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Principles of Corporate Governance

LEVEL OF COMPLIANCE: ENACTED

Summary

A 2006 African Peer Review Mechanism report under the New Partnership for Africa's Development (NEPAD) initiative confirmed that Kenya has adopted the Organization for Economic Co-operation and Development's (OECD's) Principles of Corporate Governance. On the company level, the report finds that the majority of the admittedly few listed companies are now adopting and implementing good corporate governance practices. As a result of "concerted efforts by Kenyan institutions, corporate governance environment is improving and awareness of corporate governance values and principles is growing in Kenya. The Capital Market Authority (CMA) released its Guidelines on Corporate Governance Practices by Public Listed Companies in 2002. Based on the "comply or explain" principle, these guidelines were given legal status in the Capital Markets Act 485A. However, the 2006 NEPAD publication reports weak enforcement and inadequate monitoring of corporate compliance with codes and standards in Kenya. The capacity of some regulators and supervisors is constrained, and the court system is slow and inefficient. Further, many business laws, including the 1962 Companies Act, are outdated. Also, minority shareholders rights are lacking in some respects. The NEPAD report recommends enforcing implementation of laws and regulations, enhancing supervisory institutions' capacities, and updating some aspects of the legal and regulatory framework.

General Overview

In 2005 and 2006, Kenya participated in the African Peer Review Mechanism (APRM) as part of the New Partnership for Africa's Development (NEPAD). The APRM has a distinct focus on corporate governance. As part of the review of corporate governance, Kenya prepared a Country Self Assessment Report (CSAR) on Corporate Governance, which was reviewed as part of the completion of the Country Review Mission (CRM).The review notes that corporate governance in Kenya is improving and awareness of corporate governance values and principles is growing in Kenya, as a result of "ongoing efforts to put in place a good corporate governance framework to meet international benchmarks" (p. 158) by institutions such as the Capital Markets Authority (CMA), the Nairobi Stock Exchange (NSE), and the Institute of Certified Public Accountants (ICPAK), among others. Most significantly, the report verified that Kenya has adopted the Organization for Economic Co-operation and Development's (OECD) Principles of Corporate Governance and "most listed companies are now adopting and implementing good corporate governance practices" (p. 158), according to the APRM report.

Writing on corporate governance for the London Business School in 2003, Nganga et al. note that minority shareholders rights are lacking in some respects, despite the fact that minority shareholders in Kenya receive better treatment than in most other emerging markets. A large number of companies have majority shareholders, and these oftentimes are multinationals. In cases where the majority shareholder is not the government, unsatisfied minority shareholders only have two options: sell their shares or sue the company. On the other hand, the report cites shareholder apathy and ignorance as a problem in Kenya, but notes that the Private Sector Corporate Governance Trust (PSCGT) is taking measures to train shareholders and establish a shareholders association to heighten shareholder involvement. The 2006 NEPAD publication reports weak enforcement and inadequate monitoring of corporate compliance with codes and standards in Kenya. The capacity of some regulators and supervisors is constrained, and the court system is slow and inefficient. Further, many laws, including the 1962 Companies Act, relating to companies, investments, partnerships and insolvency are outdated. In addition, there is a need to apply corporate governance standards and principles beyond the larger companies.

The 2006 NEPAD report recommends "enforcing implementation of laws and regulations," "enhancing the capacities of professional and government supervisory institutions," and "updating the legal and regulatory framework" (p. 21). In particular, the Companies Act should be revised to include provision for protection of minority shareholders' rights, safeguarding the effective practice of good corporate behavior, and proper assessment of directors and boards. In response, the government of Kenya has acted to review the business laws including the Companies Law, Investment law, etc.

The existing legal framework for listed companies consists of the Companies Act, CMA regulations, and the NSE listing rules. The 2003 report by Nganga et al. indicates that the CMA released its guidelines on corporate governance practices by public companies in 2002. They were given legal status in the Capital Markets Act 485A. According to Grace Kibuthu's 2005 report on Kenya's capital market, the intention of the guidelines is to improve corporate governance practices, encourage self-regulation, and align Kenya's governance practices with international standards. The CMA requires that companies adopt minimum standards with regard to the chairman and chief executive officer, board of directors, shareholders, chief financial officers, and disclosure. The Nganga et al. report adds that companies are required to either comply with the PSCGT's corporate governance code, which was first issued in 1999, and updated in 2002, or provide reason for noncompliance in the statement of the director in the annual report. In addition, they must state the steps being taken to achieve compliance. Grace Kibuthu's 2005 report notes that it is difficult to judge the impact of the guidelines, because they are not obligatory. However, listed companies have made an effort to disclose information on quarterly and annual performance, principal shareholders, and the level of compliance with the corporate governance principles.

Despite these considerable steps in creating a corporate governance framework in Kenya, a 2008 report by Lois Musikali points out that it is doubtful whether Kenya "can achieve good corporate governance with the current state of its law and a code that is designed without sufficient consideration of its market conditions" (p. 1). Consequently, Musikali recommends that the laws and codes affecting corporate governance in Kenya be reviewed to reflect "the market conditions in Kenya today" (p. 17). A dual standard of director liability such as that of the United Kingdom should be established, and the protection of minority shareholders and stakeholders should be improved.

The Nairobi Stock Exchange, a self-regulatory organization under the supervision of the Capital Markets Authority, is the sole licensed trading exchange in the country. The Capital Markets Authority was established under the Capital Markets Act as the regulator and supervisor for the capital markets in Kenya. According to Kibuthu's 2005 report, the CMA has an enforcement program to ensure compliance with regulatory rules and requirements. This program utilizes a surveillance program and annual market license reviews. The NSE also monitors the compliance of listed companies through its compliance department. When it detects a problem, the NSE forwards the complaint to the CMA for investigation and action. The Nganga et al. 2003 report indicates that the PSCGT, a private organization backed by international donor agencies and business leaders, has played a major role in inciting changes in the corporate governance practices in Kenya and the rest of East Africa since 1999.

Kenya's capital market is still at a nascent stage, states the U.S. Department of Commerce's 2008 Country Commercial Guide. The capital market consists of the NSE, 15 investment advisory firms, 11 investment banks, 10 stock brokers, 14 fund managers, one credit rating agency, two capital venture funds, five collective investment schemes, and five authorized depositories, according to the 2007 Country Commercial Guide on Kenya by the U.S. Department of Commerce. At the end of 2006, market capitalization was KSh 726.8 billion up from KSh 481.2 billion at the beginning of 2006. According to the 2006 NEPAD report, in February 2005, "a total of 115,544 companies were registered in Kenya under the Companies Act, of which approximately 5000 companies were public companies, 2760 companies were foreign owned and 48 were listed on the Nairobi Stock Exchange" (p. 19).

The Investor Protection Index is a subcomponent of the World Bank's 2009 Doing Business Indicators. The Investment Protection Index consists of three dimensions of investor protection: transparency of transactions (Extent of Disclosure Index), liability for self-dealing (Extent of Director Liability Index) and shareholders' ability to sue officers and directors for misconduct (Ease of Shareholder Suits Index). The indexes range between 0 and 10, with higher values indicating greater disclosure, greater liability of directors, greater powers of shareholders to challenge the transaction, and better investor protection. Kenya scores 3 in the Disclosure Index, against a regional average of 4.6 and a OECD average of 5.9. It scores 2 in the Director Liability Index, against a regional average of 3.2 and an OECD average of 5.0 and 10 in the Shareholder Suits Index against regional average of 5 and an OECD average of 6.6.

Principle: Principle I: Ensuring the Basis for an Effective Corporate Governance Framework

[Insufficient Information]

According to the 2003 repo rt by Nganga et al., the governance and efficacy of listed companies had improved in the years prior to the report, making it comparable to "any other market in the world" (p. 20). By introducing and enforcing the necessary regulations, the CMA and NSE have improved governance. Similarly, the 2006 country review report on Kenya published by the NEPAD notes that the corporate governance environment in the country is improving, as a result of "ongoing efforts to put in place a good corporate governance framework to meet international benchmarks" (p. 158) by related institutions. Kenya has adopted the OECD's Principles of Corporate Governance and "most listed companies are now adopting and implementing good corporate governance practices" (p. 158), according to the NEPAD report.

However, legal processes are lengthy, and the legal system's ability to resolve complex commercial disputes is questionable. Also, when government is the majority shareholder in a company, the corporate governance practices of a company may be compromised, due to poor public governance. Such is the case in the situation of questionable accounting practices in the Kenya Power & Lighting Company and the National Bank of Kenya. The report states that there is optimism that the commitment of the government to adopting the PSCGT's corporate governance code will improve the situation. However, the publicly available information does not directly address Kenya's compliance with this principle.

In addition, Nganga et al. indicate that the listed companies are governed by the Companies Act, CMA regulations, and the NSE listing rules. The CMA released its guidelines on corporate governance practices by public companies in 2002. . They were given legal status in the Capital Markets Act 485A. According to Kibuthu's 2005 report, the intention of the guidelines is to improve corporate governance practices, encourage self-regulation, and align Kenya's governance practices with international standards. The CMA requires that companies adopt minimum standards with regard to the chairman and chief executive officer, board of directors, shareholders, chief financial officers, and disclosure. The Nganga et al. report adds that companies are required to either comply with the PSCGT's corporate governance code, which was first issued in 1999 and updated in 2002, or provide reason for noncompliance in the statement of the director in the annual report. In addition, they must disclose the steps being taken to achieve compliance. Grace Kibuthu's 2005 report notes that it is difficult to judge the impact of the guidelines, because they are not obligatory. However, listed companies have made an effort to disclose information on quarterly and annual performance, principal shareholders, and the level of compliance with the corporate governance principles. Further, the 2008 article by Lois Musikali points out that although corporate governance laws and regulations are mainly in place, it is still questionable for Kenya to achieve good corporate governance as the current laws are designed without sufficient consideration of the underlying market conditions where they are to be enforced. Musikali recommends that the laws and codes affecting corporate governance in Kenya be reviewed to reflect "the market conditions in Kenya today" (p. 17). The 2006 NEPAD report recommends that the Companies Act be revised to include provision for protection of minority shareholders' rights, safeguarding the effective practice of good corporate behavior, and proper assessment of directors and boards.

Also according to Kibuthu's 2005 report, the CMA has an enforcement program to ensure compliance with regulatory rules and requirements. The program utilizes a surveillance program and annual market license reviews. The NSE also monitors the compliance of listed companies through its compliance department. When it detects a problem, the NSE forwards the complaint to the CMA for investigation and action. Ngangaet al. report that the PSCGT, a private organization backed by international donor agencies and business leaders, has played a major role in inciting changes in the corporate governance practices in Kenya and the rest of East Africa since 1999.

Principle: Principle II: The Rights of Shareholders and Key Ownership Function

[Insufficient Information]

The 2006 NEPAD report bemoans the absence of basic and systematic education for shareholders with respect to their rights and duties. In addition, the Companies Act has neither mechanisms to detect and investigate insider trading nor for the rating of individual directors and the board. The report concludes that "in principle, many corporations do not comply with the provision of the codes relating to setting up internal control systems for risk management mitigation" (p. 159). The 2003 report by Nganga et al. indicates that share ownership is freely transferable, the one-share/one-vote principle is applied, signifying that a shareholders' voting power is directly proportional to the number of shares owned, and shareholders may vote by proxy, including by mail. Minority shareholders are not entitled to proportional representation on boards or any specific oppressed-minorities mechanisms. Minority shareholders with a collective 10 percent of share capital may call for an extraordinary meeting and choose to bring the issue to commercial court. The corporate governance code includes a provision for shareholder approval for major company decisions, such as major asset disposals, restructurings, mergers, acquisitions, and reorganizations. Shareholders must approve director remuneration. Shareholders are also entitled to complete and timely information about annual general meetings. The PSCGT's 2002 Principles of Good Corporate Governance state that the code of best practices asserts shareholder entitlement to any information that significantly concerns their membership, their rights to participate in meetings of members, elect directors, and their rights to participate in pertinent resolutions. The report cites shareholder apathy and ignorance as a problem in Kenya, but notes that the PSCGT is taking measures to train shareholders and establish a shareholders association to heighten shareholder involvement. However, the above cited information does not directly address Kenya's compliance with this principle.

Principle: Principle III: The Equitable Treatment of Shareholders

[Insufficient Information]

Minority shareholders rights are lacking in some respects, according to the 2003 report on corporate governance in Africa by Nganga et al. A large number of companies have majority shareholders, and these are, oftentimes, multinationals. In cases where the majority shareholder is not the government, unsatisfied minority shareholders only have two options: sell their shares or sue the company. The report judges that while this may be a problem, minority shareholders in Kenya nonetheless receive better treatment than in most other emerging markets. On the other hand, the report cites shareholder apathy and ignorance as a problem in Kenya, but notes that the PSCGT is taking measures to train shareholders and establish a shareholders association to heighten shareholder involvement. Minority shareholders are not entitled to proportional representation on boards or any specific oppressed-minorities mechanisms. Minority shareholders with a collective 10 percent of share capital may call for an extraordinary meeting and choose to bring the issue to commercial court. The 2006 NEPAD report states that minority shareholders are regularly informed too late of the agenda of their AGM meetings. "Decisions are often made by majority shareholders and the AGM often appears as a forum to simply endorse decisions" (p. 159). However, the publicly available information does not directly address Kenya's compliance with this principle.

Principle: Principle IV: The Role of Stakeholders in Corporate Governance

[Insufficient Information]

The 2008 article by Lois Musikali points out that the corporate governance system in Kenya is particularly inadequate in serving the interests of stakeholders and minority shareholders. The 2006 NEPAD report states that Kenyan laws "generally protect the rights of business stakeholders, including suppliers, creditors and communities in which businesses operate" (p.20). But enforcement capacities are weak and the Judiciary is "perceived as lenient towards businesses that do not fully adhere to regulations" (p. 20). Employee protection under the labor laws is also weak, and corporate social responsibility and care for the environment are still in infancy in Kenya. Apart from this, however, there is insufficient publicly available information to fully address Kenya's compliance with this principle.

Principle: Principle V: Disclosure and Transparency

[Insufficient Information]

The corporate governance code mandates the disclosure of director and senior executive remuneration. In addition, the board must present the annual accounts to ensure that they follow the International Accounting Standards (IASs). According to the 2003 report by Nganga et al., the introduction of IASs, later renamed International Financial Reporting Standards (IFRSs), and the Private Sector Corporate Governance Trust's (PSCGT) Principles and Sample Code of Best Practice in Kenya has led to a significant improvement in companies' disclosure. Nganga et al. highlight that the disclosure of information has been provoking media scrutiny. However, the publicly available information does not directly address Kenya's compliance with this principle.

An assessment of the accounting and auditing environment in Kenya was conducted by the World Bank in 2001. The World Bank noted that Kenya had adopted the IASs, thereby "closing the gap" between national and international accounting standards. The Institute of Certified Public Accountants of Kenya (ICPAK), in its 2005 self-assessment prepared as part of the International Federation of Accountants' member body compliance program, points out that listed entities must prepare interim reports, have an Audit Committee, and comply with corporate governance rules. It is further required that the finance and accounting departments of listed companies be headed by a member of the ICPAK. The self-assessment goes on to note that statutory auditors are appointed by the shareholders. In 2006, the United Nations Conference on Trade and Development (UNCTAD) issued a report, which stresses that in practice, the level of non-compliance is quite high. The UNCTAD goes on to note that Kenya's adherence to IFRSs has not been achieved. Nevertheless, the available assessments do not directly address Kenya's compliance with this principle.

Principle: Principle VI: The Responsibilities of the Board

[Insufficient Information]

The 2003 report by Nganga et al. asserts that the structure of boards in listed companies has changed in line with the requirements of the corporate governance code. Committees, such as the auditing committee, have been appointed, the roles of Chairman and Chief Executive Officer have been separated, and there has been an increase in the number of independent board members. Provisions of the corporate governance code include requirements that one-third of the board is comprised of non-executive directors. Directors are limited to five directorships and must volunteer themselves for re-election at annual general meetings and the director's remuneration must be approved by shareholders. A director may not chair more than two listed companies. Executive compensation must be disclosed in the annual report. In addition, the board is obliged to present the annual accounts to ensure that they follow the International Accounting Standards. The Chief Finance Officers and auditors are required to be members of the Institute of Certified Public Accountants, while secretaries are required to belong to the Institute of Certified Public Secretaries. With respect to directors, there is concern that directors are unaware of their roles and responsibilities "and that many are members of an old boys' club." The directors of multinational firms are perceived to be 'rubber stamps for the parent company' (p.19). To address this issue, an Institute of Directors was established in April 2003, the PSCGT trains directors, and the CMA "has recommended minimum qualifications for directors" (p. 19). The 2008 article by Lois Musikali recommends that a dual standard of director liability such as that of the United Kingdom be established and the laws and codes affecting corporate governance in Kenya be reviewed to reflect "the market conditions in Kenya today" (p. 17). However, the publicly available information does not directly address Kenya's compliance with this principle.

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- Centre for Corporate Governance Kenya (CCG)
  http://www.ccg.or.ke/
- Institute of Certified Public Accountants of Kenya (ICPAK)
  http://www.icpak.com
- Kenya Accountants and Secretaries National Board (KASNEB)
  http://www.kasneb.or.ke/
- Kenya Capital Markets Authority (CMA)
  http://www.cma.or.ke/
- Institute of Directors
- Kenya National Chamber of Commerce and Industry
  http://paragonkenya.com/KNCCIMSA/investinginkenya.html
- Ministry of Finance (MoF)
  http://www.treasury.go.ke/
- Ministry of Planning and National Development (MPND)
  http://www.planning.go.ke/
- Nairobi Stock Exchange (NSE)
  http://www.nse.co.ke/
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- Regulatory Advisory Board (RAB)

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Objectives and Principles of Securities Regulation

LEVEL OF COMPLIANCE: **INSUFFICIENT INFORMATION**

Summary

Kenya's capital market is still at a nascent stage, with the Nairobi Stock Exchange (NSE)--a self-regulatory organization under the supervision of the Capital Markets Authority (CMA)--as the sole licensed trading exchange in the country, according to the U.S. Department of Commerce's 2008 Country Commercial Guide. The CMA was established under the Capital Markets Act as the regulator and supervisor for the capital markets in Kenya. However, the CMA has limited capacity, and lacks operational independence, reports the World Bank's 2004 Project Appraisal Document. Furthermore, the enforcement of market rules and supervision of market participants is relatively weak. The International Monetary Fund's 2007 Annual Progress Report concludes that Kenya has not fully implemented its Poverty Reduction Strategy for 2003/2004 and 2004/2005, which included establishing a central depository system, strengthening disclosure rules and their enforcement, and introducing a secondary market. It is worth noting that, starting in 2005, all equity trades have been settled through an electronic central depository system. Furthermore, the NSE has been initiating talks with the stock exchanges from Uganda and Tanzania to put in place a common central depository system and regional East African Capital Market. Kenya's CMA is an ordinary member of the International Organization of Securities Commissions (IOSCO), and a signatory to the IOSCO multilateral memorandum of understanding since 2009. Nevertheless, the information provided above does not directly address Kenya's observance of the IOSCO Objectives and Principles of Securities Regulation.

General Overview

The Capital Markets Authority (CMA) was established in December 1989 under the Capital Markets Authority Act, renamed the Capital Markets Act in 2000 after amendments. The CMA is responsible for the licensing, regulation and supervision of all capital markets participants, as stated on the PricewaterhouseCoopers (PwC) website. The CMA also disseminates rules and regulations within its jurisdiction, and is empowered to carry out enforcement and sanctions. All companies that issue securities are regulated under the Capital Markets Act, the Companies Act, and the CMA's regulations.

In January 2004, the Financial Sector Reform and Strengthening (FIRST) Initiative launched a "Strategy for Development Finance and Increasing Access to Financial Services" project for Kenya, which was completed in February 2005. As stated on the FIRST Initiative website, the aim of the project was to strengthen the financial sector in Kenya by reforming the Development Finance Institutions, and facilitating access to finance for rural and small-and medium enterprise sectors. In October 2004, the World Bank approved the Proposed Credit to Kenya for the Financial and Legal Sector Technical Assistance Project. According to the World Bank website, the overall objective of the program is "to create a sound financial system and strengthened legal framework and judicial capacity." One of the main components of the Project includes the development of long-term securities and capital markets in Kenya, reports the World Bank's 2004 Project Appraisal Document. The World Bank stresses that the CMA has limited capacity, and lacks operational independence. Furthermore, the enforcement of market rules and supervision of market participants is relatively weak. The World Bank's 2008 Report on the Status of Projects in Execution states that the Financial and Legal Sector Technical Assistance Project "is making progress towards achieving its development objectives" (p. 10). The Project is expected to close on March 31, 2010.

In May 2006, the New Partnership for Africa's Development (NEPAD) published an African Peer Review Mechanism for Kenya. The NEPAD report mentions the results of a joint International Monetary Fund (IMF)/World Bank 2003 Financial Sector Assessment Program (FSAP) for Kenya, which was not published. The International Monetary Fund (IMF) published a Poverty Reduction Strategy in 2007, which enumerates the financial sector reforms undertaken by Kenya for 2003/2004 and 2004/2005. The reforms aimed at, inter alia, establishing a central depository system, strengthening disclosure rules and their enforcement, and introducing a secondary market. The IMF stresses that this strategy has not been fully implemented as envisaged during both 2003/04 and 2004/05 periods. It is worth noting that starting in 2005, all equity trades have been settled through an electronic central depository system. The Nairobi Stock Exchange (NSE) has been initiating talks with the stock exchanges from Uganda and Tanzania with the aim of establishing a common central depository system and regional East African Capital Market.

Kenya's capital market is still at a nascent stage, states the U.S. Department of Commerce's (DoC) 2008 Country Commercial Guide. The NSE, a self-regulatory organization (SRO) under the supervision of the CMA, is the sole licensed trading exchange in the country. All applications for listing must be approved by the CMA, and are subject to NSE Rules and Regulations. The U.S. DoC's 2007 Country Commercial Guide indicates that the NSE is divided into three parts. The Main Investment Market is the dominant segment and favorable for "mature companies with strong dividend streams" (p. 54). The Alternative Investment Market is favorable for small and medium sized enterprises. The Fixed Income Securities Market "allows businesses, financial institutions, and government and supranational authorities to raise capital through the issuance of debt securities" (p. 54), the US DoC Guide added. As of August 2007, according to the U.S. DoC's 2008 report, there were 48 listed companies, with market capitalization amounting to USD 12.1 billion. This represents an approximate 32 percent increase from August 2005.

The International Organization of Securities Commissions (IOSCO) multilateral memorandum of understanding (MMoU) is based on the thirty IOSCO Principles adopted in 1998 and the experience gathered by securities regulators in using bilateral Memoranda of Understanding (MoUs). The IOSCO MMoU provides a standardized framework for sharing enforcement-related information and a gradually expanding network of participating regulatory agencies. IOSCO members who wish to sign the IOSCO MMoU participate in a comprehensive screening process to establish that they have the legal capacity to fully comply with the terms of the IOSCO MMoU. Kenya's CMA is an ordinary member of IOSCO, and a signatory to the MMoU since 2009. Kenya is also a member of the East African Community, a regional intergovernmental organization comprised of Tanzania, Uganda, Burundi, and Rwanda.

Principle: 1. The responsibilities of the regulator should be clear and objectively stated.

[Insufficient Information]

Pursuant to the Capital Markets Act, the CMA is responsible for the licensing, regulation and supervision of all capital markets participants. The CMA also disseminates rules and regulations within its jurisdiction, and is empowered to carry out enforcement and sanctions, as reported on the PwC website. However, the information provided above does not directly address Kenya's compliance with this principle.

Principle: 2. The regulator should be operationally independent and accountable in the exercise of its functions and powers.

[Insufficient Information]

At the time of the World Bank's 2004 Project Appraisal Document, it was reported that the CMA lacked operational independence. However, the report does not directly address Kenya's compliance with this principle.

Principle: 3. The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.

[Insufficient Information]

At the time of the World Bank's 2004 Project Appraisal Document, it was reported that the CMA had limited capacity. However, the report does not directly address Kenya's compliance with this principle.

Principle: 4. The regulator should adopt clear and consistent regulatory processes.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 5. The staff of the regulator should observe the highest professional standards, including appropriate standards of confidentiality.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 6. The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, to the extent appropriate to the size and complexity of the markets.

[Insufficient Information]

The NSE is the main SRO under the supervision of the CMA. All applications for listing must be approved by the CMA, and are subject to NSE Rules and Regulations, as pointed out by the U.S. DoC's 2008 report. However, the report does not directly address Kenya's compliance with this principle.

Principle: 7. SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.

[Insufficient Information]

See Principle 6.

Principle: 8. The regulator should have comprehensive inspection, investigation and surveillance powers.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 9. The regulator should have comprehensive enforcement powers.

[Insufficient Information]

The CMA disseminates rules and regulations within its jurisdiction, and is empowered to carry out enforcement and sanctions, as stated on its website. However, the World Bank's 2004 Project Appraisal Document stresses that enforcement of market rules and supervision of market participants remains weak. Nevertheless, the available assessments do not directly address Kenya's compliance with this principle.

Principle: 10. The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 11. The regulator should have authority to share both public and non-public information with domestic and foreign counterparts.

[Enacted]

Kenya's CMA is a signatory to the MMoU, and an ordinary member of IOSCO. The IOSCO MMoU is based on the thirty IOSCO Principles adopted in 1998 and the experience gathered by securities regulators in using bilateral MoUs. The IOSCO MMoU provides a standardized framework for sharing enforcement-related information and a gradually expanding network of participating regulatory agencies. IOSCO members who wish to sign the IOSCO MMoU participate in a comprehensive screening process to establish that they have the legal capacity to fully comply with the terms of the IOSCO MMoU. Kenya has signed the IOSCO MMoU, implying that the IOSCO screening committee considered that the Kenyan legal framework complies with Principles 11, 12, and 13.

Principle: 12. Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.

[Enacted]

See principle 11.

Principle: 13. The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.

[Enacted]

See principle 11.

Principle: 14. There should be full, timely and accurate disclosure of financial results and other information that is material to investors' decisions.

[Insufficient Information]

According to a 2003 Survey published by Nganga et al. for the London Business School, the introduction of International Accounting Standards (IASs), later renamed International Financial Reporting Standards (IFRSs), and the Private Sector Corporate Governance Trust's (PSCGT) Principles and Sample Code of Best Practice in Kenya has led to a significant improvement in companies' disclosure. Nganga et al. highlight that the disclosure of information has been provoking media scrutiny. The PSCGT, an initiative aimed at fostering the highest standards of corporate governance in Kenya, published the Principles and Sample Code of Best Practice in Kenya in 2002. However, the report does not directly address Kenya's compliance with this principle.

Principle: 15. Holders of securities in a company should be treated in a fair and equitable manner.

[Insufficient Information]

The 2003 Survey by Nganga et al. indicates that minority shareholders' rights are lacking in some respects. Minority shareholders are not entitled to proportional representation on boards or any specific oppressed minorities' mechanisms. A large number of companies have majority shareholders, and these are oftentimes multinationals. In cases where the majority shareholder is not the government, unsatisfied minority shareholders only have two options: sell their shares or sue the company. The report asserts that while this may be a problem, minority shareholders in Kenya nonetheless receive better treatment than in most other emerging markets. On the other hand, the report cites shareholder apathy and ignorance as a problem in Kenya, but notes that the PSCGT is taking measures to train shareholders and establish a shareholders association to heighten shareholder involvement. The PSCGT, an initiative aimed at fostering the highest standards of corporate governance in Kenya, published the Principles and Sample Code of Best Practice in Kenya in 2002. However, the report does not directly address Kenya's compliance with this principle.

Principle: 16. Accounting and auditing standards should be of a high and internationally acceptable quality.

[Insufficient Information]

An assessment of the accounting and auditing environment in Kenya was conducted by the World Bank in 2001. The World Bank noted that Kenya had adopted International Accounting Standards, later renamed International Financial Reporting Standards (IFRSs) in 1998, thereby "closing the gap" between national and international accounting standards. The Institute of Certified Public Accountants of Kenya (ICPAK), in its 2005 self-assessment prepared as part of the International Federation of Accountants' member body compliance program, points out that listed entities must prepare interim reports, have an Audit Committee, and comply with corporate governance rules. It is further required that the finance and accounting departments of listed companies be headed by a member of the ICPAK. The self-assessment adds that statutory auditors are appointed by the shareholders. In 2006, the UNCTAD issued a report, which stresses that all listed companies in Kenya prepare accounts in accordance with IFRSs. In practice, however, the level of non-compliance is quite high. The UNCTAD goes on to note that Kenya's adherence to IFRSs has not been achieved. Nevertheless, the available assessments do not directly address Kenya's compliance with this principle.

Principle: 17. The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 18. The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 19. Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 20. Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 21. Regulation should provide for minimum entry standards for market intermediaries.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 22. There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 23. Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 24. There should be procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 25. The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 26. There should be ongoing regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 27. Regulation should promote transparency of trading.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 28. Regulation should be designed to detect and deter manipulation and other unfair trading practices.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 29. Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.

[Insufficient Information]

There is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: 30. Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.

[Insufficient Information]

The IMF published a Poverty Reduction Strategy in 2007, which enumerates the financial sector reforms undertaken by Kenya for 2003/2004 and 2004/2005, including the establishment of a central depository system. Starting in 2005, all equity trades have been settled through an electronic central depository system. The NSE has been initiating talks with the stock exchanges from Uganda and Tanzania with the aim of establishing a common central depository system and regional East African Capital Market. Despite the information provided above, there is insufficient information publicly available as to Kenya's compliance with this principle.

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Effective Insolvency and Creditor Rights Systems

LEVEL OF COMPLIANCE: NO COMPLIANCE

Summary

The World Bank and the International Finance Corporation, in assessing Kenya's investment climate, found the insolvency regime to be costly and subject to lengthy delays, and called for the reform and modernization of the existing legislation. According to information cited in this report, Kenya's insolvency regime suffers from infrastructural inadequacies relating to both the legal and institutional frameworks underpinning insolvency practice and property and creditor rights. A "Doing Business 2009" report released annually by the International Bank for Reconstruction and Development and the World Bank disclosed that it takes an average of 4.5 years to complete formal insolvency proceedings, at an average cost of 22% of the estate, and a return to creditors of, on average, thirty-one cents on the dollar.

General Overview

A 2004 Investment Climate Assessment of Kenya by the World Bank and the International Finance Corporation (WB/IFC) criticized the lengthy and cumbersome business entry and registration procedures and noted that the conduct of insolvency procedures was also both long and costly. The report added that the courts are not generally trusted and that contract enforcement and dispute resolution is therefore very difficult. The WB/IFC report cited information from an as yet unpublished report generated through the Financial Sector Assessment Program carried out by the World Bank and the International Monetary Fund (WB/IMF) in 2004, wherein a number of key weaknesses relevant to Kenya's insolvency regime were pointed out. The identified problems include infrastructural inadequacies relating to both the legal and institutional frameworks underpinning insolvency and property and creditor rights. According to the WB/IMF report, as cited in the WB/IFC assessment, "a lack of accurate and reliable information about the borrowers' ability to pay reduces competition, increases credit risk, and lending rates, and makes it difficult to reduce the dependence of banks' lending decisions on collateral" (p. 64). Also implicated are land-registration inefficiencies, corruption, and court delays. The WB/IFC report called for Kenya to reform and modernize the Companies Act to improve the insolvency regime.

A 2004 project appraisal document by the World Bank's Financial Sector Unit for the Africa Region discussed the rationale for a Financial and Legal Sector Technical Assistance Project in Kenya. In this report, numerous additional weaknesses in Kenya's legal and judicial framework are disclosed. Specifically, the document found that the legislative regime is "fragmented, outmoded, and incomplete" in its treatment of property rights, insolvency, and creditor rights (p. 18). As a result, the authors of this report called for a comprehensive legal review in order to develop a more relevant legislative framework for Kenya's current economic realities. To that end, the World Bank began providing technical assistance in 2004, focusing on developing appropriate draft legislation and helping to create "a sustainable, participatory approach to law reform" (p. 39). Acts deemed to be in most pressing need of amendment include the Companies Act, the Insolvency Act, and the Bankruptcy Act.

The U.S. Department of Commerce reported in its 2008 Country Commercial Guide for Kenya that the country's judicial system derives from the British system, comprising magistrates' courts, high courts in major towns, and, over all, a Court of Appeal. Wage and labor disputes are heard in a separate industrial court, whose rulings are not subject to appeal. Commercial courts hear commercial disputes. The first Companies Act was passed in 1948, and Kenya's current Companies Act (1962) and other investment-related laws are based on that founding legislation.

According to the "Doing Business 2009" snapshot offered by the International Bank for Reconstruction and Development and the World Bank, Kenya ranks 76th out of the 181 economies surveyed, worldwide. The report tracks three aspects of the business-closing process to identify problem areas in insolvency regimes. These include the time it takes, on average, to complete the process, expressed in years; the average cost of the procedure, expressed as a percentage of the debtor estate; and the average recovery rate, expressed in cents on the dollar. The report also offers comparable figures for the region and for the member states of the Organization for Economic Co-operation and Development (OECD). In Kenya it takes an average of 4.5 years to complete a bankruptcy proceeding, whereas the average time for the region is 3.4 years and the time required in OECD states averages 1.7 years. It costs an average of 22% of the estate in Kenya, compared to an average regional cost of 20.2% and an OECD average of 8.4%. The average recovery rate is 31.6 cents on the dollar in Kenya, compared to an average of 16.9 cents in the region and 68.6 cents on the dollar in the OECD countries.

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Insurance Core Principles

LEVEL OF COMPLIANCE: INTENT DECLARED

Summary

According to the New Partnership for Africa's Development (NEPAD) 2006 report, which mentions the results of a joint International Monetary Fund/World Bank 2003 Financial Sector Assessment Program (FSAP) for Kenya, the Insurance Act had serious shortcomings and needed to be revised in line with the Insurance Core Principles promulgated by the International Association of Insurance Supervisors. It was further recommended that Kenya enhance the operational independence of the Office of the Commissioner of Insurance by separating it from the Ministry of Finance. The NEPAD report indicated that the Kenyan authorities were in the process of implementing most of the FSAP recommendations, but with some delays. The Insurance Act was amended in November 2006 to establish the Insurance Regulatory Authority (IRA) as the new supervisor and regulator for the insurance sector. The Insurance (Amendment) Act entered into force on May 1, 2007. However, a number of challenges remain in the Kenyan insurance industry, points out the IRA's Corporate Plan for the period 2008 to 2011, including poor corporate governance, outdated provisions of the Insurance Act, lack of well-documented operational manuals, and inadequate resources of the regulator.

General Overview

Beginning in the early 1980s, the government of Kenya, with the support of the United Nations Conference for Trade and Development (UNCTAD), began the process of drafting a law to regulate the insurance sector. The Insurance Act CAP 487 was adopted in 1986, and entered into force on January 1, 1987. The Act established the Office of the Commissioner of Insurance, a department in the Ministry of Finance (MoF), as the competent authority for regulating and developing the insurance industry. It was responsible for administering the Insurance Act, advising the government on policy matters regarding insurance, and protecting the interests of policyholders. The World Bank's 2004 Project Appraisal Document reported that the Office of the Commissioner of Insurance was not operationally independent, and did not have adequate resources to carry out effective insurance supervision.

In May 2006, the New Partnership for Africa's Development (NEPAD) published an African Peer Review Mechanism for Kenya. The NEPAD report mentions the results of a joint International Monetary Fund (IMF)/World Bank 2003 Financial Sector Assessment Program (FSAP) for Kenya, which was not published. The FSAP mission found that the Insurance Act had serious shortcomings and needed to be revised in line with the Insurance Core Principles promulgated by the International Association of Insurance Supervisors (IAIS). It was further recommended that Kenya establish an insurance regulator independent from the MoF. The NEPAD report indicated that the Kenyan authorities were in the process of implementing most of the FSAP recommendations, but with some delays. Kenya is a member of the IAIS. Following the joint IMF/World Bank 2003 FSAP, the government of Kenya separated the Office of the Commissioner of Insurance from the MoF in order to enhance the supervisory capacity of the insurance regulator and give it more autonomy. In November 2006, the Insurance Act was amended to establish the Insurance Regulatory Authority (IRA) as the new supervisor and regulator for the insurance sector. The Act stipulates the objectives and functions of the IRA, appointment of board members and their powers. The Insurance (Amendment) Act entered into force on May 1, 2007.

The IMF published a Poverty Reduction Strategy in 2007, which enumerates the financial sector reforms undertaken by Kenya for 2003/2004 and 2004/2005. The reforms aimed at, inter alia, developing a comprehensive strategy for insurance services development. The IMF stresses that this strategy has not been implemented as envisaged during both 2003/04 and 2004/05 periods. With regards to financial sector reform, the World Bank approved the Proposed Credit to Kenya for the Financial and Legal Sector Technical Assistance Project in October 2004. As stated on the World Bank website, the overall objective of the program is "to create a sound financial system and strengthened legal framework and judicial capacity." As reported in the World Bank's 2004 Project Appraisal Document, one of the main components of the Project includes providing more powers to financial sector regulators. The World Bank's 2008 Report on the Status of Projects in Execution states that the Financial and Legal Sector Technical Assistance Project "is making progress towards achieving its development objectives" (p. 10). The Project is expected to close on April 1, 2010. However, a number of challenges remain in the Kenyan insurance industry, points out the IRA's Corporate Plan report for the period 2008 to 2011. These challenges include poor corporate governance, outdated provisions of the Insurance Act, lack of well-documented operational manuals, and inadequate resources of the regulator.

In 2007, according to the PricewaterhouseCoopers website, there were 43 insurance companies and 2 domestic reinsurance companies operating in Kenya. Gross insurance premium written during the same period amounted to approximately USD 586.4 million. With regards to insurance intermediaries, the insurance industry comprised 201 insurance brokers and 2665 insurance agents in 2006, as noted in the IRA's 2006 Annual Report.

Principle: ICP 1 Conditions for effective insurance supervision

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 2 Supervisory objectives

[Insufficient Information]

As reported in the IRA's 2008-2011 Corporate Plan, the Insurance (Amendment) Act, which entered into force in 2007, stipulates the objectives and functions of the IRA. These supervisory objectives include supervising and regulating the (re)insurance business, as well as formulating and enforcing standards for the conduct of (re)insurance activities; licensing all persons involved in or connected with insurance business; protecting the interests of policyholders and insurance beneficiaries; and promoting the development of the insurance sector. However, the report does not directly address Kenya's compliance with this principle.

Principle: ICP 3 Supervisory authority

[Insufficient Information]

Until 2006, the Office of the Commissioner of Insurance, a department in the MoF, was the competent authority for regulating and developing the insurance industry. It was responsible for administering the Insurance Act of 1986, advising the government on policy matters regarding insurance, and protecting the interests of policyholders. The World Bank's 2004 Project Appraisal Document reported that the Office of the Commissioner of Insurance was not operationally independent, and did not have adequate resources to carry out effective insurance supervision. In order to enhance the supervisory capacity of the insurance regulator and give it more autonomy, the government of Kenya separated the Office of the Commissioner of Insurance from the MoF. The Insurance Act was amended in November 2006 to establish the Insurance IRA as the new supervisor and regulator for the insurance sector. The Insurance (Amendment) Act entered into force on May 1, 2007. As part of its strategy to strengthen the regulatory authority, the IRA plans to develop its human resource capacity, as reported in the IRA's 2008-2011 Corporate Plan. Despite the information provided above, the available assessments do not directly address Kenya's compliance with this principle.

Principle: ICP 4 Supervisory process

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 5 Supervisory cooperation and information sharing

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 6 Licensing

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 7 Suitability of persons

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 8 Changes in control and portfolio transfers

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 9 Corporate governance

[Insufficient Information]

In light of poor corporate governance in the insurance industry, the IRA, as reported in its 2008-2011 Corporate Plan, is "determined to put in place and maintain good corporate governance standards at all levels of its operations" (p. 14). However, the report does not directly address Kenya's compliance with this principle.

Principle: ICP 10 Internal control

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 11 Market analysis

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 12 Reporting to supervisors and off-site monitoring

[Insufficient Information]

An assessment of the accounting and auditing environment in Kenya was conducted by the World Bank in 2001. The World Bank noted that Kenya had adopted International Accounting Standards, later renamed International Financial Reporting Standards (IFRSs) and International Standards on Auditing in 1998, thereby "closing the gap" between national and international standards. In 2006, the UNCTAD issued a report, which stresses that insurance companies prepare accounts in accordance with IFRSs. In practice, however, the level of non-compliance is quite high.. Nevertheless, the available assessments do not directly address Kenya's compliance with this principle.

Principle: ICP 13 On-site inspection

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 14 Preventive and corrective measures

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 15 Enforcement or sanctions

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 16 Winding-up & exit from the market

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 17 Group-wide supervision

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 18 Risk assessment and management

[Insufficient Information]

As part of its strategy to enhance the regulatory and supervisory framework, the IRA plans to adopt risk-based supervision and establish prudential guidelines, as reported in the IRA's 2008-2011 Corporate Plan. However, the report does not directly address Kenya's compliance with this principle.

Principle: ICP 19 Insurance activity

[Insufficient Information]

According to the IRA's 2006 Annual Report, there are two domestic reinsurance companies operating in Kenya. Furthermore, international reinsurance companies are present in the Kenyan market through reinsurance brokers or liaison offices. The Annual Report points out that reinsurance companies are generally treated as insurance companies under the Insurance Act. However, the report does not directly address Kenya's compliance with this principle.

Principle: ICP 20 Liabilities

[Insufficient Information]

As part of its strategy to enhance the regulatory and supervisory framework, the IRA plans to establish prudential guidelines, as reported in the IRA's 2008-2011 Corporate Plan. However, the report does not directly address Kenya's compliance with this principle.

Principle: ICP 21 Investments

[Insufficient Information]

See ICP 20.

Principle: ICP 22 Derivatives and similar commitments

[Insufficient Information]

See ICP 20.

Principle: ICP 23 Capital adequacy and solvency

[Insufficient Information]

As at end of December 2006, according to the IRA's 2006 Annual Report, insurance companies in Kenya were required to maintain a solvency margin of about USD 12,476, or 5 percent of assets in excess of liabilities. As a measure of the solvency margin ratio, per the same report, the industry was generally solvent. However, the report does not directly address Kenya's compliance with this principle.

Principle: ICP 24 Intermediaries

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 25 Consumer protection

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 26 Information, disclosure & transparency towards the market

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 27 Fraud

[Insufficient Information]

There is insufficient publicly available information as to Kenya's compliance with this principle.

Principle: ICP 28 Anti-money laundering/ Combating the Financing of Terrorism

[Insufficient Information]

According to the U.S. Department of State's 2009 International Narcotics Control Strategy Report, Kenya does not have an effective anti-money laundering regime and has not yet criminalized terrorist financing. The 2007 World Bank Country Assistance Strategy report on Kenya notes that the country has taken steps towards implementing legislation to combat money laundering and financing of terrorism.. The Financial Action Task Force (FATF), in its 2007-2008 Annual Report, names Kenya as one of the jurisdictions that have undertaken to implement the FATF's 40+9 recommendations. Nevertheless, the available reports do not directly address Kenya's compliance with this principle.

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Anti-Money Laundering/Combating Terrorist Financing Standard

LEVEL OF COMPLIANCE: INTENT DECLARED

Summary

According to the 2009 U.S. Department of State (DoS) report, Kenya does not have an effective anti-money laundering (AML) regime and has not yet criminalized terrorist financing. The 2007 World Bank Annual Report on Kenya notes that the country has taken steps towards implementing Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) legislation. Kenya has also been building capacity against money laundering and terrorism financing, notably with the establishment of the National Task Force on Anti-Money Laundering and Combating Financing of Terrorism in 2003. The 2009 U.S. DoS report also refers to the 2006 anti-money laundering proposed legislation titled "Proceeds of Crime and Anti-Money Laundering Bill," which was passed by Parliament on December 16, 2008 but had not been signed into law by the President. Further, the World Bank informs that the Central Bank of Kenya (CBK) has plans to adopt an AML policy to be followed by all financial institutions licensed under the Banking Act. Kenya has also continued to enhance the investigative capacity of the Kenya Anti-Corruption Commission and the Office of the Attorney General. However, the reform process appears to have suffered a setback with a challenge to the CBK's AML related supervisory authority by court rulings and political opposition. The Financial Action Task Force, in its 2007-2008 Annual Report names Kenya as one of the jurisdictions that have undertaken to implement the FATF's 40+9 recommendations.

General Overview

According to a 2009 U.S. Department of State (DoS) report, Kenya does not have an effective anti-money laundering (AML) regime, and has not yet criminalized terrorist financing, and has ineffective rules on freezing and seizure of funds related to money laundering and terrorism financing. The "Kenya Country Assistance Strategy Progress Report, 2004-2008," published by the World Bank in 2007, states that Kenya introduced AML and proceeds of crime legislation at the end of 2006 pursuant to the Kenyan Governance Action, and a draft bill to that effect was finalized in October 2006 and was expected to be passed by May 2007. The 2009 U.S DoS report also refers to the 2006 anti-money laundering legislation titled "Proceeds of Crime and Anti-Money Laundering Bill." According to the 2009 DoS report, "the bill made it through the second reading [of Parliament], one step from final passage, before it stalled." A 2009 report by Kiunuhe in the Business Daily confirms that as of February 2009 the bill had not yet been enacted into law.

The Financial Action Task Force, in its 2007-2008 Annual Report names Kenya as one of the jurisdictions that have undertaken to implement the Financial Action Task Force (FATF) 40+9 recommendations. Per the 2007 World Bank Report, the Central Bank of Kenya (CBK) planned to adopt an AML policy to be followed by all financial institutions licensed under the Banking Act by June 2007. The 2007 IMF Report titled "Kenya: Poverty Reduction Strategy Annual Progress Report - 2004/2005," adds that, along with steps towards implementing Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) legislation; Kenya has also been building capacity against money laundering and terrorist financing, notably with the establishment of the National Task Force on Anti-Money Laundering and Combating Financing of Terrorism in 2003. Further, per the 2007 World Bank Report, Kenya has continued to enhance the investigative capacity of the Kenya Anti-Corruption Commission (KACC) and the Office of the Attorney General. However, no further information regarding Kenya's progress in these areas is publicly available. The reform process, according to the 2007 World Bank Report, also appears to have suffered a setback with a challenge to the CBK's AML related supervisory authority by court rulings.

The 2009 U.S. DoS Report adds that Kenya is fast becoming a major hub for money laundering, and recommends that to stem the tide, Kenya should pass effective AML legislation at the earliest, create a financial investigation unit, reinforce cooperation between law enforcement agencies in the country, including the CBK and the Ministry of Finance, and tighten licensing and supervision of financial institutions.

According to the same report, law enforcement authorities in Kenya include the CBK's Banking Fraud Investigation Unit, the Kenya Police (through the Anti-Narcotics Unit and the Anti-Terrorism Police Unit), the Kenya Revenue Authority, and the KACC. The 2009 U.S. DoS report also refers to a major money laundering case in Kenya between 2007 and 2009 where Charterhouse Bank management committed account irregularities, and evaded taxes, import duties and audit to launder funds to the tune of $500 million from 1999 to 2006. The Charterhouse managers were also found guilty of violating the CBK's basic know-your customer guidelines and the CBK Prudential Guidelines for suspicious transactions reporting, record keeping, internal controls, audit evasion, and illegal transfer of funds. The Bank's license was revoked, but investigations revealed a pervasive abuse of the country's inadequate money laundering regime. The 2009 U.S. DoS stated that in Kenya $100 million are laundered every year.

Principle: 1. Legal Systems and Related Institutional Measures

[No Compliance]

The 2009 U.S. DoS report states that Kenya does not have an effective AML regime. The report does however note that there are certain provisions of related Acts that criminalize money laundering. For instance, Section 49 of the Narcotic Drugs and Psychotropic Substance Control Act of 1994 criminalizes money laundering related to narcotics trafficking with a 14 year prison sentence. Further, Legal Notice No. 4 of 2001 and the CBK Guidelines on Prevention of Money Laundering also make money laundering a criminal offense. The 2009 U.S. DoS report notes that there have been no money laundering prosecutions under these provisions. According to the report, the Government of Kenya proposed a Proceeds of Crime and Anti-Money Laundering Bill in November 2006 to substantially expand its money laundering regime. According to the 2009 DoS report, "the bill made it through the second reading [of Parliament], one step from final passage, before it stalled." A 2009 report by Kiunuhe in the Business Daily confirms that as of February 2009 the bill had not yet been enacted into law. The 2009 DoS report, however, identifies several shortcomings with the draft bill, namely, it "does not mention terrorism, nor does it specifically define "offense" or "crime" and the proposed legislation does not explicitly authorize the seizure of legitimate businesses used to launder money."

Anne Kiunuhe points out that, once enacted, the new AML bill would make money laundering an extraditable criminal offence subject to a maximum sentence of 14 years in jail and/or penalty of 5 million Kenyan Shillings. Kiunuhe states that under the draft law the definition of money laundering would be quite broad "involving property, which one knows or ought to know or suspects is or forms part of the proceeds of crime." Furthermore, it was reported that the draft law would establish several new bodies including: a Financial Reporting Centre (FRC), an Anti-Money Laundering Advisory Committee, and an Asset Recovery Agency (ARA). The FRC is said to be tasked with receiving and analyzing reports of suspicious transactions and referring them to the appropriate law enforcement authorities, and the threshold for submitting suspicious transactions by reporting institutions to the FRC would be set at $10,000 USD. According to Kiunuhe, the Anti-Money Laundering Advisory Committee would advise the Director of the FRC, while the ARA would seek to recover proceeds of crime. As part of the asset recovery program, Kiunuhe reports that the draft law would provide extensive information gathering powers to both police officers and the ARA, including the authority to enter, search, and seize. Furthermore, the draft law would also set up a Criminal Asset Recovery Fund and address international assistance in both investigations and proceedings.

The 2009 U.S. DoS report further notes that despite being a party to the United Nations (UN) Convention for the Suppression of Financing of Terrorism, Kenya does not criminalize terrorist financing as required by the United Nations Security Council Resolution (UNSCR) No. 1373. Different versions of a terrorism bill was introduced in 2003 and 2007, but Parliament took no action. The bill faces stiff opposition from human rights and Muslim groups. The CBK also does not distribute the list of persons included on the UN 1267 Sanctions Committee's consolidated list.

The 2009 U.S. DoS Report adds that seizure and forfeiture laws are ineffective. Law enforcement authorities include the CBK's Banking Fraud Investigation Unit, the Kenya Police (through the Anti-Narcotics Unit and the Anti-Terrorism Police Unit), the Kenya Revenue Authority, and the KACC. However, these agencies' powers are seriously limited by legislative handicaps and corruption. In this regard, the Report recommends Kenya pass enabling legislation and increase cooperation between law enforcement authorities, including the CBK and the Ministry of Finance (MoF). In addition, their powers, training and monitoring capabilities need to be enhanced. Additionally, according to the 2009 U.S. DoS Report, cross-border currency controls are lax, although the September 2002 Guidelines require foreign exchange dealers to ensure that cross-border flows are not illegal financial transactions.

Principle: 2. Preventive Measures - Financial Institutions

[Insufficient Information]

Per the 2009 U.S. DoS report, Kenyan financial institutions are supervised by the CBK. The amended Banking Act, the CBK, and the Kenya Bankers Association Guidelines have provisions for customer identification, record keeping, especially for foreign currency transactions, suspicious transactions reporting, and disclosure of information by the CBK to domestic or foreign financial regulatory authorities. However, enforcement mechanisms do not exist, and there have been no money laundering prosecutions, convictions, or arrests, encouraging serious and recurrent violations. The 2009 U.S. DoS report further notes that the CBK does not distribute the list of persons included on the UN1267 Sanctions Committee's consolidated list. Nevertheless, there is no publicly available information on Kenya's compliance with the FATF's requirements for this principle.

Principle: 3. Preventive Measures - Designated non-Financial Business and Professions

[Insufficient Information]

According to the 2009 U.S. DoS report, Kenyan Designated non-Financial Business and Professions (DNFBP), like foreign exchange bureaus and mortgage companies, are supervised by the CBK, whereas casinos are supervised by the Minister of Home Affairs. The 2009 DoS report notes that there are 95 foreign exchange bureaus under supervision in Kenya. However, the report finds the supervision of this sector to be ineffective. The CBK has however enforced new guidelines under the Central Bank of Kenya Act in 2007 to regulate foreign exchange bureaus. Further, the report notes that the Proceeds of Crime and Anti-Money Laundering Bill, if implemented, would place STR requirements on DNFBPs, including casinos, real estate agencies, precious metals and stones dealers, and legal professionals and accountants. Nevertheless, there is no publicly available information addressing Kenya's compliance with the FATF's requirements for this principle.

Principle: 4. Legal Person and Arrangements & Non-Profit Organizations

[Insufficient Information]

The 2009 U.S. DoS report observes that charitable and nonprofit organizations (NPOs) in Kenya are registered with the government and fall under the oversight of the National Non-Governmental Organization Coordination Bureau, a government agency. The NPOs are required to file annual returns with the Bureau, though enforcement is weak, and returns are either incomplete or inaccurate, undermining transparency. Despite the above information, none of the publicly available sources on Kenya address the country's actual compliance with the FATF's requirements for this principle.

Principle: 5. National and International Co-operation

[Insufficient Information]

According to the 2009 U.S. DoS report, Kenya is a signatory of the 1988 UN Drug Convention, the UN International Convention for the Suppression of the Financing of Terrorism, the UN Convention against Transnational Organized Crime, and the UN Convention against Corruption. Kenya is also an active member of the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG), a Financial Action Task Force (FATF)-style regional body, and has informal information sharing arrangements with the United States and the United Kingdom. Nevertheless, there is insufficient information publicly available addressing Kenya's compliance with the FATF's requirements for this principle.

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Core Principles for Effective Banking Supervision

LEVEL OF COMPLIANCE: INTENT DECLARED

Summary

Kenya is a regional financial and trade center for Eastern, Central, and Southern Africa. The joint 2003 International Monetary Fund (IMF)/World Bank Financial Sector Assessment Program (FSAP) determined that the banking system in Kenya remained vulnerable to a number of risks that could endanger financial stability, as reported in the World Bank's 2004 Project Appraisal Document. In May 2006, the New Partnership for Africa's Development published an African Peer Review Mechanism for Kenya, which mentions the results of the joint IMF/World Bank 2003 FSAP. According to the report, the Central Bank of Kenya (CBK), the banking regulator, is taking steps to address the gaps and shortcomings identified by the FSAP mission, including the introduction of risk-based supervision, capacity building for supervision, and revision of prudential regulations. As reported in its 2007 Annual Report, the CBK has undertaken a comprehensive review of the Banking Act to address shortcomings, and bring it in line with the Basel Core Principles for Effective Banking Supervision, The Banking (Amendment) Act of 2006, which entered into force on May 1, 2007, effectively cedes the authority to issue/revoke licenses from the Ministry of Finance to the CBK. The IMF's 2009 Staff Report indicates that revisions to the Banking Act are expected to strengthen the regulatory and supervisory framework, and align regulatory practices with international standards. Key provisions will introduce consolidated supervision, as well as mandatory supervisory intervention and prompt corrective actions for failing or under-capitalized banks. The privatization of the National Bank of Kenya is also being considered. However, there have been delays in completing the review of the Banking Act, states the IMF's 2009 Staff Report. Priority is being given to this issue by the Kenyan authorities.

General Overview

In 2003, the International Monetary Fund (IMF) and the World Bank conducted a Financial Sector Assessment Program (FSAP) in Kenya, which included an assessment of the country's compliance with the Basel Core Principles (BCPs) for Effective Banking Supervision. The FSAP concluded that, in light of Kenya's weak financial system, the banking system remained vulnerable to a number of risks that could endanger financial stability. This finding was reported in the World Bank's 2004 Project Appraisal Document on a Proposed Credit to Kenya for the Financial and Legal Sector Technical Assistance Project. The World Bank notes that following the FSAP, a series of initiatives have been put forward to move the reform process closer to implementation. In May 2006, the New Partnership for Africa's Development (NEPAD) published an African Peer Review Mechanism for Kenya, which mentions the results of the joint IMF/World Bank 2003 FSAP. The NEPAD report indicates that the Central Bank of Kenya (CBK), the banking regulator, is taking steps to address the gaps and shortcomings identified by the FSAP mission, including the introduction of risk-based supervision, capacity building for supervision, and revision of prudential regulations.

A 2007 Address by Professor Njuguna Ndung'u, Governor of the CBK, published on the Bank for International Settlements (BIS) website, recognizes the need "to bring the legal framework for regulating the banking sector up to speed with international developments." As reported in the CBK's 2007 Annual Report, the CBK has undertaken a comprehensive review of the Banking Act to address shortcomings, and bring it in line with the BCPs. The Banking (Amendment) Act of 2006 entered into force on May 1, 2007. The Banking (Amendment) Act effectively cedes the authority to issue/revoke licenses from the Ministry of Finance (MoF) to the CBK. According to the IMF's 2009 Staff Report, revisions to the Banking Act are expected to strengthen the regulatory and supervisory framework, and align regulatory practices with international standards. Key provisions will introduce consolidated supervision, as well as mandatory supervisory intervention and prompt corrective actions for failing or under-capitalized banks. The privatization of the National Bank of Kenya (NBK) is also being considered. However, there have been delays in completing the review of the Banking Act, states the IMF's

2009 Staff Report. Priority is being given to this issue by the Kenyan authorities.

With regards to financial sector reforms, the Financial Sector Reform and Strengthening (FIRST) Initiative launched a "Strategy for Development Finance and Increasing Access to Financial Services" project for Kenya in January 2004, which was completed in February 2005. As stated on the FIRST Initiative website, the aim of the project was to strengthen the financial sector in Kenya by reforming the Development Finance Institutions, and facilitating access to finance for rural and small-and medium enterprise sectors. In October 2004, the World Bank approved the Proposed Credit to Kenya for the Financial and Legal Sector Technical Assistance Project. As stated on the World Bank website, the overall objective of the program is "to create a sound financial system and strengthened legal framework and judicial capacity that will ensure broad access to financial and related legal services." As reported in the World Bank's 2004 Project Appraisal Document, one of the main components of the Project includes the restructuring and privatization of financial institutions through the establishment of a new regulatory body. The Project also seeks to provide more powers to financial sector regulators, and strengthen the Deposit Protection Fund. Finally, the World Bank recommended revising the Banking Act and prudential regulations to address deficiencies in the legal framework for banking supervision. The World Bank's 2008 Report on the Status of Projects in Execution states that the Financial and Legal Sector Technical Assistance Project "is making progress towards achieving its development objectives" (p. 10). The Project is expected to close on March 31, 2010.

In 2007, the IMF published a Poverty Reduction Strategy, which enumerates the financial sector reforms undertaken by Kenya for 2004/2005. The reforms aimed to establish a new regulatory framework in Kenya to enhance good governance and competitiveness. According to the IMF report, the plan included, inter alia, developing a Financial Sector Strategy that involved restructuring and privatizing the NBK and other state-owned banks; enhancing the CBK's supervisory authority and transferring banking system licensing, regulatory and disciplinary powers from the MoF to the CBK; reducing non-performing loans (NPLs); strengthening the Deposit Protection Fund; implementing anti-money laundering (AML) legislation; and revising the legal framework to remove uncertainties in the banking sector. The IMF's 2007 Joint Staff Advisory Note indicates that the implementation of financial sector reforms has been considerably delayed. The IMF stresses the need to accelerate reform, and specified reforms that still need to be completed, namely restructuring and privatizing the NBK and other state-owned banks, as well as strengthening the regulatory oversight of the banking sector.

Kenya is a regional financial and trade center for Eastern, Central, and Southern Africa. As of 2008, according to the U.S. Department of Commerce's (DoC) 2008 Country Commercial Guide, there were 45 domestic and foreign commercial banks in Kenya, with four major commercial banks dominating the system. Foreign banks account for around 40 percent of total assets in Kenya. The IMF's 2008 report on Selected Issues states that although the ratio of NPLs to total loans has significantly declined over the years, it remains relatively high. The Basel II Capital Adequacy Framework, issued by the Basel Committee on Banking Supervision, came into effect in Kenya on December 31, 2006. During 2007, as reported in its 2007 Annual Report, the CBK issued a Basel II Implementation Questionnaire to all banks for the formulation of a Basel II implementation policy, which includes compliance with the BCPs. Kenya is a member of the Common Market for Eastern and Southern Africa, as well as the East African Community, a regional intergovernmental organization comprised of Uganda, Tanzania, Burundi, and Rwanda.

Principle: 1. (1) Clear responsibilities and objectives for each supervisory agency.

[Insufficient Information]

The CBK is the regulatory and supervisory authority for Kenya's deposit-taking institutions, as well as mortgage companies and other financial institutions. As stated in its 2007 Annual Report, the main responsibility of the CBK is to foster a stable market based financial system. This includes enhancing the legal and regulatory framework for the banking sector. The Banking (Amendment) Act, which became operational on May 1, 2007, effectively cedes the authority to issue/revoke licenses from the MoF to the CBK. Nevertheless, the report does not directly address Kenya's compliance with this principle.

Principle: 1.(2) Operational independence and adequate resources.

[Insufficient Information]

According to the U.S. DoC's 2007 Country Commercial Guide, the Central Bank of Kenya Act provides for the CBK's operational autonomy, and strengthens its bank supervision functions. Nevertheless, the report does not directly address Kenya's compliance with this principle.

Principle: 1.(3) A suitable legal framework for authorization and ongoing supervision.

[Insufficient Information]

The 2007 Address by the Governor of the CBK, published in the BIS Review, recognizes the need "to bring the legal framework for regulating the banking sector up to speed with international developments." As reported in the CBK's 2007 Annual Report, the CBK has undertaken a comprehensive review of the Banking Act to address shortcomings, and bring it in line with the BCPs. The Banking (Amendment) Act of 2006 came into effect on May 1, 2007. The Banking (Amendment) Act effectively cedes the authority to issue/revoke licenses from the MoF to the CBK. In addition, the Central Bank of Kenya Act provides for the CBK's operational autonomy, and strengthens its bank supervision functions. Nevertheless, the available assessments do not directly address Kenya's compliance with this principle.

Principle: 1.(4) A suitable legal framework to address compliance with laws as well as safety and soundness concerns.

[Insufficient Information]

See Principle 1.(3).

Principle: 1.(5) Legal protection for supervisors.

[Insufficient Information]

There is insufficient information publicly available regarding Kenya's compliance with this principle.

Principle: 1.(6) Arrangement for sharing of information between supervisors and protection of confidentiality of shared information.

[Insufficient Information]

There is insufficient information publicly available regarding Kenya's compliance with this principle.

Principle: 2. Clearly defined permissible activities for banks and control of the use of the word 'bank'.

[Insufficient Information]

In 2006, the CBK issued a report on Prudential Guidelines for Institutions, which provides for detailed guidelines on, inter alia, preventing prohibited business practices as specified under the Banking Act. The guidelines apply to all transactions conducted by an institution and reflected on the balance sheet or reflected as off-balance sheet items. However, the report does not directly address Kenya's compliance with this principle.

Principle: 3. Criteria for structure, directors, operating plan, controls, financial condition and capital base.

[Insufficient Information]

In 2006, the CBK issued a report on Prudential Guidelines for Institutions, which provides for detailed guidelines on, inter alia, corporate governance. The guidelines stipulate the minimum standards required from directors, chief executive officers and management of an institution so as to promote proper standards of conduct and sound banking practices, as well as to ensure clarity and effectiveness in the exercise of their duties and responsibilities. Pursuant to the guidelines, shareholders are responsible for the appointment of a competent and dedicated board of directors, and management responsible for taking decisions in accordance with prudent banking practices. However, the report does not directly address Kenya's compliance with this principle.

Principle: 4. Authority to review and reject transfer of ownership.

[Insufficient Information]

The CBK's 2006 report on Prudential Guidelines for Institutions provides for detailed guidelines on, inter alia, licensing of new institutions. The guidelines further authorize the CBK to appraise the application upon receipt and make appropriate recommendations to the MoF. However, the report does not directly address Kenya's compliance with this principle.

Principle: 5. Authority to review major acquisitions and investments.

[Insufficient Information]

In 2006, the CBK issued a report on Prudential Guidelines for Institutions, which provides for detailed guidelines on, inter alia, mergers, amalgamations, and transfer of assets and liabilities as specified under the Banking Act. Pursuant to the guidelines, shareholders and directors are responsible for ensuring that the provisions are adhered to by the institutions intending to merge, amalgamate and/or transfer assets and liabilities. The guidelines further authorize the CBK to appraise the name under which financial institutions intend to register in case of change of name and make appropriate recommendations to the MoF. However, the report does not directly address Kenya's compliance with this principle.

Principle: 6. Minimum capital adequacy requirements (meet Basle Capital Accord for internationally active banks).

[Insufficient Information]

The CBK's 2006 report on Prudential Guidelines for Institutions provides for detailed guidelines on, inter alia, capital adequacy. The report specifies that the Banking Act empowers the CBK to prescribe the minimum ratios to be maintained by financial institutions, as well as determine the method for asset valuation and classification. In addition, the CBK is empowered to continuously monitor the institutions' minimum core capital levels and to review them from time to time. According to the CBK report, the guidelines envisage that the risk-based approach to capital adequacy measurement applies to both on and off - balance sheet items. The focus of this framework is credit risk, as well as interest rate risk, market risk, operational risk, concentration risk and underlying collateral risk. Institutions are required to assess and provide for these risks in the evaluation of their respective capital adequacy levels. As noted in the CBK's 2007 Annual Report, the banking sector remained well capitalized during 2007. As at December 2007, the capital adequacy ratio in the banking sector stood at 19 percent, a 2 percentage point increase from the previous year. Nevertheless, the available assessments do not directly address Kenya's compliance with this principle.

Principle: 7. A method exists for the evaluation of procedures related to loans, investments and portfolio management.

[Insufficient Information]

The ratio of NPLs to total loans in the Kenyan banking sector remains relatively high, although it has significantly declined over the years. According to the CBK's 2007 Annual Report, the ratio of NPLs to total loans declined from 14.9 percent in 2006 to 8.1 percent in 2007. In 2006, the CBK issued a report on Prudential Guidelines for Institutions, which provides for detailed guidelines on, inter alia, risk classification of assets and provisioning as specified under the Banking Act. The guidelines seek to ensure that all assets are regularly evaluated using an objective internal grading system, and that timely and appropriate provisions and write-offs are made to the provisions account in order to accurately reflect the true condition and operating results of institutions. Pursuant to the guidelines, financial institutions are required to maintain adequate provisions for bad and doubtful debts prior to disclosing profits or dividends. The 2007 CBK Governor's Address states that the Banking (Amendment) Act of 2006 requires licensed institutions to share credit information on NPLs. Nevertheless, the available assessments do not directly address Kenya's compliance with this principle.

Principle: 8. Policies, practices and procedures for evaluating the quality of assets and the adequacy of loan loss provisions and reserves.

[Insufficient Information]

See Principle 7.

Principle: 9. Prudential limits and management information system on concentration of exposure.

[Insufficient Information]

There is insufficient information publicly available regarding Kenya's compliance with this principle.

Principle: 10. Arm's length rule and monitoring for connected lending.

[Insufficient Information]

The CBK's 2006 report on Prudential Guidelines for Institutions stresses that, as a general rule, the Banking Act "prohibits institutions from granting or from permitting to be outstanding any advance or credit facility to any of its directors or other person participating in the general management of the institution" (p. 120). However, the report does not directly address Kenya's compliance with this principle.

Principle: 11. Policies and procedures for country risk and transfer risk.

[Insufficient Information]

In 2006, the CBK issued a report on Prudential Guidelines for Institutions, which provides for detailed guidelines on, inter alia, foreign exchange exposure limits. The guidelines stipulate that, as a general rule, the overall foreign exchange risk exposure of an institution should not exceed 20 percent of the institution's core capital. However, the report does not directly address Kenya's compliance with this principle.

Principle: 12. Measuring and monitoring market risk. Limit and/or specific capital charge on market risk exposure.

[Insufficient Information]

There is insufficient information publicly available regarding Kenya's compliance with this principle.

Principle: 13. Comprehensive risk management processes.

[Insufficient Information]

In 2005, the CBK issued Risk Management Guidelines to provide guidance to financial institutions on the development of risk management systems and frameworks. The CBK states that the guidelines are in line with international best practices. As the guidelines spell out, institutions that do not have independent risk management structures must immediately set up units to concentrate fully on the risk management function which, in order to ensure independence, reports directly to the board. The guidelines further stipulate that the risk management programs of each financial institution should contain at least active board and senior management oversight; adequate policies procedures and limits; adequate risk monitoring and management information systems; and adequate internal controls. According to NEPAD's 2006 report, which mentions the results of the joint IMF/World Bank 2003 FSAP, the CBK is taking steps to introduce risk-based supervision and revision of prudential regulations. Despite the information provided above, the available reports do not directly address Kenya's compliance with this principle.

Principle: 14. Adequate internal controls.

[Insufficient Information]

The CBK's 2005 Risk Management Guidelines stipulate that the risk management programs of each financial institution should contain at least adequate internal controls. However, the report does not directly address Kenya's compliance with this principle.

Principle: 15. Strict "know-your-customer" rules and high ethical and professional standards.

[Insufficient Information]

Kenya has not developed an effective AML regime, points out the U.S. Department of State's (DoS) 2009 International Narcotics Control Strategy Report. In November 2006, the government of Kenya published a proposed Proceeds of Crime and Anti-Money Laundering Bill. The proposed Bill authorizes the establishment of a Financial Intelligence Unit (FIU), and requires financial institutions to file suspicious transaction reports. The U.S. DoS stresses that this Bill does not explicitly mention terrorism, nor does it define criminal activities. The Bill is currently stalled, but the Eleventh Parliament is expected to address this issue when it reconvenes in 2009.

Kenya has not criminalized the financing of terrorism, states the U.S. DoS' 2009 report. The Anti-Terrorism Bill was drafted in 2006 to strengthen the government's ability to combat terrorism. The Bill was published and submitted to Parliament in 2007, but no further action was taken. In 2008, the Bill was renamed to the Prevention of Organized Crime Bill, but was not resubmitted to Parliament. The U.S. DoS' 2009 International Narcotics Control Strategy Report recommends enacting the proposed Proceeds of Crime and Anti-Money Laundering Bill, and creating an FIU. The government of Kenya should also criminalize the financing of terrorism. It is further recommended that the MoF revoke or refuse to renew the license of banks involved in money laundering activities. Finally, the CBK should be encouraged to tighten its examinations and audits of banks. Kenya is a member of the Eastern and Southern Africa Anti-Money Laundering Group, a Financial Action Task Force-style regional body. Despite the above information, none of the available sources directly address Kenya's compliance with this principle.

Principle: 16. Effective supervisory system consisting of on-site and off-site supervision.

[Insufficient Information]

At the time of the World Bank's 2004 Project Appraisal Document, it was noted that the Banking Supervision Department of the CBK had "a well-founded off-site and on-site supervision program" (p. 1). The CBK's 2006 report on Prudential Guidelines for Institutions indicates that upon licensing, the CBK visits all authorized institutions, and carries out on-site inspections to confirm existence of comprehensive risk management policies. The CBK goes on to note that it conducts on-site inspections within the first six to twelve months after commencement of operations, and periodic inspections thereafter to advise appropriately and ensure that the institution is on the right track in terms of compliance with guidelines. Nevertheless, the available assessments do not directly address Kenya's compliance with this principle.

Principle: 17. Regular contact with bank management and understanding of bank's operations.

[Insufficient Information]

There is insufficient information publicly available regarding Kenya's compliance with this principle.

Principle: 18. Analytical reports and statistical returns on solo and consolidated basis.

[Insufficient Information]

There is insufficient information publicly available regarding Kenya's compliance with this principle.

Principle: 19. Independent validation of supervisory information through on-site examination or external auditors.

[Insufficient Information]

There is insufficient information publicly available regarding Kenya's compliance with this principle.

Principle: 20. Ability to supervise on a consolidated basis.

[Insufficient Information]

The IMF's 2009 Staff Report indicates that revisions to the Banking Act are expected to incorporate provisions on consolidated supervision. However, the report does not explicitly address Kenya's compliance with this principle.

Principle: 21. Consistent accounting policies and practices that provide a true and fair view of the financial condition of the bank.

[Insufficient Information]

An assessment of the accounting and auditing environment in Kenya was conducted by the World Bank in 2001. The World Bank noted that Kenya had adopted International Accounting Standards, later renamed International Financial Reporting Standards (IFRSs) in 1998, thereby "closing the gap" between national and international accounting standards. The Institute of Certified Public Accountants of Kenya (ICPAK), in its 2005 self-assessment prepared as part of the International Federation of Accountants' member body compliance program, points out that the Banking Act and the Central Bank Act set out minimum disclosure requirements whose compliance is verified by the CBK. The ICPAK indicates that there are no specific legal requirements by the CBK with respect to monitoring and enforcement of accounting and auditing standards. Instead, emphasis is put on statutory requirements. The enforcement of accounting and auditing standards is left to ICPAK. In 2006, the UNCTAD issued a report, which stresses that banks prepare accounts in accordance with IFRSs. In practice, however, the level of non-compliance is quite high. The UNCTAD goes on to note that Kenya's adherence to IFRSs has not been achieved. Nevertheless, the available assessments do not directly address Kenya's compliance with this principle.

Principle: 22. Adequate supervisory measures to ensure timely corrective action.

[Insufficient Information]

At the time of the World Bank's 2004 Project Appraisal Document, it was noted that although the Banking Supervision Department of the CBK had established a solid framework for off-site and on-site supervision, corrective actions were lacking. The CBK's 2006 report on Prudential Guidelines for Institutions stresses that the CBK has the authority to take remedial measures, and impose administrative sanctions on financial institutions, their board of directors, or their officers. Furthermore, the CBK's 2006 Prudential Guideline on Enforcement of Banking Laws and Regulations has been formulated to provide information and guidance to the banking industry on the approach the CBK will take in issuing supervisory directives and corrective orders to institutions. It also provides an outline of specific corrective and remedial measures. According to the IMF's 2009 Staff Report, revisions to the Banking Act are expected to incorporate provisions on mandatory supervisory intervention and prompt corrective actions for failing or under-capitalized banks. Despite the above information, none of the available sources directly address Kenya's compliance with this principle.

Principle: 23. Banking supervisors must practice global consolidated supervision over their internationally-active banking organizations.

[Insufficient Information]

There is insufficient information publicly available regarding Kenya's compliance with this principle.

Principle: 24. International exchange of information with other supervisors.

[Insufficient Information]

There is insufficient information publicly available regarding Kenya's compliance with this principle.

Principle: 25. Supervision of local operation of foreign banks and information sharing with home country supervisors.

[Insufficient Information]

There is insufficient information publicly available regarding Kenya's compliance with this principle.

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Core Principles for Systemically Important Payment Systems

LEVEL OF COMPLIANCE: INTENT DECLARED

Summary

In July 2005, Kenya implemented the Kenya Electronic Payments and Settlement System (KEPSS), its first Real Time Gross Settlement system. The system is operated and owned by the Central Bank of Kenya (CBK), and all commercial banks in Kenya participate in the system. In its 2008 Annual Report the CBK notes that the KEPSS, in 2008, continued to be the dominant payment system in the country settling about 93.8 percent of all direct payments. The CBK states in its 2007 Payment Systems Policy Framework Report that, in conducting payment system oversight, it follows the Core Principles for Systemically Important Payment Systems promulgated by the Committee on Payment and Settlement Systems. It will also use standards, principles and recommendations established by the CBK, the East African Monetary Affairs Committee (a committee of the three East Africa Central Bank Governors, namely, Kenya, Tanzania and Uganda), and other international financial organizations. The CBK also states that by the end of 2008, through the National Payment System Project, Kenya shall have put in place a modern payment system that is effective, efficient, secure, compliant with international standards, and compatible with other international payment systems. The 2008 Annual Report by the CBK indicates that a National Payment System Bill was presented to parliament in 2008, which would establish a safe and efficient payment system in Kenya and broaden the CBK's oversight function. However, as of April 2009, there is no update on the passage of the Bill. The CBK also plans to designate and continuously review and evaluate Systemically Important Payment Systems in Kenya to ensure that their design and operation continue to meet, at the very minimum, international best practices, standards and protocols.

General Overview

In its 2007 policy framework document on the "Oversight of Payment Systems in Kenya" (hereafter referred to as the 2007 Policy Report), the Central Bank of Kenya (CBK) declares that in conducting payment system oversight, it follows the Committee on Payment and Settlement Systems' (CPSS) Core Principles for Systemically Important Payment Systems (CPSIPS). It will also employ the standards, principles and recommendations established by the CBK, the East African Monetary Affairs Committee (MAC, a committee of the three East Africa Central Bank Governors, namely, Kenya, Tanzania and Uganda), and other international financial organizations. The 2007 Policy Report states that the CBK "will maintain the responsibility to designate payment systems in accordance with the [CPSS'] Core Principles for Systematically Important Payment Systems [SIPS]" (p. 12). Nevertheless, the SIPS are not clearly identified on the CBK's website or in any of its publications.

A 2004 CBK policy report also stated that by the end of 2008, through the National Payment System (NPS) Project, Kenya would have put in place a modern payment system that was effective, efficient, and secure and would be compliant with international standards, practices and compatible with other international payment systems. The SIPS were also to be designated and continuously reviewed and evaluated to ensure that their design and operations have met and continue to meet, at the very minimum, international best practices, standards, and protocols. The NPS Project established the Kenya Electronic Payments and Settlement System (KEPSS), a real time gross settlement (RTGS) system, which went live on July 29, 2005. According to the CBK's 2005 Annual Report, all commercial banks in Kenya are participants in the KEPSS. According to a 2005 report by the CBK on the Rules and Procedures of KEPSS, the system is operated and owned by the CBK. The KEPSS uses SWIFT as its message carrier for financial transfers, and requires the commercial bank's hold settlement account at the CBK.

The 2008 Annual Report of the CBK provides statistics on the payment mechanisms in Kenya. According to the report, currency was the most widely used form of payment in 2008. Checks dominated noncash payment instruments in the country which are processed through the Automated Clearing

House (ACH). In the same year, Electronic Funds Transfer (EFT) transactions equaled Ksh 676 million. There has also been consistent growth in the use of credit and debit cards, ATMs, and Point of Sale (POS). The 2008 Annual Report also found that the KEPSS has recorded a steady increase in usage, with total transaction value of Ksh 14,507 the period ending June 30, 2008, representing an 83.0 percent annual increase in value. The majority of transactions originated as direct payments. Values posted directly into KEPSS by commercial banks accounted for approximately 93.8 percent of the total transactions flow through KEPSS. Meanwhile, third party messages processed via the Automated Clearing House showed a rising trend. Furthermore, mobile phone usage for funds transfer has gained increasing customer acceptance and business interest in Kenya. Automated Teller Machines coverage and plastic card usage have also increased.

In terms of current and future developments of the payment system, both the 2008 CBK Annual Report and the 2007 CBK Bank Supervision Report mention a draft National Payments Systems Bill. According to the latter report, "the Bill seeks to reinforce existing legal infrastructure, that affect payment and settlement systems, and will provide a legislative framework governing the operations of National Payment Systems and Settlement Instruments in Kenya when passed into law" (pp. 9-10).

Principle: I. The system should have a well-founded legal basis under all relevant jurisdictions.

[Insufficient Information]

With respect to the requirements of this principle, the CBK plan of action, as laid out in its 2007 Policy Report, includes ensuring that the system's rules and procedures, especially relating to contract, payments, securities, banking, debtor/creditor relationships and insolvency are clear and enforceable . A 2004 CBK report notes that there is no law in Kenya that explicitly and exclusively deals with payment systems, although the Central Bank of Kenya Act, as amended in 1996, gives the Bank powers to oversee and regulate the payments systems.

The 2007 Policy Report mentions that Section 4A(D) of the CBK Amendment Act sets out the CBK's role, empowering it to "formulate and implement such policies as best promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems." The Act lays down the basis of CBK's authority as overseer of payment systems thereby making oversight of payment systems an integral part of the wider responsibilities for monetary and financial stability. Recognizing that sound oversight ensures efficiency, reliability, safety, and stability of the payments system, the CBK declares in its 2007 Policy Report that it seeks to establish and encourage consistent legal rules, regulations and procedures that govern the transfer of money, so as to achieve legal certainty and enforceability of settlement and settlement finality. The CBK further believes that the payments system law governing funds transfers should take the form of a statute, which is part of the broad commercial and bankruptcy framework and that the rule of law should override relationships among parties. Further, the oversight function of the CBK should be inscribed in the law clearly describing its purpose and powers in legal statutes, laws or parliamentary Acts. The CBK also intends to have its oversight role include supporting and advising law-making authorities so as to develop and strengthen legal provisions pertaining to payments system in Kenya. In general, the information available on Kenya in regards to this principle indicate that the authorities are promoting the implementation of a sound legal framework for payment system but none of the sources publicly available address the country's actual compliance with the CPSS' requirements for this principle.

Principle: II. The system's rules and procedures should enable participants to have a clear understanding of the system's impact on each of the financial risks they incur through participation in it.

[Insufficient Information]

The CBK in its 2007 Policy Report states that it will work towards ensuring "that the rules and procedures define clearly the rights and obligations of all the parties involved, and all parties should be provided with up-to-date explanatory material" (p. 21). The CBK also aims to disclose publicly the key rules on financial risk, seeking to highlight legal risks incurred by the operator or participants of the payment system in Kenya. Nonetheless, there is insufficient information publicly available in terms of Kenya's compliance with this principle.

Principle: III. The system should have clearly defined procedures for the management of credit risks and liquidity risks, which specify the respective responsibilities of the system operator and the participants and which provide appropriate incentives to manage and contain those risks.

[Insufficient Information]

The 2007 Policy Report of the CBK states that the "focus of the Bank's oversight activities is to identify potential risks posed or introduced to the National Payments System, and to take necessary steps to eliminate or control them." (p. 8). Further, the oversight will seek to ensure that participants adopt consistent methods to manage their risks and that systems have adequate incentives and safeguards against excessive risk exposures experienced by individual participants" (p. 18). It will also encourage collective action by participants in this area, where the risk profile of each participant is tied to the behavior of others. The 2007 document further spells out that the CBK will work towards ensuring that "the rules allocate responsibilities for risk management and containment and that limits are placed on the maximum level of credit exposure that can be produced by each participant especially in netting systems" (p. 21). The CBK also plans to move toward establishing rules on pre-funding collaterizing obligations and implementing real-time settlement processes. Despite the above information there is no source publicly available that address the country's actual compliance with the CPSS' requirements for this principle.

Principle: IV. The system should provide prompt final settlement on the day of value, preferably during the day and at a minimum at the end of the day. (Systems should seek to exceed the minima included in this Core Principle.)

[Insufficient Information]

With respect to this principle, the CBK states in its 2007 Policy Report that it seeks to "ensure that appropriate mechanisms (e.g. liquidity management, exposure limits, appropriate laws, and real-time processes) exist to facilitate and support intra-day finality and irrevocability of settlement" (p. 21). Nevertheless, there is insufficient information publicly available in terms of Kenya's compliance with this principle.

Principle: V. A system in which multilateral netting takes place should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single settlement obligation. (Systems should seek to exceed the minima included in this Core Principle.)

[Insufficient Information]

According to the 2007 CBK Policy Report, the CBK aims "to ensure that the system has strong controls to address liquidity and credit risks that may arise from failure of the largest single net debtor to the system" (p. 21). Nevertheless, there is insufficient information publicly available in terms of Kenya's compliance with this principle.

Principle: VI. Assets used for settlement should preferably be a claim on the central bank; where other assets are used, they should carry little or no credit risk and little or no liquidity risk.

[Insufficient Information]

The 2007 Policy Report of the CBK remarks on the CBK'S goal to ensure that settlement is affected using balances of the participants at the CBK. It also aims to ensure that "settlement in commercial bank claims carry little or no financial risk" (p. 21). The KEPSS Rules and Procedures document available on the CBK website points out that the KEPSS participant must have a settlement account at the CBK. Nevertheless, there is insufficient information publicly available in terms of Kenya's compliance with this principle.

Principle: VII. The system should ensure a high degree of security and operational reliability and should have contingency arrangements for timely completion of daily processing.

[Insufficient Information]

The CBK notes in its 2007 Policy Report that it seeks to ensure that payment systems in the country have "commercially reasonable standards of security and a high degree of operational resilience" (p. 22). It also aims at putting in place "reliable technology, adequate backup of hardware, software and network facilities as well as effective business procedures and well-trained and competent personnel" (p. 22) to facilitate the security and resilience of the system. Moreover, a 2004 CBK Strategy Report states that the envisaged vision for the NPS is to put in place "a developed and modern payment system that is effective, efficient and secure, accessible, reliable, robust, viable and demand-driven" (p. viii). Nevertheless, there is insufficient information publicly available in terms of Kenya's compliance with this principle.

Principle: VIII. The system should provide a means of making payments which is practical for its users and efficient for the economy.

[Insufficient Information]

In its 2007 Policy Report, the CBK spells out its intention to ensure that payment systems in the country are cost effective and are flexible enough to respond to changing demands. Moreover, a 2004 CBK Strategy Report states that the envisaged vision for the NPS is to put in place "a developed and modern payment system that is effective, efficient, secure, accessible, reliable, robust, viable and demand-driven" (p. viii). Nevertheless, there is insufficient information publicly available as to Kenya's compliance with this principle.

Principle: IX. The system should have objective and publicly disclosed criteria for participation, which permit fair and open access.

[Insufficient Information]

In the 2005 KEPSS Rules and Procedures document available on the CBK website, the criteria for participation in the KEPSS are publicly disclosed. As its 2007 Policy Report states, the CBK has the twin objectives of making the system accessible to encourage competition, and at the same time to protect the system and participants from exposure to excessive legal, financial, and operational risks. It seeks to lay down objective and publicly disclosed system rules that clearly specify criteria and procedures for orderly entry and withdrawal of participants from the system. The CBK declares that it will aim to make the system fair and equitable, encouraging its geographic extension to both rural and urban areas, as well as sectoral expansion to both formal and informal financial sectors. Nevertheless, there is insufficient information publicly available in terms of Kenya's compliance with this principle.

Principle: X. The system's governance arrangements should be effective, accountable and transparent.

[Insufficient Information]

The 2007 Policy Report of the CBK notes the central bank intents to provide incentives to the management of participants in the system "to pursue objectives that are in the interest of the participants and their customers" (p. 22). Also, tThe CBK aims to provide all interested parties with access to information about how decisions affecting the systems are made. Nevertheless, there is insufficient information publicly available in terms of Kenya's compliance with this principle.

Principle: A. The central bank should define clearly its payment system objectives and should disclose publicly its role and major policies with respect to systemically important payment systems.

[Intent Declared]

In its 2007 Policy Report, the CBK does envisage defining and publicly disclosing its oversight role, as well as major policies affecting payment system operations and users through appropriate instruments. With regard to its role, the CBK further states that it will not monitor day-to-day operational aspects of payment systems or seek to resolve day-to-day operational problems except where it is itself operationally involved. It lays the responsibility for the reliable functioning of payment systems with system operators and members, and will continuously monitor to see that operators have taken reasonable steps to ensure the robustness of their systems. Further, the CBK spells out its aim to work collectively with market participants towards improving the Kenyan payment and settlement infrastructure for the benefit of all particpants. To facilitate this, it will support market-led development but may, where necessary, take a more active operational role, as was the case in its proactive role in the automation of the Clearing House and the introduction of KEPSS. The 2004 World Bank report mentions the Financial and Legal Sector Technical Assistance Credit (FLSTAC), a World Bank funded project that aimed at assisting the CBK in developing a comprehensive legal framework and mechanisms to effectively fulfill its oversight obligations. Despite the above information there is no source publicly available that address the country's actual compliance with the CPSS' requirements for this principle.

Principle: B. The central bank should ensure that the systems it operates comply with the Core Principles.

[Intent Declared]

In its 2007 Policy Report, the CBK states that in "the execution of [its] oversight functions... [the CBK is] guided by the provisions of the CPSS Core Principles for Systemically Important Payment Systems together with the responsibilities of the Central Bank, EMV standards and the IOSCO recommendations for the securities clearance and settlement system. Oversight activity aims at establishing compliance, by Kenya's payment systems, to these principles that requires payment system operators to take all reasonable measures to achieve full compliance" (p. 19).

Principle: C. The central bank should oversee compliance with the Core Principles by systems it does not operate and it should have the ability to carry out this oversight.

[Intent Declared]

In its 2007 Policy Report, the CBK states that in "the execution of [its] oversight functions... [the CBK is] guided by the provisions of the CPSS Core Principles for Systemically Important Payment Systems together with the responsibilities of the Central Bank, EMV standards and the IOSCO recommendations for the securities clearance and settlement system. Oversight activity aims at establishing compliance, by Kenya's payment systems, to these principles that requires payment system operators to take all reasonable measures to achieve full compliance" (p. 19). The report also states that the CBK's oversight activities should cover systems in Kenya that have systemic importance and affect financial stability but are not regulated by the Central Bank of Kenya Act. The document recommends the enactment of an appropriate legal and institutional framework to extend the scope of the CBK.

Principle: D. The central bank, in promoting payment system safety and efficiency through the Core Principles, should cooperate with other central banks and with any other relevant domestic or foreign authorities.

[Intent Declared]

In its 2007 Policy Report, the CBK iterates its intention to cooperate with legislative authorities, Ministry of Finance, and other oversight agencies and stakeholders through the regular exchange of views and information within a mutually agreed framework in order to promote the overall stability of the payment system. The report further mentions exchanges of information between the National Payment System Division of the CBK, the Capital Markets Authority (CMA), the Nairobi Stock Exchange (NSE) and utility service providers including telecommunications and electricity firms.

As regards international cooperation, the 2007 CBK Report advocates cooperation between the three East African Central Banks (of Kenya, Tanzania, and Uganda) that oversee their National Payment Systems independently, so as to promote information sharing and the development of uniform oversight procedures. The 2008 Annual Report of the CBK states that "the East African Community's Central Banks harmonized the technical specifications and the legal framework for the proposed East Africa Cross Border Payment System that will involve connectivity of the Real Time Gross Settlement (RTGS) systems in the region" (p. 56). Aimed at ensuring efficient and safe settlement of intra-regional financial transactions, the system is expected to be operational by the 2nd quarter of 2008/2009 financial year.

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Special Data Dissemination Standard

LEVEL OF COMPLIANCE: NO COMPLIANCE

Summary

Summary Statement: Kenya does not yet subscribe to the Special Data Dissemination Standard (SDDS) of the International Monetary Fund (IMF). Rather, it participates in the IMF's less rigorous General Data Dissemination System (GDDS), to which it subscribed on October 29, 2002. Kenya has three data-producing statistical agencies: the National Bureau of Statistics (NBS, which replaced the Central Bureau of Statistics in 2006), the Ministry of Finance, and the Central Bank of Kenya. In 2005, the IMF issued a Report on the Observance of Standards and Codes Data Module, in which it assessed Kenya's data collection, compilation, and dissemination standards to be highly professional and ethical, but in need of significant improvements in the areas of data quality, reliability, and other aspects of transparency. Ongoing reforms, including the creation of a new statistical framework, called the Strategic Implementation Master plan, aim to address many of these outstanding issues. The 2006 passage of a new Statistics Act conferred independence on the NBS, and Kenya's statistical authorities have been working with technical missions to improve their data dissemination practices, but the IMF reported in 2009 that there has been a recent deterioration in Kenya's data dissemination regime.

General Overview

Kenya does not subscribe to the International Monetary Fund's (IMF) Special Data Dissemination Standard (SDDS), but is a subscriber to the less rigorous General Data Dissemination System (GDDS). Kenya subscribed to the GDDS on October 29, 2002, when it began posting its metadata on the Dissemination Standards Bulletin Board (DSBB). The 2005 IMF Report on the Observance of Standards and Codes, Data Module, noted that Kenya has three principal data-producing agencies: the Central Bureau of Statistics (CBS), the Ministry of Finance (MoF), and the Central Bank of Kenya (CBK). The report stated that Kenya observes high standards of professionalism and ethics in its collection, compilation, and dissemination of statistical data but suggested that the allocation of roles and responsibilities across these three agencies could be more clearly elaborated. This would render the process more efficient and effective. The ROSC further recommended that greater resources be allocated to the development and dissemination of statistical data.

Within the Ministry of Planning and National Development, the CBS functioned as the primary agency for the collection, compilation, and dissemination of official statistics. In 2006, with the passage of the new Statistics Law, the CBS was replaced by the National Bureau of Statistics (NBS). Government finance statistics are reported by the MoF. The MoF has no specific legal mandate for its statistical role and responsibilities - instead, these are defined in a presidential decree. The CBK is governed by the Banking Act and the CBK Act, including its data dissemination in the areas of monetary and balance-of-payment statistics. The ROSC asserted that this mandate should be broadened to include coverage of more financial institutions. The law grants CBK independence. The ROSC found that the CBS (now NBS) puts in real effort to institute a professional, ethical work culture among its officers and staff. The ROSC also found that the MoF, the CBS, and the CBK generally worked well together. However, the usefulness of data, particularly MoF data, suffers from the fact that they are neither compiled nor analyzed according to generally accepted international guidelines. The ROSC recommended that MoF staff be given training in the use of Government Finance Statistics (GFS) methodology. According to the ROSC, the CBS provided early access of some data to government officials. This practice is not followed by the CBK. The staff and officials of the CBK are subject to formal ethical guidelines which are posted on the CBK website.

The 2009 IMF "Third Review under the Poverty Reduction and Growth Facility Arrangement" contains an annex specifically devoted to Kenya's statistical issues. According to this report, "the provision of Kenya's economic and financial data is broadly adequate for surveillance and program monitoring" (Annex III, p. 15). The report stated that Kenya has provided the GDDS with detailed short and medium term plans for improving its statistical regime and has accepted technical assistance to this end. It has also participated in exercises to assess its capacity building requirements. The report further noted that "accuracy and reliability do not receive adequate attention in any of the datasets" (p. 15). Kenya regularly submits its core financial data, and the CBK publishes monthly and biannual monetary and exchange rate data, along with some external data. The CBK publishes a Monthly Economic Review and the NBS publishes an annual Economic Survey.

In 2009 the IMF reported a significant deterioration of quality in Kenya's national accounts data, attributing this to insufficient budget and staffing at the NBS. Kenya's authorities accepted the assistance of an IMF advisor in "rebasing the national accounts estimates at constant 2001 prices and compiling institutional accounts for the general government sector" (p. 15), and is developing quarterly national accounts with the help of the East African Regional Technical Assistance Center. Price indices are not yet available for production, exports, or imports. A national consumer price index (CPI) was first published in early 2002. The CPI weightings are being updated with the goal of bringing the CPI into line with the international standards set out in the 2004 edition of the CPI Manual. Beginning in fiscal year 2005-2006, Kenya has been using the 2001 edition of the Government Financial Statistics Manual (GFSM) for its budget classifications. On the other hand, "serious delays have emerged in reporting, reflecting difficulties in establishing budget execution and accounting systems consistent with the new classification: (p. 16). A systems upgrade is necessary to overcome these problems. The report notes that Kenya is progressing toward the adoption of the Integrated Financial Management Information System.

Fiscal data reconciliation still shows significant gaps, and there are still important discrepancies in budget outturn data. The 2009 report also stated that "the recording of external financing and expenditure directly financed from abroad is still an important area for improvement" (p. 16). There has been only limited progress made in the compilation of consolidated fiscal statistics. In addition, Kenya still experiences significant delays in reporting its budgetary central government data to the Government Financial Statistics Yearbook. Annual government financial data on revenues and expenditures are compiled and reported by the NBS in accordance with the format set forth in the GFSM2001 and uses bridge tables. There is regular monthly and quarterly data reporting to the International Financial Statistics.

Kenya has not yet implemented the Monetary and Financial Statistics Manual and does not yet use the Standardized Report Forms developed by the IMF. The CBK has been working with a technical Mission from the IMF to move this effort forward, but the Mission has unearthed problems of misclassification affecting central government deposit data. The CBK will need to deal with expanding its data coverage to include information on Kenya's Savings and Credit Cooperatives, which constitute a significant part of the banking system's total deposits. Balance of payments data, compiled by the NBS, is reported regularly but with significant delays. In addition, two sets of this data are produced - one in Kenyan shillings and one in U.S. dollars - and these are not wholly consistent. The CBK also has begun publishing quarterly estimates of the balance of payments. In the area of current accounts, trade data is of reasonably good quality, overall, but other data are "rather weak" (p. 17), according to the IMF, and coverage gaps have emerged. There is a likelihood of significant under-recording of current earnings, private sector investment flows, and other data. The IMF added that "estimates of direct and portfolio investment are believed to be substantially understated" (p. 18). MoF data on public and publicly guaranteed external debt have been reviewed by both IMF and World Bank staff, who identified problems that have since been addressed. Still, the IMF stated that "significant debt data management problems remain, along with more general issues in the area of external debt management and its integration in the budget formulation and expenditure management systems" (p. 18). The report added that the CBK, MoF, and NBS are working jointly on external debt data issues, and there are plans to disseminate information on statistical methodology and to compile data on the international investment position.

Principle: Comprehensive economic and financial data, disseminated on a timely basis.

[No Compliance]

Kenya does not subscribe to the IMF's SDDS, but is a subscriber to the less rigorous GDDS. Kenya subscribed to the GDDS on October 29, 2002, when it began posting its metadata on the DSBB. The IMF's 2005 ROSC found that Kenya's disseminated data is compliant with, and at times exceeds, GDDS recommendations regarding periodicity and timeliness.

Principle: Ready and equal access to official statistics.

[No Compliance]

Kenya does not subscribe to the IMF's SDDS, but is a subscriber to the less rigorous GDDS. Kenya subscribed to the GDDS on October 29, 2002, when it began posting its metadata on the DSBB. For the most part, macroeconomic statistics are reasonably accessible, according to the IMF's 2005 ROSC. The exception is balance-of-payment data. At present, primary access is via the internet websites of the generating agencies and the IMF's DSBB. There are ongoing efforts to improve accessibility, including a new draft Statistics Act and a proposed new framework, called the Strategic Implementation Masterplan, both of which should also address issues of data utility and dissemination procedures. The ROSC reported that prior release to government officials occurs with some datasets, and this fact is not made explicit to the public.

Principle: Official statistics must have the confidence of their users. Transparency of its practices and procedures is a key factor.

[No Compliance]

Kenya does not subscribe to the IMF's SDDS, but is a subscriber to the less rigorous GDDS. Kenya subscribed to the GDDS on October 29, 2002, when it began posting its metadata on the DSBB. The ROSC found that Kenya's macroeconomic data is generally serviceable. There is variable internal consistency within datasets, and a failure to adequately implement and make public the policy and practice of data revisions across the range of datasets. The ROSC further suggested that Kenya more closely align its compilation practices with the standards of the Government Finance Statistics Manual 2001.

Principle: A set of standards that deals with the coverage, periodicity and timeliness of data must also address the quality of statistics.

[No Compliance]

Kenya does not subscribe to the IMF's SDDS, but is a subscriber to the less rigorous GDDS. Kenya subscribed to the GDDS on October 29, 2002, when it began posting its metadata on the DSBB. The 2005 IMF ROSC found that accuracy and reliability are uneven in Kenya's reported statistical data. In the national accounts, this is attributed to both inadequate source data and poor compilation and analytical techniques. There is an inconsistency between the Kenyan methodology and that set forth in the Balance of Payments Manual, 5th edition, which renders these data unreliable or incapable of cross-comparison. Revision methodologies are also inadequate. The Statistics Law establishes that the CBS shall be free of external interference in the conduct of its work. Methodological training is provided by outside experts. There are plans in place to adopt the principles of the System of National Accounts, and the CBS recently released national accounts data for 1996-2003 that are in line with those principles. Methodological, technical, and source data changes are announced simultaneously with the public release of the affected data, but there is advance release to certain users. The 1992 Code of Regulations, applicable to all Kenya's civil servants, governs the behavior of staff involved in the collection, compilation, and dissemination of data. An oath of secrecy is required. In 2009 the IMF reported a significant deterioration of quality in Kenya's national accounts data, attributing this to insufficient budget and staffing at the NBS.

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Code of Good Practices on Transparency in Monetary Policy

LEVEL OF COMPLIANCE: **INSUFFICIENT INFORMATION**

Summary

Although there is no specific, publicly available information directly addressing Kenya's compliance with the International Monetary Fund's (IMF) monetary policy transparency standard, a number of sources address it in parts. The legislative underpinnings of the Central Bank of Kenya's (CBK) monetary policy functions and goals are generally clear and are contained in the provisions of the Central Bank of Kenya Act. The Data Module of the IMF's 2005 Report on the Observance of Standards and Codes for Kenya disclosed several specific problem areas. Insufficiently detailed Central Bank of Kenya accounts source data, inadequate procedures for the assessment of data consistency, and incomplete differentiation between preliminary and revised data all contribute to transparency difficulties. Kenya does not subscribe to the IMF's Special Data Dissemination Standard, but has participated in the less rigorous General Data Dissemination System since 2002.

General Overview

There is, as yet, no formal report by the International Monetary Fund (IMF) or other authoritative agency that specifically addresses monetary policy transparency in Kenya, although the issue is touched upon in a number of publications. The Central Bank of Kenya Act governs the operations of the Central Bank of Kenya (CBK). A 2006 IMF working paper on Kenya's monetary policy by K. Cheng quotes the main provision of the act, providing that "the principle object of the Bank shall be to formulate and implement monetary policy directed to achieving and maintaining stability in the general level of prices" (p. 4). Cheng noted that the CBK's primary monetary instruments are open market operations, reserve requirements, rediscount facilities, and lender-of-last-resort facilities (the latter two not having been used in recent times). Cheng's paper noted, in passing, that "poor data quality, particularly the output data, is a concern.... Specifically, given the large size of the informal sector, national accounts statistics may not capture important activities that are influenced by the monetary policy stance" (p. 20).

In an April 2007 press release, the IMF announced that recent Kenyan governance reforms have been directed toward strengthening institutions and improving transparency, but that more needed to be done. In particular, the Executive Board criticized the reporting of inaccurate information and stressed the need to more forcefully root out corruption. More recently, in the "Statement by the Executive Director, included in the 2009 IMF's Third Review under the Poverty Reduction and Growth Facility Arrangement," Kenya's commitment to improvement in transparency was reflected in the announcement that "in June [of 2008] Kenya won the United Nations' Public Service Award in the category 'Improving Transparency, Accountability, and Responsiveness in the Public Service' for comprehensively introducing performance contracts across all cadres in the public service" (p. 27). The Statistical Issues annex of that report noted that the CBK has not yet fully implemented the Monetary and Financial Statistics Manual (MFSM). It has submitted test data for the eventual adoption of the IMF's Standardized Report Form, but no further progress has been achieved in this regard. Kenya is working with an IMF technical mission to overcome the problems delaying MFSM implementation. The website of the CBK discloses that there have been a number of regulatory changes through 2008, and that the CBK Act and Banking Act have also seen amendment activity. However, there is still no authoritative publicly available assessment as to Kenya's compliance with the monetary policy transparency standard. Kenya is not a subscriber to the IMF's Special Data Dissemination Standard (SDDS), but has been a subscriber to the less prescriptive General Data Dissemination System (GDDS) since October 29, 2002, according to the IMF's SDDS and GDDS websites.

Principle: Clarity of roles, responsibilities and objectives of central banks.

[Insufficient Information]

The publicly available information does not conclusively address Kenya's compliance with this principle. Section 4 of the Central Bank of Kenya Act establishes that the CBK's principle function is the formulation and implementation of monetary policy in such a way as to maintain price stability, foster liquidity and solvency, and set and maintain a stable market-based financial system. To do this, it may employ such instruments as open market operations, reserve requirements, rediscount facilities, and lender-of-last-resort facilities (the latter two not having been used in recent times). Section 4(B)(3) of the CBK Act requires the CBK to make key financial data and information on monetary policy available to the public. The Act further requires that the CBK publish its monthly balance sheet and monetary policy statements. The IMF's 2005 Data Dissemination ROSC asserts that the Policy Analysis and Research Department (PARD), a division of the CBK, is specifically tasked with the responsibility of compiling monetary statistics. The PARD's duties are not specifically addressed by legislation, but are regulated by CBK-originated guidelines.

Principle: Open process for formulating and reporting monetary policy decisions.

[Insufficient Information]

The publicly available information does not directly address Kenya's compliance with this principle. However, all recent IMF reports assert that Kenya is working to improve governance and transparency. The CBK website provides public access to biannual reports of the CBK's Monetary Policy Committee. The CBK has also developed an Integrated Monitoring and Evaluation System (IMES) as a part of Kenya's Economic Recovery Strategy. The IMES is designed to permit the government to evaluate program and policy effectiveness. It considers input, process, and output indicators, as well as indicators of outcomes and impacts. It attempts to accommodate the potential effects of external factors (conflict, weather, the world economy) through the implementation of a national research agenda that will call upon the resources of the academic and external donor communities. Its most important role will be to provide policy feedback. To identify the indicators used by the IMES, stakeholders will be consulted to develop a body of baseline data.

At the time that the IMF's 2005 Strategy Paper was published, a Strategic Plan for Statistics had been endorsed by the parliament, and the IMF judged that it would "ensure that the data required for poverty assessments and public policy evaluation are produced and disseminated regularly and in a timely manner" (p. 68). Improvements in data collection and analysis, as well as dissemination procedures, will fall under the auspices of the Central Bureau of Statistics (CBS). According to the IMF, the IMES framework is to be applied system-wide, allowing "maximum participation of the community, civil society, and all development partners at all levels" (p. 68).

Principle: Public availability of information on monetary policy.

[Insufficient Information]

The publicly available information does not conclusively address Kenya's compliance with this principle. However, the IMF's 2005 Data ROSC reported that data is made available in both print and electronic versions. The CBK website provides access to much monetary policy related information and statistical data, and improvements to the website have improved accessibility to its publications. There appears to be no formal provision for advance-release calendars, altough there are regular annual, monthly, and weekly publications available on the website. The CBK also provides access to monetary policy related legislation. The ROSC stated that Kenya's complete monetary policy dataset is published twice a year. Monetary data is released simultaneously to all interested parties. The CBK website offers public access to its primary methodological guidelines: Statistics Sources and Methods and Guidelines for Compiling Banking Statistics Returns, and offers a link to the IMF''s GDDS website.

The Central Bank of Kenya Act establishes the CBK as the sole official agency responsible for compiling and disseminating Kenya's monetary statistics. Section 4 of the CBK Act mandates that the CBK's primary function is to maintain price stability, liquidity, and solvency of the banking system, and to formulate and implement monetary policies to achieve these ends. In addition, the CBK is responsible for Kenya's foreign exchange policy, the management of foreign exchange reserves, issuing currency, and other functions. Section 4(B)(3) of the CBK Act obligates the CBK to release key financial and monetary policy information to the public and requires the monthly issuance of the CBK's balance sheet and monetary policy statements. According to the ROSC, the PARD handles the compilation tasks, and is regulated by CBK-originated guidelines. The ROSC also notes that the bank provides briefings to the Treasury and publishes its annual Financial Report in the Kenya Gazette.

Principle: Accountability and assurances of integrity by the central bank.

[Insufficient Information]

The publicly available information does not conclusively address Kenya's compliance with this principle. With regard to the integrity of data, however, the IMF's 2005 ROSC disclosed several problem areas. The CBK balance sheet, from which the CBK accounts are compiled, was found to be insufficiently detailed. The CBK did not employ an appropriately detailed trial balance sheet to derive monetary statistics. Whereas the IMF acknowledged that "source data are checked for inter-temporal consistency, and their internal consistency is tested through a system of formal consistency checks" (p. 13), the report noted tha*-t there is no routine assessment of consistency in the corresponding data regarding interbank positions. The ROSC did state that the CBK's statistical work is largely automated but added that the CBK relies solely on administrative sources, that no statistical adjustments or revision studies were done, and that "preliminary and revised data are not clearly identified in CBK's publications" (p. 13).

In the Statement of Corporate Governance, included as a part of the 2006 Annual Report, the CBK asserted that "the Bank is committed to the highest standards of integrity, professionalism, and business ethics" (p. 76). (The 2006 report remains the most recent annual report available on the CBK website). The CBK has instituted an employees' code of ethics and conduct, with which all bank staff must comply. The report states that there are internal controls to ensure the accuracy and completeness of accounting data, and that bank expenditures are subject to comprehensive internal regulation. The CBK attempts to ensure the integrity of its own accounts through performance monitoring of its budget, done internally, and the resulting reports are provided to the CBK board of directors' audit committee.

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Code of Good Practices on Transparency in Fiscal Policy

LEVEL OF COMPLIANCE: INTENT DECLARED

Summary

The International Monetary Fund's (IMF) 2008 Fiscal Transparency Module of the Report on the Observance of Standards and Codes (ROSC) found that Kenya had achieved significant improvement in its transparency practices in recent years, due largely to the passage of a number of key new laws. Nonetheless, the report found that many longstanding deficiencies remain. These problems include insufficient parliamentary oversight, the persistence of a bureaucratic culture that gives preference to traditional practice over legislative compliance. A number of recommendations addressing legal and institutional weaknesses were made by the IMF ROSC team. According to the 2009 IMF Third Poverty Reduction Report, Kenyan authorities have expressed a commitment to continue pursuing the goals embodied in the Strategy to Revitalize Public Management, which will have significant impact on the transparency of the budget process. An organic budget law is being drafted addressing weaknesses in Public Finance Management. Already, the new Public Procurement Oversight Authority has been put in place, governed by the Public Procurement and Disposal Act, which calls for a stronger parliamentary oversight role.

General Overview

The International Monetary Fund (IMF) conducted a Fiscal Transparency module of its Report on the Observance of Standards and Codes (ROSC) for Kenya in 2008, in which it asserted that "Kenya meets some of the requirements of the fiscal transparency code" (p. 1). According to the report, this represents a significant improvement since 2003, and is due in large part to the passage of important new laws, such as the Public Officer Ethics Act, the Anti-Corruption and Economics Crimes Act which sets up the Kenya Anti-Corruption Commission (KACC), the Public Audit Act, the Government Financial Management Act, the Public Procurement and Disposal Act, the Privatization Act, and the Statistics Act. The ROSC stated that these and other "initiatives and practices have helped Kenya comply with some of the requirements of the fiscal transparency code. However, a great deal more is needed to conform with best international practices" (p. 1).

Consequently, the ROSC came up with a number of recommendations. The main recommendations address the following: (1) the building blocks for a Public Finance Management reform should be put in place by revising the Government Financial Management Act and financial regulations, putting budget execution, as well as accounting and internal auditing onto a solid legal basis, create a single Treasury account, clarify the "concept of general government and embody it in the law" (p. 1); track and carefully manage the growth of autonomous agencies and funds; (2) the effectiveness of the external audit function needs to be increased by reducing backlogs and ensuring that the follow-up of audit findings are timely and sustained; and (3) contingent liabilities need to be quantified and policies to mitigate their impact implemented, and a legal and institutional framework for Public Private Partnerships (PPPs) established appropriate capacities to assess risks in PPP arrangements developed..

According to the 2008 Open Budget Index (OBI) of the International Budget Project, Kenya scored 57%, offering "some information to the public in its budget documents during the year." In order to assign its scores, the OBI tracks eight key budget documents and evaluates the content provided therein. Of the eight tracked documents, Kenya is found to produce a Pre-Budget Statement, an Executive's Budget Proposal, the Enacted Budget, some In-Year reports, a Year-End Report, and an Audit Report, and makes all of these documents available to the public. It does not produce a Citizen's Budget or a Mid-Year Review. The OBI found that the budget proposal offered significant information in the Executive's Budget Proposal, allowing citizens to develop a comprehensive understanding of the government's spending and taxing plans for the budget year. However, the failure to produce a Mid-Year Review weakens public accountability, even though the In-Year Reports are fairly detailed. The Year-End Report is described as "incomplete," further weakening the public's ability to assess budget performance. Finally, the Audit Report is not released "in a timely manner" and the Official Secrets Act obstructs public access to the level of detail needed for a full understanding of government performance on specific budget projects, even though there is a Constitutional provision guaranteeing the public's right to government information. There is, however, no explicit freedom-of-information law on the books in Kenya, according to a report for the OBI produced by the Muslims for Human Rights organization (available on the OBI website). Public access to the budget process could be significantly enhanced by expanding public participation in budget hearings. Kenya is not a subscriber to the IMF's Special Data Dissemination Standard (SDDS), but has been a subscriber to the less prescriptive General Data Dissemination System (GDDS) since October 29, 2002, according to the IMF's SDDS and GDDS websites.

Njeru Kirira, a researcher with Global Economic Investments and Financial Consultancy Ltd and Transparency International, reported to the Institute for a Democratic Alternative for South Africa (IDASA) on Kenya's budget management capabilities. Kirira found Kenya's budget transparency and accountability to be impaired by the "archaic" nature of its budget management process and by the inability of the public to access necessary information. Also, according to Kirira, the Constitution and a variety of other legislation provide detailed legal coverage of all fiscal activity, but bureaucratic actions inhibit the realization of the transparency that should otherwise ensue from this legal framework. A 2002 effort to enable greater parliamentary oversight of the budget failed. Even where laws do exist, bureaucratic officials are frequently unaware of their provisions, and thus frequently fail to comply. Inherited bureaucratic practice tends to trump specific legal requirements. The report mentioned specific legal shortcomings, including the lack of a provision requiring that budget information be made public prior to the presentation of the budget proposal to parliament. There are inadequate reporting requirements and too many loopholes with regard to financial management. Legislation does not specifically require the use of a medium-term expenditure framework in the budget. In-Year reports are not produced often enough. There are insufficient controls on extra-budgetary funds and appropriations in kind. Finally, the report found that citizen input into the budget process is not specifically provided for in the law.

The IMF's 2005 "Kenya: Poverty Reduction Strategy Paper" reported that the Kenyan government published an Economic Recovery Strategy that "will guide major reforms to be undertaken over the period 2003 - 2007" (p. 13). In particular, Kenya would focus on the development of a stable, sustainable macroeconomic framework. The specific goals of the strategy would be to keep inflation low, reduce fiscal imbalances and domestic borrowing, and establish a "healthy balance of payments" (p. 13). This would be done by encouraging an increase in domestic savings and investment and by improving accountability in the use of public resources. Another part of the strategy would be to restructure and refocus public spending priorities. Fiscal policy is seen as a key part of this overall strategy, particularly through consolidation in order to reduce domestic debt. It is also hoped that private investment will be encouraged by increasing the availability of credit for the private sector. According to the 2009 IMF Third Poverty Reduction Report, Kenyan authorities have expressed a commitment to continue pursuing the goals embodied in the Strategy to Revitalize Public Management, which will have significant impact on the transparency of the budget process. The IMF report states that an organic budget law is being drafted "will address weaknesses in the legal framework for [Public Finance Management]" (p. 9). A new Public Procurement Oversight Authority has been put in place, governed by the Public Procurement and Disposal Act, which stipulates "transparent and competitive procedures" (p. 23) and which calls for a stronger parliamentary oversight role. Kenyan officials were cited as asserting "public expenditure management reforms remain critical to our goal of promoting the efficient use of public resources and transparency" (p. 30).

Principle: Clarity of roles and responsibilities.

[Intent Declared]

The IMF's 2008 ROSC stated that Kenya displays a number of shortcomings in meeting fiscal transparency standards. For instance, it uses a definition of general government that fails to comport with the principles of the Government Finance Statistics. According to the ROSC, Kenya has traditionally lumped government-owned non-profit institutions together with state-owned enterprises, clouding the distinction between the public and government sectors. On the other hand, "relationships between central government and public nonfinancial and financial corporations are generally clearly defined" (p. 4). The report notes that, "to some extent, public corporations are engaged in quasi-fiscal activities, but they receive no preferential treatment vis-à-vis the private sector" (p. 4). Equally well-defined is the management of state assets. The passage of the Privatization Act in 2005 has established clear principles to guide the privatization process, calling for the creation of a Privatization Commission that will report to Parliament and requiring proceeds of privatization to be paid into the Consolidated Fund. Relations between the government and the Central Bank of Kenya (CBK) are clearly laid out in the CBK Act, which provides the CBK with independence and provides clear limits to its fiscal role. By law, the CBK "acts as banker, adviser, and fiscal agent of the government, and administers domestic debt on behalf of the government" but can provide deficit financing only up to a maximum of 5% of the gross recurrent revenue of the most recently audited appropriations accounts. Such loans are subject to the CBK's interest rate. The ROSC added that "the CBK also issues debt instruments on behalf of the government, but is adequately compensated... through a levy which the government pays on all debt issues" (p. 7).

The ROSC asserted that the Constitution provides a clear distinction of the fiscal roles played by the executive, legislative, and judicial branches. The roles and responsibilities of government agencies regarding financial management are spelled out in the Government Financial Management Act of 2004, which also governs the roles of accounting officers within ministries and government agencies. The 2003 Public Audit Act governs the Controller and Auditor General's oversight role and responsibilities. The different roles played at different levels of the government are clearly defined in law. The tax and spending responsibilities of local authorities are clearly laid out in the Local Government Act. In contrast, budget management is poorly covered within Kenya's legal framework. According to the ROSC, the "legal framework has a very limited coverage of key areas of government financial management, and does not take into account important reforms implemented in recent years" (pp. 9-10). In addition, the ROSC found the Ministry of Finance's (MoF) fiscal management role to be relatively weak, making it difficult for the MoF to enforce regulatory compliance. This problem is the subject of a review currently being undertaken with the assistance of the World Bank. The ROSC further found that "mechanisms for the coordination and management of budgetary and extra-budgetary activities are not adequately defined" (p. 8).

Tax policy is subject to clear, comprehensive legal provisions, according to the ROSC, and there is a mechanism for the filing of tax appeals. Administration of tax policy is the responsibility of the Kenya Revenue Authority (KRA). There are explicit limits to the authority of officials to engage in discretionary interpretation of tax law. Exemptions are expressly spelled out, and the KRA applies them strictly. However, exemptions are "fairly extensive and tax expenditures are not reported" (p. 15). Nonetheless, the ROSC reported that "Tax administration is clearly defined and well coordinated with overall fiscal management" (p. 15). According to the ROSC, the KRA and the MoF work closely together during the preparation and execution of the budget, and there are clearly defined legal rights accorded to taxpayers.

The Public Officer Ethics Act of 2003 creates the legal framework governing ethical conduct, along with provisions of the Corruption and Economic Crimes Act. The provisions of these laws have been codified in a Code of Ethics governing the behavior of public servants. In addition, the ROSC noted that "the Public Officers Ethics Act of 2003 provides for declaration of assets by senior officers as well as all persons holding political or judicial function at both national and local level, and board members and chief executives of state corporations" (p. 17).

According to the 2009 IMF Poverty Reduction Report, Kenyan authorities have expressed a commitment to continue pursuing the goals embodied in its Strategy to Revitalize Public Management, which will have significant impact on the transparency of the budget process. An organic budget law is being drafted that "will address weaknesses in the legal framework for [Public Finance Management]" (p. 9). A new Public Procurement Oversight Authority has been put in place, governed by the Public Procurement and Disposal Act, which stipulates "transparent and competitive procedures" (p. 23) and which calls for a stronger parliamentary oversight role.

Kenyan officials were cited as asserting "public expenditure management reforms remain critical to our goal of promoting the efficient use of public resources and transparency" (p. 30).

Principle: Open budget processes

[No Compliance]

According to the IMF's 2008 ROSC, Kenya's "annual budget process is generally open" (p. 18) and has been strengthened during the recent round of reforms to the medium term expenditure framework. A peculiarity of the system, which follows the Westminster tradition, is that the budget "is not formally adopted until after the start of the fiscal year" because parliamentary deliberations begin very close to the start of that year. The interim period, which can extend to as late as November, is constitutionally covered by a process called the "vote on account" that is held within a few days of the submission of the budget. This vote can authorize spending that could comprise as much as half of the submitted budget. The ROSC noted that the development and recurring budgets are coordinated through the operations of the medium term expenditure framework. The MoF has primary responsibility to prepare the two budgets, while sector planning and monitoring falls to the Ministry of Planning. The ROSC found Kenya's budget presentation process to be "partly consistent with international standards" (p. 20), but noted that "program classification has not yet been developed" (p. 20). The budget includes a discussion of fiscal policy objectives over the medium term, but does not include an analysis of fiscal sustainability, nor does it include estimates of new initiatives and ongoing costs of government policy, even though this information is available in reports by sector working groups. The ROSC also found only "limited discussion... on the sensitivity of budget estimates to changes in economic variables and of fiscal risks" (p. 21).

Control of budget execution is inhibited, according to the ROSC, by the fact that "basic accounting and internal control procedures are frequently modified and are not legally enforceable" (p. 22). The ROSC found that the general accounting methods are satisfactory, they are not applied equally across the various ministries. The ROSC attributes this situation to the lack of a clear legal framework and weak ministerial capacity. Accounting records may be poorly maintained, entries may be double-posted, and expenditures may be omitted from the accounts, in addition to other common methodological issues. An additional problem noted by the ROSC is the failure to follow the principles of a single Treasury Account, even though the legal framework is in place. On the other hand, the recently implemented cash-flow planning system is "functioning well" (p. 25) and management of public debt is transparent. However, the ROSC found that the government's internal audit system is compromised by a weak and fragmented legal framework, but noted that the system is still evolving. At present, internal audit coverage and follow-up are deficient. Problems also exist with the implementation of the new public procurement law, due largely to the fact that the Public Procurement Oversight Authority has yet to be created. In-year reporting "remains inefficient and fragmented" (p. 30), but is in the process of being replaced. At present, there are important gaps in the coverage of the general and central government. The ROSC observed that Kenya's audited final accounts are released later than required by law, which calls for release within 6 months of the fiscal year's end. Finally, the ROSC noted that "the objectives and expected results from government activities are defined in broad terms in sector working group papers, but not formalized in the budget" (p. 32).

According to the 2008 OBI, Kenya scored 57%, offering "some information to the public in its budget documents during the year." In order to assign its scores, the OBI tracks eight key budget documents and evaluates the content provided therein. Of the eight tracked documents, Kenya is found to produce a Pre-Budget Statement, an Executive's Budget Proposal, the Enacted Budget, some In-Year reports, a Year-End Report, and an Audit Report, and makes all of these documents available to the public. It does not produce a Citizen's Budget or a Mid-Year Review. The OBI found that the budget proposal offered significant information in the Executive's Budget Proposal, allowing citizens to develop a comprehensive understanding of the government's spending and taxing plans for the budget year. However, the failure to produce a Mid-Year Review weakens public accountability, even though the In-Year Reports are fairly detailed. The Year-End Report is described as "incomplete," further weakening the public's ability to assess budget performance. Finally, the Audit Report is not released "in a timely manner" and the Official Secrets Act obstructs public access to the level of detail needed for a full understanding of government performance on specific budget projects, even though there is a Constitutional provision guaranteeing the public's right to government information. There is, however, no explicit freedom-of-information law on the books in Kenya, according to a report for the OBI produced by the Muslims for Human Rights organization (available on the OBI website). Public access to the budget process could be significantly enhanced by expanding public participation in budget hearings.

Principle: Public availability of information.

[No Compliance]

The IMF's 2008 ROSC found that Kenya makes fairly comprehensive fiscal information available to the public, but noted that there was a time lag involved. The report noted that local authorities have begun making efforts to increase public involvement in its budget hearings. The ROSC found that budget documents provide comprehensive coverage of central government fiscal activities, "but provide no data on general government" (p. 33). The budget document provides only aggregate data on defense spending, and there is no reporting on state-owned defense industries. Data covered in budget documents is limited to the budget year and two years going forward. There is reporting on the guaranteed debt but none covering other contingent liabilities, and there are no statements on tax expenditures in the budget documents. According to the ROSC "information on gross government debt and financial assets is published regularly" (p. 35). The report added that there are no advance release calendars, and Kenya has not made formal commitment to publish its fiscal data on a more regular schedule.

In its 2005 ROSC Data Module, the IMF reported that compiling and disseminating fiscal statistics is handled by three distinct government agencies: the MoF, Ministry of Planning and National Development (MPND), and the Central Bank of Kenya. The activities of these agencies are not, however, legislatively assigned, but are allocated by Presidential Decree. The MoF handles budget execution and external debt data, while the CBK compiles data on domestic financing and debt. The MPND compiles central and local budgetary statistics and public debt data. While the IMF ROSC noted that these agencies, in practice, work collaboratively, this is not legislatively mandated. Kenya is not a subscriber to the IMF's SDDS but has been a participant in the less prescriptive GDDS since October 29, 2002.

According to the 2008 OBI, Kenya scored 57%, offering "some information to the public in its budget documents during the year." Kenya produces a Pre-Budget Statement, an Executive's Budget Proposal, the Enacted Budget, some In-Year reports, a Year-End Report, and an Audit Report, and makes all of these documents available to the public. It does not produce a Citizen's Budget or a Mid-Year Review. The OBI found that the budget proposal offered significant information in the Executive's Budget Proposal, allowing citizens to develop a comprehensive understanding of the government's spending and taxing plans for the budget year. However, the failure to produce a Mid-Year Review weakens public accountability, even though the In-Year Reports are fairly detailed. The Year-End Report is described as "incomplete," further weakening the public's ability to assess budget performance. Finally, the Audit Report is not released "in a timely manner" and the Official Secrets Act obstructs public access to the level of detail needed for a full understanding of government performance on specific budget projects, even though there is a Constitutional provision guaranteeing the public's right to government information. There is, however, no explicit freedom-of-information law on the books in Kenya, according to a report for the OBI produced by the Muslims for Human Rights organization (available on the OBI website). Public access to the budget process could be significantly enhanced by expanding public participation in budget hearings.

Principle: Independent assurances of integrity.

[No Compliance]

In its 2008 ROSC on Fiscal Transparency, the IMF reported that Kenya's budget data remain unreliable, although it added that there have been significant improvements in the estimates of revenues in recent years. Working group reports which address the revision of data are published on the MoF website. Neither the budget nor the final accounts documents include a statement of the accounting policy followed, and there is no legally recognized authority on setting and enforcing accounting standards. The rules for cash-based transaction recording are contained in the 1989 Government Financial Rules and Procedures, but there is no uniformity of application with regard to these rules. Accounts reconciliation, on the other hand, was found to be effective, but the ROSC noted that "there are delays in clearance of suspense balances booked in accounts," (p. 37). Independent oversight is provided by the Kenyan National Audit Office (KENAO), which is independent and governed by provisions of the Kenyan Constitution. The Kenya National Audit Commission derives its charter from the Public Audit Act of 2003 and is responsible for approving the KENAO budget, sets compensation and appointment policy for KENAO staff, and carries out other responsibilities related to the KENAO's functioning. KENAO has statutory audit authority across all of the general government. Audit reports have improved in timeliness, but delays occur at the level of the MoF and the National Assembly, which are required to provide scrutiny of the documents. The ROSC reported that a provision in the Public Audit Act requiring that state-owned enterprises and local governments pay for their statutory audits "may create a conflict of interests" (p. 38). The KENAO's audit capacity was also found to be inadequate. Follow-up on external audit reports is subject to delay. According to the ROSC, both KENAO and the Parliament are working to improve the dissemination of audit reports and procedures to the public, primarily through the KENAO website. The ROSC also reported that Kenya encourages the external scrutiny of macroeconomic assumptions. Finally, the ROSC asserted that the Statistics Act of 2006 replaced the former Central Bureau of Statistics with the Kenya National Bureau of Statistics and granted it legal assurances of autonomy. Kenya is not a subscriber to the IMF's SDDS but has been a subscriber to the less prescriptive GDDS since October 29, 2002, according to the IMF's SDDS and GDDS websites.

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  http://openbudgetindex.org/files/ImpactMUHURI1.pdf

Relevant Organizations

- Central Bank of Kenya (CBK)
  http://www.centralbank.go.ke/
- Kenya Anti-Corruption Authority
- Kenya Revenue Authority (KRA)
- Ministry of Finance (MoF)
  http://www.treasury.go.ke/
- Ministry of Planning and National Development (MPND)
  http://www.planning.go.ke/
- National Bureau of Statistics (NBS)
  http://www.knbs.go.ke/
- Office of the Controller and Auditor General
  http://www.auditor-general.go.ke/
- Parliament of Kenya
  http://www.parliament.go.ke/

Relevant Legislation/Regulation

- Constitution of Kenya, 1992 (as amended in 1998)
  http://www.kenyalaw.com/theconstitution.htm
- Government Financial Management Act, 2004
- Public Audit Act, 2003
- Local Governments Act, 1986 (revised 1998)
- Statistics Act, 2006

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International Financial Reporting Standards

LEVEL OF COMPLIANCE: INTENT DECLARED

Summary

An assessment of the accounting and auditing environment in Kenya was conducted by the World Bank in 2001. The World Bank noted that Kenya had adopted International Accounting Standards (IASs), later renamed International Financial Reporting Standards (IFRSs) in 1998, thereby "closing the gap" between national and international accounting standards. According to the 2005 and 2006 self-assessments prepared by the Institute of Certified Public Accountants of Kenya (ICPAK) for the International Federation of Accountants (IFAC), international standards are adopted as drafted without any modifications, and the text of laws and regulations simply refers to IFRSs. As of 2006, all IFRSs in effect were adopted, states the 2006 ICPAK self-assessment. However, there is insufficient information publicly available regarding the adoption of subsequent amendments to IFRSs. The 2006 United Nations Conference on Trade and Development (UNCTAD) report states that IFRSs are to be applied by all public interest entities and Small and Medium-size Enterprises. Although in practice companies use the standards adopted by the ICPAK, it is not legally authorized to issue accounting and auditing standards. As far as enforcement of legal requirements is concerned, the UNCTAD pointed out that in practice the levels of non-compliance with IFRSs are quite high. In addition, UNCTAD reported that some industry specific regulation in Kenya and IFRS-based requirements are not compatible and thus universal adherence to IFRSs has not been achieved. In response, the ICPAK stated in a 2008 Action Plan prepared for the IFAC that it is in the process of reviewing the financial reporting environment to identify existing and potential hindrances to the adoption and implementation of IFRSs.

General Overview

In November 2001, the World Bank conducted a review of accounting and auditing practices in Kenya based on the information provided by the country's authorities. This assessment evaluated the weaknesses and strengths of accounting and auditing requirements and reviewed the reporting requirements against actual practices. The World Bank's Report on the Observance of Standards and Codes (ROSC) contained policy recommendations to improve the reporting framework in Kenya. According to the assessment, Kenya adopted International Accounting Standards (IASs), later renamed International Financial Reporting Standards (IFRSs), as Kenyan standards in 1998. The standards are applicable for all companies regardless of their size and field of activity. The 2001 ROSC reported that the "standards gap" had been closed; though the World Bank found that the compliance with reporting requirements was only partial, due to inadequacies in the enforcement mechanism, legal and institutional framework, and education in the field of accounting.

According to a 2006 Institute of Certified Public Accountants of Kenya (ICPAK) self-assessment prepared for the International Federation of Accountants (IFAC), "IFRSs are adopted as drafted without amendments except to rename the IFRS as a national standard and / or to translate it into another language" (p. 75). However, some standards are not applicable in Kenya and therefore have not been adopted. Since the 2001World Bank assessment, the International Accounting Standards Board (IASB) revised IASs and issued new IFRSs for areas where no guidance previously existed. Although the ICPAK in its 2006 self-assessment states that all international standards in effect as of the date of the assessment are adopted, no further information as to the adoption of all the latest versions of IFRSs is publicly available.

The legal framework for accounting requirements in Kenya is largely based on the Companies Act which, according to the 2006 United Nations Conference on Trade and Development (UNCTAD) report, prescribes the format of financial reports and requires all limited liability companies to keep books of account. Some of the requirements of the Companies Act, the report notes, do contradict IFRSs. The 2005 ICPAK self-assessment reported that the Accountants Act supplements the Companies Act and specifies rules for private sector accounting standards. The World Bank observed that neither act accounted for a legal obligation to comply with the accounting standards in use and recommended the amendment of the two acts to strengthen the financial reporting regime in Kenya. According to the same assessment, the Accountants Act was amended in 2002. It is unclear, however, if the World Bank's recommendations have been incorporated into the revised Accountants Act.

According to the description of the Kenyan regulatory framework as detailed in the 2005 ICPAK self-assessment, banks are regulated by the Central Bank of Kenya (CBK). The CBK does not set any additional accounting or auditing requirements. Compliance with accounting standards is enforced by the ICPAK. The Banking Act and the Central Bank Act specify the minimum disclosure requirements. The securities market is regulated by the Capital Markets Authority (CMA), which monitors compliance with IASs for listed companies. Noncompliance could lead to imposition of fines or suspension from the Nairobi Stock Exchange. The CMA does not play a role in the setting of accounting standards. The 2001 World Bank assessment noted that enforcement of accounting standards was not as rigorous and that the stock exchange did not have any mechanism for improvement in quality of financial reporting by listed companies. The subsequent 2006 UNCTAD report highlights that both the CMA and the CBK require application of IFRSs.

The insurance sector is regulated by the Commissioner of Insurance that draws its power from the Insurance Act Chapter 487. The UNCTAD report notes that "in the case of the insurance sector in Kenya, while the Insurance Act requires preparation and audit of accounts, the Act does not specify the basis of preparing these accounts" (p. 6). With the adoption of IFRS 4 on insurance contracts, the report further notes, it became apparent that the provisions of the Insurance Act contradict the requirements of IFRS 4. After extensive deliberations, the ICPAK and the Commissioner of Insurance decided that insurance companies will prepare financial statements in accordance with IFRS 4, and in addition submit to the Commissioner the documentation required by the Act. This situation, according to the UNCTAD, "poses a burden on insurance companies in Kenya" (p. 6). The 2006 UNCTAD report cited other regulations regarding financial reporting including legislation pertaining to retirement benefit schemes, cooperative societies and local authorities, and according to the UNCTAD report "in some cases the provisions of these laws hinder the implementation of IFRSs" (p 6). Realizing that inconsistent legal requirements hinder the full application of IFRSs, the ICPAK is working with the regulators to require application of IFRSs across all industries. In a 2008 Action Plan prepared for the IFAC, the ICPAK states that it is in the process of reviewing the financial reporting environment to identify existing and potential hindrances to the adoption and implementation of IFRSs. As far as enforcement of legal requirements is concerned, in line with the conclusions of the World Bank in 2001, the 2006 UNCTAD report pointed out that in practice the levels of non-compliance are quite high.

The ICPAK, which is listed as a member on the IFAC website, is the accounting and auditing standard-setting body in Kenya. It was established under the Accountants Act, Chapter 531 along with the establishment of the Registration of Accountants Board (RAB) and the Kenya Accountants and Secretaries National Examinations Board (KASNEB). The KASNEB conducts examinations for prospective accountancy professionals, while the RAB is responsible for registration of successful candidates. These candidates can then be registered as ICPAK members. The World Bank noted that the process involving three different bodies leads to coordination problems.

Principle: IFRS 1: First-time Adoption of International Financial Reporting Standards (revised 2009)

[Insufficient Information]

According to the 2006 ICPAK self-assessment, this standard, in effect as of September 2005, has been adopted in Kenya. However, the IASB subsequently revised IASs and issued new IFRSs for the areas where no guidance previously existed. There is insufficient information publicly available regarding adoption of the new and revised standards in Kenya.

Principle: IFRS 2: Share-based Payment (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IFRS 3: Business Combinations (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IFRS 4: Insurance Contracts (effective 2006)

[Insufficient Information]

See Principle 1.

Principle: IFRS 5: Non-current Assets Held for Sale and Discontinued Operations (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IFRS 6: Exploration for and Evaluation of Mineral Resources (effective 2006)

[Insufficient Information]

See Principle 1.

Principle: IFRS 7: Financial Instruments: Disclosures (effective 2007)

[Insufficient Information]

See Principle 1.

Principle: IFRS 8: Operating Segments (effective 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 1: Presentation of Financial Statements (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 2: Inventories (effective 2005)

[Insufficient Information]

See Principle 1.

Principle: IAS 7: Cash Flow Statements (effective 1994)

[Enacted]

According to the 2001 World Bank assessment, the ICPAK adopted IASs in 1998. IAS 7 was last revised in 1992, prior to its adoption by the Kenyan authorities.

Principle: IAS 8: Accounting Policies, Changes in Accounting Estimates and Errors (effective 2005)

[Insufficient Information]

See Principle 1.

Principle: IAS 10: Events after the Reporting Period (effective 2005)

[Insufficient Information]

See Principle 1.

Principle: IAS 11: Construction Contracts (effective 1995)

[Enacted]

According to the 2001 World Bank assessment, the ICPAK adopted IASs in 1998. IAS 11 was last revised in 1993, prior to its adoption by the Kenyan authorities.

Principle: IAS 12: Income Taxes (effective 2001)

[Insufficient Information]

See Principle 1.

Principle: IAS 16: Property, Plant and Equipment (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 17: Leases (effective 2005)

[Insufficient Information]

See Principle 1.

Principle: IAS 18: Revenue (effective 1995)

[Enacted]

According to the 2001 World Bank assessment, the ICPAK adopted IASs in 1998. IAS 18 was last revised in 1993, prior to its adoption by the Kenyan authorities. In the 2001 assessment, the World Bank noted that Kenyan companies were not fully compliant with the requirements of this standard.

Principle: IAS 19: Employee Benefits (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 20: Accounting for Government Grants and Disclosure of Government Assistance (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 21: The Effects of Changes in Foreign Exchange Rates (effective 2005)

[Insufficient Information]

See Principle 1.

Principle: IAS 23: Borrowing Costs (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 24: Related Party Disclosures (effective 2005)

[Insufficient Information]

See Principle 1.

Principle: IAS 26: Accounting and Reporting by Retirement Benefit Plans (effective 1998)

[Enacted]

According to the 2001 World Bank assessment, the ICPAK adopted IASs in 1998. IAS 26 was last revised in 1987, prior to its adoption by the Kenyan authorities.

Principle: IAS 27: Consolidated and Separate Financial Statements (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 28: Investments in Associates (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 29: Financial Reporting in Hyperinflationary Economies (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 31: Interests in Joint Ventures (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 32: Financial Instruments: Disclosure and Presentation (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 33: Earnings per Share (effective 2005)

[Insufficient Information]

See Principle 1.

Principle: IAS 34: Interim Financial Reporting (effective 1999)

[Insufficient Information]

See Principle 1.

Principle: IAS 36: Impairment of Assets (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 37: Provisions, Contingent Liabilities and Contingent Assets (effective 1999)

[Insufficient Information]

See Principle 1.

Principle: IAS 38: Intangible Assets (effective 2004)

[Insufficient Information]

See Principle 1.

Principle: IAS 39: Financial Instruments: Recognition and Measurement (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 40: Investment Property (revised 2009)

[Insufficient Information]

See Principle 1.

Principle: IAS 41: Agriculture (revised 2009)

[Insufficient Information]

See Principle 1.

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27, 2009. (ICPAK 2008)
http://www.ifac.org/ComplianceAssessment/part_3/KEN1.pdf

- United Nations Conference on Trade and Development, "Review of Practical Implementation Issues of International Financial Reporting Standards - Case study in Kenya," Trade and Development Board, Investment, Enterprise and Development Commission, Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting, Twenty-third session, Geneva, 10-12 October 2006. Available from United Nations Conference on Trade and Development website. Accessed on March 27, 2009. (UNCTAD 2006)
http://www.unctad.org/en/docs/c2isard33a5_en.pdf

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http://www.worldbank.org/ifa/kenyarosc.pdf

Relevant Organizations

- Capital Markets Authority (CMA)
http://www.cma.or.ke/

- Central Bank of Kenya (CBK)
http://www.centralbank.go.ke/

- Eastern Central and Southern African Federation of Accountants (ECSAFA)
http://www.accaglobal.com/ecsafa/

- Institute of Certified Public Accountants of Kenya (ICPAK)
http://www.icpak.com

- Insurance Commission (IC)
http://www.treasury.go.ke/department.php?deptID=11

- Kenya Accountants and Secretaries National Board (KASNEB)
http://www.kasneb.or.ke/

- Ministry of Finance (MoF)
http://www.finance.go.ke/

- Nairobi Stock Exchange (NSE)
http://www.nse.co.ke/

- Regulatory Advisory Board (RAB)

Relevant Legislation/Regulation

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http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

- Accountants Act, Cap. 531, 1977
http://www.kenyalaw.org/kenyalaw/klr_app/view_cap.php?Cap...

- Accountants Regulations, 2004
http://www.kenyalaw.org/kenyalaw/klr_app/view_content.php...

- Accountants (Additional Functions of the Institute) Regulations, 1984
http://www.kenyalaw.org/kenyalaw/klr_app/frames.php

- Finance Bill, 2005
http://www.treasury.go.ke/downloads/Finance%20Bill%202005...

- Insurance Act No. 363, 1986
http://www.lexadin.nl/wlg/legis/nofr/oeur/lxweken.htm

- NSE Rules and Regulations
http://www.nse.co.ke/newsite/inner.asp?cat=rules

- Capital Markets (Securities) (Public Offers, Listing And Disclosures) Regulations, 2002
http://www.cma.or.ke/index.php?option=com_docman&task=doc...

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International Standards on Auditing

LEVEL OF COMPLIANCE: INTENT DECLARED

Summary

According to an assessment of the accounting and auditing environment in Kenya conducted by the World Bank in 2001, the country adopted International Standards on Auditing (ISAs) in 1998, thereby "closing the gap" between national and international auditing standards. In a 2006 self-assessment prepared for the International Federation of Accountants, the Institute of Certified Public Accountants of Kenya (ICPAK), which sets auditing standards in Kenya, states that ISAs are adopted in their entirety, and the new or revised ISAs issued by the International Auditing Assurances Board are applicable in Kenya immediately upon their effective date. Despite this statement, there is no indication in the self-assessment that all of the subsequent revisions to ISAs have been incorporated into Kenyan requirements. However, the ICPAK reported in a 2008 Action Plan that the ICPAK technical team would continue to support ongoing adoption of the new standards. As far as the enforcement of the auditing requirements is concerned, the World Bank in its 2001 assessment noted that Kenya was only partially compliant with the international requirements because of weak enforcement mechanisms and inadequate resources. Other weaknesses identified included the absence of guidance on application of ISAs, inadequacies in the legal and institutional framework, and lack of professional training and education. The World Bank recommended amending the main acts governing accounting and auditing practices and simplifying reporting requirements for Small and Medium-size Enterprises (SMEs). In 2006, the United Nations Conference on Trade and Development (UNCTAD) also concluded that in practice the levels of non-compliance with ISAs are quite high in Kenya. The UNCTAD pointed out that in most cases only larger companies are audited, while SMEs audits are usually conducted either for tax purposes or when seeking credit.

General Overview

In November 2001, the World Bank conducted a review of accounting and auditing practices in Kenya based on the information provided by the country's authorities. This assessment evaluated the weaknesses and strengths of accounting and auditing requirements and reviewed the reporting requirements against actual practices. The World Bank's Report on the Observance of Standards and Codes (ROSC) was published in November 2001 and contained suggested policy recommendations to improve the financial reporting framework in Kenya. According to the assessment, Kenya adopted the International Standards on Auditing (ISAs) in 1998 as Kenyan standards effective for periods commencing on or after December 1999. In this regard, the Institute of Certified Public Accountants of Kenya (ICPAK) in a 2006 self-assessment prepared for the International Federation of Accountants (IFAC) reiterated that the ICPAK's policy is to adopt "International Standards on Auditing as they are issued by the International Auditing Assurances Board (IAASB) without any change or modification. Any new standards issued by the IAASB are adopted on the effective date" (pp. 49-50). Despite this statement, there is no indication in the self-assessment that all of the subsequent revisions to ISAs have been incorporated into Kenyan requirements. Furthermore, the ICPAK reported in a 2008 Action Plan that the ICPAK technical team would continue to inform its members about ISAs in use and support ongoing adoption of the new standards.

The World Bank's ROSC pointed out that, "however, compliance with the requirements of [International Accounting Standards] IASs and ISAs is partial, due to enforcement mechanisms that continue to evolve and inadequate resources" (cover page). The report further elaborated on other significant reasons for Kenya's lack of compliance, which included inadequacies in the legal framework, absence of implementation guidelines for application of ISAs, and lack of professional skills and training. The World Bank explained that auditors were unable to ensure compliance with ISAs. It noted that while quality of auditing services seemed better at large firms, this was not always the case. The subsequent 2006 United Nations Conference on Trade and Development

(UNCTAD) report concurred with these findings pointing out that "after seven years since the adoption of IFRSs and ISAs in Kenya, compliance levels remain quite low among companies in Kenya" (p. 18).

The legal framework for financial reporting and auditing requirements in Kenya is largely based on the Companies Act, which is supplemented by the Accountant's Act. According to the 2006 ICPAK self-assessment, under the Companies Act, listed and private companies are required to have their financial statements audited. Under the Accountant's Act, the ICPAK is empowered "to issue regulations and standards for use in auditing financial statements" (p. 49). The 2006 UNCTAD report suggested some statutory incongruence by pointing out that the Companies Act "does not reflect the requirements set out in the Accountants Act" nor does it "recognize the Institute's authority to oversee and prescribe the financial reporting framework to be adhered to by companies in preparing financial statements" (p. 5). The 2006 UNCTAD report did note however that "with respect to audits, the [Companies] Act requires companies to appoint auditors who must be members of the Institute and who meet the criteria for an auditor as laid out in the Accountants Act" (p. 5).

According to the description of the Kenyan regulatory framework as detailed in the 2005 ICPAK self-assessment, banks are regulated by the Central Bank of Kenya (CBK). The CBK does not set any additional accounting or auditing requirements. The Banking Act and the Central Bank Act specify the minimum disclosure requirements. The securities market is regulated by the Capital Markets Authority (CMA) which monitors compliance with IASs and ISAs for listed companies. Under the Capital Markets Act and the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations of 2002, the ICPAK self-assessment of 2005 pointed out, "listed entities must prepare interim reports, have an Audit Committee and comply with rules on corporate governance which require their finance and accounting departments to be headed by a member of the ICPAK." The CMA does not play a role in the setting of auditing standards. Non-compliance with financial reporting, accounting, and auditing standards could lead to imposition of fines or suspension from the Nairobi Stock Exchange. The World Bank in its 2001 assessment noted that enforcement of accounting standards was not as rigorous and that the stock exchange did not have any mechanism for improvement in quality of financial reporting by listed companies. The insurance sector is regulated by the Commissioner of Insurance that draws its power from the Insurance Act Chapter 487. According to the 2005 ICPAK self-assessment, the Commissioner of Insurance "sets out a mandatory minimum disclosure as well as classification and valuation criteria which is applied along with the requirements of International Accounting Standards and International Standards on Auditing." The self-assessment further notes that the Commissioner of Insurance routinely reviews published accounts for compliance with mandatory requirements.

The ICPAK, which is listed as a member on the IFAC website, is the accounting and auditing standard-setting body in Kenya. It was established under the Accountants Act, Chapter 531. According to the ICPAK 2006 self-assessment, ICPAK has adopted the IFAC Code of Ethics and its functions include promoting "standards of professional competence and practice amongst members of the Institute" (p. 56). Furthermore, the self-assessment notes that the ICPAK has issued a Guide to Professional Ethics, which sets out guidelines for issues of ethical importance. However, per the World Bank 2001 assessment, there was no mechanism to ensure compliance with the ethical standards.

Principle: ISA 200 Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 200 effective as of September 30, 2005 has been adopted in Kenya. Subsequent amendments to ISA 200 introduced as results of issuance of ISA 700 (Revised) have also been adopted, the self-assessment notes.

Principle: ISA 210 Agreeing the Terms of Audit Engagements (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 210 effective as of September 30, 2005 has been adopted in Kenya,. Subsequent amendments to ISA 200 introduced as results of issuance of ISA 700 (Revised) have also been adopted, the self-assessment notes.

Principle: ISA 220 Quality Control for an Audit of Financial Statements (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 220 (Revised) has been adopted in Kenya effective for periods beginning on or after June 15, 2005.

Principle: ISA 230 Audit Documentation (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 230 (Revised) was adopted in Kenya effective for periods beginning on or after June 15, 2006.

Principle: ISA 240 The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 240 in effect as of September 30, 2005 has been adopted in Kenya effective for periods beginning on or after December 15, 2004.

Principle: ISA 250 Consideration of Laws and Regulations in an Audit of Financial Statements (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 250 effective as of September 30, 2005 has been adopted in Kenya,.

Principle: ISA 260 Communications of Audit Matters with Those Charged With Governance (effective 2009)

[No Compliance]

The 2006 ICPAK self-assessment states that ISA 260 has been adopted in Kenya, effective as of December 31, 2000. ISA 260 was subsequently revised and there is no indication in the ICPAK self-assessment that the revisions have been incorporated into Kenyan requirements, except for ICPAK's statement that they adopt ISAs in their entirety.

Principle: ISA 300 Planning an Audit of Financial Statements (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 300 has been adopted in Kenya effective for periods beginning on or after December 15, 2004.

Principle: ISA 315 Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 315 has been adopted in Kenya effective for periods beginning on or after December 15, 2004.

Principle: ISA 320 Materiality in Planning and Performing an Audit (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 320 in effect as of September 30, 2005 has been adopted in Kenya,.

Principle: ISA 330 The Auditor's Procedures in Response to Assessed Risks (effective 2009)

[No Compliance]

The 2006 ICPAK self-assessment states that ISA 330 has been adopted in Kenya, effective as of December 15, 2004. ISA 330 was subsequently revised and there is no indication in the ICPAK self-assessment that the revisions have been incorporated into Kenyan requirements, except for ICPAK's statement that they adopt ISAs in their entirety.

Principle: ISA 402 Audit Considerations Relating to an Entity Using a Service Organization (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 402 in effect as of September 30, 2005 has been adopted in Kenya.

Principle: ISA 500 Audit Evidence (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 500 has been adopted in Kenya effective for periods beginning on or after December 15, 2004.

Principle: ISA 501 Audit Evidence—Specific Considerations for Selected Items (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 501 in effect as of September 30, 2005 has been adopted in Kenya.

Principle: ISA 505 External Confirmations (effective 2009)

[No Compliance]

The 2006 ICPAK self-assessment states that ISA 505 has been adopted in Kenya, effective as of December 31, 2001. ISA 505 was subsequently revised and there is no indication in the ICPAK self-assessment that the revisions have been incorporated into Kenyan requirements, except for ICPAK's statement that they adopt ISAs in their entirety.

Principle: ISA 510 Initial Audit Engagements—Opening Balances (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 510 in effect as of September 30, 2005 has been adopted in Kenya.

Principle: ISA 520 Analytical Procedures (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 520 in effect as of September 30, 2005 has been adopted in Kenya.

Principle: ISA 530 Audit Sampling (effective 2009)

[No Compliance]

The 2006 ICPAK self-assessment states that ISA 530 has been adopted in Kenya, effective as of July 1, 1999. ISA 530 was subsequently revised and there is no indication in the ICPAK self-assessment that the revisions have been incorporated into Kenyan requirements, except for ICPAK's statement that they adopt ISA's in their entirety.

Principle: ISA 540 Audit of Accounting Estimates (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 540 in effect as of September 30, 2005 has been adopted in Kenya.

Principle: ISA 545 Auditing Fair Value Measurements and Disclosures (effective 2004, superseded by ISA 540 in December 2009)

[No Compliance]

The 2006 ICPAK self-assessment states that ISA 545 has been adopted in Kenya, effective for periods commencing on or after December 31, 2003. ISA 545 was subsequently revised and there is no indication in the ICPAK self-assessment that the revisions have been incorporated into Kenyan requirements, except for ICPAK's statement that they adopt ISA's in their entirety.

Principle: ISA 550 Related Parties (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 550 in effect as of September 30, 2005 has been adopted in Kenya.

Principle: ISA 560 Subsequent Events (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 560 has been adopted in Kenya. Subsequent amendments to ISA 200 introduced as results of issuance of ISA 700 (Revised) have also been adopted with the effective date of December 31, 2006, the self-assessment notes.

Principle: ISA 570 Going Concern (effective 2009)

[No Compliance]

The 2006 ICPAK self-assessment states that ISA 570 has been adopted in Kenya, effective as of December 31, 2000. ISA 570 was subsequently revised and there is no indication in the ICPAK self-assessment that the revisions have been incorporated into Kenyan requirements, except for ICPAK's statement that they adopt ISAs in their entirety.

Principle: ISA 580 Written Representations (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 580 in effect as of September 30, 2005 has been adopted in Kenya.

Principle: ISA 600 Special Considerations—Audits of Group Financial Statements (Including the Work of Component Auditors) (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 600 in effect as of September 30, 2005 has been adopted in Kenya.

Principle: ISA 610 Using the Work of Internal Auditors (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 610 has been adopted in Kenya, effective as of September 30, 2005.

Principle: ISA 620 Using the Work of an Auditor's Expert (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 620 in effect as of September 30, 2005 has been adopted in Kenya.

Principle: ISA 700 Forming an Opinion and Reporting on Financial Statements (effective 2009)

[No Compliance]

The 2006 ICPAK self-assessment states that ISA 700 in effect as of September 30, 2005 has been adopted in Kenya, effective as of September 30, 2002. ISA 700 was subsequently revised and there is no indication in the ICPAK self-assessment that the revisions have been incorporated into Kenyan requirements, except for ICPAK's statement that they adopt ISA's in their entirety.

Principle: ISA 705 Modifications to the Opinion in the Independent Auditor's Report (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 701 has been adopted in Kenya effective for periods beginning on or after June 15, 2006.

Principle: ISA 710 Comparative Information—Corresponding Figures and Comparative Financial Statements (effective 2009)

[No Compliance]

The 2006 ICPAK self-assessment states that ISA 710 has been adopted in Kenya, effective as of July 1, 1997. ISA 710 was subsequently revised and there is no indication in the ICPAK self-assessment that the revisions have been incorporated into Kenyan requirements, except for ICPAK's statement that they adopt ISA's in their entirety.

Principle: ISA 720 The Auditor's Responsibilities Relating to Other Information in Documents Containing Audited Financial Statements (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 720 in effect as of September 30, 2005 has been adopted in Kenya.

Principle: ISA 800 Special Considerations—Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks (effective 2009)

[Enacted]

The 2006 ICPAK self-assessment states that ISA 800 has been adopted in Kenya effective for periods beginning on or after June 15, 2006.

Sources of Assessment

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  http://www.finance.go.ke/
- Nairobi Stock Exchange (NSE)
  http://www.nse.co.ke/
- Regulatory Advisory Board (RAB)

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Methodology Note

For a more thorough discussion of our methodology, please visit our website. Below you find an explanation of qualifying criteria for information used in eStandardsForum's standard reports as well as a definition of the Levels of Compliance.

Sources

Sources used in this report are information that is objective and freely available to the public that pertain to a country's compliance with the requirements of any given standard. The defining characteristics of eStandardsForum's sources are public availability and objectivity. For example, third-party assessments of a country will take precedence over selfassessments. Nevertheless, in the absence of third-party assessments, self-assessments form an important source of information.

Levels of Compliance

The compliance categories assess information on two levels. On the first level, it measures the public availability of information on a country's compliance with the 12 Key Standards. If the level of information is unsatisfactory, a rating of "Insufficient Information" is assigned. If the level of information is deemed sufficient, a rating ranging from "No Compliance" to "Full Compliance" is assigned, depending on how well the publicly available sources have evaluated the country's regulatory framework for the respective standard. These particular categories have been selected because they mirror the process a country follows when implementing standards and codes.

FULL COMPLIANCE: There is publicly available information indicating that the country has incorporated the principles of the relevant standard into laws or regulations, and that these principles are currently being applied and followed in an effective, consistent, and transparent manner.

COMPLIANCE IN PROGRESS: There is publicly available information indicating that the country has incorporated the principles of the relevant standard into laws or regulations and that there has been significant progress made towards the effective enforcement of the laws or regulations by regulators and supervisors, albeit with minor shortcomings.

ENACTED: There is publicly available information indicating that the country has incorporated most of the principles of the relevant standard into laws or regulations. The Enacted category does not address the actual enforcement of the laws or regulations.

INTENT DECLARED: The country has made a formal, public, and authoritative declaration that it will incorporate the principles of the relevant standard into laws or regulations and will adhere to the standard.

NO COMPLIANCE: There is publicly available information indicating that the country has not incorporated the principles of the relevant standard into laws or regulations or has taken any steps to comply with the relevant standard.

INSUFFICIENT INFORMATION: There is not enough information publicly available to make an assessment as to the country's level of compliance with the relevant standard.