



Kenya Property Markets Scorecard

Conditions for Small Businesses



Institute of
Economic Affairs

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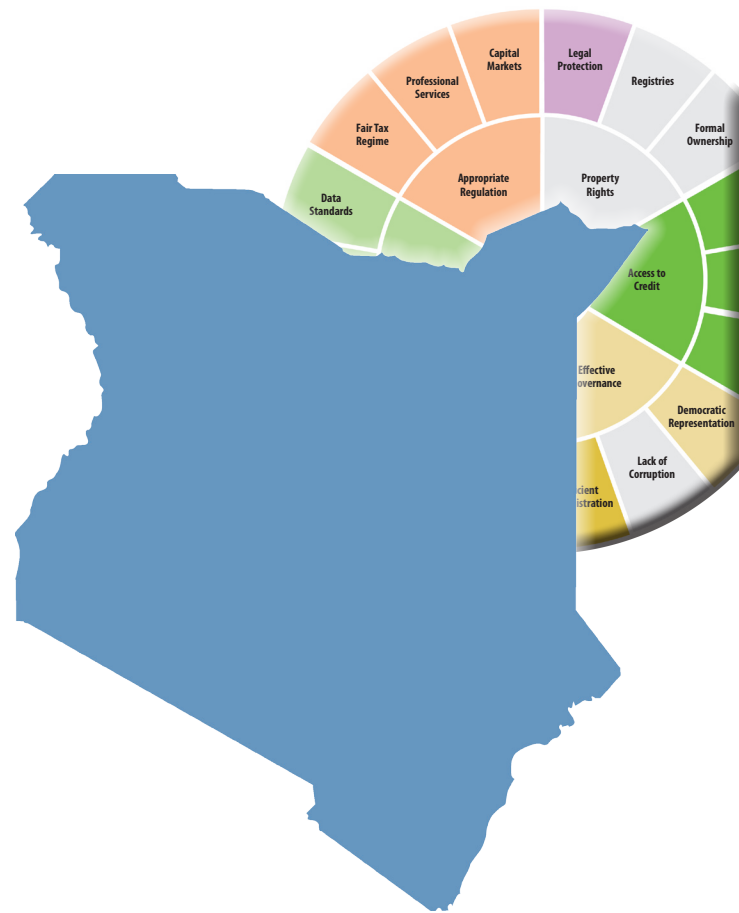


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Introduction

Property rights are among the most fundamental principles enshrined in Article 17 of the United Nations' Universal Declaration of Human Rights and constitutionally protected in most states. Despite this worldwide legal recognition of the importance of property rights to building peaceful, democratic, and prosperous societies, access to and protection of property rights vary greatly in practice. What is more, in many countries understanding of property rights often remains limited to property titles, without deeper appreciation of the underlying and interconnected institutions that make property rights meaningful and allow property markets to function.

The International Property Markets Scorecard is a tool jointly developed by the Center for International Private Enterprise (CIPE) and the International Real Property Foundation (IRPF) in order to map the institutional components of property markets and evaluate their effectiveness. The Scorecard provides a methodology for property market system analysis to investigate the six core elements necessary for sustainable property market development – property rights laws and enforcement, access to credit by small businesses, efficiency of governance, rational dispute resolution, financial transparency, and appropriate regulations.

This approach not only illustrates the linkages between property market elements but also helps identify gaps where some of those important institutions remain weak, either due to the lack of a proper legal and regulatory framework or its weak implementation. Such gaps represent key areas that countries should prioritise when considering reforms to strengthen institutions that support healthy and inclusive property markets.

In Kenya, CIPE and the Institute of Economic Affairs (IEA) have been working together to use the Scorecard methodology to examine the strength of urban, commercial property markets in two major cities and highlight barriers that small businesses face, with the particular focus on

property rights and access to credit by small businesses. Similar efforts by CIPE and local partners are also taking place in Armenia, China, the Philippines, and Russia.

The Scorecard consists of two major levels of inquiry – desktop or secondary research and field assessments of actual property market conditions. Desk research is conducted using established indexes from multilateral development agencies such as the World Bank and the World Economic Forum as well as other publicly available sources. To maintain consistency and comparability the desk research remains consistent across each country. Given the unique character and background of each country, field assessments are more flexible.

IEA tailored the fieldwork in Kenya through a mix of focus groups and interviews to obtain the most accurate snapshot of the conditions entrepreneurs face in dealing with the government, banks, and professional services providers in the property sector. Although necessarily subjective, these views from small businesses have a unique power to illustrate key problem areas in property markets precisely because of the real, personal experiences they reflect. The result presented here is a report that explains and supplements the Scorecard findings, and provides reform recommendations.

Section 1

Country Context

Property Rights in Kenya

The level of recognition and protection of property rights in a given country is ultimately determined by the cultural values that influence what a society is willing to acknowledge, defend, and enforce. Therefore, as each society changes, the definition of property rights will also change, and the laws and rules will change to reflect the new norms.

In Kenya, property rights recognition has been historically weak given the cultural values held at the time and the corresponding framework of laws and rules.¹ In pre-colonial times, land was held communally at the custody of local clans. Rights were restricted to use as neither families nor communities could sell, subdivide, lease, or rent to others. Families took turns in carrying out agricultural activities on the land and would move from one plot to another based on the planting seasons and weather patterns. The rights of individuals were not viewed as sacrosanct but instead intertwined with the rights of others, and overlapping with those of families and wider groups.

Colonisation introduced a nationwide land registration system that included titling of farm lands. Beginning in the late 1950s and through the post-independence period, titling of farmland as individual freehold property was initially expected to achieve many aims at once: provide security of tenure and protect investments; enable farmers to borrow against a new form of collateral; allow land to pass into the hands of the most able farmers; quell and prevent disputes; improve husbandry through consolidation of holdings; promote political stability; and provide a clear public record of ownership.² However, those hopes soon became frustrated by the lack of title security and politically motivated irregular – and frequently outright illegal – land allocations.³

From the post-colonial period until the multi-party elections of 1992, Kenya continued under a one-party Constitution, with land being an object of widespread political patronage and corrupt schemes. The history of communal ownership, colonisation, and one-party rule left

Kenya with a property rights system full of conflicts, abuses, and multiple allocations of single plots of land. This situation has only recently begun to be addressed in a meaningful way through the National Land Policy launched in 2009 and the provisions of Kenya's new 2010 Constitution.

The Need for Enhanced Property Rights Protection

Peruvian economist Hernando de Soto famously asked: why is it that although cities across the developing world are teeming with entrepreneurs, yet these countries seem unable to become prosperous market economies? The answer, he argues, is that they hold “resources in defective forms: houses built on land whose ownership rights are not adequately recorded, unincorporated businesses with undefined liability, industries located where financiers and investors cannot see them.” Since property rights are not properly documented, they cannot “readily be turned into capital, cannot be traded outside of narrow local circles where people know and trust each other, cannot be used as collateral for a loan, and cannot be used as a share against an investment.”⁴

De Soto's argument highlights that developing nations failed to build a sophisticated legal infrastructure that permits property to be turned into capital and their property law systems are so cumbersome as to be dysfunctional, thus driving legitimate economic activity into an informal, extralegal sector. This is the situation in Kenya today, where the informal sector accounts for the majority of businesses and employment in the country. In order to change that, Kenya needs a more effective property rights system that would make those rights more easily accessible to small businesses, informal and formal alike.

One key cornerstone of an effective property rights system is the legal concept of a “bundle of rights.” Property rights are likened to a bundle of sticks where each stick represents a particular right or stream of benefit. The bundle expands as sticks or rights are added and reduced as rights are taken away.⁵ For example, a landowner may have a number of

“sticks” such as the right to sell, lease, mortgage, subdivide, and develop, depending on the laws of the community. The community also has rights known as “police power,” for example to tax, take for public use, and regulate uses. Therefore, the strength of property rights protection in a country will depend significantly on the clarity and consistency of the rules and laws adopted in acknowledging, defending, and enforcing property rights.

Given the recent legislative changes meant to create a stronger property markets framework, Kenya has a unique opportunity to define and implement the bundle of rights that would allow all its citizens to transform the property they hold or lease into productive capital.

Recent Constitutional Reforms

Kenya is in the process of implementing a new Constitution that was promulgated in August 2010 following popular approval through a national referendum. The Constitution brings about significant change in how property rights are viewed and enforced. For the first time, for instance, traditional discrimination against women in terms

of land inheritance has been made illegal. The old Constitution was silent on land inheritance by women and therefore customary and traditional practices prohibited women from inheriting their family's land. The law did allow women to own land; however, because of the traditional discrimination, women could not use land as collateral for access to credit from financial institutions such as commercial banks.

Article 60(1) of the new Constitution eliminates gender-based discrimination in laws, customs and practices related to land and property, including inheritance. Article 27(3) further states that “women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.”⁶ Protection of the right to property has been included in the Bill of Rights under Article 40 as well as in Chapter 5 of the Constitution on Land and Environment.

The Constitution classifies land ownership into three categories: public land held in trust by the government, community land held by the community, and private land held by individuals either through freehold or leasehold. It has also eliminated 999-year leaseholds that were issued during the colonial times, limiting them to 99 years. These reforms provide an opportunity for more equitable development of some prime and economically vital property, most of which is located in urban areas.

The new Constitution also introduced important administrative changes that may affect the functioning of local property markets. It provided for a devolved system of government where the national government will share functions with 47 newly created counties. Each county has a locally elected assembly of parliament with the power to pass local laws, including revenue collection. The counties receive 15 percent of the national revenue and need to raise the remainder of their funding needs themselves. This may have an impact on functioning of the local property markets if the counties attempt to raise the level or change the methods of collection of local property taxes, land registry fees, and other levies.

The history of communal ownership, colonisation, and one-party rule left Kenya with a property rights system full of conflicts, abuses, and multiple allocations of single plots of land. This situation has only recently begun to be meaningfully addressed.

Section 2

Urban Commercial Property Markets

For purposes of this study, urban commercial property refers to property available for office space or retail and to some extent logistical or warehousing use. The study excludes residential space although there are cases where small businesses are operating in residential areas.⁷

Part of the problem of trying to quantify Kenya's property market in urban areas is the scarcity and disparate nature of the available data, and gaps in record keeping. For example, although there are plans to introduce digitisation of property records, the land registry in the Ministry of Lands is still manually operated, making it difficult to query land transactions. More up-to-date information is available from private property agents and realtors but this information is in some cases not consistent and the reliability and independence of the information may be questionable as there is no centralised public listing of commercial property available.⁸

The urban areas included in this report comprise of the capital city Nairobi, which is the political and administrative centre with a population of over three million residents, and Mombasa, the second largest city in Kenya with a population of about one million residents. Thirty-two per cent of Kenya's population is urban (a share projected to rise to 54 per cent by 2030), accounting for about 13 million people.⁹ This means that approximately one-third of Kenya's urban dwellers live in the two largest cities.

Mombasa is an important sea port with the main harbour that serves as the port of entry to Kenya and the greater Eastern and Central African region. Its seaside location with white sandy beaches and tropical climate also makes Mombasa a major tourist attraction. The two cities were chosen because they represent a significant portion of Kenya's urban population and represent a diverse array of established businesses.

Property markets assessment in those two cities focused in particular on small businesses defined as both formal and informal enterprises employing fewer than 50 individuals. The focus on small businesses derives from the fact that they provide about 80 per cent of total

employment in Kenya, accounting for the great majority of the work force. Micro and small enterprises (MSEs) contribute about 18 per cent of Kenya's Gross Domestic Product (GDP), more than double the contribution by the manufacturing sector which stands at 8 per cent of GDP.¹⁰

The study examined day-to-day challenges that small businesses face with regard to property rights and access to credit. Some of the challenges particular to small businesses include:

- insufficient property rights protection, especially tenant rights that are often based on informal arrangements,
- challenges in obtaining cadastral information from the lands registry,
- cases of illegal evictions, and limited access to dispute resolution mechanisms,
- difficulty in accessing credit from commercial banks,
- allegations of corruption in many local councils and authorities, and
- inadequacy of regulations that govern small businesses.

Section 3

Key Scorecard Findings

The following summary of key findings on the six Scorecard elements is largely based on secondary sources (see the Appendix for details). Those international survey and rankings were subsequently supplemented by on-the-ground focus groups and interviews with MSEs and experts conducted by IEA in Nairobi and Mombasa.

The primary finding of the Scorecard was very weak support for the first Core Element – Property Rights, as well as very weak ratings regarding corruption and rule of law. Although ongoing reforms including the new Constitution and implementation of the National Land Policy have improved service delivery, corruption by local council officials in property transactions still remains a major challenge. This has resulted in ‘work around’ measures as businesses seek to obtain services from the council by avoiding bureaucratic red tape.

The findings show that the legal framework addressing property rights is complex and is not clearly understood by market participants. This has led to mass disinheritance of communities and individuals, inequitable distribution of land, and ineffective government regulation of private property rights.

Property Rights - Very Weak

This is the weakest of the six elements and the top priority for improvement. Although there have been efforts to improve legal protection of property rights in Kenya, new laws have not been fully implemented and many challenges persist in practice. The major challenge to implementation is the fact that the existing land regime remains complex, leading to a lack of awareness of the legal provisions and rights involving land ownership and transactions – especially among small businesses.

Property registries are limited and flawed, with multiple allocations and

registrations of single plots of land common. The keeping of cadastral information is inefficient resulting in rent seeking and numerous scandals involving the Ministry of Lands, especially under past political regimes. The lack of a single decentralised and reliable registry is a major hindrance as buyers and sellers still come to the Ministry of Lands headquarters in Nairobi to obtain cadastral information. Lack of an electronic, digitally searchable lands register has also impeded the pace of land transactions, presenting opportunities for extralegal payments.

Formal ownership is also constrained by land speculation, corruption, political interference, and the abuse of power. Consequently, ownership of urban property by MSEs is low because of the high costs of land driven by speculative pressures, leaving most of them dependent on frequently informal renting. Typical informal arrangements for leasing commercial property are conducted on per-day rental terms with subletting up to the fifth level within Nairobi’s Central Business District (CBD).

Even where formal lease contracts exist, small businesses are often not knowledgeable or confident enough to undertake meaningful negotiations of rental terms. The prevalence of legal jargon in lease documents inhibits full comprehension of leases and negotiation of terms by small businesses, leading to exploitation by property owners.

The abuse of tenant rights happens not only in illegal evictions but also through the negligence of property service obligations by landlords. For instance, maintenance of common areas is often not done and if it is provided additional fees are charged. As a result most tenants do not seek provision of basic services due to the high costs involved.

Access to Credit - Strong

The overall access to credit for MSEs in Kenya is strong compared with other countries in the region. Kenya has a robust banking and financial

sector based on the strength of Central Bank's regulations and adherence to them by banks. Commercial banking is well established with 42 banks (two are partly owned by government). Private equity is also strong and has been on an upward growth curve; however, small businesses have difficulty with accessing this form of financing.

While the commercial banking sector remains well-capitalised and adequately provisioned, the high costs of mortgage financing reduces access to credit for MSEs given that lending is mostly collateral based.

The microfinance sector in Kenya is very strong in urban as well as rural areas and could provide a bridge to more traditional lending services. In recent years, there has been strong development of micro-lending through savings and credit cooperatives (SACCOs) and other microfinance institutions. Such lending is often group-based to target segments of the population such as women, youth, or MSEs. Various models that include agency banking and mobile banking are being implemented to further facilitate MSE lending.

The issue of concern, though, is the fact that interest rates still remain unaffordable in the opinion of small businesses, which is partly responsible for the poor uptake of many lending programs, given the low savings rates and low per capita incomes. Loan interest rates averaged between 13 and 14 per cent for the period June 2010 to August 2011 according to the Central Bank of Kenya and are expected to rise in response to double-digit inflation. This makes the cost of borrowing increasingly out of reach, particularly for the small business owner. Another issue has to do with ambiguous and often confusing definitions of target lending groups, which deters many small businesses from perusing such funding.

Government funding through numerous development funds is often inadequate to meet the growing financial needs of small entrepreneurs. The stock exchange does not apply for small businesses as the exchange is yet to attract bond instruments that might serve the MSE sector.

A 2009 amendment to the Banking Act (Cap 488) enacted in 2010, established credit reference bureaus meant to create a viable alternative to asset-based lending. The law provides for the sharing of borrowers' credit history among financial institutions in order to facilitate access to credit for individuals with good credit ratings. Since the law came

into force, two institutions offering these services have been created. It is still unclear what impact this will have on access to credit for small businesses.

Effective Governance - Weak

While overall levels of corruption remain high, the level of awareness and public outcry has increased, resulting in a reduction of openly corrupt practices. Yet, a resurgence of systemic or high-profile corruption is on the rise, in many cases relating to property markets. Despite efforts to reform, Lands Minister James Orengo has recently admitted that the fight against graft in his ministry may take longer to be effective due to "the endless chain of corrupt officials and brokers involved in land transactions and syndicates."¹¹

Patron-client relationships still exist within the public sector and there are cases of corruption that involve council officers colluding with clients to manipulate assessed land values in order to lower their annual property tax rates. At the same time, the public in general and the small business community specifically report that some administrative procedures have

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improved. For instance, it now takes less time to obtain a police abstract, driving license, or business permit.

Rational Dispute Resolution - Weak

Businesses generally do not trust the public justice system to resolve their disputes. Costs of dispute resolution through the commercial courts are unaffordable to MSEs and most rely on trust based on previous transactions and reputation rather than on written contracts. This prevalence of informal transactions especially between property owners and tenants means that there is no recourse for tenants in case of wrongful evictions or other conflicts. In fact, evictions are quite common with owners involving agents who do not comply with procedures laid out by law.

The police who are supposed to enforce and uphold the rule of law are known to be corrupt. City council officers (askaris) also are notorious for abuse of power with numerous cases of evictions carried out under the cover of night. Enforcement of contracts is slow and expensive. Lease contracts are subject to frequent disputes where vigilante groups are hired to assist in forcibly resolving property rights and contract disputes.

Financial Transparency - Weak

Overall, Kenya's financial markets have been stable during the global financial crisis. The real estate market, however, is highly speculative – especially in the land market. Kenyans tend to buy property with very limited information from unreliable sources. Information for commercial properties that are for sale or have sold cannot be easily accessed. This information stays mostly with real estate agents and the majority of them are non-professionals since the threshold for practicing as an agent is very low. The Estate Agents Act (Cap 533) allows anybody with certificate of good conduct to practice without any emphasis on professional affiliation or qualifications.

Valuation standards are not strictly enforced. There are only about 500 highly trained independent valuers in Kenya with most firms outsourcing valuation services, which is more costly. Professional credentials are expensive to obtain resulting in cases of unprofessional conduct among unlicensed valuers. The lack of local institutions that specifically train valuers has further impeded the growth of the profession. Public universities focus on training land economists and have limited capacity both in terms of facilities and faculty. What is more, many academicians

leave to go into private practice in search of a better pay.

Appropriate Regulation - Weak

Despite the existence of professional services, many Kenyans still prefer to work with unqualified agents in dealing with property matters. There is a prevalent misconception that professional service providers are expensive, yet their fees are regulated by law unlike unprofessional agents whose charges are not standardised. Some unlicensed agents charge more than 10 per cent of the transaction value, a rate often higher than that of professionals.

The existing tax regime favours big businesses since Value Added Tax (VAT) administration is cumbersome for small businesses. Development of appropriate tax breaks for MSEs has not been realised. The capital markets remain shallow and narrow with little relevance for MSEs.

Section 4

Overview of the Fieldwork

In supplementing secondary Scorecard data with the views of small businesses, the Institute for Economic Affairs adopted a qualitative methodology to collect perceptions of how effective property rights and access to credit are for small businesses. IEA conducted semi-structured face-to-face interviews and in-depth focus group discussions in Nairobi and Mombasa during March 2011.

This approach provided the focus on MSEs while allowing for adaptability in how discussions and interviews were structured. It also avoided the common disadvantages of anonymous questionnaires where there is no control over interpretation of the topic, typically low response rates, uncertainty in who actually completed the questionnaire, and difficulty in reaching some segments of the population such as small businesses. Answers obtained by IEA, covering both factual information and perceptions, revealed the story behind respondents' individual experiences with property market transactions.

IEA held focus group discussions with 13 participants in Nairobi and 17 participants in Mombasa. They were drawn from among the private sector, government officials, realtors and property managers, property valuers, professional associations, civil society organisations, lawyers, government investment agencies, small business representatives, commercial banks, and informal sector associations. Follow-up interviews were held in both Nairobi and Mombasa in order to obtain clarifications and further information.

The businesses interviewed in Nairobi included a tutorial college leasing commercial space within the city centre, small business owners renting exhibition stalls, a retail supermarket owner, self-employed consultants offering professional services, and Juakali² association representatives. In Mombasa, the interviewees included small curio business owners, tour guide operators, art and craft exporters, self-employed hoteliers, clearing and forwarding business owners, and transport operators.

The main objective was to identify the actual challenges that small businesses face – particularly whether experiences on the ground are in conformity with what the law says. Interestingly, small businesses in Nairobi had a higher level of awareness on what the law states, especially regarding property rights, and were also aware of the existence of venture capital firms that provide alternative sources of credit. In Mombasa, the level of awareness was much lower, especially on the issue of property rights, the use of formal lease agreements, as well as availability of different sources of credit.

Overall, small businesses indicated that a key reform priority should be the decentralisation and electronic digitisation of the lands registry to enhance availability of cadastral information not only at the national level but also at the provincial and district levels. This is contrary to official communication from the Ministry of Lands, which states that cadastral information has been decentralised and therefore can be obtained at the district and provincial levels.

Section 5

Expert Roundtable Findings

The expert roundtable meeting was held on 12th May 2011 in Nairobi with participants from among various professional real estate societies, property managers and realtors, valuers, Juakali associations, banks, lawyers, consumer organisations, Ministry of Lands officials, small business owners, research institutes, and non-governmental organisations. Several experts unable to attend were later consulted individually. The meeting provided an opportunity to validate earlier findings and to agree on policy recommendations on how to tackle the challenges regarding property rights and access to credit for small businesses.

Property Rights

Participants agreed that the lack of reliable title registry is a major hurdle for all Kenyan businesses and for secure property ownership in general. Conducting searches is costly and unreliable because most people do not trust the validity of records in local registries and travel to Nairobi to verify records in the Central Registry. As one of the participants put it, “the sanctity of a property title has been lost.” To restore it, digitisation of property records and automation of title searches is long overdue, and the methods for re-creation of old or damaged records must be improved.

Such efforts are currently underway but proceed with delays, especially at the local level. One expert noted that manual searches are a source of income for local officials and they are reluctant to give it up. What is more, digitisation itself creates opportunities for corruption. There are cases where officials claim that a particular record cannot be accessed because it is being digitised but they can help find it for an additional “fee.” The government must address these counterproductive incentives while implementing the digitisation and automation process.

Attendees also noted a common perception among the general public that using informal channels and personal contacts for property transactions is less expensive than going through formal channels even

when that may not be the case. Where formal contracts are signed, however, the law is more protective of tenants than landlords in regard to commercial leases. Controlled rental property, or protected tenancy, has hindered property development, therefore negatively affecting property markets in the main cities.

Stamp duty levied by the government on land transfer transactions – currently at 4 per cent of property value – was also viewed as a major hindrance to the efficient transfer of land titles. Participants suggested that it should be made more affordable. They also thought that mortgage documents should be standardised across the financial sector in order to facilitate mortgage transfer from one financial institution to the other in search for better loan terms.

City infrastructure and planning were also mentioned as key factors affecting the cost of land and doing business with impact on mortgages and rents. Rapid urbanisation created excessive demand for land in Kenya’s major cities, on the one hand driving up prices of real estate, and on the other hand leading to the emergence of an alternative, informal market to meet demand. To address that problem, city councils should dedicate space for small vendors – both formal and informal – to put up their stalls where they have the infrastructure they need.

Access to Credit

One practical problem encountered by small businesses seeking loans is the lack of a standard definition of an MSE. Lenders generally consider businesses with up to 50 employees and annual revenue below Kshs. 5 million as small. Yet, as one of the attendees pointed out, because no standard definition exists government and donor funds provided to banks for small business loans in practice are available to all businesses and go to the most credit-worthy ones, which tend to be larger. What is more, banks and microfinance institutions define MSEs differently, further complicating the criteria for targeted lending.

Participants also noted that the significance of title deeds as a means of collateral for banks is declining due to the uncertainty of ownership and low reliability of the land registry. Given the pervasiveness of cases where multiple titles exist for the same piece of land and high legal costs involved in repossession of land, banks are unwilling to treat it as a lending-worthy asset. Moreover, many small businesses do not own property and instead lease it for their operations.

That is why there is a need for more flexible lending for MSEs that goes beyond title-based collateral and takes into account other types of collateral (for instance leasehold loans, machinery, and equipment) or loans based on a sound business idea. In the absence of such options, Kenyan MSEs will have to continue to rely primarily on their own savings or risky informal lending, which limits their opportunity for growth. Participants suggested that businesses need help in preparing sound business plans and improving their financial record keeping in order to become more credit worthy. They also noted that the government should encourage formalisation of informal small businesses as the ultimate solution to enhancing MSE access to credit.

Effective Governance

The attitude that makes bribery routine in property transactions and widely accepted – or even expected – is a big problem. Even though most government offices have service charters that specify the time and cost of a given service, they are routinely ignored. As one of the participants said, “You can’t get a service unless you do more than what is on the books.” This problem is most acute at the city council level where the issue of bribery is often compounded by the lack of proper qualifications among officials. Therefore, attacking the corruption problem at the top level of the government will not solve the problem as long as it persists in local offices.

Participants noted that corruption affecting property markets thrives in the private sector as much as in the public sector. Some law firms even include corruption costs in the legal fees that they charge clients. There are also cases of cartelisation in the provision of certain professional services. For example, many commercial banks allow only a small number of select valuers to assess values for their property loans, discriminating against other qualified professionals. With corruption frequently facilitating service delivery in property transactions, attendees noted that adopting

ethical standards and codes of conduct would be beneficial for both public officials and professionals in the real estate industry.

Rational Dispute Resolution

Participants observed that even when MSEs in Kenya enter into formal rental agreements with property owners, they often do not fully understand those agreements and fail to negotiate the terms, leading to abuse. For instance, property lease contracts often do not incorporate alternative dispute resolution mechanisms and do not specify exit clauses.

Attendees noted that the use of alternative dispute resolution mechanisms still remains low in

Kenya. The Land Arbitration Tribunal, a quasi-judicial body within the Ministry of Lands, is one available alternative, especially for lessees or grantees of commercial and industrial government plots since the Tribunal has mainly concentrated on resolving objections to the 1988 Land Rent Revision.¹³ The Tribunal also handles disputes over acquisition compensation where citizens can seek redress if they believe their property has been undervalued.

Another available option, in particular for businesses operating in residential premises, is the Rent Tribunal under the Ministry of Housing.

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It is responsible for resolving disputes between landlords and tenants whose standard rent is up to Kshs. 2,500.¹⁴ Participants believed that although aggrieved parties may still file cases in court, most such cases would likely be better resolved by the Tribunals.

Participants agreed that the inefficiency of courts is as much a problem as the costs involved in legal cases. That does not augur well for the prospects of efficient dispute resolution needed for speedy digitalisation of land records. When multiple titles exist to the same plot, resolving which one is valid and becomes scanned as “official” into the digitised registry can take years unless better procedures are put in place.

Financial Transparency

Participants noted that different property valuation methodologies are used in the profession often leading to conflicting valuation reports, especially between government valuers and private sector valuers. Government should thus enforce a common methodology to ensure uniformity of reports and consistency in the valuation practice.

A larger problem with valuation pointed out at the roundtable is the fact that few small businesses use the services of professional valuers, believing that they are overpriced. In order to save, many MSEs obtain valuations from unlicensed individuals for a smaller fee. However, they often end up losing more money in the end when those unlicensed and often unethical valuers disappear with the deposit they collected or provide inaccurate valuation.

Appropriate Regulatory Mechanisms

Participants agreed that creating sound regulatory underpinnings of property markets in Kenya depends on the implementation of the National Land Policy and Chapter 5 of the Constitution. This implementation has been underway but various stakeholders must unite behind it for reforms to maintain momentum.

When it comes to the tax regime, the existence of two separate systems of tax – Value Added Tax (VAT) and income tax – does not allow for netting of taxes owed to the national revenue authority. This affects businesses’ cash flow negatively due to the shortcomings in VAT administration that generate refund backlogs. Many small businesses – in particular those in the informal sector – perceive tax collectors as an obstacle to compliance

with the taxation regime and fear them. To overcome that, participants suggested awareness-raising about the tax advantages of registering a business and how to comply with tax rules (for instance, how to fill out tax returns properly).

As far as the regulation of professional services, participants noted that legal mechanisms applicable to real estate agents are generally weak and implementation is a challenge even in the areas where these mechanisms are relatively strong. The Estate Agent Act is out of date and needs to be reviewed in order to make it more comprehensive and cover the array of services that estate agents currently provide. Professionalism among property agents varies, often leading to non-compliance with standards, and the Estates Agents Registration Board lacks the capacity to enforce compliance amongst its members.

Section 6

Conclusion and Recommendations

The importance of secure property markets for small enterprises is fundamental to Kenya's economy particularly in light of the goals of Kenya Vision 2030,¹⁵ which sees land as one of the foundation pillars and a crucial resource for the socio-economic and political development of Kenya. The Vision states that, "Respect for property rights to land, whether owned by communities, individuals or companies, is an important driver of rapid economic transformation. This transformation is dependent on a national land use policy, which, therefore, needs to be completed as a matter of urgency."¹⁶

This report highlights that the slow and expensive judiciary system, and inadequate or lacking information among MSEs on the provisions of the new Constitution and related land policies are significant barriers for the implementation process of the legal framework which secures the property market. This inadequacy continues to hinder the implementation of the National Land Policy. Corruption and the distrust in institutions further hinder the implementation process and should be addressed with the same importance as the other areas of concern such as improved lands registry and better access to credit for MSEs. These various areas of concern must be addressed as a prerequisite to achieve Kenya's Vision 2030.

The upcoming presidential election in August 2012 and parliamentary election in December 2012 provide a unique opportunity to move forward in initiating sensitisation and raising awareness for current and future decision-makers on key priority reforms to improve the functioning of the property market for small businesses.

Key Property Rights Problems and Recommendations

In analyzing different types of property rights within the bundle of rights it is important to examine how individuals, in particular small

businesses, acquire property rights and also identify the type of right they possess. Full ownership rights may be acquired through purchase; use rights may be acquired through either periodic rentals or short-term to medium-term property leases.

Ownership rights are conveyed by land title, while rights of use are conveyed by way of periodic rental and lease agreements. Although there is no specific statute governing leasing in Kenya, it is widely practiced, especially among MSEs. Common law, Income Tax Act (CAP 470), and VAT Act (CAP 476) together define the legal and tax framework for leasing transactions in Kenya.

Informal processes that provide some type of property rights to users are also prevalent. Many small businesses are entering into various arrangements that differ from one landlord to the other, meaning that property transactions are not registered and therefore remain informal. For example, a large number of small businesses within Nairobi's city centre rent commercial spaces of 1 meter squared (m²) for 24 hour periods or less. Typically these agreements are not well documented, often resulting in property rights violations by landlords against their short-term tenants. Since the arrangements are informal, small businesses have no recourse when their rights are violated.

In the area of land ownership, the state of the land registry has led to challenges especially in accessing information on land cadastre. The system is still manual and its operations remain highly centralised despite efforts to initiate decentralisation. Performing land and property searches is difficult as information on completed land transactions and land and property listings that are for sale is not uniformly made public. This has significantly affected property rights protection in the country since information remains in the hands of a few. The lack of publically available property market information also has a negative impact on the level of access to credit because financial intermediaries have difficulty

determining market prices and helping to steer the market away from speculation.

In addition, there is a general lack of awareness on property rights and the legal processes that ensure property rights protection. Small businesses do not know what type of property rights they have. They are not aware of what the law says – especially when it comes to dispute resolution mechanisms or property right violations such as forced evictions – and they also do not know their responsibilities and obligations in terms of payment of local land rates and property taxes.¹⁷ To address these challenges, a number of interventions should be considered.

Simplify and harmonise property rights framework

The legal framework is too complex with many layers that are difficult to understand and comprehend. The National Land Policy is aimed at rationalizing all the various laws under one policy. The creation of the Lands Commission, called for under the Constitution, is supposed to oversee the harmonisation of all land-related laws and provide improved clarity in land policy administration. However, although the National Land Policy has been adopted by the Parliament, its implementation is yet to be fully realised as the National Assembly has not yet promulgated the law forming the Commissioner of Lands whose role is central to land policy management in Kenya.

The related issue is adequacy – whether the implementation of the Land Policy meets the demands of the public, specifically the needs of small businesses. There are many complaints about the unnecessarily complicated procedures involved even in straightforward administrative services such as facilitating transfer of ownership in the case of inheritance. Simplification of the laws and greater efforts to help the public understand their rights would go a long way toward helping everyone better understand legal protection of property rights and therefore enhance enforcement.

Develop new legal tools tailored to MSE needs

Difficulties faced by small businesses in property transactions demonstrate a need to develop legal tools and instruments that capture the different types of property rights that small businesses find useful

Simplification of the laws and greater efforts to help the public understand their rights would go a long way toward helping everyone better understand legal protection of property rights and therefore enhance enforcement.

and appropriate for their unique situations. Legally, the land title is an instrument used to show proof of ownership rights and its use is limited to purchase transactions, which are not the primary concern of small businesses. Rental and lease agreements are more crucial for small businesses. However, most are informal and therefore not legally protected as binding transactions.

In order to encourage small businesses to use formal leases, available legal arrangements should include a wider array of instruments including a simple and innovative way to capture the arrangements already common in the market such as hourly or 24-hour rentals. This approach to formalizing the existing informal processes would greatly improve the business environment for small businesses by acknowledging, defending, and enforcing their property rights.

Finalise digitisation of the lands registry

The process of digitisation of the lands registry should be expedited. A well-functioning, widely accessible cadastre will immediately result

in better property rights protection. More accurate information on completed transactions and public land and property listings at any point in time will also help with dispute resolution in cases of conflicts and violations. Decentralisation of the registry will improve service delivery by bringing the service closer to the people as well as improving transparency and accountability.

Officials at the Ministry of Lands indicate that the registry can be accessed at the provincial and district offices, whereas businesses maintain that they have to travel to Nairobi to obtain accurate information. Further studies are needed to identify the status of the registry at local offices and any remaining road blocks with local officials. Once reliable access to local registries is in place, an information campaign should be carried out to educate the public on the importance of the registry and the process for local access to land records.

Educate small businesses about their rights

The government, private sector, and civil society organisations should initiate various nationwide awareness programs on property rights and obligations to sensitise people about their rights as users of property. This will improve the way purchase, rental, and lease agreements are negotiated and documented resulting in increased formality and fewer cases of property rights violations. Specific knowledge on the obligations of small businesses as ‘right-holders’ under the tax compliance, and how these revenues are crucial to the functioning of the entire property markets system, should also raise compliance levels. Such an awareness program would also include sensitising small businesses about alternative dispute resolution mechanisms that might be more suitable to their needs, such as the Land Tribunal, in addition to the courts.

Key Access to Credit Problems and Recommendations

The majority of lending in Kenya is done by private commercial banks¹⁸ and seven venture capital firms operating in Nairobi. Lending is collateral based with credit provided on the basis of assets through long-term loans and mortgages. Therefore, commercial banks accept titles as part of the requirements for awarding credit for property purchases. Since titles only represent one type of property right, i.e. ownership rights, small businesses with only use rights (formal leases) are disqualified from credit financing because leases are not accepted by banks as collateral.

This means that most small businesses are excluded from the credit market served by commercial banks as they do not own any assets to enable them to qualify for loans, while at the same time they cannot afford mortgage repayments due to high interest rates.

Introduce new forms of financing tailored to MSE needs

One way to improve access to credit by small businesses would be to initiate banking regulatory reforms that allow for broader access to financing specifically aligned to uses or to the types of property rights held by small businesses. For example, banks could provide lending for small businesses to finance their commercial rental space by structuring repayments within the rental period and reserving the right to take over the lease in case of default.

If the business defaults, the bank could still recover its investment by leasing the commercial space to another business for the remainder of the lease, in addition to recovery action from the defaulter. Such an arrangement would assist those businesses who cannot rent desirable commercial property – and therefore increase their sales and revenue potential – without credit.

A further reform could also provide credit vehicles¹⁹ for small businesses with proven business plans and solid customer bases to lease commercial property since they generally cannot afford to purchase property. Such expanded definition of collateral would also help businesses secure loans not only to rent property but also to finance operations and expansion.

Other Recommendations

Improve governance and accountability at the local level

Although the government has been trying to improve service delivery through service charters, there is still a pressing need for a higher degree of institutional efficiency, transparency, and accountability both at the Ministry of Lands – which records land transactions – and at the local authorities and council offices. Effective governance will only be achieved by making internal processes transparent and open for stakeholder participation, especially given Kenya’s recent administrative reorganisation into 47 counties with locally elected governments. Targeted training needs to be carried out for the new county officials to facilitate the implementation of anti-corruption measures as well as to

improve financial literacy in the light of new rules for financing of local governments outlined in the Constitution.

Enhancing the accountability and efficiency of the judiciary will also be important in stemming new cases of graft as well as improving public confidence in the key institutions governing property rights protection.

Make professional real estate services more accessible

Property valuers and other service providers need to sensitise the public on their profession's ethics and code of conduct since there is a growing misconception that their services are unaffordable. Many small businesses still resort to informal property managers and estate agents who are unqualified and often ultimately cost more than the fees charged by the qualified valuers. The Estate Agents Act should be revisited to raise the professional requirements for real estate agents and encourage continuous training and adherence to a code of ethics.

The Way Forward

Property rights and access to credit stand at a crucial moment in Kenya. The new Constitution and National Land Policy provide the impetus to address long-standing confusion and inequalities in the property rights system. What is more, several provisions of the draft MSE Bill, currently debated in the Parliament, are of particular relevance to the situation of small businesses in property markets.²⁰ If passed, this bill would, among others, facilitate informal sector formalisation through improved management of MSE associations regulated with a dedicated registrar; promote urban zoning of land for development of small enterprise clusters; provide the facilities such as dedicated premises for MSEs in urban areas; improve access to business development services; and create the MSE Tribunal.

Small businesses form the overwhelming majority of the work force in Kenya and contribute mightily to the country's GDP. The time is right for a wide public awareness campaign regarding both the rights and obligations that come with the bundle of property rights for MSEs. More targeted credit programs are also needed that move away from relying solely on asset-based collateral and take into account the special circumstances of small businesses including lending based on leaseholds, booked orders or documented customer histories.

Finally the acceptance – which over time grew into expectation – of corruption in property transactions as well as various “work around” measures by small business in dealing with public officials should come to an end. Many small businesses distrust public institutions and formal service providers, but often end up paying more and ultimately getting poorer or no services from informal and unethical providers. Example cases of the consequences of working outside the formal sector for both the small business and the overall system should be illustrated so that entrepreneurs can clearly see the vicious circle informality perpetuates.

The implementation of the International Property Markets Scorecard in Kenya has come at an opportune time. These thoroughly researched and validated results provide a clear picture of the current situation and barriers that small businesses face in property markets. The findings also outline practical steps that can greatly improve property rights protection and access to credit for small businesses in Nairobi and Mombasa that can untimely be realised throughout the entire country.

Endnotes

1. See Okoth-Ogendo, H., 1976, "African Land Tenure Reform," in Heyer, J., Maitha, J. & Senga, W. (eds.), *Agricultural Development in Kenya – An Economic Assessment*, Nairobi: Oxford University Press.
2. See Shipton, Parker. 1992. "Debts and Trespasses: Land, Mortgages, and the Ancestors in Western Kenya," *Africa* 62(3): 357-388.
3. Roger Southall, "The Ndungu Report: Land & Graft in Kenya," *Review of African Political Economy*, 103, March 2005, pp. 142-51.
4. Hernando de Soto. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, New York: Basic Books, pp. 5-6.
5. "Introduction to Property Rights: A Historical Perspective," University of Illinois Extension, <http://urbanext.illinois.edu/lcr/propertyrights.cfm>.
6. The Constitution of Kenya, 2010, www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution_of_Kenya__2010.pdf.
7. Such cases are a symptom of the informality caused by an excess demand for commercial property that cannot be met, or when the available commercial space is unaffordable. There are numerous cases, especially in Nairobi, where residential buildings located next to shopping centers are being put up for commercial leasing. Also prime residential properties located near the Central Business District (CBD) are being converted from residential to commercial office space due to factors such as availability of parking space, convenience, etc. This trend is happening outside of city planning, indicating the unmet demand for commercial property within the CBD.
8. Many real estate firms have their own property listings, some of which are available on the Internet. However, such information is usually outdated and verification may sometimes be difficult.
9. Ayieko, Francis, "Kenya: Where Do Urban Slum Dwellers Fall in Mortgage Debate?" 29 June 2011, <http://allafrica.com/stories/201106300572.html>.
10. Kenya National Bureau of Statistics, *Economic Survey 2010* (and earlier editions, 2008 and 2009), Republic of Kenya.
11. "Govt to repossess more title deeds says Orengo," KBC News, 11 July 2011, www.kbc.co.ke/news.asp?nid=71253.
12. Small informal sector businesses that have emerged as an industry that employs unskilled and semi-skilled laborers to produce low-tech, labor-intensive manufactured products.
13. Land Arbitration Tribunal, Ministry of Lands, www.lands.go.ke/index.php?option=com_content&task=view&id=19&Itemid=35.
14. Rent Restriction Department, Ministry of Housing, www.housing.go.ke/?p=135.
15. Kenya Vision 2030 is the country's new development plan covering the period 2008 to 2030 that aims to transform Kenya into a rapidly industrializing middle-income nation by 2030, www.vision2030.go.ke.
16. Kenya Vision 2030, 2007, p. 9.
17. Land rates are taxes levied by the councils or local authorities; they are highly variable across towns and are approved by the Ministry of Local Government. Property taxes are levied by the national government and are administered and collected by the national revenue authority. In Kenya, property taxes have not been well developed but they remain a policy option that can be utilised as a revenue base that enables provision of business support infrastructure (e.g., making commercial space available) that benefit all stakeholders including small businesses.
18. FinAccess National Survey 2009, FSD Kenya and Central Bank of Kenya, http://www.fsdkenya.org/finaccess/documents/09-06-10_FinAccess_FA09_Report.pdf.
19. There is a distinction between providing finance to rent or lease property, and lease financing which is a form of purchasing property by sharing risks between two or more players. Here we refer to the former, which means providing short-term credit to finance payment of lease or rent that one can pay back within the rent/lease period.
20. Enacting MSE Bill is part of policy interventions envisaged by the Sessional Paper No. 2 of 2005 on Development of Micro and Small Enterprises, given that Kenya does not currently have a legal document dealing specifically with MSEs. Attempts to introduce such a bill have been underway for years but it finally has a realistic chance of being passed.

Appendix

Kenya Property Markets Scorecard



The Scorecard reflects the status of the six Core Elements necessary for transparent and efficient property market development. Each Core Element includes three Lead Indicators that are further divided into Sub-Indicators. Colours signify the strength of institutions that support market development – very strong, strong and weak. No colour indicates that institutions are very weak. Gray indicates more information is needed for an objective determination.

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Scorecard Methodology

The International Property Markets Scorecard is a systems analysis tool to measure the strength of institutional support for transparent, rational and effective property markets. It provides stakeholders with a visual representation of the status of the core elements necessary for sustainable property markets that help to distribute power and economic opportunity.

Quantitative and qualitative measures are taken from established international economic development organisations (information current as of October 2011) and paired with on-the-ground assessments of market participants. Unless otherwise specified, answers to Field Questions (FQ) come from the interviews and focus groups conducted by IEA in March 2011 in Nairobi and Mombasa.

The purpose of the Scorecard is to bring about an awareness of the interconnections between the microeconomic factors necessary for development and provide advocates, policymakers, and development groups with clear, actionable goals for continuous improvement.

Property markets are inherently local and can vary widely from one city to another, even from one block to the next. The Scorecard is meant to measure how policy decisions and levels of implementation affect property markets. It is not meant to provide specific guidance, measures or predictions of individual property performance and is only valid in the cities where field assessments have occurred. For detailed information on the Scorecard methodology please contact forum@cipe.org.



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Property Rights

Goal – Property rights that are legally protected, secure, recorded in a single, accurate, widely accessible electronic registry and that lead to high levels of formal ownership for all citizens

1.1 Legal Protection

Core Question: Does an effective and sufficient legal framework exist to protect property rights for all citizens? **No – Weak – However, new Constitution and National Land Policy set out a comprehensive reform agenda.**

Legal Framework

1.1.1 Are property rights clearly defined and protected by law? **No – Weak – Ranking 102nd out of 142; Score 3.41 out of 7 Trend ↑**

Security of Tenure

1.1.2 Can citizens challenge the legality of government takings? **No – Weak – 76th out of 142; Score 3.4 out of 7 Trend ↑**

Source: *Global Competitiveness Report 2011-2012* – World Economic Forum www.weforum.org/issues/global-competitiveness

Bundle of Rights

Survey Question

SQ1: What is the bundle of rights (group of rights such as occupancy, use and the right to sell or lease) associated with both residential and commercial property ownership? **Weak – freehold (absolute proprietorship) and leasehold; government is implementing comprehensive reforms to correct former privatisation acts at the expense of indigenous and communal land rights.**

1.2 Registries

Core Question: Does a reliable property registry exist including cadastral, title and mortgage lien information? **No – Very Weak, system has resulted in land speculation, corruption, political interference and the abuse of power. In addition, poor record keeping has allowed multiple allocations and registrations of single plots of land.**

1.2.1 Cadastral Information

Status – Very Weak – Modernisation program called for in National Land Policy adopted December 2009 but not yet fully implemented.

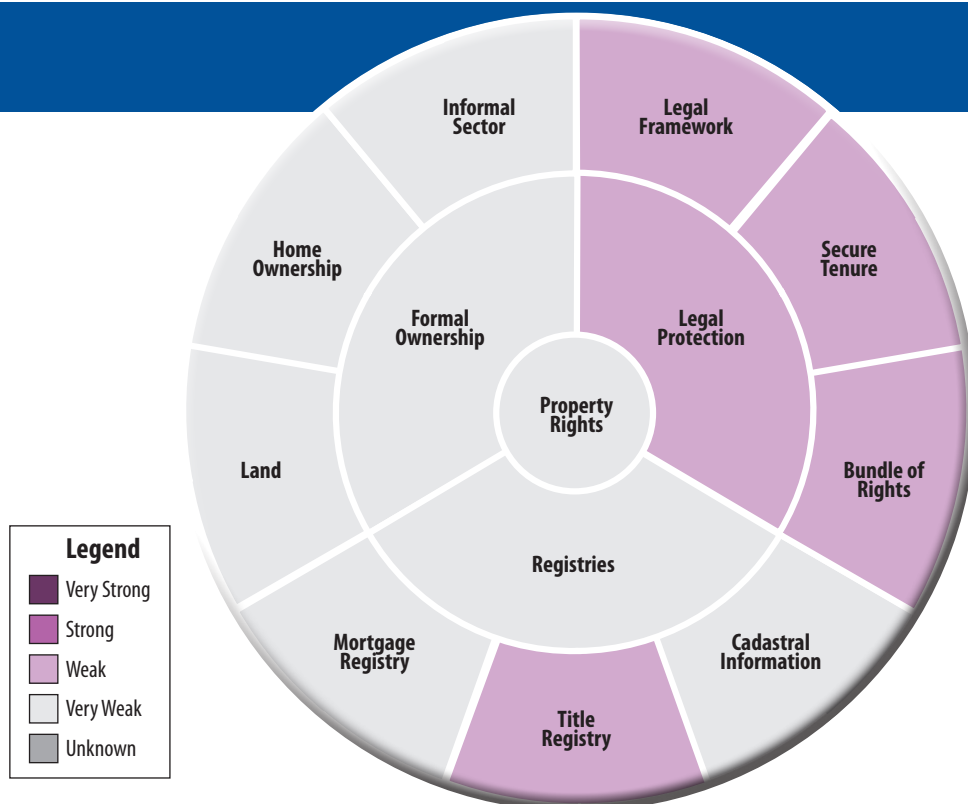
Survey Questions

SQ2: Is cadastral information (information about the dimensions and location of land parcels) easily accessible to the public? **No**

SQ3: Is zoning/permitted use information included and are use regulations respected and enforced? **No**

SQ4: Are Geographic Information Systems (GIS) including Global Positioning Satellite (GPS) information used to create and update the registry? **No**

Source: Ministry of Lands - www.ardhi.go.ke/
Civil Society Resource: Institution of Surveyors of Kenya www.isk.or.ke



1.2.2 Title Registry

Status – Weak – Ranking – 133rd out of 183 Trend = – currently not central and in non-digital form, new Land Policy aims to digitise the title registry

1.2.2.1 What is the number of procedures required to register the transfer of a property from one owner to another? **8**

1.2.2.2 What is the duration of time in calendar days that it would take to complete the transfer? **64**

1.2.2.3 What is the total cost of the transfer including all fees, taxes, etc. expressed as a percentage of the value of the property? **4.3%**

Source: *Doing Business 2012* – Registering Property, World Bank www.doingbusiness.org/data/exploreconomies/kenya

1.2.3 Mortgage Registry, only held by individual commercial banks

Status – Very Weak

Survey Questions

SQ5: The mandatory use of notaries or similar officials slows down and adds cost to the process. Does a notary need to be involved in the registration process? **Yes**

SQ6: Is information in the registry available electronically? **No**

SQ7: Title insurance is indemnity insurance against financial loss from defects in title and from the invalidity or unenforceability of mortgage liens. Is title insurance available to lenders? **No**

Source: *Financing Homes 2008*, World Bank and International Housing Finance Corporation [www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/financinghomes/\\$FILE/FinancingHomes.pdf](http://www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/financinghomes/$FILE/FinancingHomes.pdf)

1.3 Formal Ownership

Core Question: Do citizens understand and trust property rights institutions and avoid the informal sector?

No – Very Weak – the ineffectiveness of the current system has led to mass disinheritance of communities and individuals; inequitable distribution of land; and ineffective governmental regulation of private property rights.

Survey Questions

Land

SQ8: What is the status of land ownership? **Very Weak – Land is either government land, community land (trust land) or private land. Over time there has been a systematic breakdown of land rights and land administration. The new Land Policy seeks to address these issues.**

Source: Ministry of Lands - www.ardhi.go.ke/

Home Ownership

SQ9: What is the percentage of formal home ownership? **Very Weak – 16%**

Source: National Housing Corporation - www.nhkenya.co.ke/

Informal Sector

1.3.3 What is the percentage of service firms that report competition with unregistered or Informal firms? **80% - Very Weak Formal Sector (2007)**

Source: Enterprise Surveys www.enterprisesurveys.org/ExploreEconomies/?economyid=101&year=2007

In-Country Assessment Information

Field Question (FQ) 1: Even if legal provisions exist, what is the actual status of property rights and ownership for small businesses?

Citizens lack information on the Constitution and related land policies and laws, hence they cannot demand accountability. Inadequacies in

implementation of property rights laws and lack of political will, especially at the local council level, hinder their enforcement. This lack of enforcement of the regulatory framework leads to exploitation by property owners with many cases of collusion with the Ministry of Lands officials.

FQ 2: Are standard purchase contracts used for commercial properties? If not, how are property purchases usually completed?

While regulatory frameworks, purchase contracts and statutes are in place, many purchase contracts are completed through – or in many cases supplanted by – informal arrangements. Such arrangements are based on trust but have no legal enforceability.

FQ 3: Do separate contracts or other means exist to hide value from authorities when registering property transactions?

Different property valuation methodologies are used often leading to conflicting valuation reports especially between government valuers and private sector valuers. However, it is difficult to ascertain whether these cases are deliberately used to hide property values from the authorities.

FQ 4: Are standard leases used for commercial space? If not, what is a typical arrangement for rental?

Informal markets exist and operate on per day terms. Informal arrangements are characterised by subletting of up to the fifth level and subdivision of premises into tiny stalls in the city centre (Nairobi). Most formal leases are not negotiated by both parties, leading to exploitation of the tenants by the landlord. Legal jargon prohibits comprehension by users, i.e. leases are not prepared in simple

language that is easy to understand by a lay person.

FQ 5: What are the typical rates, terms and availability of office, retail, manufacturing and logistics facilities in both cities?

Rental prices in Nairobi range from USD 10 to USD 22 per square metre depending on office space or retail in the city centre with provisions for rent escalation ranging from 7 to 10 per cent every year. In Mombasa, rental costs are about USD 5 per square metre. There is more availability for office and retail space than for manufacturing in both cities. The term periods for renting begin from a minimum of one year upwards.

FQ 6: What are the processes for government expropriation of property especially notice and due process for owners? Are those laws followed or do expropriations happen by collusion between officials and connected elites?

The country has an enabling law, a good land tenure system, and laws protecting private property rights. There are examples of acts governing expropriation being aptly followed; e.g. due compensation has been made in the case of takings for the Thika Highway expansion from four lanes to eight. However, lawful government expropriation is complicated by the existence of multiple title deeds for the same land parcel making it difficult to identify real owners to determine compensation.

FQ 7: Are business owners compensated fairly when their property is taken for public use?

Delays in the processing of compensation are common. Cases of non-consensus in property values and conflicting valuation reports are also common. Members of the public do not have

sufficient information on the procedures to be followed when faced with expropriation.

FQ 8: What protections do businesses who lease space have from arbitrary eviction by owners?

The lack of formal contracts between landlords and tenants means that there is no recourse for tenants when landlords forcefully evict them. Landlords frequently involve agents in evicting tenants from their property. Most of these agents do not follow the legal procedures. Some landlords involve vigilante groups to help them carry out evictions.

FQ 9: What services are typically provided to tenants (common areas, public access, security) and what means of redress are available if services are not provided?

Tenants lack awareness of their rights and as a result there are numerous cases of tenants' rights violations, e.g. some landlords withhold maintenance of the premises. Tenants rarely ask for basic services due to the high fees charged when services are rendered.

FQ 10: What is the actual experience of transferring a property, accessing the registry and dealing with registry officials?

The lack of single, accessible, electronic registry means that land issues and services cannot be completely decentralised. Cases of misplacement of paper files are common and issues of multiple allocations of title deeds still exist. Doing searches on property is bureaucratic, expensive, and a long and tedious process.

Access to Credit

Goal – An efficient, transparent financial sector that provides a broad range of citizens with access to multiple forms of competitive credit so that they can start businesses, build wealth, and purchase property

2.1 Banks

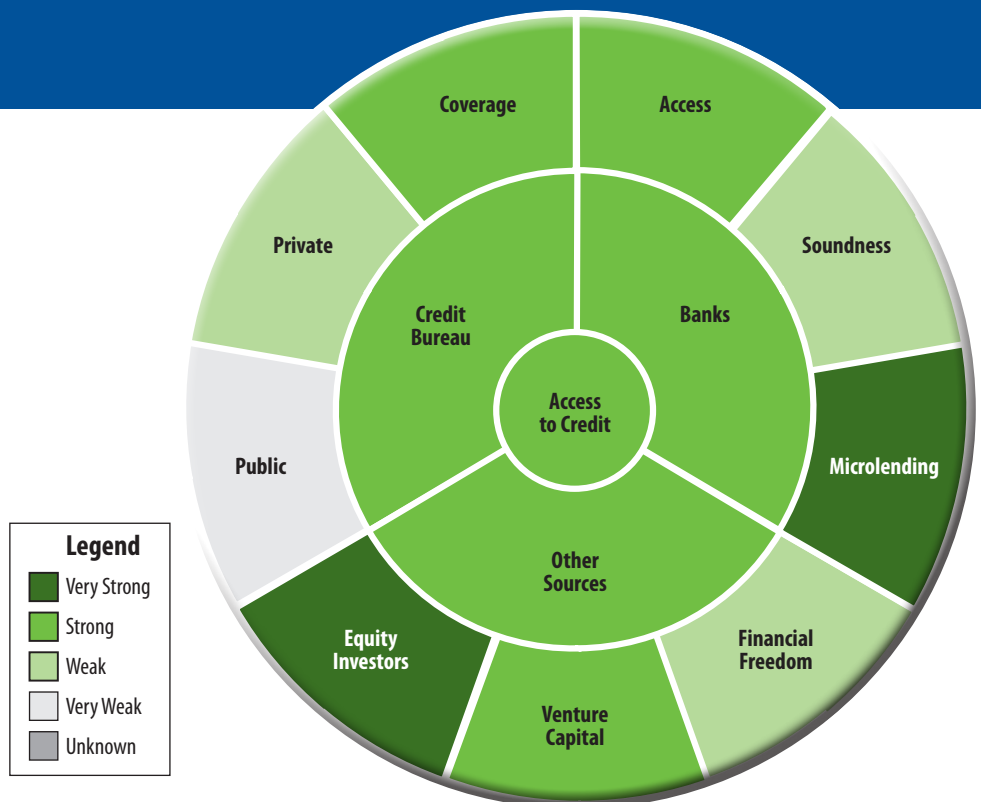
Core Question: Are traditional banking services robust and extensive enough to serve the needs of the population to help them build wealth and purchase property?

Yes – Strong, many alternatives to bank loans are available to small businesses.

Access

2.1.1 How easy is it to obtain a bank loan? **Strong – Ranking 15th out of 142; Score 3.95 out of 7, however use by small and medium businesses is limited due to collateral requirements and high interest rates.**

Source: *The Global Competitiveness Report 2011-12*, World Economic Forum www.weforum.org/issues/global-competitiveness



Soundness

2.1.2 How sound are the country's banks? **Weak – Ranking 74th out of 142; Score 5.2 out of 7 Trend =**

Source: *The Global Competitiveness Report 2011-12*, World Economic Forum www.weforum.org/issues/global-competitiveness

2.1.3 Microlending

Status – **Very Strong, supported by the Association of Microfinance Institutions**

2.1.3.1 Microfinance allows citizens without traditional creditworthiness to build a credit history. How many microfinance institutions are operating in the country? **15**

Business Initiatives & Management Assistance Services (BIMAS)

www.bimaskenya.com/

Equity Bank www.equitybank.co.ke/

K-Rep Bank www.k-repbank.com/index.php

Kenya Women Finance Trust www.kwft.org

Kenya Agency to Development of Enterprise & Technology (KADET)

www.kadet.co.ke/

2.1.3.2 What is the number of active borrowers per institution?

BIMAS	12,252
Equity Bank	542,249
K-Rep Bank	58,578
Kenya Women Finance Trust	208,010
KADET	15,135

Source: Microfinance Information Exchange www.mixmarket.org/mfi

2.2 Other Sources

Core Question: Are entrepreneurs free to raise capital outside the banking system including venture capital and/or by issuing stock in a well-regulated stock exchange? **Yes – Strong, however, small and medium enterprises have difficulty accessing capital in the formal system. They rely heavily on family, friends and informal lending. MSEs can also use dedicated government funds (Decentralised Fund and MSE Fund).**

Financial Freedom

2.2.1 How much control does the government exert over financial services? **Weak for entrepreneurs – Score 50 out of 100 – Considerable government control**

Source: *Index of Economic Freedom 2011*, Heritage Foundation, www.heritage.org/index/Country/Kenya

Venture Capital

2.2.2 How easy is it for entrepreneurs to find venture capital? **Strong – 28th out of 142; Score 3.29 out of 7, although still limited for small companies.**

Equity Investors

2.2.3 How easy is it to raise money by issuing shares on the stock market? **Very Strong – 21st out of 141; Score 4.55 out of 7, although not relevant for MSEs**

Source: *The Global Competitiveness Report 2011-12*, World Economic Forum, www.weforum.org/issues/global-competitiveness

2.3 Credit Bureau

Core Question: Is comprehensive credit information available through public and private credit bureaus? **Yes – Strong, although regulations from 2009 (Banking Act amendment, Cap 488) are just starting to take effect. It is too**

early to tell if bureau and credit histories will increase access to commercial loans.

Overall Ranking 8th out of 183 Trend =

Coverage

2.3.1 What is the depth of information available in credit bureaus? **Strong – Score – 4 out of 6 with a higher number indicating more information is available**

Public

2.3.2 What is the extent of public credit registry coverage? **Very Weak – not available**

Private

2.3.3 What is the extent of private credit registry coverage? **Weak – 4.5%**

Source: *Doing Business 2012 – Getting Credit*, World Bank, www.doingbusiness.org/data/exploreeconomies/kenya

In-Country Assessment Information

FQ11: How available are mortgage loans for purchasing commercial property (office, retail, industrial and logistics), who is the typical user and what are the prevailing trends?

Access to credit is generally not a problem as MSEs have numerous sources of funds such as the Decentralised Funds and MSE Fund. However, the cost of credit remains high and there is concern that financial intermediaries are not willing to relax the lending rules to MSEs. Access to credit through formal channels is also affected by the prevailing attitude favouring loans from family, friends and informal lenders rather than banks. Many people fear that by taking loans from financial institutions they will lose their property should they default in repayment.

FQ12: What are the interest rates, term and loan-to-value ratios?

Interest rates are either variable or fixed depending on the financing institutions. They range from 11.99% to 15% per year. The typical term for repayment of loans are from 1 year to 25 years with Loan to Value (LTV) ratios of 60% to 95% depending on whether the property is in an urban area and whether it is developed.

FQ13: What services other than loans such as insurance, funds transfers, and business development training are available from microfinance organizations for formal businesses?

Some MFIs offer business development training, market development, basic business management skills and basic book keeping for SMEs.

FQ14: What professional financial services are available outside state owned banks including insurance, credit cards and investment management?

Investment banking, risk assurance, credit card and mobile payment solutions are commonly offered to businesses.

FQ15: How available is seed money or angel investors for the start up of small businesses?

Angel investing is still relatively new and it is not easy for small entrepreneurs to find such investors. A more common source of seed money is credit available through Micro Financial Institutions (MFI),

Savings and Credit Cooperative Societies (SACCOs), mortgage banks, and individual moneylenders. In addition, funding for projects with insufficient capital can be done with guarantees from banks.

FQ16: Do small businesses have access to credit information about potential customers?
No

FQ17: Can businesses gain access to information about them contained in credit bureaus and correct inaccuracies?
No

Effective Governance

Goal – A popularly elected government free of corruption and functioning efficiently and transparently enough to guarantee economic freedom to individuals and support equitable property markets

3.1 Democratic Representation

Core Question: Does the country have free and open elections for the leadership and can citizens engage in free enterprise? **No – Weak, Kenya's democracy suffered a low point in 2007 when rigged elections were followed by violence. However, the new Constitution, peacefully approved in a 2010 referendum, should bring about reforms.**

3.1.1 Voice & Accountability

3.1.1.1 Are citizens able to elect their government and do they enjoy freedom of expression, association and a free media? **No – Weak – Percentile Rank – 39.8 Trend ↑; Freedom House notes that Kenya's civil liberties have improved due to the reduced threat of ethnic and political violence.**

Sources: *Governance Matters 2010*, World Bank; Freedom House 2011, http://info.worldbank.org/governance/wgi/sc_chart.asp; <http://freedomhouse.org/template.cfm?page=22&year=2011&country=8066>

3.1.1.2 Are citizens free to form political and civic organisations free of state interference and surveillance? **Yes – Weak – Score 5.29 out of 10 Overall Ranking – 101st out of 167 Trend ↑**

Source: *The Economist Intelligence Unit Democracy Index 2010* http://graphics.eiu.com/PDF/Democracy_Index_2010_web.pdf

3.1.2 Public Information

3.1.2.1 Are there regulations governing conflicts of interest in the executive and legislative branches of government? **No – Executive Score 53 out of 100 – Very Weak; Legislative Score 57 out of 100 – Very Weak**

3.1.2.2 Can citizens access legislative processes and documents? **No – Score 38 out of 100 – Very Weak (2009)**

Source: *Global Integrity Report* – <http://report.globalintegrity.org/Kenya/2009>

3.1.3 Market Intervention

Overall Freedom Ranking – Weak 106th out of 179 Trend =

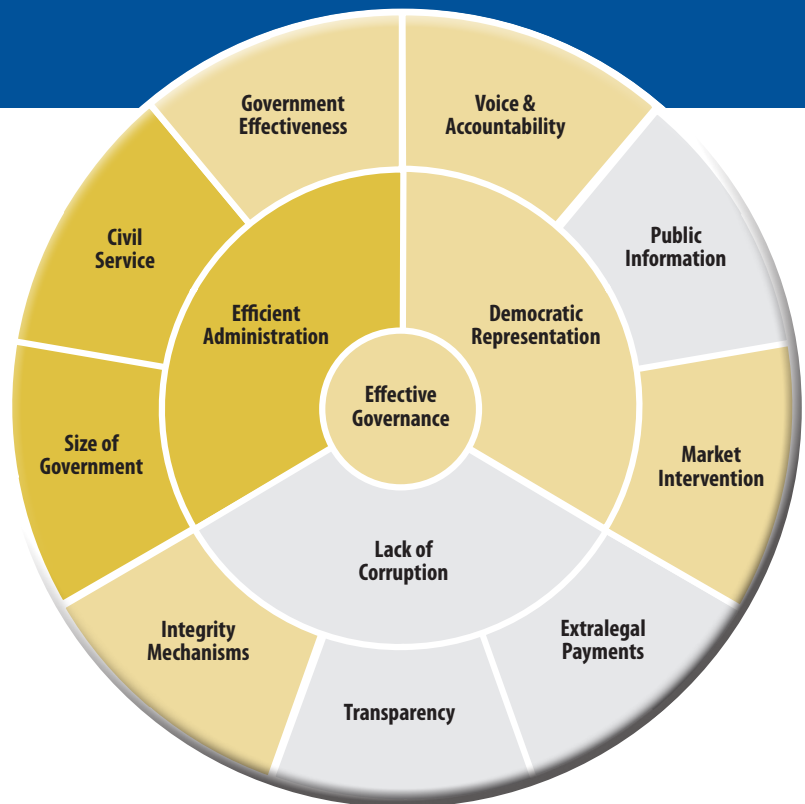
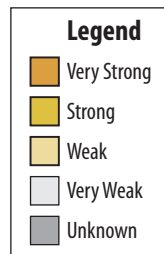
3.1.3.1 To what extent does the government intervene in the private sector including state owned industries? **Score 72.8 out of 100 with a higher score indicating less intervention**

3.1.3.2 To what extent does the government control prices? **Score 73.2 out of 100 with a higher score indicating less control**

Source: *2011 Index of Economic Freedom* – Heritage Foundation, www.heritage.org/index/Country/Kenya

3.2 Lack of Corruption

Core Question: Is the public sector transparent and free of corruption? **No – Very Weak. However, new Constitution creates institutions to help address corruption issues.**



Transparency

3.2.1 What is the perceived level of corruption in the country? **Very Weak – Ranking – 154th out of 180; Score 2.1 out of 10 Trend ↓**

Source: Transparency International, *Corruption Perceptions Index 2010*, www.transparency.org/policy_research/surveys_indices/cpi/2010/results

Integrity Mechanisms

3.2.2 A National Integrity System is a framework where the principle institutions that contribute to integrity, transparency and accountability in a society can address corruption in a systematic way. Does a National Integrity System exist? **Yes – Weak, to be addressed by constitutional reforms.**

Source: Transparency International, www.transparency.org/policy_research/nis/nis_reports_by_country

Extralegal Payments

3.2.3 How often do companies report that officials and/or companies expect additional payments to "expedite" services or gain business? **79.2% of firms say they are expected to make unofficial payments – Very Weak**

Source: *Enterprise Surveys*, World Bank, 2007, www.enterprisesurveys.org/ExploreEconomies/?economyid=101&year=2007

3.3 Efficient Administration

Core Question: Are quality services and qualified civil servants available to the public through the efficient use of public money? **Yes – Strong, reforms in public financial management have continued. However, political patronage in civil service appointments is still quite strong.**

Size of Government

3.3.1 What is the size of government relative to GDP? **30.1% - 25 to 30% considered optimum – Strong**

Source: *2011 Index of Economic Freedom*, Heritage Foundation, www.heritage.org/index/Country/Kenya

Civil Service

3.3.2 What is the quality of the civil service? **Strong – Score 77 out of 100**

Source: *Global Integrity Report* – <http://report.globalintegrity.org/Kenya/2009>

Government Effectiveness

3.3.3 What is the overall effectiveness of the government? **Weak – Percentile Ranking – 35.9 Trend ↑**

Source: *Governance Matters 2010*, World Bank, http://info.worldbank.org/governance/wgi/sc_chart.asp

In-Country Assessment Information

FQ18: What is the actual experience of small businesses in dealing with the government, particularly the number and complexity of required procedures and the prevalence of extra payments to facilitate services such as licenses or permits?
Interviewed businesses noted improvements at the Nairobi City Council as it takes less time to obtain a business license. However, there are still cases of collusion between some City Council officers and clients to manipulate rates and various business approvals. Some public officials still require extralegal payments to expedite services. There remains a lack of political will to fight corruption. Although Kenyans are more assertive about corruption, it is slowly being transformed into systemic corruption. In many cases, corruption is no longer overt, e.g., there exist cartels in obtaining business licenses and in procurement relying on behind-the-scenes influence and conflicts of interest rather than open bribery.

Rational Dispute Resolution

Goal – An efficient institutional framework that balances the rights of the public, owners, lenders and borrowers in the event of a dispute or loan default

4.1 Rule of Law

Core Question: Do all market participants abide by the rule of law and have confidence in the courts and the ability of police to control crime? **No – Very Weak, Businesses do not trust public institutions in solving commercial disputes.**

Impartiality

4.1.1 What is the confidence level of the strength and impartiality of the police, courts and contract enforcement? **Very Weak – Percentile Ranking – 16.6 Trend ↑**

Source: *Governance Matters 2010*, World Bank, http://info.worldbank.org/governance/wgi/sc_chart.asp

Independent Judiciary

4.1.2 Can members of the judiciary be held accountable for their actions? **No – Score 32 out of 100 – Very Weak Trend ↑**

Source: *Global Integrity Report* – <http://report.globalintegrity.org/Kenya/2009>

Costs of Crime

4.1.3 What are the business costs of crime and violence? **High costs – Ranking 118th out of 139, Score 3.5 out of 7 – Very Weak Trend ↑**

Source: *The Global Competitiveness Report 2011-12*, World Economic Forum www.weforum.org/issues/global-competitiveness

4.2 Enforcement of Contracts

Core Question: Are systems in place for timely and efficient enforcement of contracts?

Commercial – No – Weak, although judicial reforms are ongoing

4.2.1 – Judicial Enforcement

Commercial – Weak – Ranking 127th out of 183 Trend ↓

4.2.1.1 What is the number of procedures involved in resolving a commercial dispute? **40**

4.2.1.2 What is the time between the filing of a lawsuit and resolution in judicial enforcements? **465 days**

4.2.1.3 What is the cost of judicial enforcements as a percentage of debt value? **47.2%**

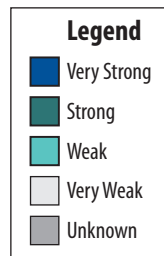
Source: *Doing Business 2012* – www.doingbusiness.org/data/exploreconomies/kenya

4.2.2 – Summary Proceedings

SQ 10: Summary proceedings are alternative dispute resolution processes where creditors can apply for a direct court order in property disputes. What is the time between notice of intent to foreclose and loan collection in summary proceedings if available to lenders? **Not available – Very Weak**

SQ 11: What is the cost of summary proceeding if available to lenders as a percentage of property value? **Not available – Very Weak**

4.2.3 – Power-of-Sale



SQ 12: Power-of-sale agreements give creditors to power to sell properties after notice to the borrower without court intervention. What is the time between notice of intent to sell and loan collection for power-of-sale agreements if available to lenders? **239 days – Strong**

SQ 13: What is the cost of power-of-sale agreements if available to lenders as a percentage of property value? **3.96% – Very Strong**

Source: *Financing Homes 2008*, World Bank and International Housing Finance Corporation, [www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/financinghomes/\\$FILE/FinancingHomes.pdf](http://www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/financinghomes/$FILE/FinancingHomes.pdf)

4.3 Commercial Dispute Resolution

Core Question: Can commercial disputes be resolved efficiently and fairly without exorbitant expense and delay? **No – Weak, there is a shortage of judges and judicial officers and a severe backlog of cases.**

Survey Questions

Commercial Courts

SQ 14: Do specialised commercial courts exist for the handling of property disputes and foreclosures? **Yes – Weak, Commercial Courts exist but are ineffectual.**

Source: Judiciary of Kenya www.judiciary.go.ke/website/index.php

Alternative Dispute Resolution

SQ 15: Are alternative dispute resolution mechanisms in place including commercial arbitration, private mediation and community based processes? **Yes – Weak – Kenya is a member of both New York Convention and the International Center for the Settlement of Investment Disputes but arbitration not used by lenders.**

Civil Society Resource: Chartered Institute of Arbitrators Kenya www.ciarbkenya.org/

Commercial Treaties

SQ 16: What bilateral, regional and international commercial treaties exist concerning business between countries? **Strong – a member of WTO, the Common Market of Eastern and Southern Africa (COMESA) and preferential agreements with the U.S. and EU.**

Source: Kenya Investment Authority www.investmentkenya.com/

In-Country Assessment

FQ19: To what extent do small businesses trust public institutions to support contract enforcement?

Political interference often derails the execution of the rule of law in Kenya. The cost of solving a case at the commercial courts is prohibitive for MSEs. Legal fees are very high. The police are known to be corrupt and City Council Askaris (local security officers) often do not follow the law. There are numerous cases of evictions being carried out under the cover of night by Askaris.

FQ20: To what extent are alternative dispute resolution procedures used and trusted by small businesses?

The Constitution has provisions for the use of alternative methods of dispute resolution that include reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms, e.g. Barazas (community-based councils).

Financial Transparency

Goal – A well developed and transparent financial system that includes strong supporting institutions and highly trained and ethical professionals that contribute to effective financial intermediation and deep and broad access to capital and financial services

5.1 Market Stability

Core Question: Are market risks sufficiently transparent and diversified so that efficient capital allocation can occur? **Yes – Strong – Financial regulations are very clear and conform to International Financial Reporting Standards.**

Financial Reporting

5.1.1 What is the strength of the country's auditing and reporting standards? **Strong – 66th out of 139; Score 4.7 out of 7 Trend =**

Financial Services

5.1.2 Does the financial sector provide a wide variety of financial products and services to businesses? **Strong – 56th out of 142; Score 4.77 out of 7 Trend ↓**

Source: *The Global Competitiveness Report 2011-12*, World Economic Forum <http://www.weforum.org/issues/global-competitiveness>

Insolvency Process

Strong – Ranking – 92nd out of 183

- 5.1.3 What is the average time to complete bankruptcy proceedings? **4.5 years**
- 5.1.4 What is the cost of bankruptcy proceedings as a percentage of the estate? **22%**
- 5.1.5 What is the recovery rate of bankruptcy proceedings? **30.9 cents on the dollar**

Source: *Doing Business 2012 – Closing a Business* www.doingbusiness.org/data/exploreeconomies/kenya

5.2 Independent Asset Valuers

Core Question: Do trained, independent and ethical asset valuers exist for all types of assets? **No – Weak, there are deficiencies in training and practice. Lenders do not use independent valuers to verify values.**

Survey Questions

Standards

SQ 17: How easy is it to find a valuer who implements International Valuation Standards? **Weak – the Valuers Act spells out some very basic misconduct rules but there are no standards of practice mentioned in the law.**

Civil Society Resource: Institution of Surveyors of Kenya www.isk.or.ke/

Training

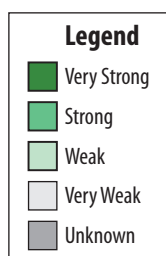
SQ 18: What is the level of training of valuers? **Very Weak – limited to holding a land economics degree and serving an apprentice program**

Civil Society Resource: International Real Property Foundation www.irpf.org

Ethics

SQ 19: Are opinions offered by valuers free of influence from parties to the transaction? **Weak – enforcement is limited to removal from the very narrow government approved valuer list.**

Civil Society Resource: International Valuation Standards Council www.ivsc.org



5.3 Data Standards

Core Question: Is accurate property information available electronically in formats that are consistent with international standards? **No – Weak, legacy British Codes have not been updated since independence.**

Survey Questions

Sales & Operating Data

SQ 20: A multiple listing service is an electronic exchange system where brokers and agents can widely share contracted real estate listings of properties that are for sale. Do multiple listing type services exist? **No – Weak, Internet sites are developing but the market is still largely informal and Internet data is unreliable.**

SQ 21: Do resources exist for obtaining building income and expense estimates? **No – Very Weak**

Civil Society Resource: Institute of Real Estate Management www.irem.org

Interchange Formats

SQ 22: Do electronic data interchange formats conform to international standards (eXML – electronic business using extensive markup language)? **No – Weak, geospatial data standards are in xml.**

Civil Society Resource: Open Standards Consortium for Real Estate International www.oscre.org

Technical Standards

SQ 23: Do building codes and office building measurement standards (ANSI/BOMA Z65.1) conform to international standards? **No – Weak, Building Code Review was launched April 20, 2009 but codes are not well monitored and enforced, especially within urban areas.**

Source: Ministry of Housing www.housing.go.ke

In-Country Assessment

Valuation Profession

FQ21: How many independent valuers exist in the market? Can small businesses obtain fair valuations for property they want to buy or sell?

There are very few highly trained, independent and ethical valuers: approximately 450 licensed. Many of the licensed valuers have gone back to higher institutions of learning to teach or are not active. Most firms outsource valuations, which is an expensive exercise. Lack of local institutions that specifically train valuers has impeded the growth of the profession. Local universities that train land economists are under-equipped i.e. they have limited facilities.

FQ22: What are the valuation standards and do they conform to international and regional standards?

The Institution of Surveyors of Kenya, a national association with a membership of over 1,000 valuers, surveyors and property managers is affiliated with the Federation of International Surveyors (FIG), the Commonwealth Association of Surveyors and Land Economists (CASLE) and subscribes to the International Valuation Standards Committee. There are some government guidelines on expected valuation standards but they are not codified into law.

FQ23: What valuation methods and techniques are used in the market?

Due to lack of sales, income, and operating data valuations still rely heavily on the replacement cost approach.

Data Availability

FQ24: How available is information for commercial properties that are for sale or that have sold?

Sales information for commercial properties cannot be easily accessed at the Ministry of Lands. Sales information accessed through the Internet is highly unreliable. Most estate agents wield property information; however, the majority of them are non-professionals.

Appropriate Regulation

Goal – A comprehensive regulatory regime that is transparent, efficient, simple in its implementation and that leads to accurate reporting of property values and prudent protection from market risks

6.1 Fair Tax Regime

Core Question: Do market participants feel the overall tax rate is fair and participate in formal transactions?

No – Weak, personal and corporate income taxes are moderate, but overall taxes are too high and small businesses remain in the informal sector.

Transfer Tax

6.1.1 What is the total property transfer tax including all duties and payments? **Strong – 4.3%. However, 4% stamp duty plus attorney and other fees need to be reduced further to encourage registration and accurate price reporting.**

Overall Tax

6.1.2 What is the overall tax rate on entrepreneurs? **49.6% – Ranking – 166th out of 183 Very Weak**

Source: *Doing Business 2012 – Paying Taxes & Registering Property*, World Bank, www.doingbusiness.org/exploreconomies/kenya

Divestment

Survey Question

SQ 24: What is the tax on profits for foreign investors when divesting property? **Weak – there is a 30% tax on rental income and foreign corporate income tax is 37.5%. Kenya has Double Taxation Treaties with Canada, Denmark, Germany, India, Norway, Sweden, the U.K. and Zambia**

Source: Kenya Revenue Authority www.kra.go.ke/

6.2 Professional Services

Core Question: Are the professional services necessary for efficient and transparent property markets available and appropriately regulated and supervised? **No – Weak, market is developing but still primarily limited to sales of new construction.**

Asset Valuers

Survey Questions

SQ 25: Are property valuers licensed and/or certified by the government? **Yes – Weak – registration is limited to one level and primarily for land transactions.**

Source: Ministry of Lands - www.ardhi.go.ke/

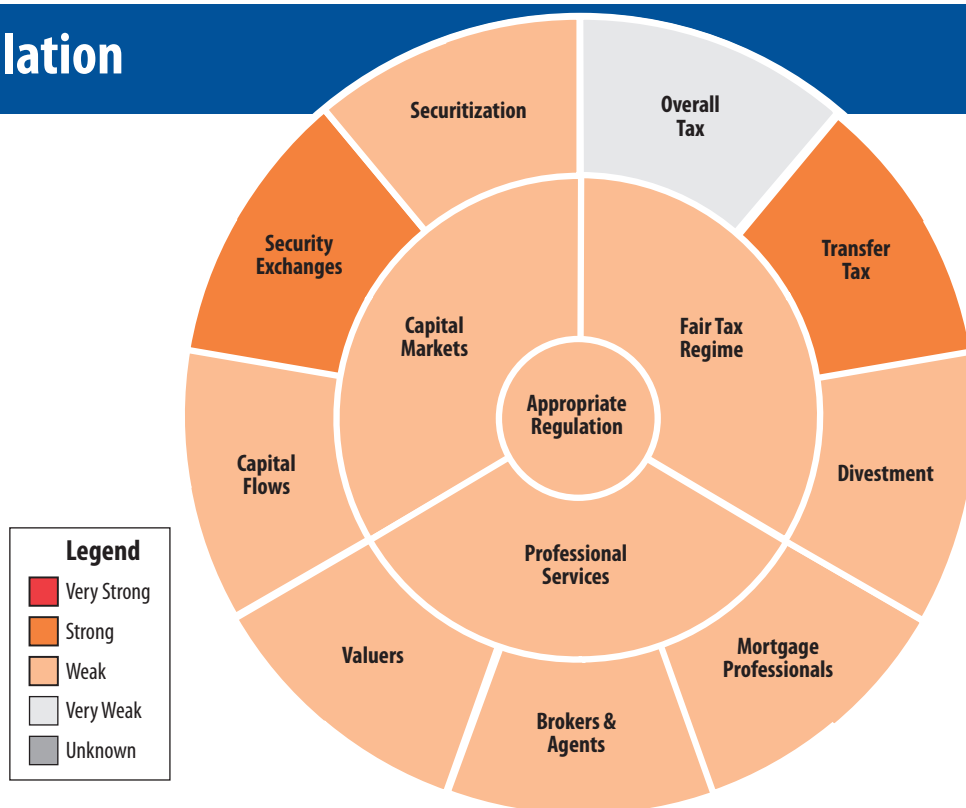
SQ 26: How effective are mechanisms in place to discipline valuers who engage in misconduct? **Weak – Valuers Act provides for disciplinary and removal procedures but limited primarily to land valuers.**

Source: Land Valuers Act www.isk.or.ke/mats/ValuersAct.pdf

Brokers & Agents

Survey Questions

SQ 27: Are real estate brokers and agents licensed and/or certified by the government? **Yes – Weak, up to 80% of those working as brokers are unregistered.**



SQ 28: How effective are mechanisms in place to discipline brokers or agents who engage in misconduct? **Very Weak – Estate Agents Act provides for removal from registry, but the majority of agents are unregistered.**

Source: Ministry of Lands www.lands.go.ke/index.php?option=com_content&task=view&id=21&Itemid=37

Mortgage Professionals Survey Questions

SQ 29: Are mortgage professionals licensed and/or certified by the government? **Yes – Mortgage Finance Institutions are regulated by the Central Bank – Strong**

SQ 30: How effective are mechanisms in place to discipline mortgage professionals who engage in misconduct? **None in place as profession is small with only 2 separate mortgage finance companies – Very Weak**

6.3 Capital Markets

Core Question: Are capital markets well-regulated and diversified enough to provide financial resources to private sector entrepreneurs and innovators? **No – Weak – Capital Markets Authority is well established but the markets are shallow and narrow.**

Capital Flows

6.3.1 What are the business impacts of rules on Foreign Direct Investment? **Significant, Weak – Ranking 75th out of 142; Score 4.6 out of 7**

Security Exchanges

6.3.2 Is the regulation of securities exchanges transparent, effective and free of influence from government and industry? **Yes – Strong, Ranking 68th out of 142; Score 4.19 out of 7**

Source: *The Global Competitiveness Report 2011-12*, World Economic Forum <http://www.weforum.org/issues/global-competitiveness>

Securitisation

6.3.3 What is the depth of asset-backed securities, mortgage-backed securities, high-yield bonds and highly leveraged loans? **Weak – some contracts issued for power and agribusiness.**

Source: Multilateral Investment Guarantee Agency - www.miga.org/

In-Country Assessment

Taxation

FQ25: What is the level of taxation for small businesses? Are any of those taxes an excessive burden on small businesses? Are any tax discounts provided for small businesses? Sales tax regime favours big business as VAT administration is cumbersome and costly for small businesses. They must collect VAT from customers and submit it to the revenue authority on a monthly basis.

Professional Services

FQ26: What is the experience of small businesses in dealing with professional property market service providers such as real estate agents, brokers and valuers? There is concern over the large number of unregistered agents facilitating access to property. These agents charge the same for legitimate and illegitimate (not properly registered) transactions. There is a great need for legislation to regulate all professionals that deal with property.

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