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The Agency for International Development Presents

Critical Issues For American Investors in KENYA

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EXECUTIVE SUMMARY

Kenya has attracted foreign investment since the colonial period, when its agreeable climate and good communications attracted many British settlers. It has long been the principal destination in eastern Africa for investment in agriculture, manufacturing, and financial services.

Kenya has a heterogeneous society, with a multiplicity of ethnic groups. The official languages are English and Kiswahili, although several dozen other indigenous languages are also spoken. Kenya hosts influential Asian and European communities, with Europeans being evenly split between white Kenyans and long time expatriate residents.

The economy is founded on a combination of a modern light manufacturing industry, a sophisticated services sector, and an agricultural sector that has traditionally been a model for the rest of Africa. Tourism is by far the most important and dynamic industry in the services sector.

Although only 18 percent of Kenya's land is of high or medium agricultural potential, the agricultural sector (including ranching) is one of the most important economic activities in the country. Agriculture accounts for 28 percent of GDP and generates 60 percent of Kenya's foreign exchange. Seventy percent of all Kenyans are employed in agriculture, including 14 percent of all wage earners in the formal sector.

Kenya has a vibrant and diverse private sector. The manufacturing sector, which has been the fastest growing sector of the economy, includes food processing, paper products, textiles, metal and engineering, and vehicle assembly and part manufacturing. Other major manufacturing activities include electrical equipment, plastics, chemicals and pharmaceuticals, and mining and mineral products.

Kenya has taken significant steps in recent years to assure that potential foreign investors have the opportunity to become engaged in productive and profitable ventures. The creation of an Investment Promotion Center (IPC) as a "one stop shop" for having investment projects approved should greatly facilitate the investment process. The government has liberalized its policies on the repatriation of profits and dividends, although investors have complained about the long waiting period to gain access to foreign exchange. Foreign investors can also take advantage of special tax incentives and holidays. Investment projects designed to produce exclusively for export enjoy unlimited access to foreign exchange and additional tax incentives. Despite these reforms, however, net private foreign investment has been slightly negative in recent years, primarily because of growing concern over the lack of government transparency and the slow pace with which regulatory reforms have been implemented.

Kenya has a well-developed, modern infrastructure. It has world class port facilities and is well served by major international airlines. Business telecommunications services are adequate both for international and domestic needs.

Kenya's exports are focused principally on the European Community (EC) and the neighboring eastern and southern African region. Sources of imports are more diversified, although the EC is the single largest source. The country's balance of payments deficit rose toward the end of the 1980s, but has since begun to recede. Currency management reforms introduced at the end of 1991 eased restrictions on gaining access to foreign exchange. Import permits are still required, and there may be some delays in processing.

Kenya has been one of the leading recipients of external aid in Africa. During the 1980s the economy became increasingly reliant on external assistance, while its debt service ratio has risen dramatically. Both the World Bank and the IMF are working with Kenyan authorities through structural adjustment programs to counter this trend.

Kenya has a large supply of relatively inexpensive labor. Unemployment is high, which has led Kenya's leaders to promote policies aimed at generating new jobs. The labor force is well educated and highly disciplined, although technical skills in some fields are in short supply. The high literacy levels in the modern labor sector make it easy to train workers in new management and technical skills.

Kenya has long possessed the largest and technically the most advanced financial system in East Africa. The economic problems of the past decade revealed significant weaknesses, especially in commercial banking, but the government, with advice and assistance from donors, has taken steps to improve its foreign debt situation, the availability of domestic resources, and the management of its financial institutions.

The Kenyan government's tax policy has attempted to achieve mutually conflicting goals: to create a reliable, steadily increasing flow of funds to help cover the government's expenditures in a period of chronic deficits, but also to promote investment, including foreign investment, by lightening the tax burden. An additional major goal has been to shift Kenya's industrial base from its import-substitution orientation toward one that is more competitive and export oriented.

Throughout the 1980s, Kenya grappled with the problem of excessive and inefficient patterns of public spending. The government became heavily dependent on external assistance to meet its budgetary commitments. It also became heavily indebted to the local financial sector. Under pressure from donors, however, the government has committed itself to reducing government spending and privatizing state-owned enterprises.

Kenya is a member of the World Intellectual Property Organization, and the Bern Copyright Convention.

1. Political Background

1.1 History and Society

Although Kenya was first visited by Arab traders as early as the first century A.D., it was not until between the eighth and eleventh centuries that Persian and Arab traders began settling there. Arab settlers governed the coastal areas until the Portuguese took control of the region in 1498. The Sultan of Oman displaced the Portuguese in the 18th and 19th centuries, and in 1895 the British established the East African Protectorate over the area.

Under the Protectorate white settlers were encouraged to settle in the fertile central highlands, and in 1920 Kenya formally became a colony of Great Britain. The construction of a rail link to Uganda during this period helped to establish patterns of settlement and trade that continue to the present.

Between 1952 and 1959, Africans living under colonial rule rose up against the British in what became known as the Mau-Mau rebellion. Although the British suppressed this insurgency, they began to cede political control over the colony to the Africans living there. In 1963 Kenya became independent, proclaiming itself a republic within the Commonwealth a year later.

Jomo Kenyatta, a pro-independence activist, became the first President of Kenya, and remained the leader of the ruling Kenya Africa National Union (KANU) until his death in 1978.

Although Kenya's official ideology under Kenyatta's rule was "African Socialism," the country pursued generally pro-Western policies. Kenya sought to achieve industrial self-sufficiency during the 1960's and 70's, with the state playing a dominant role in the economy.

Kenya's pro-Western orientation survived Kenyatta's death and the succession to the presidency by KANU's Vice-President Daniel Arap Moi in 1978. Under Moi, however, Kenya increasingly adopted statist economic policies. Sluggish economic performance and mounting international pressure have led the Moi government to begin ceding control of the economy to market forces, albeit slowly.

Kenya has a heterogeneous society, with a multiplicity of ethnic groups. The official languages are English and Kiswahili, although several dozen other indigenous languages are also spoken. Kenya also hosts influential Asian and European communities, with the Europeans being evenly split between white Kenyans and long-time expatriate residents. Both the Asian and European communities have been the targets of criticism by Kenyan Africans for their prominent roles in government, the economy, and the military.

Kenyatta came from the largest ethnic group in Kenya, the Kikuyu, who comprise 21 percent of the population. Under his rule, many Kikuyu rose to occupy powerful positions in the economy and government. Other large groups include the Luo (13 percent), the Luhya (14 percent), and the Kalenjin (11 percent).

Ethnic and regional identity are critical factors in the political process and in coalition-building. After Kenyatta's death, competing interests in Kenyan society regarded Moi—a member of the minority Kalenjin ethnic group—as a viable counterweight to entrenched Kikuyu dominance of government and the economy.

1.2 Political and Economic Policies

After independence, Kenya followed a strategy of import substitution-led industrialization, which resulted in the rapid growth of the state sector and a proliferation of government parastatals. From 1963 to 1974 Kenya enjoyed a period of rapid growth, creating the largest and most diversified industrial base in East Africa. The 1974 oil shock dampened growth somewhat, though strong coffee prices in the mid-1970's encouraged further economic expansion. Kenya has enjoyed steady growth of 5 percent per year since 1985.

Kenya has a high rate of population growth that has offset its otherwise impressive economic performance. The combination of high population growth and the country's success in expanding access of education has meant that the Kenyan economy has been unable to generate sufficient jobs for all the school graduates. Until 1986, the Kenyan government officially acted as the employer of last resort for graduates unable to find jobs elsewhere in the economy. This resulted in steady expansion of the state's role in the economy, and a proliferation of inefficient state-owned enterprises. Losses incurred by state enterprises are a steady drain on the public treasury, and have been the principal domestic cause of macroeconomic imbalances in Kenya in recent years.

Growth of the public sector has led to rising fiscal and current account deficits, as well as chronic inflation. Under pressure from multilateral financial institutions, the Kenyan government has agreed to privatize many state-owned enterprises and to liquidate those that cannot be sold. The government recognizes that the key to sustaining economic growth will be reduction of its fiscal deficit. Progress toward reform, however, means that the government must take on the risky task of dismantling networks of political patronage that are the foundation of public sector institutions.

Kenya has pursued a policy of structural adjustment in cooperation with the International Monetary Fund since 1982, but has made headway toward meeting adjustment targets only in fits and starts.

Kenya has devalued the shilling 40 percent since 1987, keeping its exchange rate competitive. It has progressively liberalized exchange controls and streamlined the process for the repatriation of dividends.

The Kenyan government recognizes the critical need to boost foreign investment in the economy. In an effort to reverse a recent trend toward disinvestment, the government has created legal regimes allowing the establishment and operation of export processing zones

(EPZ) and manufacturing-under-bond arrangements. While some domestic businesses have established EPZ operations, foreign businesses have been slow to respond.

1.3 Structure of Government

Kenya's political system is centered around an executive presidency. Kenya was a de-facto one-party state from its independence until 1982, when the Constitution was amended to make KANU the only legal political party, effectively suppressing the activities of most opposition groups. While the government has announced its intention of restoring pluralism to Kenya, formal provisions protecting opposition activity have yet to be enacted.

Legislative power is vested in the unicameral National Assembly, which has 176 elected members and 12 nominated by the government. Election to the Assembly is by universal adult suffrage. There are 29 cabinet ministries, expanded from 23 after the 1988 elections.

Elections in Kenya are normally held every five years. In the last election, held in 1988, a large number of incumbents were defeated, including two cabinet ministers. In 1987, Kenya switched from a secret ballot to a queue system. In 1990, under international pressure, the government restored the secret ballot, and in 1991 President Moi announced his intention of allowing multiparty democracy in Kenya.

The Kenyan judiciary is formally independent of both the legislature and the executive. However, the President appoints the chief justice and appellate justices and, in 1988, President Moi amended the constitution to give himself the authority to dismiss judges and civil servants without review. The independence of these bodies was formally restored in 1990, although the president continues to have the discretion to name justices.

Kenya's military has traditionally been regarded as a professional corps that has tended to refrain from overt involvement in politics. In 1982, however, the Kenyan Air Force attempted to seize power in a coup, following the government suppression of an opposition political movement. The Army remained loyal to Moi and suppressed the uprising. Since the coup, the armed forces have continued to support Moi and have increased their influence. In 1983, Moi announced that he was increasing the size of the army for the first time since independence.

1.4 Recent Political Developments

Since Moi assumed the Presidency in 1978, he has sought to consolidate his base of support by building a coalition of smaller ethnic groups within the government to offset the influence of the Kikuyu. Kenya's patronage system has, however, allowed some of those allied with the President to use their positions in government for self-enrichment. Abuses of power for personal gain and the leakage of funds from government and parastatal accounts are a principal target of criticism by the President's opponents as well as by donors and foreign investors.

In December 1991, President Moi informed a KANU congress that Kenya was going to move to a multiparty system for the first time. He also called for early elections to be held later in 1992. These announcements came after a donor conference chaired by the World Bank announced that all new aid pledges to Kenya would be suspended for six months pending a reform of the political and economic system. (International donors provided Kenya with some $1.6 billion in assistance in 1990 and 1991.)

While President, Moi has reshuffled his cabinet numerous times. After the 1988 elections, Moi demoted Vice President Mwai Kibaki—an influential Kikuyu—to the post of Minister of Health. Kibaki has since left KANU and formed his own political party. Another Kikuyu, Kenneth Matiba, resigned as Minister of Health after citing irregularities in the 1988 election, and later was stripped of his membership in KANU. Matiba has since joined the opposition Forum for the Restoration of Democracy (FORD).

President Moi has consolidated the power of his own Kalenjin and allied groups as he has removed leading Kikuyus from the government. Many of the politicians sacked, including Matiba and Kibaki, were very popular and regarded as highly competent.

In February 1990, Foreign Minister Robert Ouko was killed under suspicious circumstances. This case remained unsolved as of May 1992. Ouko, a Luo, was regarded as a leading opponent of corruption within the government, and an articulate advocate of increased indigenization of the economy. Because of Ouko's stature and popularity, his death caused an outcry both within Kenya and in the international community. President Moi asked Scotland Yard to investigate the murder. The investigators named one of Moi's leading supporters, Energy Minister Nicholas Biwott, as a prime suspect. A short time later, Moi dismissed Biwott, who was widely regarded as one of the most powerful and corrupt ministers in the cabinet. He was arrested a week later, although he was subsequently released due to a lack of evidence.

In recent years, opposition to Moi's rule, which was initially centered among academics and the media, has expanded. In 1986, antigovernment demonstrations took place at public universities in the country, forcing the government to close them down. These were followed by a government crackdown on the largely Kikuyu Mwakenya movement, which was accused of conspiring against the government. In July 1990, Matiba and Rubia, both former members of KANU, sought permission to hold a rally in favor of a multiparty system. The government prevented the rally from taking place, and later detained Matiba. This prompted antigovernment demonstrations in the Kikuyu Central Province.

Since that time, Moi has taken steps to liberalize the political system by reinstating the secret ballot and restoring the independence of the judiciary and civil service. However, these reforms did not succeed in blocking demands for the introduction of political pluralism.

In February 1990, Kenya's first Vice-President, Odinga Odinga, unsuccessfully tried to register an opposition National Democratic Party. Various opposition groups have since coalesced into what became known as the Forum for the Restoration of Democracy (FORD) under Odinga's leadership. Although at one time an advocate of socialism, Odinga, who is now a wealthy businessman, has moderated his earlier views. FORD

generally supports reformist economic policies in favor of foreign investment and export-led growth advocated by the Moi government, and has run primarily in opposition to the perceived abuses of power and the inefficiency of the current regime. Kenneth Matiba, also an influential businessman, is a key figure in FORD, and is widely regarded as an honest and competent public servant. The Luo-Kikuyu alliance that is backing FORD represents a serious threat to KANU in the upcoming elections.

Former Vice President Mwai Kabaki has also formed an opposition party. the Democratic Party. Kabaki is also a well-regarded businessman, and his party has garnered considerable support from the business community.

Moi now faces the challenge of a multiparty election before April 1993. While the President has expressed grave reservations about an open race, any move to renege on the promise of multiparty elections could trigger serious political turmoil.

1.5 International and Regional Relations

Kenya has continued to advocate the pro-Western positions first adopted by Kenyatta. Moi visited the U.S. on numerous occasions, and has permitted the U.S. Navy to use a base near Mombasa. Kenya supported the U.S. position in the Gulf War, and also sent troops as part of the UN Transitional Assistance Group to Namibia.

Kenya recognizes Israel, and has attracted foreign investors both from there and from South Africa. F.W. De Klerk visited Kenya in 1990, and many South African tourists visit Kenya each year.

Kenya was a part of the East African Community, along with Tanzania and Uganda, until its demise in 1977. Many of the ventures producing consumer goods built in Kenya during this time were designed with a capacity geared toward supplying this regional market. The collapse of the EAC and the subsequent deterioration in relations among the three countries hurt Kenya's regional trading position and left it with excess capacity in many of these industries.

Relations with Tanzania improved after the border was reopened in 1983, and Kenya now makes use of some Tanzanian ports and transportation infrastructure. Trade between the two countries has increased in recent years. Moi supported Ugandan President Museveni's ascension to power in 1986, though relations between the two countries have been strained as a result of a series of border incidents between 1987 and the present. Kenya stands to benefit from the reopening of Uganda's internal market in the longer term.

Kenya has poor relations with the Sudanese government, which has accused it of supporting the rebel Sudanese People's Liberation Front. In 1989 the two nation's expelled each other's diplomats, though they did not sever diplomatic relations.

A large number of Somali refugees have crossed the border into Kenya since the overthrow of Somali President Siad Barre last year. The incidence of poaching in Kenya's northern game parks by bands of Somalis has increased, and Kenyan authorities have

blamed Somali bandits for several widely publicized deaths of foreign visitors to Kenya's game parks in recent years. While this has aggravated tensions between the two governments, more serious is the prospect of incursions into Kenya by warring Somali factions.

1.5 Human Rights

Kenya has a Bill of Rights which guarantees the freedom of the individual, and an independent judiciary. However, in the past the government has not been very tolerant of opposition politics or a free press. Many opposition politicians and journalists have been harassed and jailed on charges of "rumor-mongering." Kenya has come under considerable pressure from the donor community to improve its human rights record in recent years. The seemingly aggressive investigation of former minister Ouko's death was first viewed as an indication that the government would seek to improve its record on human rights. However, the inconclusive results of the investigation have only fueled suspicion regarding official complicity in the affair.

The government's decision to permit opposition political parties for the first time has not yet translated into open tolerance of anti-regime activism.

2. Economic Performance and Outlook

2.1 Summary Table of Major Indicators

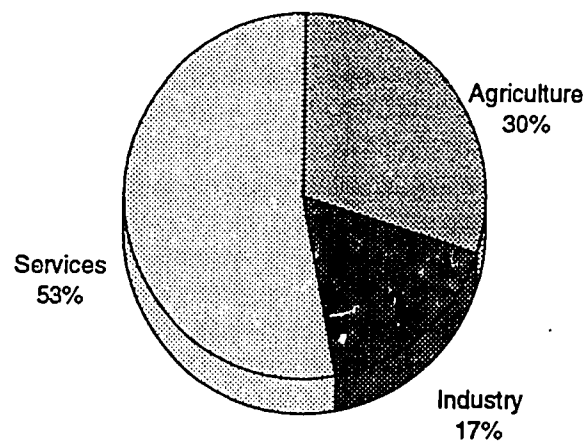
	1986	1987	1988	1989	1990	1991	1992 to 1997*
% Real GDP growth	6.3	5.2	5.7	5.2	5.0	4.8	6.0
% GDP per capita growth	10.1	11.7	5.9	10.5	10.8	9.5	5.2
% Consumption growth	21.0	14.6	13.3	14.7	—	—	—
Savings as percent of GDP	21.9	19.2	19.8	18.8	18.4	18.6	n.a.
Inflation rate	5.3	7.1	10.7	10.5	12.6	20.1	6.0

*Estimated

2.2 Structure of the Economy

The Kenyan economy is founded on a combination of a modern light manufacturing industry, a sophisticated services sector, and an agricultural sector that until recently was a model for the rest of Africa. Tourism is by far the most important and dynamic of the nation's service industries.

Figure 1. Composition of the GDP



Agriculture

Agriculture plays a pivotal role in the Kenyan economy, accounting for 30 percent of GDP, 70 percent of employment, and 60 percent of export earnings. Smallholder farmers dominate agricultural production, combining subsistence cropping and livestock production with cash crops.

During the 1980s, growth in this sector slowed as a result of a decline in world prices for key export commodities, such as coffee and tea. Delays in price and trade liberalization throughout the economy also affected agricultural production. Other negative growth factors included excessive government regulation of marketing and the lack of adequate incentives to smallholders to increase yields.

Tourism
The tourism sector has enjoyed remarkable growth since Kenya's independence in 1963, due in large part to the nation's world-renowned game parks.

Total tourism receipts have grown from only $25 million in 1963 to $480 million in 1990. The industry supports a large number of international class hotels and lodges, with a total bed capacity of over 26,400. The number of tourist visitors in 1990 was 889,000.

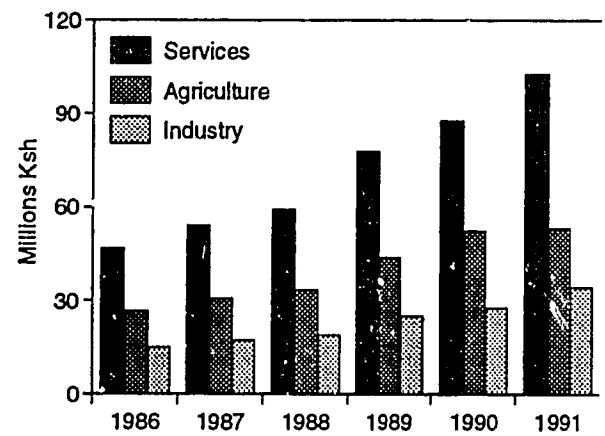
Manufacturing
Kenya's industrial sector is the fourth largest in Africa after South Africa, Nigeria, and Zimbabwe. In 1985 the sector included 560 medium and large-scale firms, more than 700 medium-scale companies, and over 1,600 small enterprises. Value added to the economy from this sector was $440 million in 1990.

Most Kenyan firms concentrate import-substitution manufacturing. In 1988 the government decided to follow the example of Mauritius by introducing export processing zones (EPZs). Reforms are also under way to turn the formerly highly protected manufacturing sector into one that is more competitive and export oriented.

Manufacturing accounts for 19 percent of employment in Kenya. It has sustained the highest rate of growth in the country's economy. Recent policy reforms are aimed at making it the leading sector. Despite these efforts, however, agriculture will continue to play its pivotal role in the economy for a long time to come.

2.3 Structural Performance

Figure 2. GDP at Factor Cost



Sectoral Performance
Kenya's nominal GDP grew by 17.6 percent in 1990, slightly higher than the 15.7 percent growth rate recorded in 1989 and well above the 11.6 percent recorded in 1986.

Agriculture accounted for 29.3 percent of GDP. Agricultural exports made up 59.8 percent of export earnings, and output in the sector was 24.9 percent higher than in 1989.

The number of tourists who visited Kenya grew by 5 percent between 1989 and 1990, with tourism earning 11.3 percent of the GDP in 1990. Tourism sector income in 1990 was 12 percent higher than in 1989.

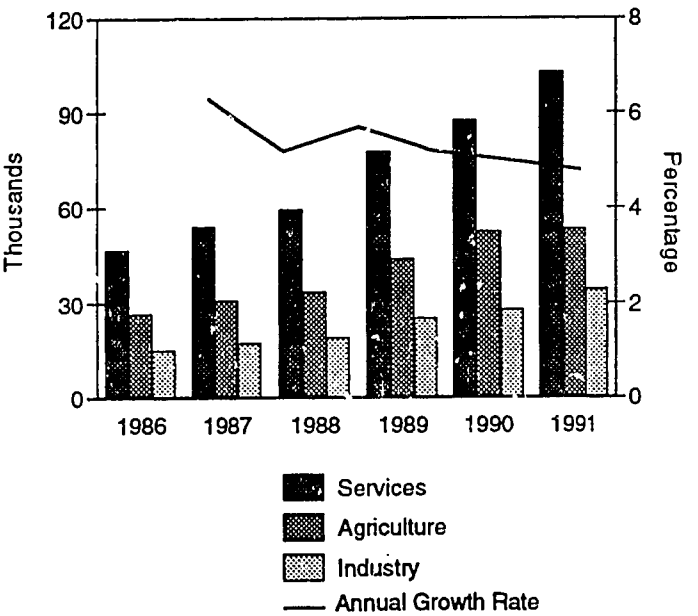
Manufacturing has continued to show commendable growth, with earnings 14 percent higher in 1990. The sector accounted for 17.3 percent of GDP and 26.7 percent of export earnings.

Building and construction activity grew by 11 percent in 1990; transport, storage, and communications grew by 12 percent; and finance grew by 12 percent.

Spending and Savings
Domestic savings as a percentage of GDP continued to drop from 18.8 percent in 1989 to 18.4 percent in 1990. This gradual decline has been evident since 1986, when savings reached a 5-year peak of 21.9 percent. The trend in declining public savings was largely the result of rising debt service repayments and uncontrolled wage expansion in the public sector.

Private savings were affected by a decline in incomes resulting from the slump in coffee and tea prices. Government savings were set back as the result of short-term difficulties in administering the newly established Value Added Tax as well as by leakage from public accounts.

Figure 3. GDP at Current Factor Cost and Annual Growth Rates



2.4 Economic Prospects 1992-1997

Prospects for the Kenyan economy continue to be tied to the outcome of political reforms that are under way. In an environment of political uncertainty, vested interests are working hard to oppose reforms that threaten privileged competitors or which will result in layoffs among workers in the parastatal sector. At the same time, with little confidence that the political status quo will endure, public sector managers have increasingly turned to corruption and short-term profit-seeking.

While development assistance donors are critical of the pace of economic reforms, they recognize that systemic problems in the economy are tied closely to the social and political underpinnings of public institutions.

There is some optimism that the political environment will stabilize during the next year. Nonetheless, Kenya's leaders will continue to face major challenges in generating support for unpopular austerity policies.

Unemployment
Despite recent gains in lowering fertility levels, Kenya's current population of 25 million is expected to reach 35 million by the year 2000. Past economic growth rates of 5 percent per annum are not high enough to absorb the number of new workers entering the labor force. Consumption of goods and services is quickly outstripping production, while expenditure on services such as education and health divert a large proportion of resources from other economic activities.

The combined result of population growth and economic stagnation is rising unemployment. It is estimated that the economy will need to generate at least four million new jobs over the next decade to resolve the problem.

Inflation

Inflation, which began rising in 1987, has accelerated during the past two years, reaching 20 percent in 1991. This is a result of converging factors that include growth in the money supply, chronic government budget deficits, declining public sector labor productivity, higher oil prices, decontrol of consumer prices, and depreciation of the Kenya shilling.

Higher oil prices were a result of instability of global supply and poor performance of the global economy in general. The government could limit inflation to manageable levels by reducing the growth in money supply, cutting government and public sector spending, and reducing the budget deficit. Isolated measures, such as suppressing the expansion of average wage rates, have so far been unsuccessful due largely to political resistance.

Public Finance and External Aid

The government budget deficit grew by 27 percent between 1990 and 1991. In 1991 the financing gap was close to 42 percent of the total government budget, of which 62 percent was financed from external sources.

The Kenyan business community and external donors have expressed concern about the growing reliance on foreign assistance, and there is justifiable uncertainty about the availability of external assistance at past levels. In order to reduce its dependence on external assistance, the Kenyan government must reduce its budget deficit and control spending in the public sector.

Parastatal Reforms

Progress in implementing World Bank-sponsored parastatal sector reforms has been slow. The large number of government corporations and the wide range of activities in which they are engaged are an impediment to renewed economic growth. Kenya's leaders recognize that privatization will be necessary to promote gains in production efficiency and to strengthen entrepreneurial competition in the economy. At the same time, the government is also concerned about the volatile social and political dislocations that can result from structural reform in the parastatal sector.

Administrative Efficiency

The growth of public sector institutions since independence has led to redundancies in the roles of government ministries and departments charged with administration of business. This can lead to excessive administrative procedures and delays in obtaining official clearances. Ongoing public sector reforms are aimed at improving administrative efficiency. The pace and effectiveness of reforms remain dependant on liberalization of the political process and suppression of political patronage in public institutions.

Savings/Investment Gap
Regulatory disincentives to private business in many sectors of the economy led to disinvestment in Kenya during the late 1980s by both local and foreign capital. This resulted in decreasing investment capital at a time when real incomes were also on the decline due to lower commodity prices in the world market and overall economic stagnation. Recent policy reforms are aimed at liberalizing the investment climate and attracting new ventures. Nonetheless, replenishing the country's capital stock is not likely to be accomplished over the short term.

2.5 Implications for American Investors

Although Kenya's economic performance has been sluggish in recent years, slated political and policy reforms could revive the economy over the medium term. Public finance reforms and privatization of parastatal industries could create numerous opportunities for foreign investors if Kenya's political institutions commit themselves to the reform process. The fate of economic reform programs will hinge on political events whose outcome is far from certain during the next year.

Kenya's urgent need for job-creating investment will lead the government to favorably consider new projects that generate significant new employment. High unemployment rates should continue to keep labor costs low for the foreseeable future.

Prospective investors should track progress on the implementation of World Bank and IMF-sponsored reforms in order to gauge the pace of progress in resolving Kenya's structural and financial weaknesses.

3. Sectoral Analysis of the Economy

3.1 Agriculture

Although only 18 percent of Kenya's land is of high or medium agricultural potential, the agricultural sector (including ranching) is one of the most important economic activities in Kenya. Agriculture accounts for 28 percent of the GDP, and generates 60 percent of Kenya's foreign exchange. Seventy percent of all Kenyans are employed in agriculture, including 14 percent of all those wage earners in the formal sector.

Throughout the 1980s, agricultural production expanded by an average of 3.5 percent per year, although this was outstripped by population growth. A shortage of arable land in Kenya, together with its continued subdivision into smallholdings, has caused overcrowding. Sixty percent of all the farms in Kenya are smallholdings of less than two hectares. These account for 70 percent of Kenya's agricultural output, including 60 percent of its coffee and 45 percent of its tea production.

The Kenyan government would like to increase the growth of the agriculture sector to 4 percent per year, and has focused its development efforts on smallholders. As part of this initiative, the government has taken steps to liberalize agricultural prices and marketing to stimulate production. It will also be necessary to substantially increase the use of fertilizer to achieve this goal.

The government's easing of restrictions on maize movements in 1991 was a welcome reform, though the continued predominance of agricultural marketing boards for coffee, tea, and cereals, and other produce has been a target of criticism by farmers and donors alike. Steps to reduce the role of marketing boards and to streamline the system by which farmers are paid will be components of a $75 million agricultural sector adjustment loan from the World Bank.

Although Kenya has experienced rapid growth in horticultural production, weak world prices for coffee and tea have resulted in an overall deterioration in Kenya's terms of trade. As a result, many Kenyan farmers are shifting out of lower value crops, like coffee, and into food crops and higher value produce, such as vegetables.

Coffee, Tea, and Other Export Crops
Coffee was Kenya's third largest hard currency earner in 1991, after tourism and tea. Although only 3 percent of Kenya's land is used for coffee production, coffee accounts for 18 percent of Kenya's export earnings. Since the collapse of the International Coffee Agreement in 1989, Kenya no longer restricts its production according to a quota set by the ICA. It hopes to increase its output of coffee to 351,000 tons per year, mostly of higher value arabica beans by the year 2000.

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Despite this ambitious goal, poor weather and declining world prices contributed to a slump in total coffee production from 130,000 tons in 1987-88 to 90,000 tons in 1990-91. The inefficiency of the parastatal coffee marketing board has contributed to declining production. The World Bank has committed $46 million to improve the payment system to farmers and to increase their access to fertilizer and other inputs.

Declining coffee prices have helped tea become Kenya's biggest export earner, bringing in $273 million in 1990. The Kenyan government hopes to take advantage of strong world demand for its high quality tea by aggressively expanding the amount of land under cultivation for tea production.

Kenya exports a number of other agricultural products, including pyrethrum, sisal, cotton, and cashew nuts.

Horticulture

Recent years have seen the rapid growth of Kenya's horticultural exports, including high-value fruits and vegetables, such as French beans, peas, strawberries, and cut flowers. Kenya's exports of horticultural products have expanded from 22,266 tons in 1980 to 49,920 tons in 1990, earning $139 million in foreign exchange. Kenya estimates that its earnings in this sector rose 12 percent in 1991. The government has provided a further stimulus to this industry by waiving the duties on imported packaging materials used to process exports.

Kenya's major markets for fresh fruits and vegetables are the United Kingdom and Germany. The principal destination for its cut flowers is the Netherlands, whence they are often re-exported. Other markets for Kenyan horticultural products include Japan, the Middle East, and North America. One constraint to the continued growth of this sector is the shortage of air freight space needed to transport produce to external markets.

Food Crops

Kenya is a major producer of maize, and in a year of normal rainfall produces enough to be self-sufficient. Drought and other unfavorable climatic conditions often make it necessary to import cereals. Kenya also produces wheat, sorghum, millet, and beans. Sugar cane is grown in Western Kenya, although poor price incentives have retarded production and led to an increase in the smuggling of sugar to Uganda.

The inefficiency of the parastatal cereal and produce marketing board has been an obstacle to greater productivity in the food crops sector, though the government took steps toward liberalizing the distribution system in 1991.

Livestock and Fish

Much of Kenya's nonarable land is suitable for raising livestock, and the government has encouraged the development of the commercial ranching industry. Cattle, goats, and sheep are raised commercially, and there are plans to increase the amount of meat produced for export. A significant percentage of Kenya's livestock are raised by semi-nomadic pastoralists in marginally productive regions of the country.

Freshwater fish are taken from Lake Victoria, and other inland fresh water lakes in the area. The catch from the Indian Ocean has increased in recent years, and there is some potential for increasing the amount of fish exported.

Forestry

Ninety-four percent of Kenya's forest estates and plantations are owned by the national or local governments. Kenya is largely self-sufficient in the production of timber for construction purposes. The government has emphasized the development of commercial plantations producing fast growing cyprus and pine trees for use in lumber, and also to supply the pulp and paper mills located in the Western Province. Hardwood plantations provide material for poles and for construction.

3.2 Manufacturing

From Independence until around 1980, Kenya pursued an industrialization policy that focused on import-substitution, gearing production toward the East African Community's market. As a result, much of Kenya's manufacturing base is capital intensive and geared toward a larger scale than the Kenyan market alone would justify. Foreign investors played a large role in the industrialization of Kenya's economy, owing to the favorable treatment the government consistently afforded to foreign investors.

The Kenyan government invested heavily in many manufacturing ventures, contributing to a proliferation of overstaffed and inefficient enterprises. The government insured that many of the industries in Kenya enjoyed high rates of protection, estimated by the World Bank in 1987 as averaging 90 percent. Kenya is the most industrialized country in eastern Africa.

In 1980, the Kenyan government shifted away from import substitution and toward export-led growth. In the economic policy statement set out in Sessional Paper Number One of 1986, the government set a target growth rate for manufacturing of 7.5 percent.

Although the sector has failed to achieve that level of growth—hovering instead at around 5.5 percent—the government has taken concrete steps to liberalize and reform the economy in an effort to stimulate exports and remove protection from inefficient industries. Tariff schedules have been simplified and lowered, and quantitative restrictions on imports removed altogether. Tax rates have been similarly lowered, and the government has devalued the currency to keep the exchange rate competitive. The government has also progressively lifted other import controls and restrictions on currency exchange to help ensure that manufacturing enterprises have easier access to imported inputs. In 1991 the government announced plans to privatize 139 state industries, giving further impetus to reconfiguring this sector.

The Kenyan government hopes to stimulate manufactured exports through manufacturing-under-bond and export processing zone (EPZ) schemes. Under these initiatives, manufacturers will have access to duty-free imports for goods that are 100 percent for export. The government is counting on Kenya's central location to African, European, and Asian markets to attract foreign investment to take advantage of these programs. Kenya has upgraded its export capability by improving the cargo handling

facilities at the Jomo Kenyatta International Airport, and by increasing the VAT exemption for imported intermediate goods used in the manufacture of exports.

Kenya's manufacturing sector grew at an average rate of 8 percent per year between 1964 and 1989, although its contribution to GDP remains at 13.2 percent. There are about 600 large to medium-sized enterprises in Kenya, 800 small enterprises, and numerous microenterprises.

The largest manufacturing subsector is food processing, with 30 percent of total value added, followed by beverages and tobacco with 11.5 percent, and chemicals. machinery, and transport equipment each contributing 10 percent. Textiles, electrical appliances, fertilizer, and cement are other important subsectors.

Although the growth of the manufacturing sector slowed from 5.9 percent in 1989 to 5.2 percent in 1990, there was major variation in the growth rates of different subsectors. Textiles, petrochemicals, and cement production volumes grew by 13 percent, while transportation equipment grew by 5.6 percent, and food processing grew by 1.3 percent.

The East African Oil Refinery in Mombasa re-exports processed petroleum products to the East African market. Crude oil imports increased 26.7 percent in dollar terms in 1990, and exports of processed petroleum products increased to 534,000 tons.

Constraints on the growth of the manufacturing sector include inflationary pressures, lack of markets, and continued problems in getting access to foreign exchange and imported inputs. The government has, however, made considerable progress in liberalizing prices and removing controls on imports and currency. This should help to stimulate manufacturing growth in coming years.

3.3 Tourism

With the number of visitors up by 9 percent, and foreign exchange earnings up 11.3 percent to $465 million in 1990, Kenya's tourism industry has long since overtaken tea and coffee as the biggest earner of foreign exchange. With 21 percent of GDP, tourism is one of the most important sectors of the Kenyan economy.

Traditionally, most visitors to Kenya have come from the U.S. and Europe. With regional competition growing, the Kenyan government has begun a campaign to draw more visitors from Asia. Tour operators have tried to promote Kenya as an affordable vacation destination with competitive off-season air fares, and improved air links to Europe. In an effort to increase the number of tourists visiting Kenya, the government last year lifted the ban on South Africans coming into the country.

Kenya has a diverse climate, spectacular scenery and topography, and a world-renowned endowment of wildlife. These factors have made it a very popular destination for tourists for over forty years. The country has an extensive system of game parks and preserves, as well as beach resorts featuring world-class accommodations. More recently the government has tried to diversify its tourist attractions to include scuba diving, boating, fishing, and mountaineering.

Kenya has a well-developed network of hotels, with an estimated 26,400 beds. Occupancy rates have averaged 55 percent.

In recent years, however, constraints on the continued growth of the tourist industry have developed. A global decline in international travel associated with the Gulf War, as well as instability within Africa, contributed to a slight decline in the number of visitors in 1990. Neighboring countries, particularly Tanzania, have begun competing with Kenya as a tourist destination. This comes at a time of increased concern that Kenya's beaches and game parks have reached their saturation points.

Kenya's image as a tourism destination has also been damaged by isolated, but highly publicized, attacks on foreign tourists in game parks. The Kenyan government has aggressively responded to these attacks by creating the semi-autonomous Kenya Wildlife Services to provide security in the game parks.

3.4 Mining

Although trace elements of large numbers of minerals and gemstones are present in Kenya, only a few are commercially exploitable. Soda ash production, used primarily in glass and soap manufacture, makes the largest contribution to GDP, followed by refined salt and fluorspar. Some gemstones are found in southern Kenya.

4. The Role of the State in the Economy

State intervention in the Kenyan economy occurs largely through semi-autonomous public agencies that hold shares in industrial and commercial enterprises, promote services and infrastructure, and serve as marketing, administrative, and advisory boards.

4.1 Strength and Role of the Public Sector

One of the principal weaknesses of the Kenyan economy is the size of the public sector, which accounts for nearly 50 percent of total wage employment in the modern sector.

The number of government ministries has increased from 19 in 1970 to 28 in 1991. There are six ministries responsible for manpower training. Employment in the public sector has been increasing at over 6 percent per year—faster than the 5-percent growth in gross domestic product.

State-owned enterprises account for up to 11 percent of GDP. There are 255 commercially oriented enterprises in which the state has a stake. The government owns controlling shares in more than half of these.

Nearly two-thirds of parastatals are concentrated in manufacturing and mining. Public manufacturing enterprises account for about 30 percent of total manufacturing output; about 18 percent are in distribution, and 15 percent are in finance.

Direct public-sector involvement in the economy comes in numerous forms:

- Government monopolies provide basic services such as electricity, water, telecommunications, and rail services.
- Public agencies import some basic foodstuffs directly such as wheat, rice, sugar, and maize. Kenya is traditionally self-sufficient in sugar and maize, but it imports these items in years when there are shortfalls in domestic production.
- Government monopolies exist for the marketing of some key commodities. The government-owned National Cereals and Produce Board is the sole buyer of all farm produce, such as wheat and maize, from the farmers. The board then sells the grain to millers and other wholesalers. The Kenya National Trading Company (KNTC) controls all distribution of commodities, such as sugar, salt, cement, and most paper products. The Kenya Tea Packers Limited (KETAPA) processes and markets all the tea traded in the domestic market.
- The government sometimes awards exclusive import licenses for certain imports such as fertilizers and sets the prices and margins for the items.
- Public agencies sometimes regulate prices and margins for selected items in the domestic economy, mainly foodstuffs and fertilizers.

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- The government of Kenya has often intervened to rescue public enterprises from bankruptcy. Parastatal losses account for about 20 percent of the budget deficit while their government guaranteed borrowing constitutes as much as 17 percent of Kenya's foreign debt.
- Central government authorities directly allocate sometimes scarce foreign exchange. All applications for foreign exchange for purchase of inputs and spares, and repatriation of profits, are processed by the Central Bank of Kenya.
- The government provides venture capital and development loans to small and medium-scale enterprises through its various development finance institutions. The state-owned Agricultural Finance Corporation is the largest source of credit for the agricultural sector.
- Government marketing boards also intervene in the export sector for some commodities, such as coffee and horticulture.

4.2 Strength and Role of the Private Sector

Kenya has a dynamic private sector that embraces all areas of national economic life. The manufacturing sector, which has been the fastest growing sector of the economy, includes food processing, paper products, textiles, metal and engineering and vehicle assembly and parts manufacturing. Other major manufacturing activities include electrical equipment, plastics, chemicals and pharmaceuticals, and mining and mineral products.

Building and construction, distribution services, and much of the tourist and hotel industry are dominated by the private sector. The private sector also controls most of the agroprocessing, fisheries, and leather and leather goods processing activities.

The sector is diverse in terms of sources of capital. There are 900 major manufacturers of which 180 are multinationals, mainly from the United Kingdom, the United States, and Germany. Other major sources of investment include Italy, France, India, Japan, and Switzerland.

An important factor to note about the Kenyan private sector is what is often referred to as the "Asian Question." Kenyan citizens of Asian origin dominate the domestically owned and operated medium- and large-scale manufacturing sector. The Asians' economic strength, relative to their very small numbers—less than 2 percent of the total Kenyan population—has been a major source of criticism among Kenyans of African and European origin. The issue presents a sociopolitical problem that the government has been reluctant to address.

4.3 Implications for American Investors

The diversity of the economic activities in Kenya and the presence of a substantial amount of foreign investment capital are indicative of Kenya's traditionally hospitable investment climate.

Although Kenya has a mixed economy, the government's policies promoting foreign investment and the private sector have diminished any fear of expropriation, or other drastic changes in government policy toward foreign investors or the private sector in general.

State intervention in the economy has at times been an impediment to an expansion of investment opportunities. The government, however, has committed to divesting itself of a wide variety of parastatal companies and to deregulate trade and industry as part of its structural adjustment program. This should create additional opportunities for foreign investment over the next two to three years.

5. INVESTMENT CLIMATE

Kenya has attracted foreign investment since the colonial period. An agreeable climate and good communications attracted large numbers of British settlers. After World War II, Kenya became East Africa's leading destination for investment in agriculture, manufacturing, and financial services. After independence in 1963, the country embraced a mixed economic development model: the colonial tendency toward government intervention in economic activities was not only retained but accelerated. Private business activity, however, was also encouraged. Under President Kenyatta, the Foreign Investment Protection Act of 1964 guaranteed repatriation of capital and profits. By the late 1970s, the country had gained investments of some $500 million from Britain, $200 million from the United States, $60 million from West Germany, and $100 million from other major industrial countries.

5.1 Recent Investment Performance

Under President Moi, foreign corporate investment began to level off. Reasons included global recession, lack of foreign currency, the end of the East African Community, a weak export market, proliferation of small local firms, high tax rates, the attempted coup of 1982, and the availability of financing for state-owned enterprises from large multilateral institutions such as the World Bank. The Kenyan government increased its participation in new and established ventures, holding anything from token investments to 100 percent shareholdings.

Both former President Kenyatta and President Moi sought to use the state as the engine of economic growth. Economic activity flourished, foreign capital flowed into the country, imports and exports increased, incomes increased, and social indicators improved. Gradually, however, underlying structural deficiencies in the economy emerged, including poor planning, insufficient capitalization, and lack of management skills. Many of the plants that had been constructed operated at well below capacity. High cost inputs, especially imported intermediate and capital goods, together with overstaffing with underqualified workers, taxes, and corruption, raised operating costs to unsustainable levels. Pursuit of social objectives at the expense of productivity, failure to adapt to changing market conditions, and rigidities in regulation distorted operations, leaving business objectives unattainable.

The state-led growth surge of the 1960s and 1970s left an economy deeply in debt, ill-equipped to adapt to changes in the world economy, and unable to overcome reversals in terms of trade. In place of self-sustaining growth, Kenya became increasingly dependent upon foreign borrowing and aid.

The country's debt position and its dependency upon foreign aid left Kenya little alternative but to cultivate good relations with the multilateral institutions and foreign

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governments providing aid. As the 1980s progressed and it became clear that the Kenyan economic boom had lost momentum, foreign donors began to attach stringent conditionalities to loans and grants in the form of structural adjustment programs and demands for economic policy reforms. These requirements aimed to reduce state intervention in economic activities and to deregulate the economy. The government was obliged, therefore, to curtail its acquisition of shares in new ventures.

Under the 1989-1993 development plan, the government will provide economic information and services, and serve as guardian of economic justice by adjudicating disputes and preventing or punishing unfair business practices.

Restructuring of state-owned firms, another major element of economic reform as imposed by the donors, is proceeding more slowly than the donors desire. Such structural changes may take the form of reorganization/recapitalization, liquidation, or privatization. The government has repeatedly announced that it plans to retain its "strategic" entities while liquidating or privatizing the "nonstrategic" ones, but it has been very reluctant to identify which firms fall into which category.

5.2 Experience of Private Investors to Date

Kenya welcomes foreign investment. This public message is repeated in every medium that reaches potential investors, from President Moi's speeches to the promotional brochures of government economic institutions. The constitution provides investment protections by guaranteeing compensation in any case where the government acquires foreign properties. The government, with the support of foreign aid donors, offers potential investors a broad array of incentives, beginning with special tax and other exemptions. Recently, it has established several export processing zones.

In the past, some foreign investors have complained about the complexity of government regulation and the slowness in implementation of stated policy (see Chapter 6). Kenyan officials, on the other hand, complain of exploitation, manipulation, and outright fraud by some foreign businesses. They feel that much foreign investment ignores Kenya's immediate development needs.

Both Kenyans and foreign firms believe they have gained from the liberal investment climate. Critics outside the government's inner circles argue that the main beneficiaries are large multinational corporations and high-level Kenyan politicians, who have formed an alliance that provides few benefits to the Kenyan people. With the increasing attention now given to corruption and lack of accountability in high office, and with the strong demand by ordinary Kenyans for a more democratic political system, some potential foreign investors are now taking a close look at the implications of buying into that alliance.

5.3 Investment Outlook

Kenya's current investment picture is colored more by political uncertainties than economic issues. The government's privatization program has progressed more slowly than it anticipated, in part because political issues have engaged the most senior

decision-makers. The country greatly needs an influx of new investment; instead, capital flight continues to be an issue. In an attempt to retain capital in the country, the government has created bearer certificates of deposit that allow bank customers to repatriate funds without disclosing their source.

The government needs to reestablish a climate of confidence for the business community. Kenya is moving toward having national elections to give full scope to the newly created multiparty democratic reforms. A cleanup of the top echelons of government and the civil service, and steps to reduce the rate of inflation, are other items on the pro-business agenda.

5.4 Investment Opportunities

It is useful to take a long view of Kenya's investment potential. For more than thirty years, Kenya has been a better business risk than any other country in East Africa. Kenya has a better economic base and offers more support to investment ventures than its neighbors. Assuming that structural adjustment and economic policy reforms bring about fundamental changes in the way the Kenyan government views economic issues and in the way it treats economic actors, long-term prospects for foreign investment appear relatively good.

The government has shifted from import substitution to exports as its main means to generating economic growth. Tourism has overtaken traditional exports as a generator of foreign exchange. As a result, the most attractive economic sectors today are tourism and nontraditional exports, the latter including horticultural products—fresh flowers, off-season fruits and vegetables for northern hemisphere markets, and tropical fruits year-round—and some manufactured goods. Changes in Kenya's international relations, such as a possible revival of the East African Community, may increase Kenya's markets for manufacturers within the subregion. The establishment of economic links with the Republic of South Africa may also mean more exports and increased tourism. Kenya Airways recently announced new routes to serve European, Asian, and South African cities that are destinations for Kenyan products.

5.5 Implications for American Investors

Americans have always been welcome in Kenya, and American investors have felt a special affinity for the country. More American firms doing business in East Africa locate their regional offices in Nairobi than in any other city. The number of American firms in Kenya now exceeds 120. Until recently, relations between the governments of Kenya and the United States were very cordial. The United States saw Kenya as a strategic link in its security position in Africa and the western Indian Ocean, while Kenya saw the United States as a tolerant and generous partner in both political and economic matters.

Although the increasing emphasis among donors on political and economic reform has stiffened President Moi's resentment of foreign advice, the Kenyan political system has in fact responded to donor recommendations for reform in several key areas. It seems quite likely that the currently political uncertainty will not lead to radical changes in economic policy, such as the emergence of a government that repudiates the shift toward

free markets and private production. The most probable outcome is a more liberal political system operating in tandem with a more liberal economy. In such an environment, careful American investors should be able to find attractive business opportunities.

6. Regulation of Foreign Investment

At the level of official policy, political rhetoric, and public relations, Kenya goes far toward assuring potential foreign investors ample opportunities to become engaged in productive and profitable economic activity. It is worth noting, however, the words of a 1990 report by USAID/Kenya, in which the foreign investment climate is evaluated thus:

> Net private foreign investment, however, has been negative in recent years. This is primarily attributable to the growing concerns over government transparency and burdensome investment regulations. There are a number of specific reasons for foreign investors not investing in Kenya including: government controls on ownership and repatriation of profits; government delays and costs involved with licenses and regulations; low and mid-level corruption which increases the cost and risk of doing business; government price and interest rate controls; and government capital and exchange controls. While the large increase in foreign aid experienced over the past six years has cushioned the impact of declining exports and fluctuating oil prices, it has also allowed the Government of Kenya to avoid necessary policy changes that are required to increase foreign investment and exports.

6.1 Government Policy

Kenyan officials call their government's investment policy "pragmatic," alluding to shifts between public and private control of resources as economic circumstances warrant. Broad economic policy has been shaped by a series of multiyear plans, following strategies outlined from time to time in parliamentary papers. The basic document governing Kenya's recent economic orientation is Sessional Paper No. 1, issued in 1986 under the title "Economic Management for Renewed Growth." This paper declared the government's support for:

- Greater private economic activity.
- Flexible exchange rates aiming at making exports competitive while allowing import substitutes to survive.
- Agricultural producer prices that reward increases in output.
- Replacement of import quotas by tariffs.
- Government guidance of wage rates rather than imposed rates.
- Realistic interest rates.
- Removal of price controls on most items other than "basic necessities."

The government has said that it intends to provide investors long-term stability of incentives in a healthy economy.

6.2 The Government's Investment Priorities

In offering opportunities to investors, the Kenyan government hopes to achieve the following objectives:

- Job creation
- Use of domestic resources
- Foreign exchange earnings
- Technology transfer, including training
- Rural development, including high-technology farming

Sectors in which the government particularly wishes to encourage foreign investment include the following:

- Agriculture support (inputs and services)
- New agricultural products (diversifying horticulture)
- Agroprocessing (oilseed pressing, brewing, juices, sauces, canned horticultural products)
- Poultry products
- Fisheries
- Leather processing, leather goods
- Furniture
- Paper products
- Textiles and apparel
- Metals and engineering
- Vehicle parts and assembly
- Electrical equipment
- Plastics, chemicals, pharmaceuticals
- Mining and minerals
- Construction
- Tourism

The government wishes to encourage investment in virtually all sectors except those considered strategic such as energy, transport, and telecommunications.

6.3 Incentives for Investors

The constitution prohibits the seizure of private property except for defense or other public purposes, in which fair and prompt compensation are guaranteed. This protection is available to local and foreign investors alike. Foreigners are also guaranteed, under the Foreign Investment Protection Act, the right to repatriate capital and profits. This includes transfer of after-tax profits, including noncapitalized retained profits; original book value of investments; and principal and interest of certain loans. Capital gains from

sale of assets, however, may not be repatriated immediately, but must be retained in Kenya for five years and invested in government securities. Earnings on the securities may be repatriated when received. In recent years, efforts to repatriate capital or profits have met delays due to shortages of foreign exchange.

In terms of specific incentives, Kenya now offers the following:

- Tax deductions of 85 percent, realized through accelerated depreciation of capital assets, are available to encourage development outside Nairobi and Mombasa; the rate in those two urban areas is only 35 percent. Manufacturers under bond receive 100 percent investment allowances regardless of location.
- Assets may be depreciated for tax purposes at special rates, which vary according to industry and level of activity.
- Losses deductible from taxes can be carried forward indefinitely.
- Tax exemptions, notably from import tariffs and value added tax. Outside of Nairobi and Mombasa, the exemption applies to the first KShs 40 million of investment in plant and equipment, while that rate is half as much in the two urban centers.
- Materials imported to produce exports are eligible for duty remission.
- Certain exports receive compensation in the form of refunds of duties on imported components.
- Investors producing exclusively for export may manufacture under bond, a status that exempts them from customs duties and VAT on virtually all components.

The Kenya Export Processing Zones Authority has approved a private EPZ near Nairobi's Kenyatta Airport; public EPZs are planned for Mombasa and Athi River. The zones offer:

- 10-year tax holidays (25 percent tax during second 10 years).
- Exemptions from withholding taxes on dividends and other payments to nonresidents for 10 years.
- Exemptions from import duties on machinery, raw materials, and intermediate inputs.
- No foreign exchange controls.
- No restrictions on management or technical arrangements.
- Exemptions from VAT.
- All taxes on capital gains have been abolished.

There is an Investment Promotion Centre which is an information and service bureau. It works with private investors and recommends policy and legislative reforms to the government of Kenya in order to improve the investment climate. One of the Centre's chief services is a free, one-stop enterprise creation system, which processes project applications and helps obtain necessary approvals. The system's goal is to complete the process within four weeks. The Centre invites inquiries at the following address:

The Executive Chairman
Investment Promotion Centre
National Bank Building, 8th Floor
Harambee Avenue
P.O. Box 55704
Tel: 254-2-221-401 through 4
Telex: 25460 BIASHARA
Fax: 254-2-336-663

Kenyan exports enjoy market access through several treaty programs:

ACP/Lome Convention, which grants preferential duty rates to goods entering the European Community.

The Generalized System of Preferences for non-EC industrial nations.

The Preferential Trade Area (PTA), comprising 18 countries in eastern and southern Africa.

6.4 Limitations on Foreign Investment

The government has not entertained requests to invest in utilities such as telecommunications, electric power, basic transport, and similar "strategic" activities. These services, now provided by state entities, are likely to be among those retained under government monopoly.

Foreign investment proposals intended to compete directly with established Kenyan firms—such as in the tourist business—have failed to receive approval. It remains to be seen whether this will be true as economic policy reform continues to evolve. The government hopes to avoid foreign investments involving ownership of farmland, unless irrigation or other major capital improvements are intended. Foreign investment in small-scale retail sales is also discouraged.

6.5 Acquiring Real Estate

With the exception of the policy on farmland mentioned in the preceding paragraph, there appear to be no constraints on land ownership specific to foreign enterprises.

6.6 Establishing a Business

Kenya's Companies Act, based upon the United Kingdom's Companies Act of 1948, governs establishment and structure of the following public and private companies:

Banks
Insurance companies
Building societies
Branches of foreign companies

Partnerships
Joint ventures
Sole proprietorships
Cooperatives

It is advisable to have competent legal counsel in establishing a new business entity in Kenya.

6.7 Local Content Requirements

There appear to be no local content requirements in Kenya.

6.8 Regulation of Competition

Regulation of competition, per se, is vanishing as structural adjustment progresses, except in activities deemed "strategic" by the government of Kenya. Restrictions on provision of tourist services, ownership of farmland, and establishment of small retail shops also seem intended to deter foreigners from competing in those specialties.

6.9 Investment Protection

Kenya is a member of the Multilateral Investment Guarantee Agency (MIGA), a World Bank affiliate, and of the International Center for the Settlement of Investment Disputes. American investors are eligible for insurance from the Overseas Private Investment Corporation.

6.10 Implications for American Investors

The investment environment is now being made more attractive through a framework of incentives and services to help investors. It remains for individual investors to investigate specific opportunities and to test the utility and efficiency of the support system.

American investors, who will find Kenyans eager to discuss cooperative ventures, should evaluate qualifications carefully and determine the levels of capital contributions and managerial and technical inputs they can anticipate from potential Kenyan partners.

7. INFRASTRUCTURE

Kenya has a well-developed modern infrastructure. It has world-class port facilities and is well served by major international airlines. Business telecommunications services are adequate for both international and domestic needs.

7.1 Transport

Port Facilities

For three centuries, Kenyan coastal towns have served as centers of commerce between the East African coast and the countries bordering the Indian Ocean and the Gulf of Oman. Mombasa, the main port, has operated as a modern port for international commerce since 1895.

Kilindini Harbor in Mombasa is administered by the Kenya Ports Authority. It boasts the best and largest port facilities on the east coast of Africa. Facilities include a wide range of cargo handling for exports, imports, and transshipment.

Mombasa is the main shipping outlet for several other neighboring countries as well, including Uganda, Burundi, Rwanda, and parts of eastern Zaire and southern Sudan. Total cargo handled through the port exceeds 7 million tons per year, the majority of which consists of containerized shipments.

Air Transport

The government operates the two international airports—Jomo Kenyatta International Airport in Nairobi and Moi International Airport in Mombasa. The two airports serve more than 25 international airlines, with about 300 flights per week. Jomo Kenyatta International Airport handles at least 16 flights to Europe daily.

Nairobi is the air transport hub for flights to and from Europe for all the eastern, central, and southern African regions. The two international airports handled more than 2.8 million passengers and over 70,000 tons of commercial freight in 1991.

Kenya Airways operates scheduled domestic flights between Nairobi, Mombasa, and several other commercial centers, including Kisumu, Malindi, and Eldoret.

A sixth airport, Wilson Airport in Nairobi, is utilized mainly by air charter operations and private company flights between Nairobi and most other parts of the country, and between Kenya and the eastern, central, and southern Africa regions.

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Road Infrastructure
Kenya has a network of almost 60,000 kilometers of all-weather roads, of which over 7,000 kilometers are bituminized. The roads are used by the nearly 250,000 vehicles in the Kenyan fleet, in addition to the transit traffic to and from neighboring countries. All the major commercial centers are easily accessible by road in all seasons. There are over 4,600 kilometers of bituminized international trunk roads connecting Kenya to neighboring Ethiopia, Somalia, Tanzania, Uganda, and southern Sudan.

A large number of private companies operate passenger bus services and long distance taxis to every part of the country.

The private sector operates long distance haulage, which supplements the railroad system. Long distance trucking is the major method of transportation between the port of Mombasa and Kenya's neighboring countries.

Railroads
The government-owned Kenya Railways Corporation operates a 2,060 kilometer railroad network linking the port of Mombasa with all the major manufacturing and commercial centers in the country. The rail system also links Kenya with the railroads in two of the neighboring countries-Uganda and Tanzania.

7.2 Energy

Imported petroleum accounts of almost 69 percent of Kenya's commercial energy consumption. About a dozen local and international companies import crude oil under license from the government. Refining is centrally organized at Kenya Oil Refineries Limited in Mombasa, a joint venture between the government and the oil companies.

The government-owned Kenya Pipeline Company operates a major pipeline which connects the refinery with storage facilities in Nairobi and other industrial and commercial centers.

Kenya has a developing hydro-electric energy production sector which currently accounts for the production of 25 percent of the total energy consumed in the country. Due to escalating prices of oil and limited water resources, the country is under pressure to develop alternative sources of energy. In response, Kenya is developing thermal energy programs in several parts of the country and is experimenting with the use of power alcohol produced from molasses - a by-product of sugar refining. Other alte native energy sources under development include solar, wind and biogas.

The government and the Kenya Association of manufacturers (KAM), a private sector association, operate a joint project to ensure efficient use of energy in the country. The project is also responsible for designing energy conservation measures and advising on the future energy needs for the industrial sector.

7.3 Communications

Kenya is a regional leader in telecommunications. Business telecommunications services between Kenya and the rest of the world are more than adequate and among the best in Africa. Satellite links provide direct dialing locally and to most parts of the world, telex links worldwide, facsimile services, and other high speed data transfer locally and internationally.

Installed capacity falls below domestic demand. Kenya's major cities and the industrial and commercial sectors are given priority over households and other personal users.

Service efficiency has been affected by weaknesses in institutional management in Kenya Posts and Telecommunications Corporation (KPTC), the parastatal that controls telecommunications. KPTC is currently being reorganized under the parastatal reform program sponsored by the World Bank.

Air courier services operate from Kenya to all parts of the world. KPTC operates an efficient local postal system.

Local broadcasting service is largely controlled by the government through the Kenya Broadcasting Corporation (KBC). The Corporation operates the only three radio channels and one of the two television channels. Kenya also hosts one commercial television channel.

There are five daily newspapers - three in English and two in Kiswahili - reaching a circulation of about 400,000. The press is privately owned and operated, but in recent years has been subject to sometimes harsh government control. This situation has begun to change since the ban on opposition parties was lifted in January 1992.

7.4 Private Business Services

International standard business services are available in Kenya. Local legal and accounting firms are highly professional, and most major American and British accounting firms are represented in the country. Also represented are major international marketing and advertising agencies.

7.5 Implications for American Investors

Kenya has a sophisticated modern infrastructure that should be attractive to prospective investors.

Transport, telecommunications and business services are efficient and cost competitive by international standards. For this reason Kenya is well-situated to serve both locally-based businesses and international operations of businesses having interests elsewhere in the region.

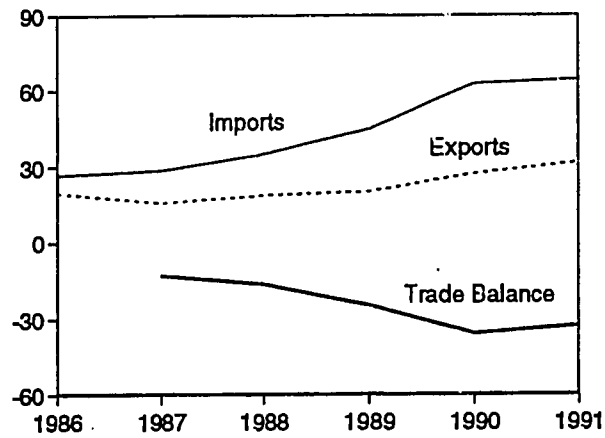
8. Foreign Trade and Balance of Payments

Kenya's exports are focused principally on the European Community (EC) and the neighboring eastern and southern African region. Sources of imports are more diversified, although the EC is the single largest source.

The country's balance of payments deficit rose dramatically toward the end of the 1980s, but has begun to recede. Currency management reforms introduced at the end of 1991 eased regulation on foreign exchange management. Import permits are still required, and there are some delays in processing.

8.1 Major Indicators, Summary Graph

Figure 4. Major Indicators



8.2 Recent Performance

Kenya's trade deficit exceeded total export earnings in 1989 for the first time in the country's history. This was despite the IMF/World Bank structural adjustment program. The deficit peaked in 1990, but abated slightly in 1991.

The trade deficit in 1990 was $1.34 billion on a trade volume of $3.42 billion. In 1991, it was $1.2 billion on a volume of $3.32 billion. The principal reason for sluggish performance in Kenya's exports was the 39 percent drop in world market prices for coffee between 1987 and 1991. The value of imports increased during the same period as a result of higher oil prices.

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8.3 Exports

Exports in 1991 totaled Ksh. 27.9 billion ($1.06 billion) with tea, coffee, horticulture, and petroleum products comprising nearly 70 percent of this total. Other exports included, in declining order: hides and skins, soda ash, sisal, pyrethrum extract, cement, fluorspar, wattle extract, and metal scrap. The nominal value of exports grew only 2 percent in 1991.

The nominal value of exports has increased by 93 percent since 1985. The most significant growth has come in horticulture, where the value of horticultural products has more than doubled since 1985, to $157 million. Tea exports have grown steadily, overtaking coffee in 1989 as Kenya's second largest foreign exchange earner. The value of tea exports in 1991 totaled $278 million, compared to $160 million from coffee.

8.4 Imports

Imports in 1991 totaled KShs. 59.8 billion ($2.26 billion). More than 50 percent of the imports were industrial machinery, crude petroleum and refined petroleum products, iron and steel, and motor vehicles and chassis.

The nominal value of imports fell by 5 percent in 1991. Since 1986, the nominal value of imports grew by 124 percent.

The most significant growth in imports has come in industrial machinery and motor vehicle and chassis.

8.5 Direction of Trade

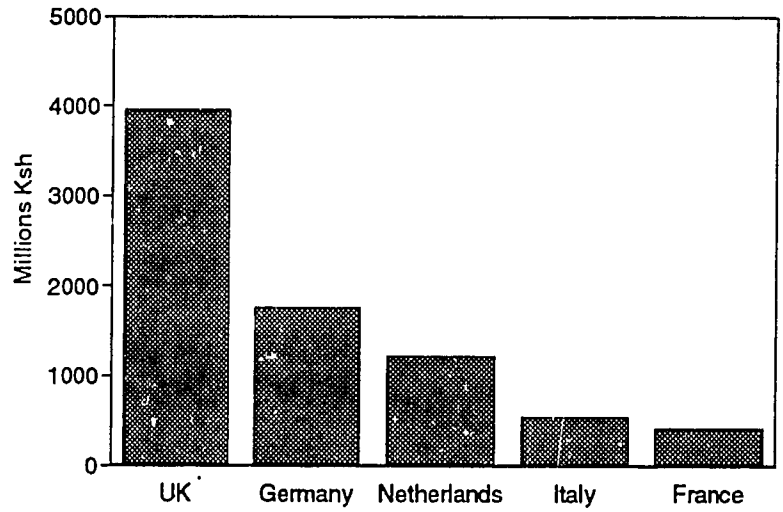
European Community countries are Kenya's main export market under the preferential access granted Kenya through the Lome Convention. More than 45 percent of Kenya's exports go to the EC. Export trade with the rest of Africa comes second, accounting for 22 percent of total exports, followed by the Far East (Japan, Australia, India, and China) with 12 percent. Exports to the U.S. account for less than 5 percent of total exports.

Exports to Selected EC Countries

This pattern in direction of export trade remained the same for most of the 1980s and is likely to continue under the terms of the Lome Convention and the emerging regional trading bloc, the Preferential Trading Area (PTA).

More than 45 percent of Kenya's imports come from the EC, followed by the Far East—primarily Japan—with 21 percent, and the Middle East with 15 percent. The U.S. is the fourth largest supplier, accounting for 8 percent of total imports.

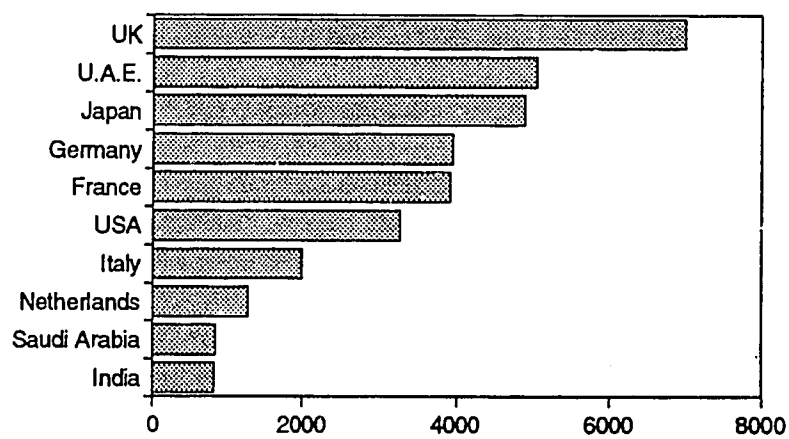
Figure 5. Exports to Selected EC Countries



Imports: Top Ten Countries of Origin by Value

This general pattern in imports has been consistent for the past six years and is likely to continue with a few variations between individual countries. Imports from the U.S. averaged around KShs.1.3 billion for most of the 1980s, but reached KShs.3.3 billion in 1989, boosted by passenger aircraft purchases from the U.S. for Kenya Airways. The pattern has also been affected by monetary fluctuations and other global market factors.

Figure 6. Top Ten Countries of Origin by Value



8.6 Exchange Rate Policy

During the past three years, Kenya has maintained a flexible exchange rate regime. Under this policy, the real effective exchange rate for the Kenya shilling has depreciated 40 percent since 1986. As of the end of March 1992, the shilling traded at KShs.30/$ and KShs.42/SDR.

Devaluation has improved the international competitiveness of Kenya's exports, although this has not resulted in an upsurge of nontraditional export volumes.

8.7 Currency Outlook

The current downward trend of the shilling against major currencies is expected to continue during the next five years as structural adjustment takes hold. Imports are expected to fall further before stabilizing.

Recent reforms in foreign exchange regulation are believed to be a first step toward the eventual full convertibility of the shilling. If the reforms are successful, the share of non-traditional exports to total exports is expected to increase. The government hopes this will increase the country's foreign currency reserves. These developments should cushion the economy against sudden external shocks and reduce the risk of sudden changes in foreign exchange policy.

8.8 Trade and Payments System

Most transactions involving foreign exchange must be approved by the central bank. Commercial banks are authorized to carry out some foreign exchange transactions without prior approval by the central bank, but not in case of capital-account transactions.

In an effort to create a more favorable environment for foreign investors, the government in November 1991 introduced convertible foreign exchange bearer certificates that can be traded outside the exchange control regulations. Bearers can invest their funds and remit their proceeds without going through the central bank.

Export proceeds are held directly by the central bank, except for investors operating under the export processing zone regime.

8.9 Licensing Requirements

All imports into Kenya are subject to government licensing. Companies must submit applications to the import/export department of the Ministry of Commerce for approval, depending on the availability of foreign exchange and the priority assigned to the relevant import category.

The import schedule classifies imports by decreasing order of priority. At the top of the priority list are capital goods, raw materials, and international inputs. At the bottom are some consumer items whose priority the government continuously reviews.

Items such as firearms and other weapons are prohibited from import.

8.10 Invisibles

Foreign exchange allowances for Kenyan citizens are still enforced. Kenyans with access to foreign exchange such as returning residents can buy foreign exchange bearer certificates and transact them on the same terms as foreigners. There are no restrictions for non-Kenyans. Tourist bills can be paid in both local and hard currency.

8.11 Capital Transactions

All capital and commercial transfers are subject to controls by the central bank. The repatriation of capital and dividends by non-Kenyans is guaranteed under the Foreign Investment Protection Act (FIPA). The guarantees cover:

- Taxed profits, including uncapitalized retained profits.
- The original book value as stated in the certificate of approved enterprise, including uncapitalized retained profits.
- Principal and interest associated with any loans specified in the certificate of approved enterprise.

8.12 Regional and International Affiliations

Kenya is a signatory to the Lome Convention, which allows it generous trade concessions with EC. It is also a member of the Preferential Trading Area (PTA), an organization of eastern and southern African states.

Kenya's relationship with the EC is crucial to the country's economic development. The terms of the Lome Convention allow Kenya to enjoy several advantages, including:

- Freedom from any import quotas
- Exemption from tariffs
- Access to public procurement contracts of any EC government

Under the Convention, a group of African, Caribbean and Pacific nations (ACP) are classified as associate members of the EC. Included under the terms of ACP status are a number of additional concessions:

- Products obtained from ACP states qualify for reduced- or nontariff entry into the EC.
- No more than five percent of the contents of such products should originate from outside the EC or ACP countries.

Definitions of "processing" are set out in the agreement to ensure that value added in an ACP country allows eligibility.

The Preferential Trade Area is a regional economic cooperation organization comprising 17 countries in eastern and southern Africa. The most developed regional economies in the organization are Kenya, Zimbabwe, and Mauritius. Because of their geographical locations, both Kenya and Zimbabwe have a clear advantage over Mauritius in terms of market penetration.

Among the advantages of PTA is that it can speed up access to foreign exchange for transactions between companies in member countries. PTA has a clearinghouse to facilitate foreign exchange transactions for trading among its members. This enables

Kenya to receive foreign exchange without many of the bureaucratic problems of regional trade. Kenyan firms using the clearinghouse are generally satisfied with its operations.

8.13 Implications for American Investors

Trading and payment systems in Kenya have improved significantly in recent years, although the government still regulates allocation of foreign exchange because of fluctuations in availability. This is done under a prioritized system that favors the export manufacturing sector.

Foreign investors can expect delays in the processing of applications for import permits and foreign exchange allocation. It is generally necessary to make applications early to avoid disruption in production.

Kenya has preferential access to EC markets and to the regional eastern and southern African market. This is a major advantage for firms seeking to export to those markets.

Kenya's export trade to the U.S. is minimal and Kenyans are not familiar with U.S. markets. There has been a large number of American firms operating in Kenya since the 1960s, and Kenyans are familiar with U.S. companies and methods of operation.

9. External Debt and Aid

Kenya has been one of the leading recipients of external aid in Africa. During the 1980s, the economy became increasingly reliant on external assistance and the country's debt service ratio has risen dramatically. Both the World Bank and the IMF are working with Kenyan authorities through structural adjustment programs in order to counter this trend.

9.1 External Debt

At the end of 1990, Kenya had an outstanding debt of $5.3 billion, equal to 58 percent of gross domestic product. Of this amount, 36 percent was owed to foreign governments and 46 percent to multilateral financial institutions. Private foreign commercial creditors accounted for 17 percent of the total external debt.

The World Bank is Kenya's largest creditor, accounting for 40 percent of the nation's total external debt and 82 percent of debt owed to multilateral creditors. West Germany alone accounts for 22 percent of debt owned to foreign governments.

Kenya paid its foreign creditors $601.8m in debt service in 1990, which was equivalent of 27.2 percent of the country's export of goods and services. This debt service ratio had dropped slightly from 33.1 percent the previous year.

Although Kenya's debt service burden is large, it has been manageable because sectoral reforms have been supported by debt forgiveness from creditor governments such as Germany, the United States, France, and the United Kingdom. Kenya's debt management is also considered basically sound. The country has maintained its creditworthiness by full and timely payment of all debt service payments.

Kenya's foreign creditors, however, are pressing for a faster pace of institutional and sectoral reforms, especially in the public sector. The large number of parastatals generate a large proportion of external debt and limit the scope of managing international reserves at a time when foreign exchange for day-to-day transactions is scarce.

9.2 Foreign Aid

Kenya's increasing reliance on foreign aid is demonstrated by the growing percentage of the government's total budget financed from external sources. This has grown from 18 percent in 1986 to 26 percent in 1991.

Between 1989 and 1991, Kenya received some $1.6 billion in foreign aid. Gross disbursements of foreign aid and loans from multilateral donors during the 1980s

exceeded $4.5 billion, of which the World Bank provided over 35 percent. The ratio of external grants to GDP has grown from 1 percent in 1986 to 3 percent in 1990.

9.3 Multilateral Adjustment Programs

Kenya was one of the first African countries to accept to undertake structural adjustment reforms under the supervision of the World Bank and the IMF in the early 1980s. Implementation stalled, however, due to the government's reluctance to administer many of the harshest austerity measures. In the face of economic stagnation and under international pressure, the reform program has picked up momentum since 1986.

The key reform objective is to reduce the size of the parastatal sector by privatizing some of the corporations and liquidating others. Other goals of the adjustment program include trade and price liberalization, relaxation of foreign exchange controls, implementation of a positive real interest rates policy, revitalization of the agricultural sector, and export reorientation.

Some progress was made in 1991 toward trade and price liberalization, and foreign exchange controls. There has, however, been little progress in the crucial area of streamlining the public sector.

9.4 Implications for American Investors

Foreign assistance is a vital component of Kenya's financial health. By tracking parastatal privatization programs and forthcoming market liberalization measures, investors can identify windows of opportunity over the short to medium term. In certain instances, they may even expect to benefit from a variety of donor-supported incentives and technical assistance programs.

10. LABOR

Kenya has a large supply of relatively inexpensive labor. Unemployment is high, providing impetus to Kenya's leaders to promote policies aimed at generating new jobs. The labor force is well educated and highly disciplined, although technical skills in some fields are in short supply. However, the high literacy levels in the modern labor sector make it easy to train workers in new management and technical skills.

10.1 Profile of Labor Resources

According to official estimates, Kenya's labor force totals about 2 million. This figure covers only wage and salary employment in the modern sector, as well as urban and rural small-scale enterprises. These activities combined account for only 20 percent of the country's total labor force.

Of the 2 million workers included in official statistics, 15 percent work in agriculture, 14 percent in n anufacturing, 23 percent in small-scale enterprises, and 6 percent in the trade and tourism sector. The public sector accounts for 47 percent of employment in the modern sector.

The average monthly wage in Kenya at the end of 1991 was approximately $105 (KShs. 3,000), ranging from a high of $260 (KShs. 7,800) in the government sector (finance and business services) to a low of $35 (KShs. 1,000) for rural agricultural workers in the private sector.

The average monthly industrial wage is now about $170. In local currency terms, wages have risen by about 25 percent in the past two years.

Average Wage Rates for Selected Sectors
(U.S. $)

	1989	1991
Agriculture	565	700
Manufacturing	1,200	1,490
Construction	825	1,040
Trade, Restaurants, Hotels	1,485	1,860
Transport, Storage and Communications	2,180	2,725
Finance and Business Services	2,490	3,115

English is Kenya's official language while Kiswahili is the national language. Most Kenyans in the modern labor sector are fluent in both languages, but business is conducted in English.

Kenya has four public and three private universities. It also has a large number of post-secondary vocational training institutions, such as polytechnics for training junior and middle level staff in technical, clerical, and secretarial skills.

A major weakness in the Kenyan training system is that it was initially designed to meet the needs of the public services sector. As emphasis begins to shift from the public to the private sector, the government has began developing a system that stresses the development of scientific and technical skills.

The Kenyan labor force is highly disciplined and committed to production, especially in the private sector, where workers are often highly motivated. Recent erosion of real incomes due to inflation and deterioration of the local currency may, however, affect workers' morale. There has been noticeable deterioration in the levels of productivity and commitment in the public sector.

10.2 Under- and Unemployment

Unemployment in Kenya has risen sharply, reaching 17 percent in 1991 despite an economic growth rate of 5 percent for more than a decade. The problem remains one of the most volatile sociopolitical issues facing Kenya's leaders.

The root of this problem is the country's high rate of population growth, nearly 4 percent annually throughout most of the 1970s and 1980s. The economy will need to generate about 400,000 new jobs annually to accommodate Kenya's growing labor force over the next two decades. An average of only 90,000 new jobs a year were generated in the economy in the period 1986 to 1991.

Fertility rates are now falling as a result of an aggressive government campaign to control population growth. But this will have no effect on Kenya's labor supply over the next 15 years since all those who will have joined the labor force by then are alive today.

There are other factors affecting unemployment on both the short and medium terms.

Retrenchment in public spending is expected to lead to job reduction in the public sector. At least 26,000 jobs are expected to be cut if the government is to achieve projected results of structural adjustment. This will release additional workers into the private labor market.

Privatization and fiscal stringency mean that the public sector, which accounts for nearly 50 percent of wage employment, can make little or no contribution to employment expansion in the coming years.

Despite rising unemployment, there is a growing shortage in skilled technical and scientific manpower. Production of university graduates in these areas has fallen below the market demand.

The market saturation with college graduates trained in the liberal arts has led to many graduates taking jobs for which they are overqualified.

The majority of workers in small-scale, informal enterprises are believed to be underemployed. Similarly, self-employed Kenyans are occasional laborers and petty traders who operate outside the formal sector. Official figures claim that 400,000 jobs were created in the informal sector in 1989/90.

Low wages and poor working conditions in the rural agricultural sector and among lower level urban workers reflect serious levels of underemployment.

The normal workday is between 8:00 a.m. or 8:30 a.m. and 5:00 p.m. or 5:30 p.m. with one hour for lunch. The hours apply to both public and private sectors. Most industries do not have tea breaks.

Kenyan attitudes in the workplace were for many years influenced by British traditions. The work ethic in the modern sector is close to that in most Western nations.

Under the current high levels of unemployment, it is not difficult finding and keeping good workers. Employers who can provide incentives to inspire greater loyalty and productivity have an extra advantage. Personnel possessing technical and managerial skills, such as engineers and accountants, require higher levels of incentives since their skills are in short supply.

Discipline is more lax in the public sector, especially as a result of a two-decade-old policy that allows public servants to engage in other economic activities. Levels of absenteeism among higher ranking managers is high. This often results in poor supervision of lower level personnel.

10.3 Income Policy

Kenya's income policy heavily favors employers, and is designed to boost employment. Wages are regulated through the General Wages Advisory Board comprising representatives of the labor unions, the employers, and the government. The board sets minimum wages, sets a cost of living allowance each year, and proposes regulation of other conditions of employment.

Wage guidelines may be set through collective bargaining agreements that are overseen by the Industrial Court. The court is bound by official guidelines regarding salaries and wages. However, it has broad power over the registration and interpretation of all collective agreements and other matters relating to conditions of employment. Its decisions are final.

Wage increases kept slightly ahead of inflation during the 1980s. In 1987, the new wage guidelines stipulated that wage increases should not exceed more than three quarters of the rise in the cost of living except for the lowest paid workers. Between 1989 and 1991, wage increase averaged 12 percent annually while inflation reached its highest in more than a decade at 20 percent. This has resulted in decline in real earnings, especially in the public sector.

The private sector usually offers higher wage increases than those required by the cost of living allowance. The average wage in 1991 was more than two times the level of minimum wage.

10.4 Working Conditions

The normal workweek is 45 hours in the private sector and 40 hours in the public sector. Many private sector businesses work on Saturday mornings.

There is no legal limit on overtime hours. Overtime is paid at one-and-a-half times the regular rate. Holidays and Sundays are paid at double the normal rate for the first eight hours, and at three times the rate after that.

An employee is entitled to 21 days of annual leave with full pay after 12 months of continuous service, whether on a 5-day or 6-day week. Workers are also paid full wages for every public holiday.

Female employees are entitled to three months of maternity leave with full pay.

Free transport is only mandatory for workers reporting to and from the workplace between the hours of 8:30 p.m. and 5:30 a.m. Some employers provide a transport link between their factories and the main public transportation terminals.

10.5 Labor Unions

A large number of labor unions represent more than two-thirds of the Kenyan workers, especially in the private sector. The unions are organized under one single federation — the Central Organization of Trade Unions (Kenya), (COTU). The Kenya National Union of Teachers (KNUT)—the single largest labor union in the country—operates independently and is not affiliated with COTU.

Employees of government ministries and departments are not eligible to join labor unions. This restriction does not apply to other personnel in the public sector, such as employees of parastatal companies and quasi-public agencies.

Unions are generally moderate and are not disruptive to business. Strikes are deemed to be unlawful unless a report of a trade dispute has been made in writing to the Minister of Labor, and 21 days have passed since the date the report was submitted. Strikes are also considered unlawful unless the lead time provided for such action under the collective bargaining agreement has expired. Serious industrial trade disputes are arbitrated at the Industrial Court.

General wage guidelines are negotiated between the unions under COTU and the employers under the Federation of Kenya Employers (FKE). Other wage and working conditions are negotiated between individual unions and individual employers under collective bargaining agreements. Negotiations are generally amicable.

Currently no radical trade unions are operating in Kenya.

10.5 Employment of Expatriates

All noncitizens of Kenya are required to have Alien Registration Certificates. Foreign personnel are required to have a work permit. Their dependents must have dependents' passes.

Applications for work permits, alien certificates, and dependents' passes are made to the Principal Immigration Officer. The documents are valid for two years, although application for extensions are generally approved.

Due to the high rate of unemployment, the government often applies pressure on the private sector to Kenyanize personnel and to use more labor intensive production methods.

10.6 Expatriate Living Conditions

Kenya is one of the most popular destinations in Africa for expatriates. The tropical highlands climate is pleasant and the people are very friendly. The two largest cities, Nairobi (pop. 1.5 million) and Mombasa (pop. 800,000) are modern by any standards. There are world class amenities such as sports facilities and restaurants.

Mombasa and other coastal towns offer beautiful beaches and water sports. The country also offers a wide range of wildlife in some of the most famous game parks in the world.

Excellent quality housing is readily available and rates are highly competitive by international standards. Services such as water, telephone, and electricity are reliable. There are several international schools offering American, British, and other European education programs.

10.7 Implications for American Investors

Kenya offers a large pool of relatively cheap labor in a highly competitive employment market. Although technical skills are low by global standards, the labor force is generally well educated, highly disciplined, and easy to train in new technical and management skills.

Unemployment will no doubt remain a major factor in the Kenyan economy for at least the next two decades.

11. Financial Sector

Kenya has long possessed the largest and the most technically advanced financial system in East Africa. The economic problems of the past decade revealed significant weaknesses, especially in commercial banking, but the government has taken steps to improve its foreign debt situation, availability of domestic resources, and management of financial institutions.

11.1 Overview of Financial Sector

Already sophisticated at independence, Kenya's fiscal and monetary system has continued to evolve. Many Kenyans are knowledgeable and comfortable with bank instruments, reducing the economy's dependence upon banknotes and coins as media of exchange. The financial sector includes a wide variety of institutions, including the following: commercial banks, nonbank financial institutions, building societies, insurance companies, development finance institutions, post office savings banks, private pension plans, stock exchange, and cooperative savings/credit societies.

A list of major financial institutions is available in Appendix A.

11.2 Banks

The bank of issue is the Central Bank of Kenya, which controls foreign exchange, monitors interest rates, and has overall supervisory responsibility for the banking sector. In 1975, the Kenyan shilling was tied to the SDR. Overvaluation of the Kenyan shilling during the 1970s contributed to the economic slowdown of the 1980s. A major devaluation in 1982 reduced the real exchange rate to 1976 levels, but stimulated inflation and reduced real wages. In recent years the shilling has been valued against a basket of currencies, and its value has fluctuated much more frequently. The bank currently pursues a flexible exchange rate policy intended to improve the country's export competitiveness. In practice, this has meant a gradual slide in the shilling more or less in line with domestic inflation. The average exchange rate was KSh 28.074 per U.S. dollar in 1991.

Interest rates were decontrolled in 1991, prompting the September 1991 release of $107 million in IMF funds under the current Enhanced Structural Adjustment Facility. In anticipation of deregulation, financial institutions raised their interest rates, with the result that the step had no shock effect on the system. As of early 1992, mortgage rates were about 20 percent, while interest paid to depositors remained at about 13.5 percent. In 1989, the maximum bank lending rate was 18 percent, while the deposit rate was 12 percent.

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The banking system appears to have recovered from the insolvency of eight financial institutions in July-August 1986. Central Bank staff now sit on the boards of some weak institutions, and capital requirements have been tightened. The financial sector continues to be dominated by four large banks, two owned by the government.

11.3 Nonbank Financial Institutions

Since the banks possess about 70 percent of total financial assets, the role of other institutions is modest. In an effort to strengthen the sector, the government has promoted consolidation of many small institutions into larger and more viable units. Like the banks, nonbank institutions are feeling the strain of meeting new capital requirements and more stringent oversight.

11.4 Institutional Investors

There are nearly twenty insurance companies in Kenya, with the government of Kenya holding varying levels of share ownership. Several firms are subsidiaries of foreign insurers.

While pension funds exist in Kenya, no information was available concerning their investment activities.

11.5 Capital Markets

The Nairobi stock exchange is one of the largest and most active in sub-Saharan Africa (the Republic of South Africa excepted), but is nonetheless modest by comparison with those in industrial countries. The shares of only sixty-seven enterprises are listed on the exchange in 1992. Although none are foreign companies, several are Kenyan subsidiaries of foreign-based multinationals.

The Kenyan government's effort to stimulate the growth of capital transactions includes the establishment of a Capital Markets Authority (CMA) in 1990, charged with encouraging companies to use equity issues as a means of raising capital. In December 1991, several leading Kenyans criticized the CMA for making public offerings more, rather than less, difficult. Since the CMA was created in response to strong World Bank urging, the Bank may take an interest in making sure the securities market does not become overregulated.

11.6 Monetary Policy

The central bank closely monitors the money supply (M-2). Between 1980 and 1985, the money supply grew by 10.7 percent. Growth rates for M-2 were 33 percent in 1986, 11 percent in 1987, and 8 percent in 1988, 12.9 percent in 1989, and 20.0 percent in 1990. The multilateral institutions remain concerned that neither public nor private borrowing from the banking system increase rapidly.

11.7 Implications for American Investors

Although Kenya's financial system is sophisticated by African standards, it is relatively small and fragile. American investors will want to investigate borrowing opportunities in the local market, but for large-scale funding they may wish to rely upon other markets. Investors seeking project funding, either through borrowing or equity issues, may wish to communicate with the institutions listed in Appendix B.

12. Inflation and Price Controls

Inflation in 1991 was at its highest level in more than a decade. High levels of public spending and low government revenue are at the source of this problem. However, short-term inflation has resulted from the removal of price controls in most sectors, with newly liberalized commodities seeking to establish competitive equilibrium in Kenyan markets.

The determining factor in controlling inflation in the future will be the pace at which the government drops competitive barriers in sectors of the economy that are presently dominated by parastatal industry and regulated pricing.

12.1 Inflation and Anti-Inflation Policies

In 1987 and 1988, inflation seemed to stabilize at around 10 percent after having climbed steadily from just over 5 percent in 1986. In the past two years, however, inflation rose sharply, reaching just over 20 percent in 1991. Rapid monetary growth was the principal catalyst for inflation.

Domestic financing of public budget deficits has contributed to inflationary growth in Kenya's money supply, which stood at 20 percent in 1991. Consequential depreciation of the Kenya shilling has led to higher prices for imports, capital, and domestically produced goods and services.

Decontrol of consumer prices under the continuing economic reforms has led to short-term inflation, most notably for a number of food and domestic staples. An additional factor aggravating inflation has been increased fuel prices stemming from instability in world supply, due principally to political conflict in the Middle East.

The government hopes that its new fiscal policies aimed at reducing budgetary deficit will help control inflation. Positive interest rate policies have also been introduced with the hope that they will help reduce the growth of money supply in the economy.

Some of the prices decontrolled over the past 18 months are beginning to find their market equilibrium. New tax measures are expected to lower tariffs on most raw materials and intermediary goods.

12.2 Price Controls

Price controls in Kenya mainly affect businesses selling to the local market. They have little impact on export-oriented industry.

In May 1988, the government began implementing a policy of gradual price decontrol aimed at total price liberation. So far, price controls have been removed from such

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products as meat and meat products, fertilizers, soft drinks, wine and beer, as well as some capital goods including farm machinery and some spare parts. However, the objective of total price liberation is far from being achieved.

Controls have historically weighed most heavily in the agricultural sector, where government monopolies dominate marketing. About a dozen local and foreign oil companies compete in the importation of crude oil and distribution of petroleum products in the country. Refining is centrally controlled through a joint project between the government and private firms.

Despite recent reforms, price controls on food items including such staples as wheat, corn, rice, and milk and petroleum products are likely to remain for the foreseeable future.

12.3 Implications for American Investors

Management of inflation is likely to remain a major consideration in the short term.

Future trends in price control reforms will largely depend on the pace of restructuring of key state monopolies and the structure of their successor enterprises.

Controversial political reforms have been proposed to eliminate conflicts of interest for public officials who operate as privileged competitors in certain highly controlled sectors of the marketplace.

Prospective investors should familiarize themselves with the current price control policies relating to their intended products and inputs, including spares and raw materials. This should be done irrespective of whether or not they expect to produce for export markets exclusively.

13. Public Finance

Kenya grappled with the problem of excessive and inefficient patterns of public spending throughout the 1980s. The government became heavily dependent on external assistance to meet its budgetary commitments. It also became heavily indebted to the local financial sector. The total government internal debt declined by about 14 percent between 1989 and 1991 after rising for most of the 1980s.

13.1 Overview of the Fiscal Situation

A Budget Rationalization Programme was introduced in 1985 to try to redress the fiscal situation. The overall budget deficit has fallen from a record 10.3 percent of GDP in 1988 to 6.0 percent in 1991. Inclusive of external grants, the budget deficit has fallen from 7.4 percent of GDP in 1988 to 4.2 percent in 1991.

Rapid population growth, uncontrolled expansion of government ministries and departments, and financial drain from a large number of inefficient parastatal corporations are the major contributors to the budget deficit. The deficit is largely financed through the sale of government bonds and treasury bills to the local nonbanking financial sector, and over 26 percent of the total budget in 1990 and 1991 was financed from external sources.

External aid donors and the local business community have expressed concern over Kenya's internal debt, especially given the declining performance of the economy in general. They feel that this situation has compounded the problems in the general economy by syphoning vital resources into government services and away from productive activities.

The modest success shown recently in budget management has been largely the result of pressure from the World Bank and the IMF.

13.2 Public Expenditures

Current expenditures rose 46 percent from 1990 to 1991. Debt servicing accounted for 27 percent of current expenditures. It was followed by general government services including defense, which accounted for 23.4 percent, education (19 percent), agriculture (7 percent), and health (4.6 percent).

Over the past four years, current expenditures have grown by 55.2 percent, while debt service spending has grown by 83 percent. Government services spending has risen at nearly 74 percent, mainly as a result of excess establishment and higher wages in the public sector.

Education spending has grown by 54 percent due to demands to meet the needs of an ever-growing student population both in the primary and secondary schools and in the public universities. Spending in agriculture has fallen by 31 percent, a trend that has had a negative impact on the sector, while spending in health services has grown by less than 14 percent.

Capital expenditures rose by 114 percent, but only about a quarter of these expenditures directly benefited business. Capital spending for some social services has grown remarkably, with education's share increasing by 256 percent, and health rising by 286 percent. Capital spending in housing and social welfare fell by 39 percent.

Capital investment in agriculture has risen by only 20 percent while capital spending in general public administration and defense services rose 56 percent.

13.3 Government Revenues

Total government revenues rose by 12 percent from FY1990 to FY1991. This was fueled in part by increased tax revenues. Both individual and corporate tax income rose 25 percent, while VAT income rose by 14 percent.

Over the past four years, total tax revenues have grown by 80 percent and individual tax revenues by 78 percent. Corporate tax revenues have increased by 79 percent while import duty revenues have grown by 219 percent.

Annual external grants to Kenya have increased by 730 percent in the past five years, from $44m in 1986 to $358m in 1991. The ratio of grants to GDP has grown from 1 percent in 1986 to 3 percent in 1991.

Throughout most of 1980s, the largest sources of government tax revenues were sales tax now replaced by the expanded VAT, and import and excise duties. The recent reforms in taxation policy are likely to affect revenues from import duties. The government revenue structure is unlikely to change much in the near future.

The only major short-term shift that is foreseen will be an emphasis on a now expanded VAT which covers some nontraditional sectors that were previously not taxed or were undertaxed, especially in the services industry.

Other recent changes likely to affect public spending include the introduction of cost-sharing in the provision of social services. User fees have been imposed on university students, and outpatient fees have been reintroduced at government hospitals.

On the expenditure side, the government has said it will reduce the size of government agencies, freeze hiring of primary school teachers, halve university enrollments, and phase out civil service pay awards over three years. Some development projects have been canceled and new projects are restricted to those wholly funded by donors.

The government hopes these measures will keep the 1992 budget deficit within 2 percent of GDP.

13.4 Implications for American Investors

The Kenyan Government has not brought its budget deficit under control, and it continues to rely heavily on foreign assistance to meet budgetary commitments.

Kenya can be expected to continue to meet its debt repayments on time and is considered creditworthy despite high levels of debt service. The debt service ratio and budget deficit could continue to affect availability of foreign exchange to the local manufacturing sector unless the economy expands faster than in recent years.

14. TAXATION[1]

The Kenyan government's tax policy has been shaped by attempts to achieve two mutually conflicting goals: create a reliable, steadily increasing flow of funds to help cover the government's expenditures in a period of chronic deficits, but also to promote investment, including foreign investment, by lightening tax burdens. An additional major goal has been to shift Kenya's industrial base from its import-substitution orientation toward one that is more competitive and export-oriented.

Tax collection is overwhelmingly a function of the central government, although a portion of the national budget goes to meet the operating and investment expenses of local entities. Local governments have long raised limited funds for local projects, mainly through property taxes. Since 1988 such governments have had the right to collect "local authority service charges" from both individuals and companies. These taxes, effected through purchase of tax stamps, are collected by employers for payment to local tax offices.

14.1 Overview of Taxation Policy

Kenya's tax policy has shifted in recent years from trying to skim off a generous portion of the income earned by modern sector enterprises to stimulating new economic activity as a means to broaden the tax base. The government's goal is to subsist on a smaller slice of an expanding pie. Import duties have been reduced in order to stimulate new business growth. The value added tax has been applied to goods and services hitherto unaffected, and corporate taxes were cut in 1991 for the third straight year from 40.0 percent to 37.5 percent. The corporate tax rate for branches of foreign firms, however, is 45 percent, from a high of 52.5 percent.

Another significant recent development in the Kenyan tax system is the abolishment of all capital gains taxes.

Kenya's tax policies, structures, procedures, rates, and penalties are quite extensive and complex. Understanding them requires special knowledge and experience. Potential investors, therefore, should consult competent accounting and legal professionals for guidance in meeting tax obligations or handling disputes with tax authorities.

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[1]The information on taxation provided below is derived principally from documents published by Price Waterhouse, including *Doing Business in Kenya* (1984), its *Supplement* (April 30, 1989), and *Kenya Budget Newsletter 1991*. Additional information was obtained from the Kenyan Government's Investment Promotion Center, *Kenya: A Guide for Investors* (1992).

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14.2 Principal Taxes

Government revenues are derived principally from the following sources: Income taxes; sales taxes, including VAT; import tariffs; excise taxes; and sales of tax stamps.

These taxes are levied on Kenyan nationals and foreigners alike. Companies resident in Kenya are taxable on their income worldwide, although deductions or tax credits are allowed for non-Kenyan income. Nonresidents are subject to withholding and taxes on income earned in Kenya. Rules for determining geographic origin of income are complex.

Key taxes of interest to potential foreign investors are discussed briefly below.

Corporate Income

Corporate gross income includes revenues from sales, interest, most dividends, and royalties, but not increases in inventory valuation or capital gains. Taxable income is the amount remaining after deductions for business expenses, depreciation, investments, interest, royalties, employee remuneration, insurance premiums, intercompany charges, research, bad debts, some exchange differences, and certain other items.

Locally incorporated companies pay income tax at 37.5 percent. Companies quoted on the Nairobi Stock Exchange are taxed at 35 percent. Under the Export Compensation Scheme, all local firms can have their tax liabilities reduced in proportion to the amount exported. There is a 15-percent flat rate late payment penalty on outstanding taxes, plus a 1.5-percent-per-month interest charge on unpaid taxes and penalties.

Foreign corporations. If a foreign company registers a subsidiary in Kenya, profits attributable to the registered Kenyan entity are taxable at 42.5 percent. Entities established under legislation intended to attract foreign investors may be offered allowances on capital investment and may be exempted from certain taxes, including import duties and sales taxes. For example, companies involved in the Export Processing Zones (EPZ) and Manufacturing Under Bond (MUB) programs are given a 10-year tax holiday, after which they pay income tax at the rate of 25 percent for the next 10 years. Other concessions are normally negotiated with the government of Kenya at the time the investment is made. Representative offices based in Kenya to oversee operations in other countries are not taxed unless the office also conducts business in the Kenyan market. Subsidiaries based in Kenya are subject to taxes on dividends, interest, royalties, rent, management fees, and sponsorship of sporting or other entertainment events.

Shareholders. There are taxes on dividends received from Kenyan companies, but not on those paid by nonresident companies. Companies under the EPZ and MUB schemes are exempt from income tax and withholding taxes on payments to foreigners for the first 10 years of operation. Dividends paid to residents are subject to a 15-percent withholding tax. Interest income on unit trusts is taxed at 10 percent, though they are not subject to any corporate tax. Pension funds are also exempt from the withholding tax.

There are no specific reliefs in connection with corporate reorganizations. Acquisitions are governed by specific tax regulations. Acquisition of a controlling interest in a Kenyan firm does not change the acquirer's tax status.

Personal income. All residents of Kenya are required to pay income tax. A foreigner who has a permanent residence in Kenya and who has worked any part of the year in Kenya is considered a resident, as is any foreigner who, having no permanent residence there, nonetheless has spent more than 183 days working in Kenya during the tax year.

Value added. The VAT, levied on all manufactured goods and many services, including hotel and restaurant bills, is applied at the rate of 18 percent ad valorem. Higher rates apply on alcoholic beverages, cigarettes, and luxury items, including mineral water. Most goods that are exempt from customs and excise duties are also exempt from VAT. These include goods that constitute an input in the production of goods for export, and services to export-oriented manufacturing concerns by both resident and nonresident professionals.

It is important to note that while EPZ enterprises are free of taxes, trade between them and the rest of Kenya is treated as export/import trade under the VAT regime.

While manufacturing services for categories of firms are not taxable, the supply of contract manufacturing service is.

VAT applies to the importation of services into Kenya for all firms except those under the EPZ scheme.

Import duties. Kenya's import tariffs are complex, covering a very extensive range of products and varying from nominal rates to more than 100 percent. Foreign importers may require the assistance of professional customs clearance specialists.

Kenya's policy has aimed at replacing quantitative restrictions with tariffs. A customs duty is levied on most imports with the exception of most imports by EPZ and MUB enterprises (including plant and equipment, spares, raw materials and components), and some specific items used for educational purposes.

The maximum duty for most raw materials and spare parts for local manufacturing is 10 percent. The same applies to inputs in the agricultural sector. Local firms can claim export compensation on duty paid on imports used for manufacturing export goods.

Excise duty is charged on a few items such as cigarettes and beer.

Registration (Stamp) Duties. These are payable on most transfers of movable and immovable property by the transferee. They are also payable in cases of all registration documents presented for business or other purposes. Since 1990, charges such as stamp duty have been removed in certain cases for transactions on the Nairobi Stock Exchange, such as retail share trade.

Beginning in 1990, costs incurred in the issue and registration of shares, debentures, and bonds were tax deductible.

14.3 Determining Personal Income

Foreign employees of non-Kenyan firms must pay taxes on income earned in Kenya, and on fringe benefits received in Kenya. The Kenyan government publishes tables for calculating the income value of housing, furnishings, vehicles, and services provided by employers. Male and female spouses are taxed at the same rates. Family deductions are available.

Foreigners are liable to withholding of taxes on a variety of income sources. The list of categories for nonresidents is quite comprehensive. Foreigners working in regional offices of foreign firms may take extensive deductions if their work involves frequent absence from Kenya. Deductions are not allowed on capital expenditure and accounts depreciation.

Personal income tax rates are progressive, starting at 10 percent and reaching 45 percent for incomes above KSh 220,000.

14.4 Depreciation

The book value of assets can be depreciated for tax purposes for most business operations. Depreciation is computed by the straight-line method and charged against operating profit, with the result that assets are written down to residual value over their estimated useful lives. Revaluations are permitted.

The following are some examples of some of the rates allowed for single shift operations:

Hotels	4 percent
Industrial buildings	2.5 percent
Plants and machinery	12.5 percent
Vehicles, trucks, and tractors	25 to 36.5 percent
Computer equipment	30 percent

Additional depreciation may be permitted for continuous process plants.

14.5 Tax Treaties

Kenya has tax treaties with the following countries:

Canada	Norway
Denmark	Sweden
Germany	United Kingdom
Malawi	Zambia

Despite negotiations over a period of years, the United States and Kenya have yet to reach agreement on provisions of a tax treaty.

14.6 Appeals

Taxpayers objecting to assessments and other liabilities should inform the Income Tax Department, in writing within thirty days of receiving notice of the liability. The Income Tax Department then either confirms or amends its decision. The taxpayer or his attorney or accountant may then appeal, within thirty days, to his local Tax District Committee. There are nine tax districts. A taxpayer may appeal the decision of the District Tax Committee, but before receiving a hearing by the High Court, he must deposit the amount of tax in dispute. Repayments do not carry interest to the taxpayer.

14.7 Implications for American Investors

Recent tax reforms are aimed at attracting investment, both domestic and foreign. The rate structures for some of the taxes are still cumbersome and difficult to administer. The government has said it is committed to simplifying them.

American investors need to consider the implications of double taxation, since Kenya does not have a tax treaty with the United States.

The Kenyan government's Customs and Excise Department has been criticized by the local media for the prevalence of graft and extra-legal activity. While the government is seeking to enact reforms, investors should react cautiously in any disputes regarding taxation.

Kenya has a good supply of professional tax lawyers and accountants who also understand the local bureaucracy. It would help potential investors to engage such services to guide them through taxation procedures during the establishment of new ventures.

15. Intellectual Property Protection

Kenya is a member of the World Intellectual Property Organization, a UN body.

15.1 Patents

Patents are no longer required to be registered in the United Kingdom prior to being obtained from the Kenya Industrial Property Office, which administers the Industrial Property Act.

15.2 Trademarks

The Registrar of Trademarks, located in the Office of the Attorney General, administers the Kenyan Trademarks Act (Cap 506). Trademarks are valid for an initial period of seven years, renewable for an additional fourteen years.

15.3 Copyrights

Kenya is a member of the Berne Copyright Convention.

15.4 Redress

Information on redress for infringement of intellectual property rights was not available.

15.5 Implications for American Investors

American businesses should experience no problems registering intellectual property for protection under Kenyan law. Should disputes arise, however, recourse to the courts may be long and costly and should be referred to local legal counsel.

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Appendix A

Foreign and Domestic Commercial and Merchant Banks In Kenya

Central Bank

Central Bank of Kenya, Ltd.
Haile Salassie Avenue
Post Office Box 6000
Nairobi

telephone: 25-42-26431
telex: 22324

Governor: Eric C. Kotut
Deputy Governor: Wanjohi Muriithi

Commercial Banks

Barclays Bank of Kenya, Ltd.
Bank House
Moi Avenue
Post Office Box 30120
Nairobi

telephone: 25-42-332-230
telex: 22210
fax: 25-42-335219

Chairman: Samuel Waruhiu
Managing Director: R. Bird

Bisahara Bank of Kenya, Ltd.
Kenprop House
Muindi Mbingu Street
Post Office Box 30831
Nairobi

telephone: 25-42-21064
telex: 25161

Chairman: S.B.R. Shah
General Manager: P.N. Bhatt

Commercial Bank of Africa, Ltd.
Commercial Bank Building
Corner of Wabera and Standard Streets
Post Office Box 30437
Nairobi

telephone: 25-42-28-881
telex: 23205
fax: 25-42-335-827

Chairman: M.H. Da Gama Rose
Managing Director: B.P. Campbell, Jr.

Grindlays Bank International (Kenya) Ltd.
Post Office Box 30550
Nairobi

telephone: 25-42-335-888
telex: 22397
fax: 25-42-330-227

Chairman: J.B. Wanjuri
General Manager: K.R. Blackie

Kenya Commercial Bank, Ltd.
Kencom House
Moi Avenue
Post Office Box 48400
Nairobi

telephone: 25-42-339-441
telex: 23085
fax: 25-42-338-006

Chairman: Dr. B. Kipkorir
CEO: A.P. Hamilton

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Middle East Bank Kenya, Ltd.
Post Office Box 47387
Kenyatta Avenue
Nairobi

telephone: 25-42-335-168
telex: 23132
fax: 25-42-336-182

Chairman: D.W.A. Blye
Managing Director: P.S. Chawla

National Bank of Kenya, Ltd.
National Bank Building
Harambee Avenue
Post Office Box 72866
Nairobi

telephone: 25-42-26-471
telex: 22619
fax: 25-42-330-784

Chairman: Raphael Gitau
General Manager: J.W. Oluga

Pan African Bank, Ltd.
ICEA Building
Kenyatta Avenue
Post Office Box 45334
Nairobi

telephone: 25-42-24-688
telex: 23058
fax: 25-42-22-410

Chairman and Managing Director:
Mohammad Aslam

Standard Chartered Bank Kenya, Ltd.
Stanbank House
Moi Avenue
Post Office Box 30003
Nairobi

telephone: 25-42-330-200
telex: 22209
fax: 25-42-330-506

Executive Managing Director: J.A.M.
Docherty

Trade Bank, Ltd.
Post Office Box 75840
Nairobi

telephone: 25-42-24-125

Trans-National Bank, Ltd.
Post Office Box 75840
Nairobi

telephone: 25-42-24-235

Trust Bank, Ltd.
Trustforte Building
Moi Avenue
Post Office Box 46342
Nairobi

telephone: 25-42-26-413
telex: 25143
fax: 25-42-334-995

Managing Director: Ajay Shah

Union Bank of Kenya, Ltd.
Postbank House
Banda Street
Post Office Box 34823
Nairobi

telephone: 25-42-28-705
telex: 23263
fax: 25-42-720-925

CEO: C.K. Muraya

Merchant Banks

Diamond Trust of Kenya, Ltd.
Moi Avenue
Post Office Box 61711
Nairobi

telephone: 25-42-337-445
telex: 23294
fax: 25-42-336-836

Chairman: Sultan Shariff
Managing Director: Nizar Maruani

Kenya Commercial Finance Company, Ltd.
Post Office Box 48400
Nairobi

telephone: 25-42-339-074
telex: 23085

Chief Manager: A.S. Garama

Kenya National Capital Corporation, Ltd.
Post Office Box 73469
Nairobi

telephone: 25-42-336-077
telex: 22159

Chairman: R. Gitau
General Manager: J.P. Okora

Pan African Credit and Finance, Ltd.
ICEA Building
Kenyatta Avenue
Post Office Box 47529
Nairobi

telephone: 25-42-25-325
telex: 23058
fax: 25-42-722-410

Chairman and Managing Director: Mohammad Aslam

Standard Chartered Acceptances, Ltd.
Post Office Box 40310
Nairobi

telephone: 25-42-336-451
telex: 22089
fax: 25-42-334-934

Chairman: J.R. Heaton
Managing Director: F.H.J. Barnes

Foreign Banks

Algemene Bank Nederland
Koinange Street
Post Office Box 30262
Nairobi

telephone: 25-42-333-561
telex: 22262
fax: 25-42-333-771

General Manager: C.A.A. Van der Ham

Bank of Baroda (India)
Post Office Box 30033
Bank of Baroda Building
Nairobi

telephone: 25-42-27-869
telex: 22250
fax: 25-42-333-089

Manager: M. Shah

Bank of India
Kenyatta Avenue
Post Office Box 30246
Nairobi

telephone: 25-42-21-414
telex: 22725

Chief Manager: S.K. Puri

Bank of Oman
Post Office Box 11129
Nairobi

telephone: 25-42-729-290

Banque Indosuez (France)
Reinsurance Plaza
Taifa Road
Post Office Box 69562
Nairobi

telephone: 25-42-729-290
telex: 23091
fax: 25-42-725-487

Regional Manager: Michel Scherrer

Citibank (USA)
Muindi Nbingu Street
Post Office Box 30711
Nairobi

telephone: 25-42-333-524
telex: 22161
fax: 25-42-337-340

General Manager: T.M. Davidson

First American Bank of Kenya (USA)
ICEA Building
Kenyatta Avenue
Nairobi

telephone: 25-42-333-960
telex: 22398
fax: 25-42-336-249

Managing Director: Manilo Blasetti

Habib Bank AG Zurich (Switzerland)
National House
Koinange Street
Post Office Box 30584
Nairobi

telephone: 25-42-334-984
telex: 22982
fax: 25-42-726-774

General Manager: Bakirali Nasir

Co-Operative Bank

Co-Operative Bank of Kenya, Ltd.
Post Office Box 48231
Nairobi

telephone: 25-42-28-711
telex: 22938

Chairman: H.N. Mulli
General Manager: E.K. Mureithi

Development Banks

East African Development Bank
Bruce House
Post Office Box 47685
Nairobi

telephone: 25-42-340-642
telex: 22689

Industrial Development Bank, Ltd.
National Bank Building
Harambee Avenue
Post Office Box 44036
Nairobi

telephone: 25-42-337-079
telex: 22339

Chairman: J.K Ndoto
Managing Director: Reginald R. Ojee

Appendix B

SOURCES OF FINANCE

Industrial Development Bank
National Bank Building
Harambee Avenue
Post Office Box 44036
Nairobi

telephone: 25-42-337-079

Government funded.

Industrial and Commercial Development Corporation (ICDC)
Uchumi House
Post Office Box 45519
Nairobi

Government sponsored vehicle for joint venture investments.

Development Finance Company of Kenya
Post Office Box 30483
Nairobi

telephone: 25-42-340-041

Jointly owned by the ICDC, the German, Dutch, and British Development Agencies, and the International Finance Corporation.

Small Enterprises Finance Company of Kenya
Post Office Box 30483
Nairobi

telephone: 25-42-340-041

Subsidiary of the Development Finance Company of Kenya.

East Africa Development Bank
Post Office Box 47685
Nairobi

telephone: 25-42-340-642

Owned by the Kenyan, Ugandan, and Tanzanian governments.

Kenya Industrial Estates, Ltd.
Post Office Box 78029
Nairobi

Finances majority African owned projects.

Kenya Equity Management
Post Office Box 62360
Nairobi

Africa Growth Fund
SEFCO
Post Office Box 34045
Nairobi

Partly sponsored by the US Overseas Private Investment Corporation and managed by Equator Bank.

International Finance Corporation
View Park Towers
P.O. Box 30577
Nairobi

Private sector investment arm of the World Bank.

Africa Project Development Facility
International House
Post Office Box 46534
Nairobi

Sponsored by AID, the World Bank, UNDP, and the African Development Bank, the APDF provides support to medium sized African owned businesses.

Industrial Promotion Services, Ltd.
IPS Building
Post Office Box 30500
Nairobi

Owned by the Aga Khan Foundation, the IFC, and the Kenya Commercial Bank.

Economic Development for Equatorial and Southern Africa
Post Office Box 56038
Nairobi

telephone: 25-42-822-920

Appendix C

THE FOREIGN INVESTMENTS PROTECTION ACT

LAWS OF KENYA

The Foreign Investments Protection Act

CHAPTER 518

Price: KSh. 9.10

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Nairobi

CHAPTER 518

35 of 1964, 6 of 1976, 7 of 1988.

THE FOREIGN INVESTMENTS PROTECTION ACT

Commencement: 15th December 1964

An Act of Parliament to give protection to certain approved foreign investments and for matters incidental thereto

Short title.

1. This Act may be cited as the Foreign Investments Protection Act.

Interpretation. 6 of 1976, Sch.

2. (1) In this Act, except where the context otherwise requires—

"approved" in relation to any enterprise, foreign currency, period, sum or amount means any enterprise, currency, period, sum or amount specified in the relevant certificate issued under section 3;

"foreign assets" includes foreign currency, credits, rights, benefits or property, any currency, credits, rights, benefits or property obtained by the expenditure of foreign currency, the provision of foreign credit, or the use or exploitation of foreign rights, benefits or property, and any profits from an investment in an approved enterprise by the holder of a certificate issued under section 3 in relation to that enterprise;

"foreign national" means a person who is not a citizen of Kenya, and includes a body corporate which was not incorporated in Kenya.

(2) For the avoidance of doubt it is declared that assets shall not cease to be foreign assets by reason of their being assets in some other part of the Commonwealth, and that currency shall not cease to be foreign currency by reason of it being in Kenya as well as in some place outside Kenya, so long as, in the case of currency, the relevant sum originates from outside Kenya.

Foreign investors may apply for and be granted certificates. 6 of 1976, Sch., 7 of 1988, s. 3.

3. (1) A foreign national who proposes to invest foreign assets in Kenya may apply to the Minister for a certificate that the enterprise in which the assets are proposed to be invested is an approved enterprise for the purposes of this Act.

(2) The Minister shall consider every application made under subsection (1) and, in any case in which he is satisfied that the enterprise would further the economic development

of, or would be of benefit to, Kenya, he may issue a certificate to the applicant.

(3) (*Dleted by* 7 *of* 1988 *s.* 3).

(4) Every certificate shall state—

(*a*) the name of the holder;

(*b*) the name and a description of the enterprise;

(*c*) the amount of the foreign assets invested or to be invested by the holder of the certificate in the enterprise divided as between—

(i) capital, being deemed to be a fixed amount representing the equity of the holder in the enterprise for the purposes of this Act and which shall be expressed in the certificate in, and shall for the purposes of this Act be in, either Kenya currency or the relevant foreign currency; and

(ii) any loan, which may be expressed in and may for the purposes of this Act be in, either Kenya currency or the relevant foreign currency;

(*d*) the foreign currency invested or to be invested;

(*f*) such other matters as may be necessary or desirable for the purposes of this Act.

(5) If the foreign assets have not yet been invested a conditional certificate shall be issued stating, in addition to the details specified in subsection (3), the period in which they shall be invested.

Amendment of certificate.

4. The Minister may amend a certificate granted under section 3—

(*a*) in any case in which he is satisfied that some other foreign national has succeeded to the interest in the enterprise of the holder of the certificate, by substituting for the name of the holder the name of his successor: 6 of 1976, Sch., 7 of 1988, s. 4.

Provided that the Minister shall not substitute the name of any person who has acquired the

interest of the holder by the expenditure, directly or indirectly, of assets other than foreign assets;

(*b*) in any case where an interest in the enterprise passes to any other person on the death of the holder;

(*c*) in any case where the name of the enterprise is altered, by substituting the name as so altered;

(*d*) in any case in which new foreign assets are invested or are to be invested in the enterprise by the holder, or the holder has withdrawn or been paid, in accordance with this Act, any part of his investment by varying the approved amount in either Kenya currnecy or the relevant foreign currency in accordance therewith;

(*e*) in any case where the investment consists of the acquisition of shares or stock of a body corporate, and new shares or stock are acquired otherwise than by the investment of assets which are not foreign assets, by amending the number or amount and the description thereof;

(*f*) with the written consent of the holder of the certificate, by varying the approved foreign currency;

(*g*) by extending the period during which foreign assets are to be invested; and

(*h*) subject to these foregoing provisions and to the written consent of the holder, in such other manner as may be necessary or desirable.

Foreign assets to be brought in during approved period.

5. If, at the time at which a certificate is issued under this Act, any foreign assets or part thereof to which the certificate relates have not been invested in the approved enterprise, they shall be so invested within the approved period, and, if not so invested within that period, the certificate shall be deemed to have been revoked.

Compliance with Cap. 113.

6. Nothing in this Act shall affect the obligation of an investor other than an investor from one of the scheduled territories to comply initially with the requirements of the Exchange Control Act.

Transfer of profits, etc. 6 of 1976, Sch., 7 of 1988, s. 5.

7. Notwithstanding the provisions of any other law for the time being in force, the holder of a certificate may, in respect of the approved enterprise to which the certificate relates, transfer out of Kenya in the approved foreign currency and at the prevailing official rate of exchange—

(*a*) the profits, including retained profits which have not been capitalized, after taxation, arising from or out of his investment in foreign assets:

Provided that any increase in the capital value of the investment arising out of the sale of the whole or any part of the capital assets of the enterprise or revaluation of capital assets shall not be deemed to be profit arising from or out of the investment for the purposes of this Act;

(*b*) the capital specified in the certificate as representing and being deemed to be the fixed amount of the equity of the holder of the certificate in the enterprise for the purpose of this Act:

Provided that—

(i) where any amendment or variation is made in the amount of the capital under the provisions of section 4, the amended or varied amount shall be substituted for the original amount; and

(ii) no additional amount or sum shall be added to the capital specified in the certificate (as amended or varied) to represent any increase in the capital value of the investment since the issue of the certificate or since the last amendment or variation of the certificate; and

(*c*) the principal and interest of any loan specified in the certificate.

Compulsory acquisition.

8. No approved enterprise or any property belonging thereto shall be compulsorily taken possession of, and no interest in or right over such enterprise or property shall be compulsorily acquired, except in accordance with the provisions concerning compulsory taking of possession and acquisition and the payment of full and prompt payment of compensation contained in section 75 of the Constitution and reproduced in the Schedule to this Act.

Investments of proceeds. 7 of 1988, s. 6.

8A. Any proceeds realized from the sale of foreign assets which may not be transferred out of Kenya in the manner provided for under section 7 shall be invested in Government securities for a period of five years:

Provided that—

(i) the income from the Government securities in which the proceeds are invested may be transferred out of Kenya under the same terms as interest under paragraph (*c*) of section 7; and

(ii) the capital may be transferred out of Kenya at the end of five years on the same terms as other funds in the manner provided for under section 7.

Regulations and directions.

9. The Minister may make regulations or give directions generally for the better carrying out of the purposes of this Act and prescribing the manner in which applications shall be made for certificates under this Act, and the information which shall accompany those applications.

SCHEDULE (s. 8)

THE CONSTITUTION OF KENYA

Protection from deprivation of property.

75. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(*a*) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and

(*b*) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(*c*) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest or right in or over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for—

(*a*) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled; and

(*b*) the purpose of obtaining prompt payment of that compensation:

Provided that if Parliament so provides in relation to any matter referred to in paragraph (*a*) the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the right or interest in the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

(3) The Chief Justice may make rules with respect to the practice and procedure of the High Court or any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the High Court or applications to the other tribunal or authority may be brought).

(4) and (5) (*Deleted by* 13 *of* 1977, *s.* 3).

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or (2)—

(*a*) to the extent that the law in question makes provision for the taking of possession or acquisition of any property—

(i) in satisfaction of any tax, duty, rate, cess or other impost;

(ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of Kenya;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) in consequence of any law with respect to the limitation of actions; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(*b*) to the extent that the law in question makes provision for the taking of possession or acquisition of—

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or

body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(7) Nothing contained in or done under the authority of any Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by Parliament.

Appendix D

PTA Preferential Trade Arrangements and the Clearing House

The Preferential Trade Area (PTA) is an economic cooperation arrangement amongst the countries of Eastern and Southern Africa. It is a sub-regional grouping which provides for cooperation in all major sectors embracing trade, industrial cooperation, transport, communications, agriculture, financial and other arrangements.

Objective

The principal objective of the PTA is to promote trade and cooperation in other fields of economic activity, so as to raise the standard of living of the people in the region and foster closer relations among the member countries i.e. with the ultimate objective of becoming a common market and eventually an economic community by the turn of the century. The objectives of the PTA as set out in Articles 3 and 28 of the Treaty are as follows:

(a) To promote cooperation in the fields of trade, customs, industry, transport, communications, agriculture, natural resources and monetary affairs.

(b) To promote the establishment of inter alia appropriate machinery for the exchange of agricultural products, minerals, metals, manufactures and semi-manufactures as well as the establishment of common training programs and institutions in various fields which would assist in the development of the manpower required by the PTA Member States.

In particular, where trade is concerned the PTA aims at:

(a) The gradual reduction and ultimate elimination of customs duties in respect of imports of commodities produced within the PTA.

(b) Establishment of common rules of origin with respect to products that shall be eligible for preferential treatment.

(c) Establishment of appropriate payment and clearing arrangements that would facilitate trade in goods and services.

(d) Fostering cooperation in the fields of transport and communications with a view of facilitating trade in goods and services.

(e) Establishing conditions regulating the re-export of products within the PTA.

(f) Promulgating of regulations for facilitating transit trade within the PTA.

(g) Simplification and harmonization of trade documents and procedures.

(h) Cooperation in customs matters.

(i) Standardization of the manufactures and quality of goods produced and traded within the PTA.

(j) Relaxation or abolition of quantitative administrative restrictions on trade among members.

(k) Promoting the establishment of direct contacts between and regulating the exchange of information among their commercial organizations such as Chambers of Commerce, association of businessmen and trade information and publicity centers.

(l) Ensuring the application of Most Favored Nation Clause to each other.

(m) Progressively adapting the members' commercial policies in accordance with the provisions of the PTA Treaty.

Membership

The organization comprises sixteen member countries: Burundi, Comoro Islands, Djibouti, Ethiopia, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Rwanda, Somalia, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

PTA Common List

The PTA Common List comprises a list of selected commodities/products which are to be accorded lower customs duties and equivalent charges when traded amongst the member states. These are commodities and products of import and export interest to member states. The list is revised periodically to include more goods of import and export interest to the member countries. Negotiations (revisions) are undertaken every two years and the main consideration is matching of import or export interests for a product to be included in the Common List. The last revision was done in June 1987.

The list is in six categories and the initial reductions in tariffs are as follows:

Group	Description	Initial Percentage Tariff Reduction
I	Food Items (excluding luxury items)	30%
II	Raw materials:	
	A. agricultural	50%
	B. non-agricultural	60%
III	Intermediate goods	65%
IV	Manufactured consumer goods (excl. luxury items):	
	A. durable consumer goods (excl. (IVc) and (IVd))	40%
	B. non-durable consumer goods (excl. (IVc) and (IVd))	35%
	C. highly competing consumer goods	30%
	D. Consumer goods of particular importance to economic development	70%

V	Capital goods (incl. transport equip't)	70%
VI	Luxury goods	10%

At its 10th Meeting the Council of Ministers approved the formula for further lowering of tariff and non-tariff barriers to intra-PTA trade according to the provisions of the Treaty. The target year for reducing customs duties was extended from 1992 to 1996. In this respect, five rounds of tariff reductions at a discount rate of 10 per cent each time will be effected in 1988, 1990, 1992, 1994 and 1996. This is to allow member states sufficient time to carry out the necessary structural adjustment to strengthen their economies, and to spread their revenue losses. Subject to review of the entire situation in 1996 the remaining 50 per cent may be eliminated in two steps.

Eligibility Requirements for Preferential Treatment

Goods traded amongst the member states will only receive preferential treatment if they meet the following requirements:-

(i) Qualify under or satisfy the PTA Rules of Origin.
(ii) The products or goods should be in the PTA Common List which comprises commodities and products of import and export interest to member states.
(iii) Local content of 45% i.e. the local value added resulting from the process of production should account for at least 45% of the ex-factory cost.

PTA Rules of Origin

The requirements of the Rules of Origin state that

(i) goods must be consigned directly from a member state to a consignee in another member state.
(ii) must be produced by enterprises in the member countries 51% owned by nationals of member states, their government institutions, agencies or corporations. Besides the above two, they must satisfy any one of the following requirements to qualify as originating in a PTA Member State.
(a) the products must have been produced in a member state and the value of materials imported from outside PTA and used at any one stage of production should not exceed 60% of the total cost of materials used in production of goods.

OR

(b) they are produced in a member state and CIF value added resulting from the process of production accounts for at least 45% of the ex-factory cost.
(c) they have, through a process of production been substantially transformed out of material imported from NON-PTA countries.

In May 1986 the PTA Authority meeting in Bujumburu, Burundi, suspended the PTA Rules of Origin (Rule 2-1 (a)) for five years. The application of it was found too restrictive

and therefore a stumbling block to trade amongst the member countries. During this period, the following sliding scale preferential formula applies.

(i) Goods from enterprises 51% and above owned by nationals will enjoy 100% preferential treatment.
(ii) Goods from enterprises 41% up to 50% owned by nationals will enjoy 60% preferential treatment.
(iii) Goods from enterprises 30% up to 40% owned by nationals will enjoy 30% preferential treatment.

In respect of countries that are already enjoying derogations under the Treaty, it was decided that the sliding scale preferential treatment formula would apply on a pro-rata basis. In the case of the BLS countries the sliding scale is as follows:

(i) Enterprises with 30% and above ownership by nationals from or nationals from PTA member states will enjoy 100% preferential treatment.
(ii) Above 24% and below 30% ownership by nationals will enjoy 60% preferential treatment.
(iii) 18% up to 24% ownership by nationals will enjoy 30% preferential treatment.

As per the BLS Protocol the derogation i.e. that of reducing the 51% equity holding to 30% was for a period of five years as from 30th September, 1982, after which the percentage is to be reconsidered. This process is under way.

Clearing House Payment Arrangement

The PTA Multilateral Clearing House was established under the PTA Treaty mainly to facilitate and promote easy flow of traded goods and services under an agreed payment scheme. The member states (countries) are allowed to use their national currencies as a means of settling their day to day payments.

A Committee on Clearing and Payments Arrangement was established under the Protocol on Clearing and Payments. This Committee consists of Governors of monetary authorities or central banks of signatory countries.

It is charged with the responsibility of promoting trade in goods and services within the PTA by:

(i) encouraging the use of national currencies in the settlement of transactions between member countries.
(ii) establishing adequate machinery for the settlement of payments among themselves.
(iii) reducing as much as possible the use of foreign exchange by member states in intra-regional settlements.

It is this Committee which adopted rules and regulations for the establishment of the multilateral clearing facility commonly known as the CLEARING HOUSE and based in Harare, Zimbabwe.

The Committee has adopted the unit of account of PTA (UAPTA) as its currency and is currently pegged to the International Monetary Fund (IMF) "Special Drawing Right" (SDR). Payments are settled at the exchange rate of the day of payment. The basic objective is to facilitate and encourage the use of national currencies in the settlement and payment of intra-PTA trade transactions and other services, and in the process reduce the use of convertible foreign exchange. With the introduction of the PTA Clearing House all trade transactions in the sub-region could be effected through the account of the member country at the Clearing House. There is an established transaction period of two calendar months after which net balances are settled in convertible currency between Central Banks. The balance in such an account at the end of a transaction period is in effect therefore the net trade balance with the member countries for the trade and other payments routed through the account. It means that during a transaction period export proceeds from other members are automatically applied to pay for imports from other member states. This is an advantage over other payment arrangements as it reduces settlements in convertible currencies to only once after each transaction period for trade among the members. During this two calendar months transaction period members are not charged interest on any debit balances. Thus a free credit is given to them during the two-month transaction period.

Operations of the Clearing House

Operations may be divided into two transactions.

1. The transactions between the exporter, importer and their commercial bankers.
2. The transactions between the member countries central banks and the Clearing House.

Each of the PTA Member Central Bank operates an UAPTA account with the Clearing House and these monetary authorities are also required to operate reciprocal accounts among themselves. The same is required of the commercial banks. A trader's commercial bank in Zimbabwe should have necessarily established correspondent arrangements with one of the commercial banks in the other member country with which it is intended to do business. When an importer requires the currency of another member country he would go to his commercial bank which in turn would go to its Central Bank. The Central Bank will purchase the required currency from the Central Bank of the exporting member country in exchange for UAPTA. The Clearing House would then debit the importer's Central Bank and credit the exporter's Central Bank with the UAPTA equivalent. The currency bought is then paid in local currency. The Clearing House can be used for payments of all trade transactions and services.

The introduction of the Clearing House payment arrangement has not resulted in any variations or upsets to the already existing settlement procedures. As already stated the PTA Clearing House Payments System provides a mechanism for minimizing the use of foreign exchange in the settlement of intra-PTA trade and other transactions.

The role of commercial banks in the system is secondary to that of central banks which are directly involved in the PTA payments and settlement framework. Commercial banks do however have a very important function in the PTA payment arrangements. They make it possible for the business community to pay in local currencies for imports and to receive export proceeds through the correspondent accounts or agency relationship with their counterparts in PTA member countries. Participation by commercial banks in the system commences only after the exporter and the importer in the member countries have entered into a valid contract, placed firm orders based on authorized imports with each other and clearly defined the method of payment.

Certain Popular Misconceptions Regarding PTA Arrangements

(a) The PTA is only for trade in products and commodities in common list.

This impression is incorrect. The member states of the PTA can exchange any commodity/product produced in their countries within the normal tariff structure and the existing rules and procedures governing trade. If preferential tariffs under the PTA Treaty are required to be availed of, the commodities to be bought or sold should be in the common list and conform to the rules of origin requirements.

(b) The PTA Clearing House Payment Mechanism can only be used for trading in commodities in the Common List.

This is also erroneous. The Clearing House Payment Mechanism is open for use for trade in commodities and services produced in member countries. Such commodities do not have to be in the Common List or even to conform to the rules of origin requirements. Services can also be paid for through the Clearing House.

Appendix E

LOMÉ CONVENTION PREFERENTIAL TRADE ARRANGEMENTS

The Lomé Convention is a co-operation agreement between the European Community (EC) and the African, Caribbean and Pacific Group of States (ACP). The former has twelve member states and the latter is comprised of sixty-six. This convention was concluded in order to promote and expedite the economic, cultural and social development of the ACP States through trade, financial and technical assistance.

Under this convention the chapter on Trade Co-operation has as its object to promote trade between the ACP States and the Community by improving the conditions of access for their products to the community market.

Products originating in the ACP States shall be imported into the community free of Customs duties and charges having equivalent effect.

The following products shall be considered as products originating in an ACP State.

(a) products wholly obtained in one or more ACP State.
(b) products obtained in one or more ACP States in the manufacture of which products other than those referred to in (a) are used, provided that the said products have undergone sufficient working or processing.

Sufficient working or processing means that the goods obtained receive a classification under a different tariff heading from that covering each of the products worked or processed. The incorporation of non-originating materials and parts in a given product obtained shall only make such products lose their originating status if the value of the said materials and parts incorporated exceeds 5% of the value of the finished product.

When products wholly obtained in the community (EC) or in their overseas territories or ACP States undergo working or processing in one or more ACP States, they shall be considered as having been wholly produced in that or those ACP States, provided that the products have been transported directly—direct consignment rule.

Eligible products shall be accompanied by evidence of originating status, the movement certificate EURI.

However, products which fall under a common organization of the treaty establishing the European Communities or are subject on import into the community, to specific rules introduced as a result of the implementation of the Common Agricultural Policy (CAP) may be excluded or subject to quantitative restrictions or the safeguard clause.

The following products shall be considered as wholly obtained either in one or more ACP States or in the community.

(a) mineral products extracted from their soil or from their seabed;
(b) vegetable products harvested therein;
(c) live animals born and raised therein;
(d) products from live animals raised therein;
(e) products obtained by hunting or fishing conducted therein;
(f) products of sea fishing and other products taken from the sea by their vessels;
(g) products made abroad their factory ship exclusively from products referred to in subparagraph (f);
(h) used articles collected there fit only for the recovery of raw materials;
(i) waste and scrap resulting from manufacturing operations conducted therein;
(j) goods produced there exclusively from the products specified in subparagraphs (a) to (i).

For the purpose of para.2(b) the following shall always be considered as insufficient working or processing, whether or not there is a change of tariff heading:

(a) operations to ensure the preservation of merchandise in good condition during transport and storage;
(b) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching, washing, painting, cutting-up;
(c) (i) changes of packaging and breaking up and assembly of consignments;
    (ii) simple placing of bottles, flasks, bags, cases, boxes, fixing on cards or boards.
(d) affixing marks, labels and other like distinguishing signs on products or their packaging.
(e) (i) simple mixing of products of the same kind where one or more components of the mixture do not meet the conditions as originating product.
    (ii) simple mixing of products of different kinds unless one or more components of the mixture do not meet the conditions as originating product.
(f) simple assembly of parts of articles to constitute a complete article;
(g) a combination of two or more operations specified in subparagraph (a) to (f);
(h) slaughter of animals.

In defining the concept of originating products, Protocol I of the Lomé III Convention gives a list of working or processing operations carried out on non-originating materials which result in a change of tariff heading without conferring the status of "originating products" on the products resulting from such operations.

The Lomé Convention has a provision for financial assistance in trade promotion so that exporters from any ACP country may participate in trade fairs and exhibitions.

Appendix F

RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT TREATY

TREATY

BETWEEN

THE UNITED STATES OF AMERICA

AND

_____

CONCERNING

THE RECIPROCAL ENCOURAGEMENT AND PROTECTION

OF INVESTMENT

The United States of America and _____

Desiring to promote greater economic cooperation between them, particularly with respect to investment by nationals and companies of one Party in the territory of the other Party; and

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties,

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources, and

Having resolved to conclude a treaty concerned with the encouragement and reciprocal protection of investment,

Have agreed as follows:

ARTICLE I

1. For the purposes of this Treaty,

   (a) "company of a party" means any kind of corporation, company, association, or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof whether or not organized for pecuniary gain, or privately or governmentally owned;

   (b) "investment" means every kind of investment in the territory of one Party owned or controlled, directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts; and includes:

      (i) tangible and intangible property, including rights, such as mortgages, liens and pledges;

      (ii) a company or shares of stock or other interests in a company or interests in the assets thereof;

      (iii) a claim to money or a claim to performance having economic value, and associated with an investment;

      (iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how, and goodwill; and

      (v) any right conferred by law or contract, and licenses and permits pursuant to law;

   (c) "national" of a Party means a natural person who is a national of a Party under its applicable law;

   (d) "return" means an amount derived from or associated with an investment, including profit; dividend; interest; capital gain; royalty payment; management, technical assistance or other fee; or returns in kind;

   (e) "associated activities" include the organization control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares, and the purchase of foreign exchange for imports.

2. Each Party reserves the right to deny to any company the advantages of this Treaty if nationals of any third country control such company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying Party does not maintain normal economic relations.

3. Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

ARTICLE II

1. Each Party shall permit and treat investment, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investment or associated activities of its own nationals or companies, or of nationals or companies of any third country, whichever is the most favorable, subject to the right of each Party to make or maintain exceptions falling within one of the sectors or matters listed in the Annex to this Treaty. Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of all such laws and regulations of which it is aware concerning the sectors or matters listed in the Annex. Moreover, each Party agrees to notify the other of any future exception with respect to the sectors or matters listed in the Annex, and to limit such exceptions to a minimum. Any future exception by either Party shall not apply to investment existing in that sector or matter at the time the exception becomes effective. The treatment accorded pursuant to any exceptions shall not be less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country, except with respect to ownership of real property. Rights to engage in mining on the public domain shall be dependent on reciprocity.

2. Investment shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. Each Party shall observe any obligation it may have entered into with regard to investments.

3. Subject to the law relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the first party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

4. Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments, shall be permitted to engage top managerial personnel of their choice, regardless of nationality.

5. Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

6. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorization and properties.

7. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investment.

8. The treatment accorded by the United States of America to investments and associated activities under the provisions of this Article shall in any State, Territory or possession of the United States of America be the treatment accorded therein

legally constituted under the laws and regulations of other States, Territories or possessions of the United States of America.

ARTICLE III

1. Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in a nondiscriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II(2). Compensation shall be equivalent to the fair market value when the expropriation action was taken or became known; include interest at a commercially reasonable rate from the date of expropriation; be paid without delay; be fully realizable; and be freely transferable at the prevailing market rate of exchange on the date of expropriation.
2. A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation therefrom, conforms to the principles of international law.
3. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or similar events shall be accorded treatment by such other Party no less favorable than that accorded to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, as regards any measures it adopts in relation to such losses.

ARTICLE IV

1. Each Party shall permit all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include: (a) returns; (b) compensation pursuant to Article III; (c) payments arising out of an investment dispute; (d) payments made under a contract; including amortization of principal and accrued interest payments made pursuant to a loan agreement; (e) proceeds from the sale or liquidation of all or any part of an investment; and (f) additional contributions to capital for the maintenance or development of an investment.
2. Except as provided in Article III paragraph 1, transfers shall be made in a freely convertible currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.
3. Notwithstanding the provisions of paragraphs 1 and 2, either Party may maintain laws and regulations; (a) requiring reports of currency transfers; and (b) imposing income taxes by such means as a withholding tax applicable to dividends or other

transfers. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgements in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

ARTICLE V

The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty.

ARTICLE VI

1. For the purposes of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Party and a national or company of the other Party; (b) the interpretation or application of any investment authorization granted by a Party's foreign investment authority to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.
2. In the event of an investment dispute between a Party and a national or company of the other Party, the parties to the dispute shall initially seek to resolve the dispute by consultation and negotiation, which may include the use of non-binding, third-party procedures. Any dispute-settlement procedures regarding expropriation and specified in the investment agreement shall remain binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws, and applicable international agreements regarding enforcement of arbitral awards.
3. (a) The national or company concerned may choose to consent in writing to the submission of the dispute to the International Centre for the Settlement of Investment Disputes ("Centre") or under the rules of the Additional Facility of the Centre ("Additional Facility"), for settlement by conciliation or binding arbitration, at any time after six months from the date upon which the dispute arose. Once the national or company concerned has so consented, either party to the dispute may institute proceedings before the Centre or the Additional Facility provided:

   (i) the dispute has not been submitted by the national or company for the resolution in accordance with any applicable previously agreed dispute settlement procedures; and

   (ii) the national or company concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Party that is a party to the dispute.

   If the parties disagree over whether conciliation or binding arbitration is the more appropriate procedure to be employed, the opinion of the national or company concerned shall prevail.

(b) Each Party hereby consents to the submission of an investment dispute to the Centre for settlement by conciliation or binding arbitration, or, in the event the Centre is not available, to the submission of the dispute to ad hoc arbitration in accordance with the rules and procedures of the Centre.

(c) Conciliation or binding arbitration of such disputes shall be done in accordance with the provisions of the Convention on the Settlement of Investment Disputes Between States and Nationals of other States done at Washington March 18, 1965 ("Convention") and the Regulations and Rules of the Centre or, if the Convention should for any reason be inapplicable the Rules of the Additional Facility shall govern.

4. In any proceedings involving an investment dispute, a Party shall not assert, as a defense, counterclaim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

5. For the purposes of this Article, any company legally constituted under the applicable laws and regulations of either Party or political subdivision thereof but that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other Party, shall, in accordance with Article 25 (2) (b) of the Convention, be treated as a national company of such other Party.

ARTICLE VII

1. Any dispute between the Parties concerning the interpretation or application of this Treaty which is not resolved through consultations or other diplomatic channels, shall be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the Model Rules on Arbitral Procedures adopted by the United Nations International Law Commission in 1958 as referred to in U.N. General Assembly Resolution 1262 (XIII) shall govern.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third state.

3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the date of selection of the third arbitrator, and the Tribunal shall render its decision within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

4. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceeding shall be paid for equally by the Parties. The Tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties.

ARTICLE VIII

The provisions of Articles VI and VII shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or (b) under other official credit, guarantee or insurance, arrangements pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE IX

This Treaty shall not derogate from:

(a) laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of either Party;

(b) international legal obligations; or

(c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization, that entitled investments or associated activities to treatment more favorable than that accorded by this Treaty in like situations.

ARTICLE X

1. This Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.
2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE XI

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.
2. Nevertheless, the provisions of this Treaty, and in particular Articles VI and VII, shall apply to matters of taxation only with respect to the following:

   (a) expropriation, pursuant to Article III;

   (b) transfers, pursuant to Article IV; or

   (c) the observance and enforcement of terms of an investment agreement of authorization as referred to in Article VI (1) (a) or (b), to the extent they are not subject to the dispute settlement provisions of a convention for the avoidance of

double taxation between the two Parties, or have been raised under such settlement provisions and are not resolved within a reasonable period of time.

ARTICLE XII

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.
2. Either Party may, by giving one year's written notice to the other Party, terminate this Treaty at the end of the initial ten-year period or any time thereafter.
3. With respect to investments made or acquitted prior to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of all of the other Articles of this Treaty shall thereafter continue to be effective for a further period of ten years from such a date of termination.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty.

DONE in duplicate is _____ on the _____ day of _____ in the English and _____ languages, both texts equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF _____:

ANNEX

Consistent with Article II paragraph 1, each Party reserves the right to maintain limited exceptions in the sectors or matters it has indicated below:

The United States of America

Air transportation; ocean and coastal shipping; banking; insurance; government grants; government insurance and loans programs; energy and power production; custom house brokers; ownership of real estate; ownership and operation of broadcast or common carrier radio and television stations; ownership of shares in the Communications Satellite Corporation; the provision of common carrier telephone and telegraph services; the provision of submarine cable services; use of land and natural resources.

Appendix G

RESULTS OF 1989 SURVEY OF THE KENYAN BUSINESS COMMUNITY

In 1989, the United States Agency for International Development (USAID) commissioned a Nairobi-based firm, Alexander MacLennan Trundell and Company (AMT), to conduct a survey of the Kenyan business sector as part of its Manual for Action in the Private Sector (MAPS) project in Kenya. Nearly 800 firms of different sizes and industry sectors were surveyed. Some of the results of this study are excerpted below.

The most frequent problems cited by businessmen as constraining their performance and growth related to the regulatory environment. These included government regulations on work permits, import licensing, controls on access to foreign exchange, price controls, and tax policies. Since this survey was conducted, the Kenyan government, with the support and cooperation of foreign donors, has taken steps to resolve some of these problems. In particular, the government has sharply reduced import restrictions and tariffs, liberalized access to foreign exchange, lowered tax rates, and substantially deregulated prices.

The survey results indicated that many Kenyan businesses have a substantial interest in exporting. The Kenyan government has also shown a considerable interest in stimulating export oriented production, both through the creation of Export Processing Zones and through liberalizing the import regime. Many of the respondents identified tourism and agribusiness as particularly promising areas for future investment.

Although few businesses complained about a lack of transportation as such, many firms cited a lack of affordable transportation as a constraint on their operations. The lack of affordable transportation was a particularly difficult problem for firms exporting ten percent or more of their product. Firms seeking to export to the PTA identified the lack of a well developed road system as a major problem, especially in western Kenya.

The graphs and charts below represent some of the more interesting results of the study.

Factors Having the Most Negative Effect on Past Sales

Ranking of Factors, By Size Category:

Owner Operated Firms	Micro-enterprises	Small Firms	Medium Firms	Large Firms
1. Local Competition	Local Competition	Local Competition	Local Competition	Import Regulations
2. Lack of Market Infra-structure	GOK Regulations	GOK Regulations	Tax Policies	GOK regulations
3. GOK Regulations	Tax Policies	Tax Policies	Import Regulations	Local Competition
4. Prod-uction Technology	Import Regulations	GOK Marketing Controls	GOK Regulations	Tax Policies

Ranking of Factors, By Industry Sector:

Agricultural Producers	Agricultural Processing	Services	Manufacturing	Commerce
1. GOK Regulations	GOK Regulations	Local Competition	Local Competition	Local Competition
2. Import Regulations	Local Competition	GOK Regulations	GOK Regulations	Import Regulations
3. Tax Policies	Foreign Competition	Tax Policies	Import Regulations	GOK Regulations
4. Local Competition	Market Infrastructure	Import Regulations	Road Transport	Tax Policies

Major Resource Constraints

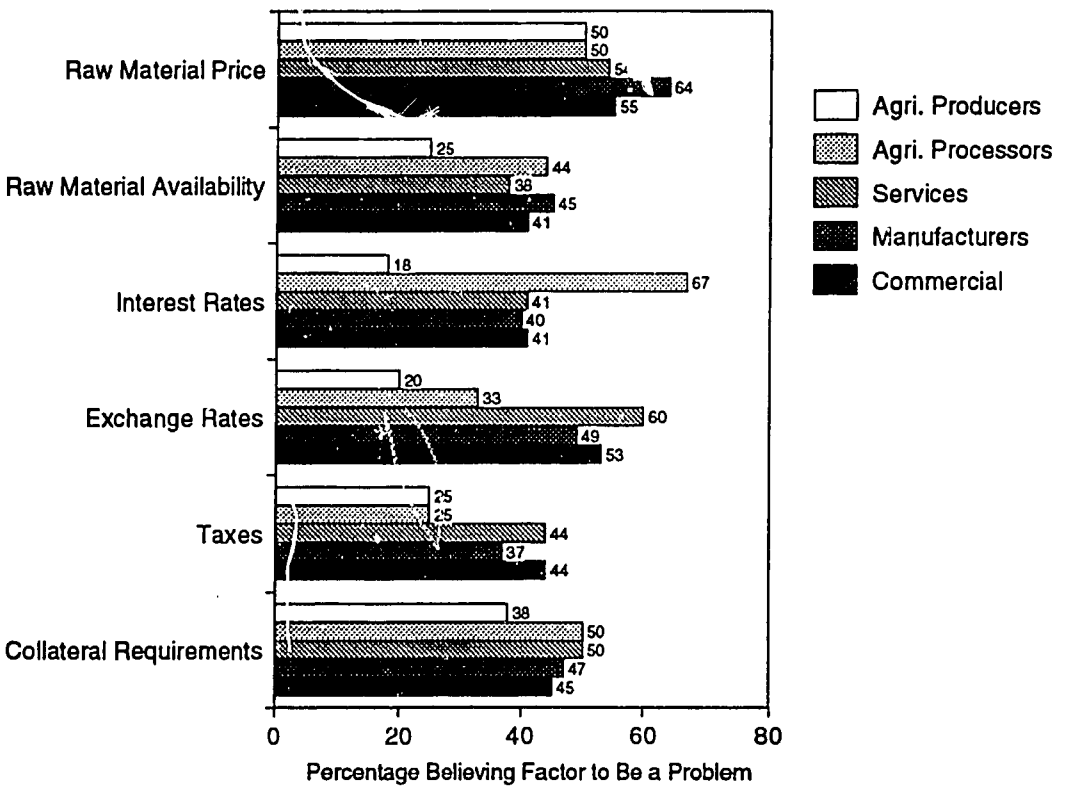
Ranking of Constraints, By Size Category:

Owner Operated Firms	Micro-enterprise	Small Firms	Medium Firms	Large Firms
1. Access to credit	Access to credit	Access to affordable transport	Access to spare parts	Access to spare parts
2. Access to suitable premises	Access to suitable premises	Access to credit	Access to credit	Access to affordable transport
3. Access to land	Access to land	Access to land	Access to land	Access to raw materials
4. Access to equipment/ technology	Reliable/ cheap power	Access to spare parts	Access to affordable transport	Access to equipment/ technology

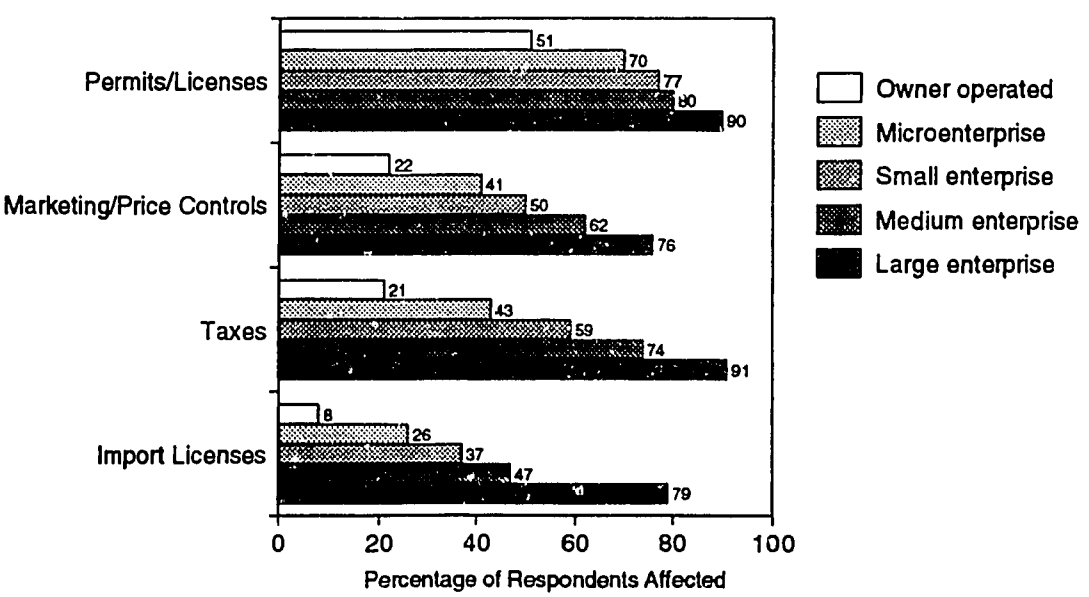
Ranking of Constraints, By Industry Sector:

Owner Operated Firms	Micro-enterprise	Small Firms	Medium Firms	Large Firms
1. Access to affordable transport	Access to raw materials	Access to spare parts	Access to credit	Access to credit
2. Access to reliable/ cheap power	Access to credit	Access to affordable transport	Access to affordable transport	Access to affordable transport
3. Access to technology/ equipment	Access to affordable transport	Access to land	Access to spare parts	Access to raw materials
4. Access to raw materials	Access to spare parts	Access to reliable/cheap power	Access to land	Access to land

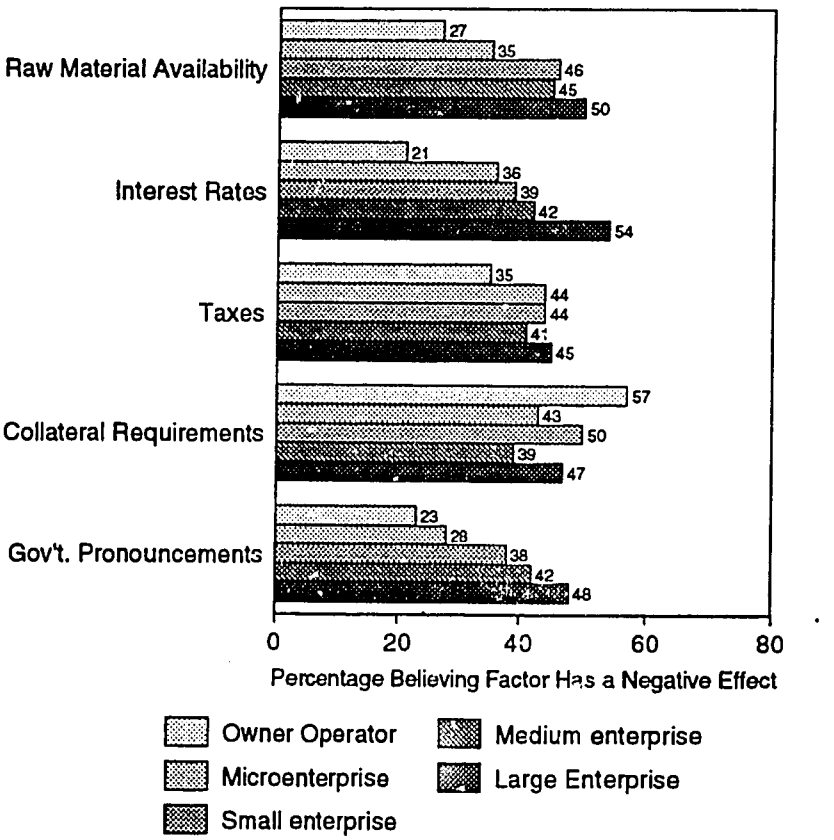
Factors Affecting Business Performance (by sector)



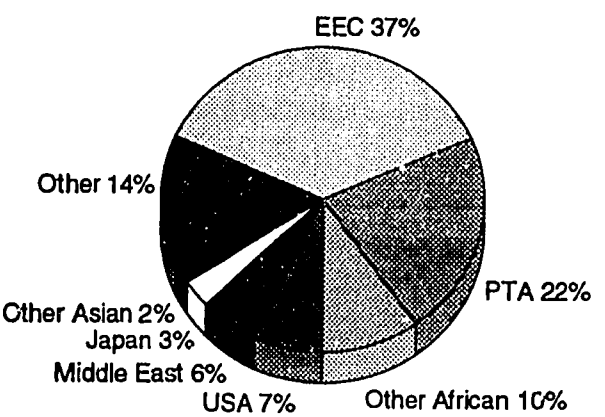
Effect of GOK Regulations (by firm size)



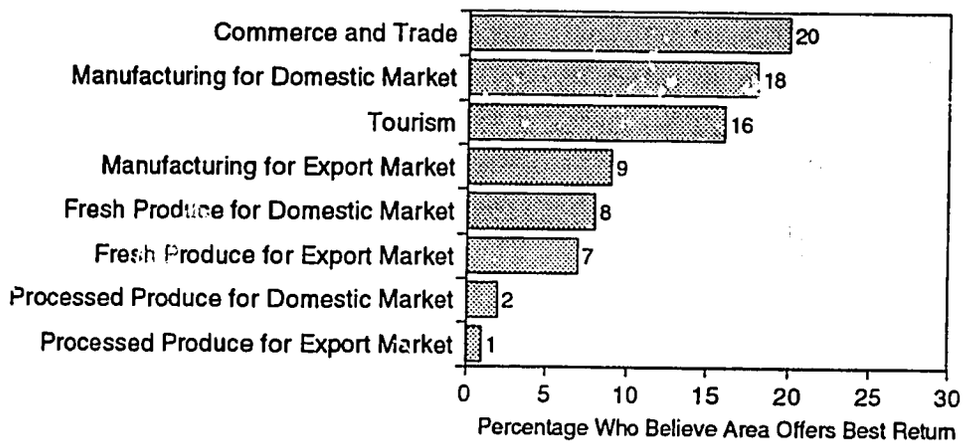
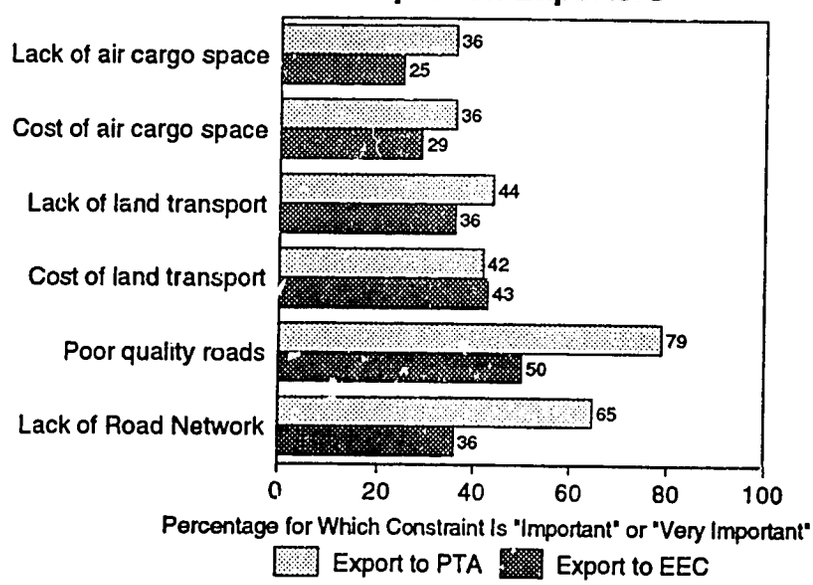
Factors Affecting Business Performance by Size



Most Profitable Export Markets



Areas Believed to Offer Best Return



Effect of Transport on Exporters