the EPZ near Nairobi. In 2003, Kenya was the third largest AGOA apparel exporter in sub-Saharan Africa at $184 million, and AGOA-related new jobs in the country number about 30,000.

Although garment exports offer an opportunity in the EAC, the medium-term future of this industry is unclear. Two factors need to be taken into account. The first affects the potential for exports to any destination; the second the potential for exports specifically to the United States. The first factor is the ending of the Multifibre Arrangement (MFA) on 1 January 2005. The MFA imposed quotas on garment exports by developing countries to the markets of developed countries. One of the consequences of this system was that efficient producers (e.g. in the Republic of Korea), after filling their quotas, invested in other countries that still had unfilled quotas (e.g. Bangladesh). The cut-make-trim (CMT) garment industry in several LDCs owes its genesis to the MFA. With the MFA gone, competition is now open, and China looms as a very large competitor. The second factor is the condition regarding third-country fabric provision in AGOA (see footnote below), which expires in 2007. Unless it is extended again and again, the EAC partners (along with other sub-Saharan countries) will need to develop a high-quality price-competitive textile industry that could supply the fabric needed to make garments for export under AGOA. This will in turn require a targeted effort to attract FDI in textiles, which is not thus far apparent.

[1] The preferential treatment available under AGOA for garments is intended primarily for garments assembled in a beneficiary country from fabric (1) sourced from the United States or (2) produced in the beneficiary country. This requirement is waived for "lesser-developed countries" (in effect, most countries in sub-Saharan Africa) until September 2007, allowing them to use fabric from any other ("third-country") source.

Source: UNCTAD, based on information from the AGOA website (http://www.agoa.gov/index.html), Office of the United States Trade Representative (2004), the *Financial Times* and other sources.

Tourism has long been an important industry in Kenya and has successfully capitalized on the country's assets – not only the natural ones like the beaches, the wildlife and the weather, but also the great human asset of an excellent workforce. However, much potential still remains for investors to exploit. For example, neither Lake Victoria nor the Rift Valley has received anything like the attention it deserves. The Serena group has a very positive view of its own future and would be delighted to see more investors join us.

Mahmud Jan Mohamed, Managing Director,

Serena Hotels (East Africa)

Legal and judicial system

History and basis

The Kenyan legal system is founded on English Common Law principles, and many of the statutes originated in the colonial era. Company and investment law is centred on the Companies Act, which is almost a replica of the English Companies Act of 1948. The Income Tax Act (Chapter 470) is modelled on the tax law applicable in the United Kingdom prior to the introduction there of corporate tax.

The principles of the law of contract, agency, bailment, tort and trust in Kenya are substantially similar to those applying in the United Kingdom. However, the regulatory aspects applicable to the establishment and maintenance of industrial energy efficiency projects are often peculiar to local circumstances and therefore different from those applicable under UK and other foreign laws.

The National Assembly approves legislation that becomes law once signed by the President. In many instances, individual laws enable the Minister responsible for a particular aspect of public life to make specific regulations. In Kenya, the Minister for Trade and Industry is responsible for most matters relating to investment, while the Minister for Finance handles fiscal, monetary and related matters. In other instances, the regulatory authorities issue rules to cover particular aspects within their jurisdiction.

The several sources of the laws that govern various judicial institutions include the Constitution (1992), which is written, and other written laws including the common law, the doctrines of equity and the statutes of general application in force in the United Kingdom on 12 August 1897, and the procedure and practice observed in courts of justice in the United Kingdom at that date – in addition to applicable customary law. The common law, the doctrines of equity and the statutes of general application apply only in so far as the circumstances of Kenya apply and its inhabitants permit. The Constitution is the supreme law.

Judicial aspects

The official language of the courts is English. Written submissions of cases and the arguments have to be in English, although the courts are entitled to accept documents in other languages, provided an English translation is attached.

The judicial system has the Court of Appeal at its apex, the High Court immediately below it and then the Subordinate Courts consisting of the Kadhis' Courts, the Resident Magistrate's Courts, the District Magistrate's Courts and the Court Martial (for members of the Armed Forces).

The practice and procedure of the Court of Appeal are regulated by rules made by the Rules Committee constituted under the Appellate Jurisdiction Act. The Court has no original jurisdiction and only hears appeals from the High Court of Kenya.

110 District Magistrate's Courts are established for the 46 districts in Kenya by section 7(1) of the Magistrate's Courts Act. The Chief Justice may, by notice in the *Gazette*, extend the areas of jurisdiction of a district magistrate by designating any two or more districts a joint district.

Corruption and inefficiency have reduced the credibility of the legal and judicial system in Kenya. These deficiencies of the system have also been an obstacle to investment in Kenya. Existing local investment has difficulty expanding, and new investment finds it difficult to locate in Kenya. The Government has called for zero tolerance for corruption and for major reforms in the judicial and legal systems (see Box I.2).

The Judicial Service Commission, chaired by the Chief Justice, plays an important role in overseeing the organization and functioning of the judiciary. The power to appoint judges of the High Court and the Court of Appeal is vested in the President (although the Judicial Service Commission plays an active role in advising him or her on the appointments), while the Commission directly appoints magistrates. The disciplining of magistrates is vested in the Commission, while that of judges lies with the President, who acts on the recommendations of disciplinary judicial tribunals set up under the Constitution.

The Advocates Act (Chapter 16, Laws of Kenya) restricts the practice of law in Kenya to Advocates admitted as officers of the High Court and holding annual practising certificates. The admission of Advocates is restricted to citizens of Kenya who have passed the qualifying examinations. Foreign advocates are not entitled to practise in Kenya unless they are instructed and accompanied by a Kenyan advocate, although a foreign advocate may practise as an advocate for the purposes of a specified suit or matter if appointed to do so by the Attorney General. All advocates in private practice are members of the Law Society of Kenya, while those in public service need not be.

Unlike some other countries, Kenya does not have a split in the legal profession between those who carry on litigation and those who do other legal work: Kenyan advocates do both. Commissioners for oaths and notaries public must be practising advocates and are appointed by the Chief Justice of Kenya. In the case of notaries public, they must have practised for not less than five years before their appointment, while the requirement for commissioners for oaths is three years.

Legislative aspects

The Constitution vests legislative power in the National Assembly. Once the National Assembly passes a bill, it is presented to the President for assent. On the President's assent, the Act becomes law, and it is operative on publication in the *Kenya Gazette*.

Much legal reform is currently taking place. Several major bills are currently before Parliament, including the Privatization Bill and the Public Procurement and Disposal of Public Assets Bill, which are both vital to Kenya's economic recovery. The Financial Management and Accountability Bill passed in 2004.

Administrative aspects

The Public Officers Ethics Act requires all public officers to declare the quantity and sources of their wealth every year. It has also led to the establishment of codes of conduct for all public officers in various Government departments and the main organs of the State: the Parliament, the Executive and the Judiciary. The Government has reviewed the salaries of public officers including judges, magistrates, teachers and other civil servants and has raised them to reasonable levels.

Protection of person and property

The Constitution guarantees the protection of life and property under sections 71 and 75 respectively. These guarantees are also protected under the Penal Code (Chapter 63, Laws of Kenya), and their violation is actionable in criminal law. Insecurity has been a major concern to many investors in Kenya (see Box I.2 in Chapter I). The Government has taken action to address this through the improved recruitment and training of police officers and community policing.

Dispute resolution

The legal system in Kenya is adversarial, and most disputes are resolved through litigation in court, although arbitration and alternative dispute resolution are becoming increasingly popular. The Government's Economic Recovery Strategy (see Chapter I) expressly encourages the mechanisms of mediation and negotiation. The Arbitration Act governs arbitration. Parties opting to refer their present or future differences to arbitration must make an arbitration agreement. The authority of an arbitrator appointed by virtue of such an agreement is irrevocable, except by leave of the High Court or unless a contrary intention appears in the agreement.

The Foreign Judgements (Reciprocal Enforcement) Act (Chapter 43, Laws of Kenya) provides for the enforcement in Kenya of judgements given in other countries that accord reciprocal treatment to judgements given in Kenya. The countries with which Kenya has entered into reciprocal enforcement agreements are Australia, Malawi, Seychelles, Tanzania, Uganda, the United Kingdom and Zambia. Without such an agreement, a foreign judgement is not enforceable in the Kenyan courts except by filing suit on the judgement.

Kenyan courts would, as a general rule, recognize a governing-law clause in an agreement that provides for foreign law. However, the selection of such a law must be real, genuine, *bona fide*, legal and reasonable. A Kenyan court would not give effect to a foreign law if the parties intended to

[1] Part of the rationale behind the new minimum capital requirement is to protect small domestic businesses in certain areas, though it is unclear that the Act will achieve this. In any event, the requirement is likely to deter investment in services as well as other sectors. UNCTAD has urged flexibility in the short run and changes to the law in the medium run (UNCTAD, 2005, forthcoming).

apply it in order to evade the mandatory provisions of a Kenyan law with which the agreement has its most substantial connection and which, for this reason, the court would normally have applied.

Institutional framework

A new investment law, superseding the Investment Promotion Centre Act of 1986, which it repealed, was passed by Parliament and assented to by the President in December 2004. Called the Investment Promotion Act, 2004, it came into force on publication in the *Kenya Gazette Supplement No. 87* on 3 January 2005. The purpose of the act is "to promote and facilitate investment by assisting investors in obtaining the licenses necessary to invest and by providing other assistance and incentives".

The principal features of the Act include the following:

- The Act defines "foreign investor" and "local investor" and specifies that the former must have an investment certificate granted under the Act in order to invest in Kenya. A local investor does not require such a certificate but must register with the KIA (the second bullet below).

- The Act reconstitutes the existing Investment Promotion Centre (IPC) as the much more powerful Kenya Investment Authority (KIA), with the mandate to promote and facilitate investment by, among other things:

  - issuing investment certificates;
  - assisting investors in obtaining licenses, permits, incentives and exemptions;
  - providing information on investment opportunities and sources of capital; and
  - advising the Government on improving the investment environment.

  (See Box IV.1 below.)

- A foreign investor is required to invest a minimum of $500,000 or the equivalent. (A local one must invest KShs 5 million or about $65,000 to be eligible for an investment certificate.) Most current foreign investors do not cross the threshold of $500,000 but their status is unaffected, as the law cannot be retroactive. If, in addition, they hold a general authority issued under the previous act, that authority will be continued as an investment certificate under the present act.[1]

- An investment certificate may be granted by the KIA to a foreign investor who invests the minimum if it believes the potential investment to be beneficial to Kenya, as judged by such criteria as its positive impact on employment, skill upgrading, transfer of technology, foreign-exchange generation, tax revenue enhancement, and the like.

- The KIA is expected to make and communicate its decision regarding an investment certificate with some dispatch: within 25 working days after receiving a complete application unless there are special reasons (related, for example, to security or the environment) requiring referral to a third party. Should the KIA fail to act within 25 days, the investor may complain to the Minister of Trade and Industry, who in turn is required to investigate the matter and communicate the decision within 15 working days.

- An investment certificate granted under the Act offers investors some important benefits, the principal one having to do with Kenya's rather extensive licensing requirements. The Second Schedule of the Act specifies 71 licences! The holder of an investment certificate is entitled to the initial issuance of all of these that are required for his or her operations and spelled out in the certificate – barring any special legal provision to the contrary, which the KIA is required to check. Until the licences are actually issued, and for a maximum period of 12 months after the issuance of the certificate, the licences are *deemed to have been issued* by virtue of the certificate, subject to the submission of appropriate applications and fees. This entitlement is only for the initial issue of licences, after which the laws under which they are normally issued apply as usual.

- Another benefit of the investment certificate is that the holder is entitled to entry (work) permits for three members of the holder's management or technical staff and three fellow-owners (or shareholders or partners). The permits are valid for two years and may be reissued to the same or different persons.
- The Act also specifies the constitution of the board (the governing body) of the KIA, which is to be composed of both serving government officials and other persons of distinction. The chief executive officer of the KIA is the Managing Director, who is to be appointed by the board.

Box IV.1. Investment Promotion Centre

The Investment Promotion Centre (IPC) was established by the Government of Kenya in 1986, through the Investment Promotion Centre Act (Chapter 485 of the Laws of Kenya) with the mandate to promote private investment in Kenya by both local and foreign investors. The Act was amended in 1992 to empower the IPC to issue a Certificate of General Authority to investment that had no special security, health or environmental implications.

The Act was further amended in 2004 (the Investment Promotion Act, 2004), and the IPC was reconstituted as the Kenya Investment Authority. The KIA will come into full authority after the Minister of Trade and Industry issues a commencement notice. It will issue Investment Certificates, which will replace the Certificates of General Authority issued by its predecessor. It will be overseen by a Board of Directors drawn from the public and private sectors, and its day-to-day management will be in the hands of a Managing Director.

(In most of these particulars, the KIA will resemble the IPC. However, there will also be significant changes – see discussion of the Act under 'Institutional framework' above.)

The function of the KIA will be to promote and facilitate investment in Kenya, both foreign and domestic. In promoting and facilitating investment, the Authority will, among other things,

- assist investors in obtaining permits, licences, incentives and exemptions;
- promote, both locally and internationally, investment opportunities in Kenya;
- advise the Government on improving the investment climate in Kenya; and
- facilitate and manage investment sites, estates and land.

The IPC (not yet transformed into the KIA) is currently headed by Mr. Luka E. Obbanda, the Acting Managing Director. For contact details, see Appendix 3.

Source: UNCTAD, based on the Investment Promotion Act, 2004, and on information provided by the IPC.

Current policy and legal framework

The current policy is intended to spur economic growth as outlined in the Economic Recovery Strategy. All sectors are in principle open to foreign investment. In certain areas, special permission may be needed (see Appendix 1).

Kenyan investment law is modelled on English investment law. The Companies Act, the Investment Promotion Act and the Foreign Investment Protection Act are the main Acts governing investment in Kenya. Some critical laws still await enactment. These include laws dealing with privatization (now before Parliament), land and public procurement. A list of other laws bearing on foreign investment can be found in Appendix 6. The existing framework provides guarantees against the expropriation of private property, except with due process of law and adequate and prompt compensation; guarantees for the repatriation of capital and after-tax profits; a variety of incentives, including investment allowances of 60% to 100%; liberal depreciation rates based on book value; the offsetting of losses by future taxable profits; and so on.

TABLE IV.1. DOUBLE TAXATION TREATIES (DTTS) AND BILATERAL INVESTMENT TREATIES (BITS), WITH SIGNING DATES

BITS		DTTS[a]	
Germany	3 May 1996	Austria	5 May 1972
Netherlands	11 September 1970	Bangladesh	8 June 1987
		Belgium	14 February 1984
		Canada	14 January 1978
		China	31 August 1991
		Denmark	3 January 1963
		France	2 September 1996
		Germany	8 January 1996
		Greece	22 May 1980
		India	18 February 1989
		Indonesia	3 January 1991
		Ireland	18 January 1973
		Japan	4 June 1959
		Netherlands	14 December 1982

Source: IPC Kenya.
[a] Kenya, Tanzania and Uganda signed the East African double taxation treaty in 1997. However, thus far, only Kenya and Tanzania have ratified the treaty.

Participation in international organizations and treaties

Kenya is a member of a number of global and regional organizations and treaties of interest to potential investors, including the following:

- the African Trade Insurance Agency (ATIA)
- the Common Market for Eastern and Southern Africa (COMESA)
- the Cotonou Agreement between the European Union and the African, Caribbean and Pacific States (ACP)
- the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, which entered into force on 7 June 1959
- the East African Community (EAC)
- the International Centre for the Settlement of Investment Disputes (ICSID)
- the Multilateral Investment Guarantee Agency (MIGA)
- the Paris Convention on Intellectual Property, the Universal Copyright Convention and the Berne Copyright Convention
- the World Intellectual Property Organization (WIPO)
- the World Trade Organization (WTO)

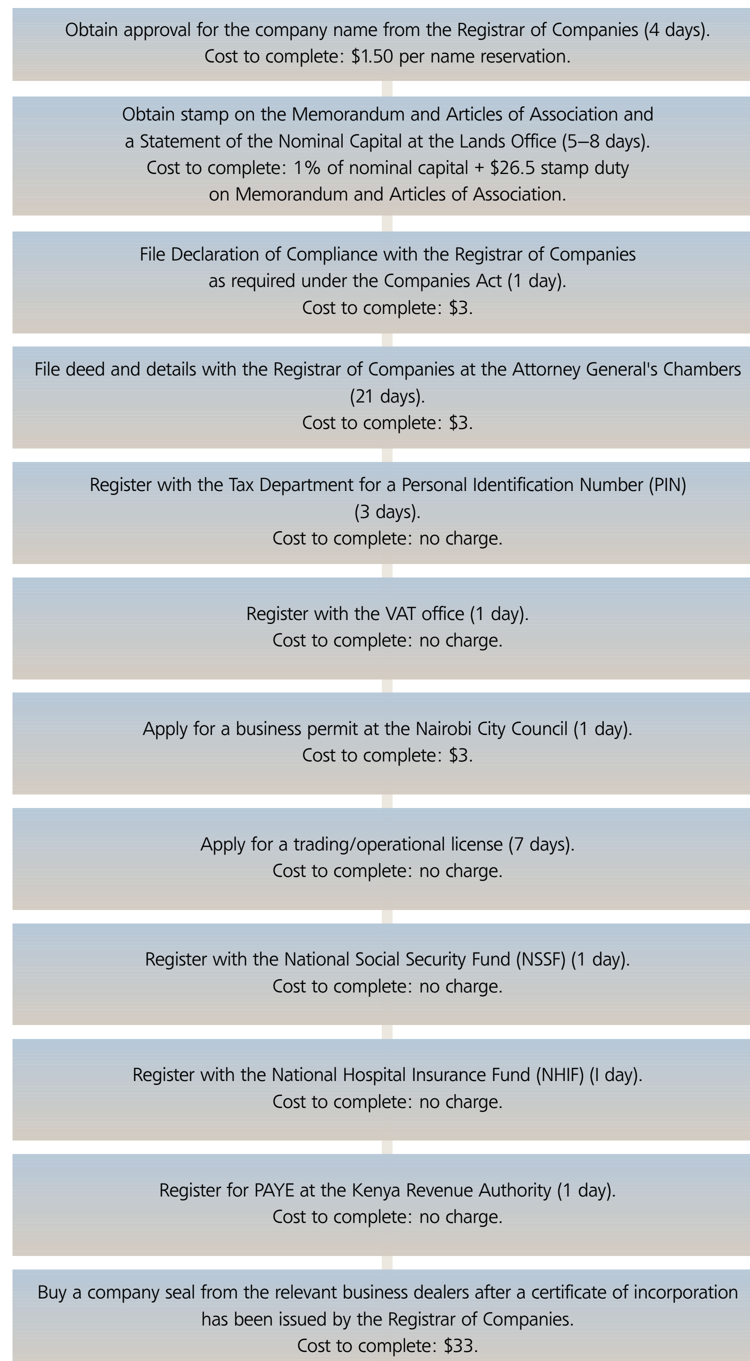
Kenya has also signed double taxation treaties (DTTs) with a number of countries (see Table IV.1).

Entry and exit

Screening, registration and authorization

Figure IV.1 shows the procedures for setting up a private company in Kenya under the Companies Act.

FIGURE IV.1. STAGES OF IMPLEMENTATION OF FDI PROJECTS



Source: UNCTAD, based on information provided by the IPC and supplemented by World Bank (2004b).

Incorporation and related requirements

The various forms of legal incorporation of business enterprises in Kenya include:

- incorporated limited liability companies (private and public)
- partnerships
- sole proprietorships
- cooperatives
- companies limited by guarantees for most non-profit organizations.
- representative offices, which are required to comply with Part X of the Companies Act (i.e. to secure a certificate of compliance from the Registrar of Companies).

Limited liability companies are the entities most favoured by foreign investors. These offer advantages similar to those offered by corporate bodies in other countries. A shareholder's liability for any deficiency on winding up is usually limited to the amount unpaid for the issued and called-up capital on the shares issued to the investor. Shares may be transferred without affecting the continuity of the business.

Establishing a limited liability company

The procedure for establishing a limited liability company in Kenya is illustrated in Figure IV.1 above.

Exit

The Kenyan legal system is quite flexible on exit options, which are normally determined by the agreement that the investor has with other investors in the project. The Companies Act specifies how a foreign investor may exit from an incorporated company. In practice, a company faces no obstacles when divesting its assets in Kenya and returning to its home country, if the legal requirements and clearances have been satisfied. The Companies Act gives the procedures for both voluntary and compulsory winding-up processes.

Ownership and property

There are no general restrictions on the percentage of equity that foreign nationals may hold in a locally incorporated company, although foreign firms are encouraged to form joint ventures with Kenyan companies or entrepreneurs. Nonetheless, there are some restrictions on investment in companies listed on the Nairobi Stock Exchange and certain businesses, such as fishing and insurance. Similarly, there are no regulations restricting joint-venture arrangements between Kenyans and foreigners, or prohibiting the acquisition of Kenyan firms by foreign-owned firms. These are matters subject to mutual agreement between partners.

Private and public companies may accept an individual's share in other entities (if it is transferable and if it is acceptable to the newly formed company) instead of cash. Companies should inform the Registrar of Companies of any allotment for consideration other than cash through a written contract constituting the title of the recipient of the allotment.

Intellectual property rights

Kenya is a member of the World Intellectual Property Organization (WIPO) and of the Paris Union, the international convention for the protection of industrial property, and it has signed the Universal Copyright Convention and the Berne Copyright Convention. Kenya is also a member of the African Regional Industrial Property Organization. Investors are entitled to national treatment and priority right recognition for their patent and trademark filing dates. The Trade Marks Act, Chapter 506 of the Laws of Kenya, provides protection for registered trade and service marks. The Act establishes an independent national patent law and an Industrial Property Institute, which considers applications for and grants industrial property rights. The registration is valid for 10 years and is renewable.

Performance requirements

Local-content requirements

Investors are encouraged to use local materials whenever available, but the use of imported materials is freely allowed. The Government is not involved in assessing what raw materials investors are using, as long as they are not a threat to the environment. In fact, Kenyan industries are heavily dependent on imported inputs, and concessions on duties and taxes on imported raw materials are therefore available.

Environment-related requirements

Investors in Kenya are required to comply with environmental standards. The National Environment Management Authority (NEMA) oversees these matters and is the principal regulatory agency for them. Developers of particular projects are therefore required to carry out Environmental Impact Assessments (EIA) prior to project implementation. Compliance with EIA requirements is enforced through the licensing regime. Generally, for projects that require a licence, the licensing authority is prohibited from issuing it unless the developer has produced a certificate of approval from NEMA. Companies are required to submit their up-to-date assessment reports to NEMA for verification by the environment auditors before they can receive an Environmental Impact Assessment license.

Technology transfer

Foreign investors are encouraged to provide training and development of human resources and undertake the transfer of technology and expertise to local staff.

Expatriate employees

Expatriates are allowed to work in Kenya provided they have an entry permit (work permit) issued under the Immigration Act (Chapter 172, Laws of Kenya). An applicant for an entry permit needs to describe the work he or she intends to engage in and will be allowed to engage only in that specific activity. Entry permits are usually granted to foreign enterprises approved to operate in Kenya as long as the applicants are key personnel. Any enterprise, whether local or foreign, may recruit expatriates for any category of skilled labour if Kenyans are not available. The issue of work permits is closely controlled, although the Government recognizes that foreign investors or shareholders need to be represented in senior management. This applies in particular to managing directors, senior finance and marketing executives and highly specialized technical positions. The IPC facilitates the acquisition of entry permits, which can be obtained on arrival in Kenya if they have not been secured beforehand.

Privatization, limitation and exclusion

Privatization

Foreign and local investors may participate in the privatization process without discrimination. Foreign investors have, in fact, bought or leased many former public enterprises (parastatals). The Government is currently reducing its role in commercial activities through a privatization programme that will allow the private sector to compete on an equal footing with former parastatals. The Government intends to enact a new Privatization Act, which will make the process more transparent than it is, especially in the allocation of the proceeds of sale. (See Appendix 5 for more information on privatization.)

Regional or zonal restrictions

Regional or zonal restrictions do not exist. Investors are free to invest in any part of the country subject to the observation of environmental laws. The Physical Planning Act (Act No. 6 of 1996) and the Local Government Act (Chapter 265, Laws of Kenya) regulate both the local and the national use of land. The objectives of these laws are to establish a national framework for the development, administration and implementation of policies and regulations on the use of land. Investors intending to undertake projects that require the erection of buildings should obtain advice from physical planners and legal experts.

Investment protection and standards of treatment

Expropriation

Kenyan law provides protection against the expropriation of private property except where due process is followed and adequate and prompt compensation is provided. Further protection is also guaranteed by the various bilateral agreements with other countries (see Table IV.1. above).

Revocation of license

A foreign investment license may be revoked:

- if an untrue statement is made while applying for the license;
- if the provisions of the Investment Promotion Centre Act or of any other law under which the license is granted are breached; or
- if there is a breach of the terms and conditions of the general authority.

In practice, the IPC has rarely revoked licences. It normally relies on counselling to achieve the desired corrective action. The Investment Promotion Act, 2004, provides that, in instances of fraudulent representation or the giving of false or incorrect material, the investment licence shall be revoked by the IPC by giving a written notice to the investor requiring him or her to show cause within 30 days from the date of the notice why the licence should not be revoked.

National treatment

Legally, there is no difference in the treatment accorded to foreign and local companies.

Dispute settlement

Kenya is a member of the International Centre for the Settlement of Investment Disputes (ICSID), a World Bank agreement for the settlement of disputes between States and Nationals of other States. (See also the discussion of dispute resolution early in this chapter.)

Foreign exchange, incentives, etc.

Exchanging and remitting funds

The Central Bank of Kenya governs matters relating to the management of foreign exchange. The Kenya shilling is the official Kenyan currency. No foreign exchange controls currently exist. Both residents and non-residents may open foreign-currency accounts with domestic banks. No person except authorized dealers is allowed to engage in the foreign exchange business, except where the Central Bank permits a specific person or class of persons to do so, subject to the conditions it may impose.

Fiscal and financial incentives

A number of incentives are offered to encourage investment. These include an investment allowance of 60% countrywide in manufacturing and hotels, and of 100% for manufacturing under bond; liberal depreciation rates based on book value; offsetting of losses by future taxable profits; remissions from custom duties on capital goods; and export promotion programmes, which include EPZs and manufacturing under bond. Investors in export zones enjoy a 10-year tax holiday followed by a 25% corporate tax rate for the following 10 years. With the coming into force (1 January 2005) of the East African Community Custom Protocol, import duties have been lowered to 25% as the maximum common external tariff. However, investors in EPZs are exempted from paying import duties. (Please see also the section "Taxation" in Chapter II as well as the section "EPZs and related matters" in Chapter III.)

Kenya does not offer financial incentives to investors.

Competition and price policies

Kenya has taken a liberal stance in regard to competition and price setting, with market forces being allowed to determine who enters or exits a given business and what prices are to be charged. The Restrictive Trade Practices, Monopolies and Price Control Act (Chapter 504, Laws of Kenya) describes predatory trade practices, collusive tendering and collusive bidding as unfair trade practices. Efforts to improve competition are being made by enacting and enforcing appropriate laws. Efforts are also being made to harmonize competition law with other laws and give the Monopolies and Prices Commission more autonomy. Larger budgetary allocations have been provided to strengthen the human resource capacity of the competition authority.

Land

Land in Kenya is classified into three types: public land, private land and community land. Of the three, community land occupies the largest surface. The freedom to own and deal with property is guaranteed by the Constitution. There are several land-tenure systems under which land may be held and operated.

One is freehold tenure, the holding of registered land in perpetuity subject to statutory and common-law qualifications. Another is leasehold tenure, the holding of land on a lease between the lessor and lessee for a given period from a specified date of commencement, on such terms and conditions as the parties may agree on. A third way in which land may be acquired and used is having it allocated by the Government.

The procedure for the allocation of alienated or unalienated[2] Government land is that the developer identifies land suitable for development and completes an application form, which he or she forwards to the appropriate District Land Board for consideration. The Land Board meets once or twice a month (depending on the district) to consider all applications, after which a decision is made and a certificate of allocation issued. Then the developer can process a lease or transfer the title depending on the type of land acquired. This process generally takes three to four months.

[2] Trust land in municipal or county areas.

Dealings in agricultural land (mostly rural land) are subject to Land Control Board consent under the Land Control Act (Chapter 302, Laws of Kenya). Agricultural land (defined as freehold land outside urban areas or land held on a leasehold title that restricts its use to an agricultural purpose) cannot be acquired unless a Land Board approves an application by the owner of such land and the person who wishes to acquire it. Land Control Boards operate in each district throughout Kenya and meet more or less regularly to consider such applications. (It is worth noting that land situated outside an urban area that is held on a leasehold title for a non-agricultural purpose is not subject to this control.) Applications for consent must be considered within six months of the agreement to enter into the transaction, or they must be renewed or extended by a Court.

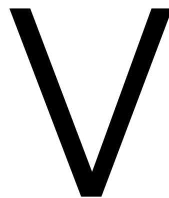
It is possible for land to be controlled in more than one manner. For example, a freehold beachfront plot situated on the coast outside an urban area may also be subject to the provisions of the Land Control Act in that the land would be regarded as "agricultural" even if it is actually used for a hotel. For this reason, it is usual and desirable for such plots of land to be held on leasehold titles restricted to an appropriate non-agricultural purpose so that the Land Control Act does not apply to such plots of land.

There is no specific legislation preventing foreigners or non-residents from owning land in Kenya, unless the land is classified as agricultural. All farmland must be owned by Kenyan citizens or by incorporated companies all shareholders of which are Kenyan citizens. This requirement is enforced by the Land Control Act, which provides that any consent of a Land Control Board will be invalid in the case of a non-citizen applicant for the purchase or lease of agricultural land. It can, however, be waived by the President of Kenya, who may, for example, waive it for an agro-processing company that needs land to grow a proportion of its basic agricultural input. No clear guidelines are currently in place on how to acquire a presidential waiver for agricultural land, which has led to complaints about excessive bureaucratic discretion.

Nestlé has had a manufacturing presence in Kenya for the past 40 years. Nairobi's location and the quality of the workforce have been big assets for us. With further improvements in governance and the full realization of the benefits of the COMESA and EAC regional arrangements, we believe that Kenya could offer many new opportunities for investors, both foreign and local. Agriculture and infrastructure are two very promising areas.

Dominique Peterhans, Managing Director, Nestlé Foods Kenya Ltd

Private-sector perceptions



This chapter summarizes the results of consultations with the private sector in Kenya. The consultations were carried out mainly in late 2004, through two group meetings but also through a number of individual meetings. Some 30 business people participated in these consultations, about half representing companies with foreign investment. The group meetings used a questionnaire on the investment climate, which also served as agenda for the meetings.

This summary should be seen as no more than indicative of private-sector opinion in Kenya.

General observations

When asked to identify the three most attractive things about Kenya, investors as a whole put people at the top. The workforce is almost universally regarded as a key advantage by investors in Kenya: hard-working, motivated and skilled. Both foreign and domestic investors ranked location as the second most attractive feature of Kenya, the country being seen as a regional hub. Political stability came next among foreign investors, although it did not rank high with domestic investors. The highland climate followed among foreign investors, while being mentioned by even more domestic investors. In fact, if climate were combined with location, it would rival people as the most attractive feature of Kenya. Other features mentioned were business infrastructure (by domestic investors) and market size and unexploited opportunities (by foreign ones).

When it came to what most needed the Government's attention, infrastructure was the clear favourite, with the most commonly mentioned problem being badly maintained roads. Foreign investors in particular also mentioned the erratic power supply and inadequate telecommunications. Corruption came a close second to infrastructure, being cited by equal numbers of foreign and domestic investors. (On this point, see also the box on corruption in Chapter I.) Security, or rather insecurity, came a fairly close third. For domestic investors, it rivalled infrastructure in importance and was perhaps even more critical than corruption. It is worth mentioning in this context that red tape was mentioned as a problem by only one foreign investor but by five domestic investors. If one combined it with corruption, it would become *the* issue for domestic investors and rival infrastructure for foreign ones. Other points mentioned were a lack of vision and a cumbersome legal system.

A question about the way Government deals with business evoked an interesting response. Foreign investors were on the whole happier with the Government than domestic ones. The latter were divided equally between those who said they were somewhat satisfied and those who were dissatisfied. Asked about progress in this area over the past five years, most agreed that there had been some progress. A minority of foreign investors (and no domestic ones) thought the progress had been considerable. Regarding what institutional improvements might be desirable, the most popular answer was "less bureaucracy". A number of investors would also like to see a stronger investment agency – which is forthcoming. (See the discussion of the Investment Promotion Act, 2004, under Institutional framework in Chapter IV.) Some foreign investors would like to see greater professionalism and accountability, while some domestic ones would like to see more dialogue between business and Government. Not only foreign but also domestic investors thought foreign investors faced special difficulties in Kenya, which included a lack of clarity, a lack of access and too many licences.

Specific points

Infrastructure

Infrastructure is investors' first concern in Kenya. Overall, the majority of investors recognized that there had been some progress in this area. One notable difference between foreign and domestic investors is that nearly all of the latter believe that there has been improvement in infrastructure, whereas the majority of foreign investors believe either that there has been no progress in this area or that things have got worse. Most foreign and domestic investors agree that any progress there has been lies in telecommunications, airports and perhaps power supply. Investors are very unhappy with roads, which rank at the top of what has shown the least progress, followed by power supply. Railways were also mentioned by both local and foreign investors. Quality and cost were the main concerns regarding infrastructure, followed by reliability and access.

Human resources

Investors consider Kenyan workers the country's greatest asset. They also think that there has been considerable progress in skills and education. Industrial relations, on the other hand, are the area in which there has been the least progress. In this context, dissatisfaction centred on the industrial courts. Some investors also expressed concerns about unemployment and the labour law, the latter being thought obsolete.

Taxation

On the whole, investors saw definite progress in the area of taxation. The Kenya Revenue Authority has become more efficient, tax collection has improved and there is greater transparency. The tax regime has also been simplified. Against these improvements, investors also noted persistent problems. The tax net is still not cast wide enough. (One foreign investor spoke of petty harassment, which he thought resulted from the tax authorities' targeting of a few visibly large taxpayers, while numerous others escaped undetected.) Long delays in VAT refunds are a continuing problem. A number of investors mentioned the lack of double taxation treaties in the region. (For a list of Kenya's taxation and investment agreements, see Table IV.1 in Chapter IV. A double taxation treaty was in fact signed by the EAC partner states in 1997, but it has not yet been ratified by Uganda.)

Other issues

Under this heading, investors were asked about a range of issues that might be contributing to an unsatisfactory business environment. Only one issue evoked nearly universal dissatisfaction: governance. The main concern was corruption, followed by delays in the judicial process. Outside of governance, an issue that crops up as a major concern in every survey of investors, there was relatively little dissatisfaction. There did not appear to be much concern over monopolies and market dominance, although foreign investors were more likely to be concerned than domestic ones. Telkom Kenya was the monopoly most mentioned by those concerned about this issue. Among the issues not raised by UNCTAD but mentioned by investors, security came at the top for foreign investors. There seemed to be near-complete satisfaction with investment protection in Kenya and not much concern over ownership restrictions, although one or two investors mentioned restrictions on land and on insurance companies (which need to have one-third Kenyan ownership). Intellectual property was a significant issue for foreign companies, which felt there was little protection of it; it was not an issue for domestic companies. As for exchanging and remitting funds, there was near-universal satisfaction with the liberalized foreign exchange regime.

Concluding remarks

One senses a certain frustration on the part of investors in Kenya. While they clearly think very highly of the special features Kenya offers – its human resources, its location, its substantial business infrastructure – they also think not enough is being done to make productive use of these strengths. Investors believe that Kenya abounds in opportunities, tourism being one case in point. Despite the alarms and advisories, Kenya remains a tourist magnet, and the numbers of tourists are increasing. Telecommunication and information technology offers yet another opportunity, as is shown by the growth in mobile telecommunication and the relatively high numbers of Internet users, the highest in the region by far. Agriculture exports are demonstrably an opportunity as well. On the other hand, the obstacles that hamper investment need to be dealt with, and the private sector is not convinced that the Government is sufficiently focused on and committed to doing this. In part, one might attribute this dissatisfaction to the somewhat unrealistically high expectations the private sector (along with most other Kenyans) entertained of the NARC Government that came to power in December 2002. Perhaps no government could have done all that this one was expected to do. Yet it is clear that more needs to be done. As one major foreign investor in Kenya (and elsewhere in Africa) put it, investment is ultimately a function of confidence, and confidence in turn a function of leadership – and the Government needs to show more leadership. Several foreign investors think that one indication of such leadership would be a determined effort to change the foreign image of Kenya, which is rather worse than reality warrants.

Appendix 1

Priorities

FDI is particularly welcomed by the Government of Kenya in the following areas:

- Agriculture and agro-processing industries;
- Export-oriented industries including AGOA-oriented ones;
- Physical infrastructure, energy, and information communication & technology;
- Plastics and pharmaceuticals;
- Textiles and apparel; and
- Tourism and related industries;

Source: Republic of Kenya, Ministry of Planning & National Development, 2003.

Restrictions and prohibitions

Foreign ownership of equity in insurance, telecommunications and companies listed on the Nairobi Stock Exchange (NSE) is restricted to 66.7%, 70% and 75% respectively. Foreign equity in companies engaged in fishing activities is restricted to 49% of the voting shares under the Fisheries Act.

The manufacture of and dealing in firearms (including ammunition) and explosives require special licences from the Chief Firearms Licensing Officer and the Commissioner of Mines & Geology, under the Firearms Act and the Explosives Act respectively. The issue of such licences is subject to successful security vetting of the applicant by the relevant Government agencies.

The manufacture of and dealing in narcotic drugs and psychotropic substances is prohibited under the Narcotic Drugs & Psychotropic Substances Act.

Appendix 2

Main foreign investors

N.B. *This is a sampling of partly or wholly foreign-owned companies in Kenya, not an exhaustive list.*

AGRICULTURE AND RELATED

	Name of company	Major foreign ownership	Business	Contact details
1	Alltech Biotechnology E.A. Ltd (Alltech Biotechnology)	United States	Animal feed additives	New Rehema House, 5th Floor Rhapta Road, Westlands P.O. Box 13995, Nairobi Tel: 254 20 449 082 Fax: 254 20 449 082 E-mail: alltech@africaonline.co.ke
2	Aquarius Systems (Aquarius Systems)	United States	Aquatic plant harvesting	P.O. Box 9179, Kisumu Tel: 254 35 21504 Fax: 254 35 21504 E-mail: acquarius@net2000ke.com
3	BAT Industries (British American Tobacco plc)	United Kingdom	Tobacco products	Likoni Road P.O. Box 30000, Nairobi Tel: 254 20 533 555 Fax: 254 20 531 616 E-mail: bat@kenyaat.com
4	Delmonte Kenya Limited (Cirio Del Monte Foods International Ltd)	United States	Food products	Thika Road P.O. Box 147, Nairobi Tel: 254 733 632 975, 254 722 204 080 E-mail: nanasi@delmonte.co.ke
5	George Williamson Kenya Ltd (Williamson Tea Holdings plc)	United Kingdom	Tea/ Food	Williamson Hse., Ngong Avenue P.O. Box 42281 GPO, Nairobi Tel: 254 20 2 710 740 Fax: 254 20 2 718 731 E-mail: nigel@williamson.co.ke
6	Goldsmith Seeds (Goldsmith Seeds)	United States	Floriculture	Twin Towers, Mombasa Road P.O. Box 10346, Nairobi Tel: 254 20 553 001 Fax: 254 20 552 015 E-mail: info@goodyearkenya.com
7	James Finlay (Kenya) Ltd (James Finlay Ltd)	United Kingdom	Tea	Mara Mara Factory P.O.Box 71, Kericho Tel: 254 52 20155 through 9 Fax: 254 52 32051 E-mail: paul.wythe@finlays.co.ke

8	Unilever Tea Kenya Ltd (Unilever plc)	United Kingdom	Tea growing and processing	Kericho Nakuru Road P.O. Box 20, 200 Kericho Tel: 254 52 20146 254 52 30188 Fax: 254 52 30 347 Email: Richard.fairburn@unilever.com
9	Vitacress Kenya Ltd	United Kingdom and Netherlands	Horticulture	Baba Dogo House 4th G P.O 63249-00619, Nairobi Tel: 254 20 860 650 Fax: 254 20 860 653 Email: operations@vitacresskenya.com

MINING, OIL AND GAS

1	BOC Kenya (The BOC Group plc)	United Kingdom	Industrial gases	Kitui Road, Enterprise Rd, P.O. Box 18010, Nairobi Tel: 254 20 531 380 Fax: 254 20 350 165 E-mail: bocinfo@boc.co.ke
2	Caltex Oil (Kenya) Ltd (ChevronTexaco Corporation)	United States	Petroleum	Viewpark Towers, P.O. Box 30061, Nairobi Tel: 254 20 218 666 Fax: 254 20 340 939 E-mail: jgmathenge@caltex.co.ke
3	Kenya Shell (The Royal Dutch/Shell Group)	Netherlands	Petroleum	Wundanyi Rd, Ind. Area, P.O. Box 45468, Viwandani, Nairobi Tel: 254 20 551 690, 254 20 541 424, 254 20 541 425, 254 20 541 423 Fax: 254 20 214 951 E-mail: shellkenya@kfl..shell.com

MANUFACTURING

1	Abbot Laboratories (Abbot Laboratories)	United States	Pharmaceutical	P.O. Box 26288 Tel: 254 020 223 145 Fax: 254 20 223 145 E-mail: abbotkenya@swiftkenya.com
2	Atlas Copco Kenya Ltd (Atlas Copco AB)	Sweden	Industrial equipment	North Rd. Airport, Emabakasi P.O.Box 40090-00100 Nairobi Tel: 254 20 825 267 Fax: 254 20 825 472 E-mail: copco-kenya@ke.atlascopco.com

3	Bamburi Cement (Lafarge)	France	Clay products	Kenya-Re Tws, 6th Flr, Upper Hill, Ragati Road P.O. Box 10921-00100 GPO, Nairobi Tel: 254 20 710 487 / 9 Fax: 254 20 271 0581 E-mail:corp.info@bamburi.lafarge.com
4	BASF (BASF AG)	Germany	Chemicals and plastics	Outering Road P.O. Box 00100-30467, Nairobi Tel : 254 20 530 774 Fax: 254 20 534 727 E-mail: cwambui@hiekchem.co.ke
5	Bata Shoe Company (Kenya) Ltd (Bata Shoe Company)	Canada	Footwear	P.O.Box 23, Limuru Tel: 254 20 223 870 Fax: 254 20 216 473 E-mail: sales@batakenya.com
6	Bayer East Africa (Bayer AG)	Germany	Pharmaceutical	Outerring Road P.O.Box 30321-00100, Nairobi Tel: 254 20 860 667 Fax: 254 20 803 341 E-mail: info@bayerea.com
7	Beiersdorf East Africa Ltd (Beiersdorf AG)	Germany	Cosmetics	Sasio Road P.O.Box 78273-00507, Nairobi Tel: 254 20 530 051 Fax: 254 20 530 053 E-mail: contact@nairobi.beiersdorf.com
8	Bestfoods Kenya Limited (Unilever Bestfoods Solution)	Netherlands and United Kingdom	Food Manufacturing	Off Outer Ring Road P.O. Box 41045, Nairobi Tel: 254 20 802 653 254 20 861 534 Fax: 254 20 860080 E-mail: russel.carmichael@eu.bestfoods.com
9	CarTrack Kenya Ltd (Lojak Corporation)	United States	Vehicle security equipment	Kenya Road, Upper Hill P.O. Box 79448, Nairobi Tel: 254 20 712 780 Fax: 254 20 713 010 E-mail: cartrack@form-net.com
10	Coca-Cola Africa Ltd (The Coca-Cola Company)	United States	Soft drink manufacture and distribution	The Chancery, Valley Road, P.O. Box 30134, Nairobi Tel: 254 20 2 712 271 Fax: 254 20 2 715 647 E-mail: billegbe@afr.ko.com

11	Colgate Palmolive (EA) Ltd (Colgate-Palmolive Company)	United States	Oral and household care products	Mogadishu Road P.O.Box 30264-00100 GPO, Nairobi Tel: 254 20 534 044 Fax: 254 20 651 417 E-mail: customerservice@colgate-palmolive.co.ke
12	Corn Products Kenya Ltd (Corn Products International Inc.)	United States	Food manufacturing	Baba Dogo Road, Off Thika Road, P.O. Box 11889, Nairobi Tel: 254 20 802 655 254 20 861 537 Fax: 254 20 861 754 E-mail: cornprod@africaonline.co.ke
13	De la Rue Ltd (De la Rue plc)	United Kingdom	Currency and security printing	Noordin Rd, off Thika Rd, Ruaraka, P.O. Box 38622-00623 Tel: 254 20 860 086 Fax: 254 20 860 787 E-mail: catherine.odwako@ke.dearue.com
14	Ecolab East Africa (Ecolab Inc.)	United States	Industrial detergents	Baba Ndogo Road, P.O.Box 63497 Muthaiga, Nairobi Tel: 254 20 862 234 Fax: 254 20 350 189 E-mail: ecolabke@africaonline.co.ke
15	Eli Lilly (Suisse) SA (Eli Lilly and Company)	United States	Pharmaceutical	Chiromo Crt., P.O.Box: 41556-00100, Nairobi Tel: 254 20 3 747 088 254 20 3 747 054 Fax: 254 20 3 747 070 E-mail: aswani-frank@lilly.com
16	Eveready East Africa Ltd (Eveready Battery Company Inc.)	United States	Batteries for general use	Standard Building, Wabera St. P.O.Box 44765-00100, Nairobi Tel: 254 20 216 139 Fax: 254 20 337 978 E-mail: batteries@eveready.co.ke
17	General Motors (General Motors Corporation)	United States	Motor vehicle assembling	Mombasa/Enterprise Rd P.O. Box 30527, Nairobi Tel: 254 20 534 141 254 20 556 588 Fax: 254 20 542 543 254 20 534 858 E-mail: gmk@africaonline.co.ke
18	Glaxosmithkline (Glaxosmithkline plc)	United Kingdom	Pharmaceutical, medical	Likoni Rd, Ind. Area P.O.Box 78392, Viwandani, Nairobi Tel: 254 20 6 933 341 Fax: 254 20 6 933 385 E-mail: susan.w.gitau@gsk.com

19	Henkel Kenya Ltd (Henkel KgaA)	Germany	Chemicals	Enterprise Road, P.O.Box: 42510 GPO, Nairobi Tel: 254 20 223 344 254 20 556 037 Fax: 254 20 545 527 254 20 552 090 E-mail: info@henkel-ea.com
20	Jos. Hansen & Soehne (Jos. Hansen & Soehne GmbH)	Germany	Pharmaceutical	Baba Ndogo Road, P.O.Box 30196-00100, Nairobi Tel: 254 20 860 920 Fax: 254 20 861 648 Email: hansenkenya@hansenkenya.com
21	Mitsubishi Motors (Mitsubishi Corporation)	Japan	Vehicle manufacturing	International Hse, Mama Ngina St., P.O. Box 48738-00100, Nairobi Tel: 254 20 219 068 254 20 228 225 Fax: 254 20 245 409 E-mail: nmburu@swiftkenya.com
22.4	Nestlé Foods Kenya Ltd (Nestlé SA)	Switzerland	Food products	Pate Rd, Ind. Area, P.O. Box 30265 GPO, Nairobi Tel: 254 20 532 569/70 Fax: 254 20 532 291 E-mail: nestle@nestlekenya.com
23	Procter and Gamble EA Ltd (The Procter and Gamble Company)	United States	Food products	Old Embakasi Rd, off Mombasa Rd, P.O.Box 30454-00100, Nairobi Tel: 254 20 823 108 Fax: 254 20 823 107 E-mail: tuvah.dk@pg.com
24	Siemens Limited (Siemens AG)	Germany	Telecommunication Equipment	Nairobi Business Park, 1st Flr., Block A, Ngong Rd. P.O.Box 50867-00200, Nairobi Tel: 254 20 723 717 Fax: 254 20 726 128 E-mail: slnairobi@siemens.co.ke
25	Tetra Pak (Tetra Pak Beteilingungs GmbH)	Germany	Packaging materials	Enterprise Rd/Likoni Rd, Nairobi Tel: 254 20 534 300 Fax: 254 20 532 639 E-mail: janet.muhoro@tetrapak.com
26	Wrigley Company (Wm. Wrigley Jr. Company)	United States	Chewing gum	Bamburi Road, P.O.Box 30767-00100 GPO, Nairobi Tel: 254 20 532 033 Fax: 254 20 553 716 E-mail: infokenya@wrigley.com

SERVICES

Financial

	Company	Country	Activity	Address
1	Acacia Financial Services (Acacia Life Insurance Company)	United States	Legal and pension services; investment holding	Jubilee Exchange Building, Mama Ngina Street, Suite 405, P.O.Box 49012, Nairobi Tel: 254 20 251 000 Fax: 254 20 229 611 E-mail: acacia@iconnect.co.ke
2	American Life Insurance Company (Kenya) Ltd (American International Group Inc.)	United States	Insurance	Alico House, Mamlaka Road, P.O. Box 30364, Nairobi Tel: 254 20 711 242 Fax: 254 20 717 365 254 20 711 413 E-mail: alicok@swiftkenya.com
3	AON Minet Insurance Brokers Ltd (AON Corporation)	United States	Insurance	AON Minet Hse, off Nyerere Rd., P.O. Box 48279-00100, Nairobi Tel: 254 20 2 710 053 254 20 2 717 240 Fax: 254 20 2 722 556 254 20 2 722 574 E-mail: adm@aon.co.ke
4	Barclays Bank (Barclays plc)	United Kingdom	Banking	Barclays Plaza, Loita St., P.O.Box 30120-00100, Nairobi Tel: 254 20 332 230, 254 20 313 405, 254 20 241270 Fax: 254 20 331 396 E-mail: Elizabeth.njoroge@barclays.com
5	British American Insurance Co (K) Ltd (British American Insurance Company Ltd)	United Kingdom	Insurance	Mara/Ragati Rd, Capitol Hill, P.O. Box 30375 GPO, Nairobi Tel: 254 20 2 710 927 Fax: 254 20 2 717 626 E-mail: britak@britak.co.ke
6	Citibank N.A. (Citigroup Inc.)	United States	Banking	Citibank House, Upper Hill, P.O. Box 30711, Nairobi Tel: 254 20 711 221 Fax: 254 20 714 811 E-mail: terence.davidson@citicorp.com
7	Jardine Alexander Forbes Insurance Brokers Kenya Ltd (Alexander Forbes)	South Africa	Financial services	Nation Centre, 9th Flr, Kimathi St., P.O. Box 52439 City Square, Nairobi Tel: 254 20 216 986 Fax: 254 20 219 519 E-mail: actuaries@forbes.co.ke

8	Old Mutual Life Insurance (Old Mutual plc)	United Kingdom	Insurance	Old Mutual Bldg, Corner of Mara/Hospital Rd, P.O.Box 30059-00100, Nairobi Tel: 254 20 2 728 881 Fax: 254 20 272 2415 E-mail: contact@oldmutualkenya.com
9	Stanbic Bank (Standard Bank Group Ltd)	United Kingdom	Banking	Stanbic Bldg, Kenyatta Ave., P.O. Box 30550 GPO, Nairobi Tel: 254 20 342 771, 254 20 311 997 Fax: 254 20 310 051 E-mail: stanbickenya@africaonline.co.ke
10	Standard Chartered Bank (Standard Chartered plc)	United Kingdom	Banking	Standard Bank Buiding, P.O. Box 30 000, Nairobi Tel: 254 20 32 093 900 Fax: 254 20 214 086 E-mail: mike.hart@ke.standardchartered.co.ke

Tourism and transport

1	Abercrombie & Kent Ltd	United Kingdom	Tour operations	Bruce House, Standard Street, Nairobi Tel: 254 20 334 955, 254 20 228 700 Fax: 254 20 213 072 E-mail: Petern@abercrombieken.com
2	KLM Royal Dutch Airline (Air France – KLM)	France	Air transport	Loita Street, P.O.Box: 49239, Nairobi Tel: 254 20 229 291, 254 20 226 050 Fax: 254 20 320 74717 E-mail: Pieter-de.man@klm.com
3	Lonrho Hotels (Norfolk Hotel, et al. – John Holt Group Ltd)	United Kingdom	Hotel management	Harry Thuku Road, P.O.Box 58581-00100, Nairobi Tel: 254 20 216 949, 254 20 216 682 Fax: 254 20 216 896 E-mail: lonhotkk@africaonline.co.ke
4	Pollman's Tours and Safaris (Partly TUI Group)	Germany and Mauritius	Tour operations	Pollmann's Hse, Mombasa Rd., P.O.Box 84198-80100, Mombasa Tel: 254 20 822 226, 254 20 544 374 Fax: 254 20 228 935 E-mail: pollmans@pollmans.co.ke

5	Somak Tours and Travel (Somak Travel Ltd)	United Kingdom	Tour operations	Somak Hse, Mombasa Rd., P.O. Box 48495-00200, Nairobi Tel: 254 20 535 508, 254 20 535 509 Fax: 254 20 535 172 E-mail: admin@somak-nairobi.com
6	Tourism Promotion Services (T) Ltd (Serena Hotels – Aga Khan Group)	Switzerland	Hotels & lodges	Kenyatta Ave/Nyerere Rd., P.O.Box 46302 GPO, Nairobi Tel: 254 20 2 725 111, 254 20 2 842 000 Fax: 254 20 2 725 184 E-mail: nairobi@serenaco.ke

Business support

1	AGS Frasers International Removals (AGS Frasers International Removals Ltd)	South Africa	Freight	Old Mombasa Rd., P.O.Box 14061-00800, Nairobi Tel: 254 20 823 252 Fax: 254 20 823 491 E-mail: agskenya@kenyaonline.com
2	Ayton Y & R Group Ltd (Young & Rubicam)	United States	Advertising	2nd Floor, Panesar's Centre, Mombasa Road, Nairobi, 00-100 Tel: 254 20 559-729, 254 20 533 702 Fax: 254-20-551 335/6
3	Cargill Kenya Ltd (Cargill, Inc.)	United States	Tea warehousing, handling, storage, blending, etc.	Dar es Salaam Road, P.O. Box 90403, Mombasa Tel: 254 11 225 701/5 Fax: 254 11 314 013, 254 11 225 284 E-mail: Ivan-Fernandes@cargill.com
4	Deloitte (Kenya) (Deloitte Touche Tohmatsu)	Switzerland [1]	Auditing and consulting	Ring Road, Westlands, P.O. Box 40092, Nairobi Tel: 254 20 4 441 344/05/12 Fax: 254 20 4 448 966 E-mail: admin@dtti.co.ke
5	DHL Worldwide Express Kenya (Deutsche Post AG)	Germany	International air express parcel and logistic services	DHL House, Witu Road, P.O. Box 67577, Nairobi Tel: 254 20 532 159, 254 20 534 588 Fax: 254 20 339 850 E-mail: booking@nbo-co.ke.dhl.com
6	KPMG (Kenya) (KPMG International)	Switzerland [1]	Auditing and consulting	Lonhro Hse, 16th Flr, Standard St., P.O.Box 40612 GPO, Nairobi Tel: 254 20 222 862 Fax: 254 20 215 695 E-mail: info@kpmg.co.ke

[1] Non-equity forms (licensing, franchising) are common in certain types of services, e.g., accounting and consulting. Country of ownership here is thus the country where the firm with which the Kenyan firm has a licensing/franchising agreement is located.

7	Maersk Sealand K Ltd (A.P. Möller Gruppen)	Denmark	Shipping	International Hse, Mama Ngina St., P.O. Box 43986 GPO, Nairobi Tel: 254 41 314 435, 254 41 220 056 Fax: 254 41 220 086
8	United Parcel Service (UPS) (United Parcel Service, Inc.)	United States	Courier service	North Road, Embakasi, P.O. Box 46586, Nairobi Tel: 254 20 820 804 Fax: 254 20 823 124 E-mail: upsnbo@form-net.com

Infrastructure

1	Celtel Kenya (Celtel International B.V.)	Netherlands	Telecommunication	Parkside Tws, Mombasa Road, P.O. Box 73146-00200 City Square, Nairobi Tel: 254 20 69 010 000 Fax: 254 20 69 011 114 E-mail: ccare@celtel.co.ke
2	Safaricom (Partly Vodafone Group plc)	United Kingdom	Telecommunication	Safaricom Hse, Waiyaki Way, P.O. Box 46350 GPO, Nairobi Tel: 254 20 427 3224 Fax: 254 20 444 5419 E-mail: customerservice@safaricom.co.ke

MISCELLANEOUS

1	Actis (Actis Capital LLP)	United Kingdom	Diversified equity investor in emerging markets	Norfolk Towers 1st Floor, Kijabe Street, P.O. Box 43233-00100, Nairobi Tel : 254 20 219 952 Fax 254 20 219 744 E-mail: mturner@act.is
2	Oxford University Press EA (Oxford University Press)	United Kingdom	Publishing	ABC Place Waiyaki Way, P.O.Box 72532 City Square, Nairobi Tel: 254 20 4 440 555 Fax: 254 20) 4 443 972 Fax: 254 20 4 443 938 E-mail: enquiry@oxford.co.ke
3	Sera Software (Sera Europe B.V.)	Netherlands	Software	Ramco Court, C13, Mombasa Rd, P.O.Box 16886 00620 Tel: 254 20 609 232 Fax: 254 20 609 300 E-mail: sera@kenyaonline.com

4	SGS Kenya Ltd (SGS SA)	Switzerland	Inspection certification firm	Rank Xerox Hse, P.O. Box 72118, Westlands, Nairobi Tel: 254 20 3 751 811 Fax: 254 20 3 741 468 E-mail: sgsinquirieskenya@sgs.com
5	Sumitomo Corporation (Sumitomo Corporation)	Japan	Trading	I&M Bldg, 4th Flr, Ngong Rd., P.O.Box 41097-00100, Nairobi Tel: 254 20 2 717 000/4 Fax: 254 20 2 710 374 E-mail: nrbzz-org2@sumitomocorp.co.ke

Source: UNCTAD, based on information from various sources.

Appendix 3

SOURCES OF FURTHER INFORMATION

[2] The IPC is expected to turn into the Kenya Investment Authority some time in 2005.

Investment Promotion Centre [2]
National Bank Building, 8th Floor
Harambee Avenue, P.O. Box 55704
Nairobi, City Square, 00200
Tel.: 254 20 221 401-4
Fax: 254 20 243 862
Websites:
www.investmentkenya.com
www.ipckenya.org

Public sector

Ministry of Agriculture
Kilimo Hse, Cathedral Road
Nairobi
Tel.: 254 20 271 8870
Fax: 254 20 272 0586
Website: www.agriculture.go.ke

Ministry of Energy
Nyayo House
Nairobi
Tel.: 254 20 330 048
Website: www.energy.go.ke

Ministry of Environment and Natural Resources
Maji Hse, Ngong Road, Nairobi
Tel.: 254 20 271 6103
Website: www.environment.go.ke

Ministry of Finance
Treasury Building, Nairobi
Tel.: 254 20 338 111
Website: www.treasury.go.ke

Ministry of Land and Housing
Ardhi House, Ngong Road
Tel.: 254 20 271 8050
Website: www.lands.go.ke

Ministry of Planning and National Development
Treasury Building, Nairobi
Tel.: 254 20 338 111
Website: www.planning.go.ke

Ministry of Roads and Public Works
Ministry of Works Building, Nairobi
Tel.: 254 20 272 3101/88
Website: www.publicworks.go.ke

Ministry of Trade and Industry
Teleposta Towers, Nairobi
Tel.: 254 20 315 001-7
Website: www.tradeandindustry.go.ke

Other public institutions

Attorney General's Chambers
State Law Office
P.O. Box 40112
Nairobi
Tel.: 254 20 227 461

Commissioner of Customs and Excise
Forodha Hse, Nairobi
Tel.: 254 20 271 5540
Fax: 254 20 271 8417

Commissioner of Income Tax
Times Towers
Haile Selassie Avenue, Nairobi
Tel.: 254 20 272 7430

Commissioner of Insurance
Anniversary Towers
University Way, Nairobi
Tel.: 254 20 330 428

Commissioner of Lands
Lands Department
Ardhi House, Ngong Road, Nairobi
Tel.: 254 20 271 8050

Commissioner of Value Added Tax
Times Towers
Haile Selassie Avenue, Nairobi
Tel.: 254 20 224 275

Export Processing Zones Authority (EPZA)
P.O. Box 50563-00200
Nairobi
Tel.: 254 20 271 2801/6
Fax: 254 20 271 3704
E-mail. info@epzakenya.com
epzahwq@africaonline.co.ke
Website: www.epzakenya.com

Kenya Bureau of Standards
P.O. Box 54974, Nairobi
Tel.: 254 20 502 210-2
Fax: 254 2503 293
E-mail: info@kebs.org
Website: www.kebs.org

Kenya Industrial Property Institute
Weights and Measures Building
South C, Nairobi
Tel.: 254 20 602 210/602 211
E-mail: kipi@swiftkenya.com

Kenya Revenue Authority
Times Towers
Haile Selassie Avenue, Nairobi
Tel.: 254 20 310 900/315 553

Nairobi City Council
City Hall
City Hall Way, Nairobi
Tel.: 254 20 224 2 82
Fax: 254 20 218 291/214 780

Principal Immigration Officer
Immigration Department
Nyayo House, Nairobi
Tel.: 254 20 333 531

Registrar of Companies
Sheria House
Harambee Avenue, Nairobi
Tel.: 254 20 227 461

Tana & Athi River Development Authority
P.O. Box 47309-00100, Nairobi
Tel.: 254 20 535 834/5
Fax: 254 20 535 832/3
E-mail: tarda@swiftkenya.com

Telkom Kenya Ltd
Telposta Towers, Kenyatta Avenue
Nairobi
Tel.: 254 20 323 2000
Fax: 254 20 243 338
E-mail: marketing@telkom.co.ke
Website: www.telkom.co.ke

Private sector

Eastern Africa Association
Jubilee Place, 5th Floor
Mama Ngina Street
P.O. Box 41272-00100, Nairobi
Tel.: 254 20 340 341/214 898
Fax: 254 20 340 341
E-mail: eaa@africaonline.co.ke
Website: www.eaa-ion.co.uk

Federation of Kenya Employers
Tel.: 254 20 272 1929
Fax: 254 20 272 1990
E-mail: fke@arcc.or.ke

Kenya Association of Manufacturers
Peponi Road, Westlands
P.O. Box 30225-00100, Nairobi.
Tel.: 254 20 374 6005/7
Fax: 254 20 374 6028/30
E-mail: kam@iconnect.co.ke
Website: www.kenyamanufacturers.org

Kenya Institute for Public
Policy Research and Analysis
Bishop's Garden Towers, 1st Floor
Bishop Road
P.O. Box 56445-00200, Nairobi.
Tel.: 254 20 271 9933/4
Fax: 254 20 271 9951
E-mail: admin@kippra.or.ke

Kenya Private Sector Alliance
P.O. Box 3556-00100, Nairobi.
Tel.: 254 20 273 0371/2
Fax: 254 20 273 0374
E-mail: psforum@kippra.org

Port Management Association
of Eastern and Southern Africa
Archbishop Makarios Rd, Mombasa
Fax: 254 20 228 344
E-mail: pmaesa@africaonline.co.ke

Tea Board of Kenya
Tea Board House
Naivasha Road - Off Ngong Road
PO Box 20064, Nairobi
Tel.: 254 20 572 421
Fax 254 20 562 120
E-mail: teaboard@Form-net.com

Tea Growers Association of Kenya
P.O. Box 320
Kericho
Tel.: 254 52 20039
Fax: 254 52 32172

Relevant websites

Kenya Investment Authority
www.investmentkenya.com
www.ipckenya.org

Ministry of Trade and Industry
www.tradeandindustry.go.ke

Ministry of Foreign Affairs
www.foreignaffairs.go.ke

Ministry of Tourism and Wildlife
www.tourism.go.ke

Ministry of Planning and National Development
www.planning.go.ke

Central Bureau of Statistics
www.cbs.go.ke

Kenya Yellow Pages
www.yellowpageskenya.com

Appendix 4

List of public holidays in 2005

The official Kenyan holidays for 2005 are:

Dates	Public holidays [1]
1 January	New Year Day
25 March	Good Friday [2]
28 March	Easter Monday [2]
1 May	Labour Day
1 June	Madaraka (Independence) Day
10 October	Moi Day
20 October	Kenyatta Day
12 November	Eid-al-Fitri [2]
12 December	Jamhuri (Republic) Day
25 December	Christmas Day
26 December	Boxing Day

1. If a holiday falls on a Sunday, it is observed on the following day.
2. The dates of these public holidays vary from year to year in accordance with the lunar calendar.

Business hours

Government working hours:
8.00 a.m. to 5.00 p.m., Monday to Friday, with a one-hour lunch break.

Private-sector working hours:
8.00 a.m. to 5.00 p.m., Monday to Friday, with a one-hour lunch break.
Most private-sector organizations also work half days on Saturday.

Banking hours:
9.00 a.m. to 3.00 p.m., Monday to Friday, and 9.00 a.m. to 11.00 a.m.
on the first and last Saturday of the month for most banks.

Shopping hours:
Most shops are open from 8.00 a.m. to 6.00 p.m. on weekdays.
Some are also open during weekends from 9.00 a.m. to 4.00 p.m.

Appendix 5

Privatization

Selected privatized enterprises

	Company	Year	Public share before (%)	Public share after (%)	Sector	Buyer	Proceeds (KShs)
	A. Liquidations						
1.	BAT Development (K) Ltd	1992	100	0	Poultry		
2.	Horti Seed Kenya Ltd	1992	100	0	Agriculture		
3.	Kenatco Transport Ltd	1992	100	0	Transport		
4.	Seed Driers Ltd	1992	100	0	Agriculture		
5.	Simpson & Whitelaw Ltd	1992	100	0	Agriculture		
6.	Motor & Pedal Ltd	1994	100	0	Transport	F.X.Co. Ltd	
7.	Kenya Film Corporation	1995	100	0	Entertainment		
	B. Receiverships						
1.	Kenya Drilling Co. Ltd	1993	100	0	Services	Kenatco Taxis Ltd & various individuals	21,700,000
2.	Yuken Textiles Ltd	1993	100	0	Textile	Yuken Mills Ltd	14,000,000
3.	Pan Vegetable Processors Ltd	1994	100	0	Agri-processing	Homegrown (K) Ltd	95,000,000
4.	Synthetic Fibres Kenya Ltd	1995	100	0	Textile Mills Ltd	Sunrise Textile	50,000,0000
5.	Kenatco Taxis Ltd	1996	100	0	Transport	-	-
	C. Public flotations						
1.	National Bank of Kenya	1994	(Ist Issue-100)	42.5	Banking	Individuals & other investors	400,000,000
2.	Kenya National Capital Corporation	1996	(2nd Issue-42.5)	22.5	Banking	Individuals & other investors	600,000,000
3.	a. Kenya Airways	1996	100	20	Transport	Individuals & institutional investors	2,643,750,000
	b. Kenya Airfreight Handling Co. Ltd*					$26 million	
	c. Kenya Flamingo Airways Ltd*						
4.	Kenya Commercial Bank	1998	100	35	Banking	Individuals & other investors	447,000,000 594,000,000
							1,820,000,000

* Kenya Airways subsidiaries

Source: Department of Government Investments and Public Enterprises (DGIPE) within the Ministry of Finance.

**Public enterprises not yet privatized
but earmarked for privatization during the 2003–2007 period**

Company name	Remarks
Telkom Kenya Ltd	Telkom Kenya's monopoly expired in July 2004.
Kenya Railways Corporation	A joint Kenya Railways and Uganda Railways concessioning process is ongoing and is to be completed by 1 July 2005.
Kenya Power & Lighting Company Ltd	The Government proposes to reduce its direct equity from 51% to below 39%.
Kenya Commercial Bank Ltd	
Kenya Electricity Generating Company Ltd (KenGen)	
Kenya Ports Authority	
Housing Finance Company of Kenya Ltd	
National Industrial Credit Ltd	
Mombasa-Nairobi North Corridor Road	
Kenya Airport Authority	

Source: Republic of Kenya, Ministry of Planning and National Development
(Interim Investment Programme for Economic Recovery Strategy for Wealth and Employment Creation, 2003–2007).

Appendix 6

Major laws and regulations affecting foreign investment

(a) Investment

Name	Area
Constitution of Kenya (1992) against expropriation without due process.	Sec.75 of the Constitution provides a guarantee
Investment Disputes Convention (1967)	Law giving legal sanction to the Convention on the settlement of investment disputes between states and nationals of other states (also covered by the Kenya Investment Act 2004).
Kenya Investment Promotion Act (2004)	Investment (see "Institutional framework" in Chapter IV).
Housing Act (1990)	Law providing for loans and grants for the construction of dwellings.
Land Acquisition Act (1983)	Repeats constitutional guarantee against the expropriation of immoveable property.

(b) Trade, taxation, finance, insurance and audit

Name	Area
Income Tax Act (1989)	Law governing taxation of income.
Value Added Tax Act (1989)	Law imposing value-added tax.
Customs and Excise Act (1984)	Law on import and export duties.
Stamp Duty Act (1982)	Law imposing stamp duty on transfers, leases and security financing documents, among others.
Banking Act (1991)	Law governing banking and other financial institutions.
Insurance Act (1988)	Law governing insurance.
Trade Licensing Act (1990)	Law governing the licensing of trades.
Companies Act (1978)	Law governing the incorporation of businesses.
Accountants Act (1984)	Law governing accounting.
Standards Act (Cap. 363)	Law governing the standardization of commodities and codes of practice.

(c) Labour, immigration and citizenship

Name	Area
Employment Act (1984)	Law governing employment and labour-related issues, including labour disputes.
Regulation of Wages and Conditions of Employment Act (1989)	Regulates employment conditions and sets minimum wages.
Trade Disputes Act (1991) with regard to collective bargaining agreements.	Regulates the handling of trade disputes, especially
Immigration Act (1984)	Law governing immigration and the issue of entry permits.
Kenya Citizenship Act (1988)	Issue of citizenship.
Aliens Restriction Act (1985)	Enables restrictions to be imposed on aliens, and makes the provisions necessary to give effect to such restrictions.

(d) The environment, forestry, construction and land

Name	Area
Environmental Management and Coordination Act (1999)	Regulates matters relating to the management and conservation of the environment.
Forests Act (1992)	Law governing forestry management, including monitoring and regulatory compliance.
Water Act, Wildlife (Conservation and Management) Act, Fisheries Act (1972)	Laws governing environment-related issues.
Registered Land Act (1989) Indian Transfer of Property Act (1882) Registration of Titles Act (1982) Government Lands Act (1984) Land Control Act (1987) Physical Planning Act (1996) Registration of Documents Act (1980)	Main substantive laws on immoveable property, regulating the procedures for the acquisition of and dealings in immoveable property.

(e) Trademarks

Name	Area
Trade Marks Act (1982)	Law governing trademark protection and regulation related to unfair business competition.

(f) Contracts and arbitration

Name	Area
Law of Contract Act (1990)	Law governing the validity, forms, effects and interpretation of contracts.
Arbitration Act (1985)	Law governing arbitration.

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