

# International Property Markets Scorecard

Kenya Market Conditions – Complete Survey January 2010



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## Scorecard Background & Information

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

### Acknowledgement

The International Property Markets Scorecard Project is the latest development in the continued cooperative work between the Center for International Private Enterprise (CIPE) and the International Real Property Foundation (IRPF). The work began in September 2002 and includes the booklet *Real Property Markets: The 'Real' Solution for Economic Development* jointly published by the Appraisal Institute, CIPE and IRPF. The Scorecard derives from the work of an academic panel led by Richard Green, PhD., Director of the University of California's Lusk Center for Real Estate and the University of Denver, Burns School of Real Estate and Construction Management's Global Real Estate Project under the direction of Dr. Mark Lee Levine.

### For Education Purposes Only

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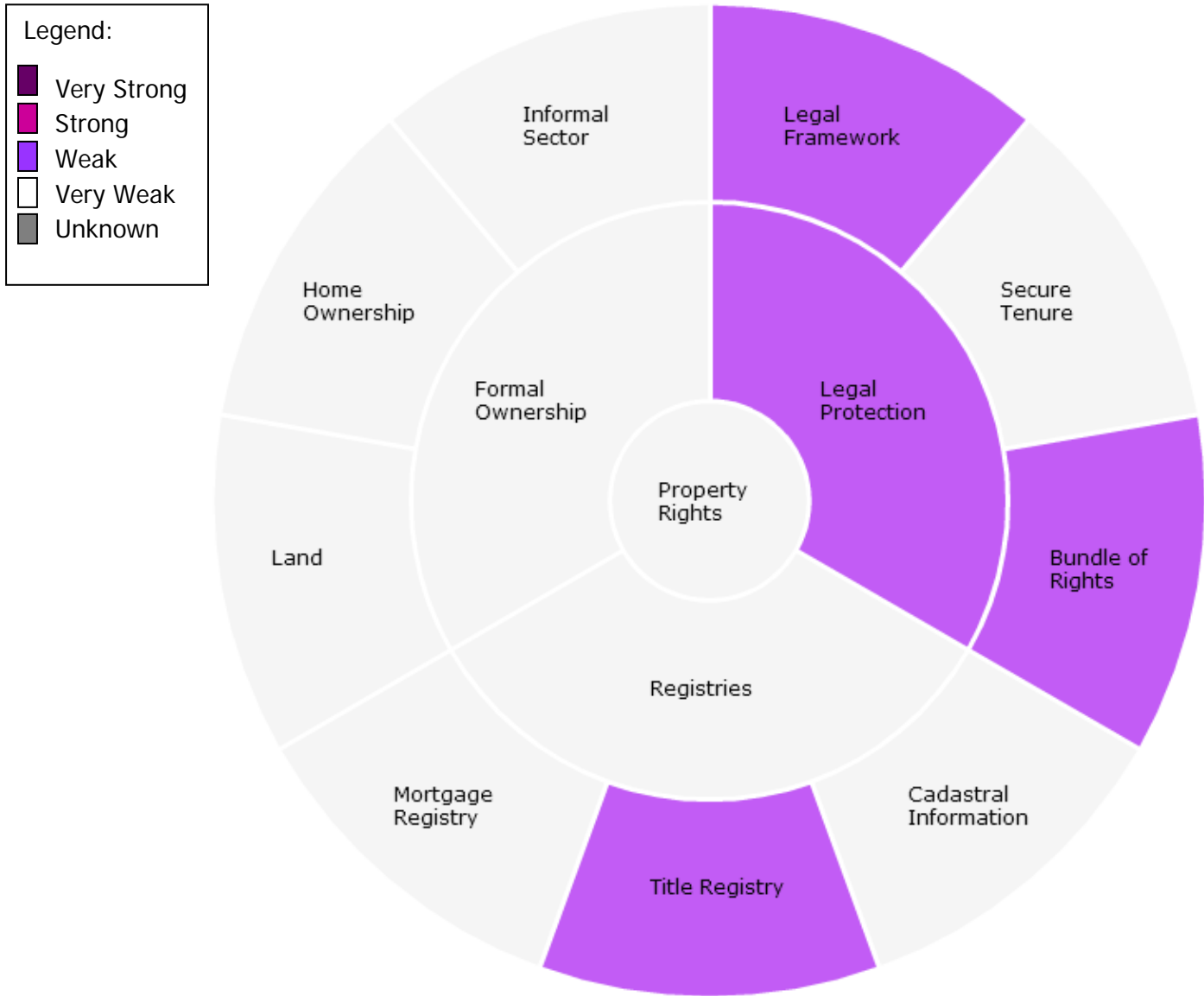
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# 1. Property Rights



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

## 1.1 Legal Protection

Core Question:	Does an effective and sufficient legal framework exist to protect property rights for all citizens? <b>No – Weak – National Land Policy adopted in December 2009 sets out a comprehensive reform agenda.</b>
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## Legal Framework

1.1.1 Are property rights clearly defined and protected by law? **No – Weak – Ranking 98<sup>th</sup> out of 133; Score 3.8 out of 7**

## Security of Tenure

1.1.2 Can citizens challenge the legality of government takings? **No – Very Weak – 106<sup>th</sup> out of 133; Score 2.9 out of 7**

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Source: *Global Competitiveness Report 2009* – World Economic Forum

[www.weforum.org/documents/gcr09/index.html](http://www.weforum.org/documents/gcr09/index.html)

## Bundle of Rights

### Survey Question

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

## 1.2 Registries

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

**Status – Very Weak – Modernization program called for in National Land Policy adopted December 2009.**

### Survey Questions

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SQ 2 Is cadastral information (information about the dimensions and location of land parcels) accessible to the public? **No**

SQ 3 Is zoning/permitted use information included are use regulations respected and enforced? **No**

SQ 4 Are Geographic Information Systems (GIS) including Global Positioning Satellite (GPS) information used to create and update the registry? **No**

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Source: Ministry of Lands - [www.ardhi.go.ke/](http://www.ardhi.go.ke/)

*Civil Society Resource: Institution of Surveyors of Kenya [www.isk.or.ke](http://www.isk.or.ke)*

### 1.2.2 Title Registry

**Weak – Ranking – 125<sup>th</sup> out of 183 Trend ↓**

- 1.2.2.1 What is the number of procedures required to register the transfer of a property from one owner to another? **8**
- 1.2.2.2 What is the duration of time in calendar days that it would take to complete the transfer? **64**
- 1.2.2.3 What is the total cost of the transfer including all fees, taxes, etc. expressed as a percentage of the value of the property? **4%**

See **Appendix** for complete procedure for registering property

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Source – *Doing Business* – Registering Property, World Bank  
[www.doingbusiness.org/ExploreEconomies/?economyid=101](http://www.doingbusiness.org/ExploreEconomies/?economyid=101)

### 1.2.3 Mortgage Registry

**Status –Very Weak**

Survey Questions

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- SQ 5 The mandatory use of notaries or similar officials slows down and adds cost to the process. Does a notary need to be involved in the registration process? **Yes**
  - SQ 6 Is information in the registry available electronically? **No**
  - SQ 7 Title insurance is indemnity insurance against financial loss from defects in title and from the invalidity or unenforceability of mortgage liens. Is title insurance available to lenders? **No**
- 

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

### 1.3 Formal Ownership

Core Question: Do citizens understand and trust property rights institutions and avoid the informal sector? **No – Very Weak – the ineffectiveness of the current system has led to mass disinheritance of communities and individuals; inequitable distribution of land; and ineffective governmental regulation of private property rights, as a result of which unplanned settlements and environmental degradation have become commonplace.**

#### Survey Questions

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##### Land

SQ 8 What is the status of land ownership? **Very Weak – Land is either government land, community land (trust land) or private land. Over time there has been a systematic breakdown of land rights and land administration.**

Source: Ministry of Lands - [www.ardhi.go.ke/](http://www.ardhi.go.ke/)

##### Home Ownership

SQ 9 What is the percentage of formal home ownership? **Very Weak – 16%**

Source: National Housing Corporation - [www.nhckenya.co.ke/](http://www.nhckenya.co.ke/)

##### Informal Sector

SQ 10 What is the size of the informal economy as a percentage of GDP? **76.6% - Very Weak Formal Sector (2006)**

Source: U.S. State Department [www.state.gov/r/pa/ei/bgn/2962.htm](http://www.state.gov/r/pa/ei/bgn/2962.htm)

#### In-Country Assessment Information

**Field Question (FQ) 1. What is the actual status of property rights and ownership for citizens?**

The collateral process in Kenya is flawed and as a result is characterized by high costs. More than 20 statutes regulate the creation and perfection of collateral resulting in weak and dispersed legal frameworks. The laws lack uniformity and result in a convoluted conveyance system. For example, freedom to contract has been severely curtailed by the statutes that

inhibit property rights through archaic procedures and regulations. In addition, stamp duty is expensive both in its direct cost and in the method of its collection. Registry systems are weak and dispersed. Many are manual, inefficient, uncoordinated and inconclusive. This situation has been exacerbated by the practice of using the registries as tax collectors.

Source: Kenya Bankers Association *Cost of Collateral in Kenya: Opportunities for Development* September 2009. [www.fsdkenya.org/pdf\\_documents/09-11-24\\_Costs\\_of\\_Collateral\\_Study.pdf](http://www.fsdkenya.org/pdf_documents/09-11-24_Costs_of_Collateral_Study.pdf)

**FQ 2. What is the actual experience of transferring a property?**

The recordation system is extremely clumsy and time consuming. It is cumbersome because there is a 4% transfer tax and a re-evaluation of each parcel done by the government. Completing registrations could take 6 months.

Source: IRPF Assessment March 2009

**FQ 3. What are the actual housing conditions for all groups including the poor, minorities and other marginalized groups?**

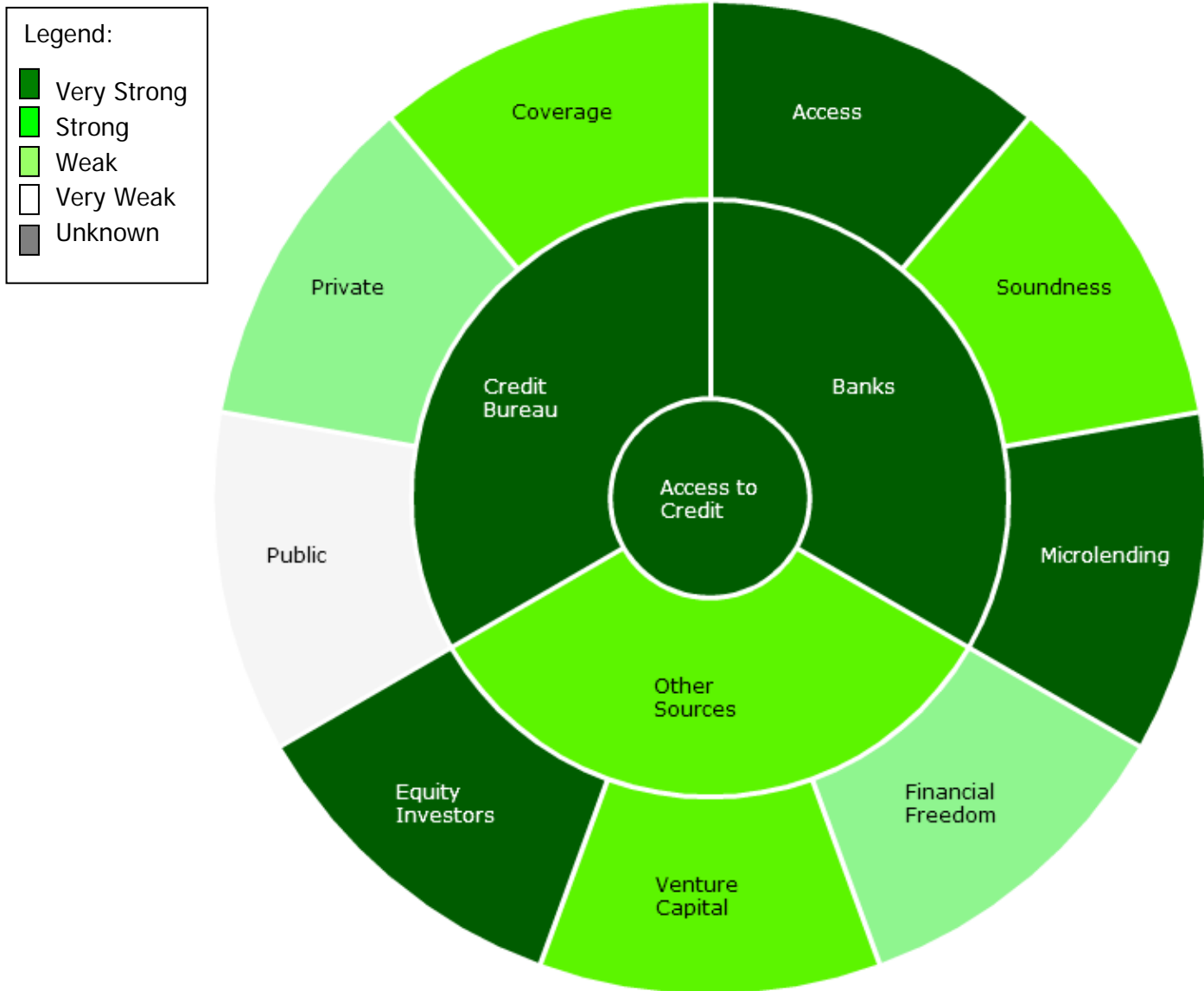
The most vulnerable persons in Kenya include subsistence farmers, pastoralists, hunters and gatherers, agricultural laborers, unskilled and low-skilled workers, unemployed youth, persons with disabilities, persons living with HIV and AIDS, orphans, slum and street dwellers, and the aged. Poor and vulnerable people lack voice, power and representation in society, which limits their opportunities to access, use and own land and land based resources. The land rights of vulnerable individuals and groups are not protected and are subject to bias and discrimination.

Further, the vulnerable lack cohesive institutions to represent their interests. To secure access to land and land based resources for vulnerable groups, the Government shall:

- a) Develop mechanisms for identifying, monitoring and assessing the vulnerable groups
- (b) Put in place mechanisms for redistribution of land and resettlement
- (c) Facilitate their participation in decision making over land and land based resources
- (d) Protect their land rights from unjust and illegal expropriation.

Source: Ministry of Lands, *National Land Policy*

## 2. Access to Credit



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

## 2.1 Banks

Core Question: Are traditional banking services robust and extensive enough to serve the needs of the population to help them build wealth and purchase property? **Yes – Very Strong, the banking sector remains well-capitalized and adequately provisioned.**

### Access

2.1.1 How easy is it to obtain a bank loan? **Very Strong – Ranking 28<sup>th</sup> out of 133; Score 3.9 out of 7**

### Soundness

2.1.2 How sound are the country's banks? **Strong – Ranking 61<sup>st</sup> out of 133; Score 5.4 out of 7**

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Source: *The Global Competitiveness Report 2009*, World Economic Forum  
[www.weforum.org/documents/GCR09/index.html](http://www.weforum.org/documents/GCR09/index.html)

### 2.1.3 Microlending

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

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

**Business Initiatives & Management Assistance Services (BIMAS)**

[www.bimaskenya.com/](http://www.bimaskenya.com/)

**Equity Bank** [www.equitybank.co.ke/](http://www.equitybank.co.ke/)

**K-Rep Bank** [www.k-repbank.com/index.php](http://www.k-repbank.com/index.php)

**Kenya Women Finance Trust** [www.kwft.org](http://www.kwft.org)

**Kenya Agency to Development of Enterprise & Technology (KADET)**  
[www.kadet.co.ke/](http://www.kadet.co.ke/)

2.1.3.2 What is the number of active borrowers per institution?

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

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Source: Microfinance Information Exchange [www.mixmarket.org/mfi](http://www.mixmarket.org/mfi)

## 2.2 Other Sources

Core Question:	Are entrepreneurs free to raise capital outside the banking system including venture capital and/or by issuing stock in a well-regulated stock exchange? <b>Yes – Strong, the private equity market has been on a growth curve since 2002 and investors have not pulled back because of the global crisis.</b>
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### Financial Freedom

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

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Source: *Index of Economic Freedom*, Heritage Foundation  
[www.heritage.org/index/Country/Kenya](http://www.heritage.org/index/Country/Kenya)

### Venture Capital

2.2.2 How easy is it for entrepreneurs to find venture capital?  
**Strong – 47<sup>th</sup> out of 133; Score 3.1 out of 7**

### Equity Investors

2.2.3 How easy is it to raise money by issuing shares on the stock market? **Very Strong – 20<sup>th</sup> out of 133; Score 4.6 out of 7**

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Source: *The Global Competitiveness Report 2009*, World Economic Forum  
[www.weforum.org/documents/GCR09/index.html](http://www.weforum.org/documents/GCR09/index.html)

## 2.3 Credit Bureau

Core Question:	Is comprehensive credit information available through public and private credit bureaus? <b>Yes – Very Strong, regulations taking effect in 2009 make it mandatory for banks to share information with credit bureaus and bureaus are licensed and regulated by the Central Bank.</b>
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**Overall Ranking 4<sup>th</sup> out of 181**

### Coverage

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

## Public

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

## Private

2.3.3 What is the extent of private credit registry coverage? **Weak – 2.3%**

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Source: *Doing Business – Getting Credit*, World Bank

[www.doingbusiness.org/ExploreEconomies/?economyid=101](http://www.doingbusiness.org/ExploreEconomies/?economyid=101)

### In-Country Assessment Information

#### **FQ 4. How available are mortgage loans for purchasing property, who is the typical user and what are the prevailing trends?**

According to the Kenyan lenders who were interviewed, real estate is not the preferred form of collateral, contrary to best practice in many other countries. As detailed previously, this is partly due to the expense of the mortgage process, but can predominantly be attributed to the multiplicity of land statutes as well as differing estates in land.

Equally alarming is the number of statutes in Kenya which inhibit a property owner's right to enter into a contract and to alienate private property. Under the Law of Contract Act, a contract relating to the sale or alienation of an interest in land has to meet special execution and attestation procedures. There are special rules regarding the preparation and execution of instruments within and outside Kenya. These rules increase the cost and add time to the collateral process and in some cases make it impossible for certain borrowers to access credit due to the non-availability of persons who can be witnesses to the execution process.

For example, in order for a bank to have a power of sale, the charge or mortgage must contain a certificate from an advocate of the High Court of Kenya, who has to explain certain sections of the law to the charger or mortgagor. In addition to limitations on contracting, there are also limitations on who can draft contracts. Section 34(1) of the Advocates Act of Kenya provides that no "non-qualified person" (i.e. a person who is not an advocate) shall, either directly or indirectly, take instructions, draw up or prepare any document or instrument: relating to the conveyance of property. Similar limitations are placed on the individuals who can perform other services commonly required in the collateral process, such as valuers (appraisers) and auctioneers.

Source: Kenya Bankers Association *Cost of Collateral in Kenya: Opportunities for Development* September 2009. [www.fsdkenya.org/pdf\\_documents/09-11-24\\_Costs\\_of\\_Collateral\\_Study.pdf](http://www.fsdkenya.org/pdf_documents/09-11-24_Costs_of_Collateral_Study.pdf)

**FQ 5. What are the interest rates, term and loan-to-value ratios for available mortgages?**

Interest rates are high – 14 to 15.7% and 30 to 50% down payment is usually required for a 5 to 20 year loan. There is a special 5% program available for civil servants.

Source: IRPF Assessment March 2009

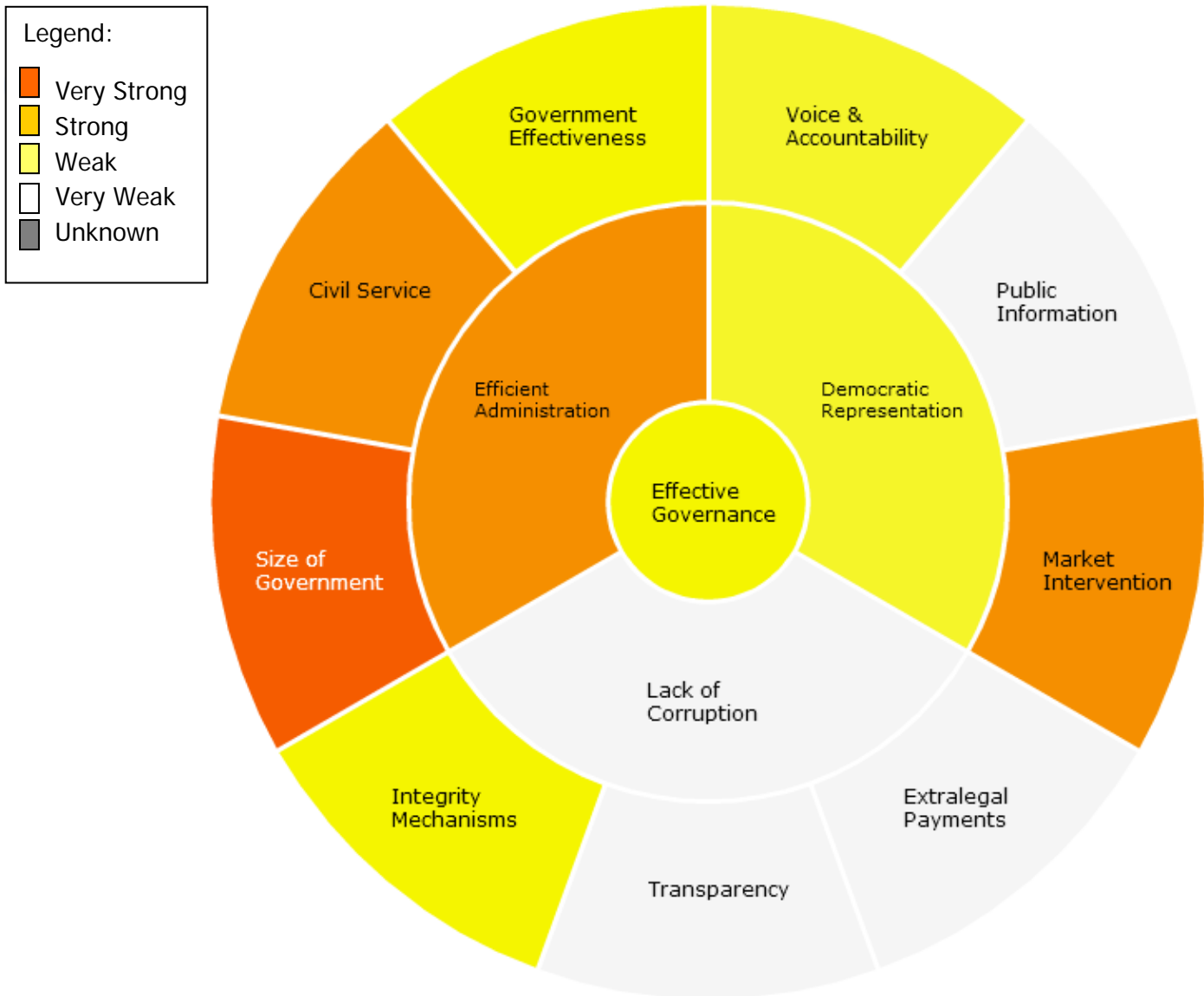
**FQ 6. Are there any informal barriers to borrowing such as for women or minorities?**

The HIV and AIDS pandemic underscores an urgent need to reform cultural and legal practices that discriminate against women and children with respect to access and ownership of land. Culture and traditions continue to support male inheritance of family land while there is lack of gender sensitive family laws. Women are not sufficiently represented in institutions that deal with land. Their rights under communal ownership and group ranches are also not defined and this allows men to dispose of family land without consulting women. Few women have land registered in their names and lack of financial resources restricts their entry into the land market. Moreover International Conventions on women's rights relevant to women's land rights ratified by the Government of Kenya have not been translated into policies or laws.

The existing laws and practices governing matrimonial property discriminates against spouses whose contribution to the acquisition of such property is indirect and not capable of valuation in monetary terms. Further, the courts have been inconsistent in determining what amounts to such contribution, with the result that some spouses have unfairly been denied of their rights to land.

Source: Ministry of Lands, *National Land Policy*

### 3. Effective Governance



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

### 3.1 Democratic Representation

Core Question:	Does the country have free and open elections for the leadership and can citizens engage in free enterprise? <b>No – Weak, post-election violence in 2008 was caused by corruption in the electoral process and exacerbated by corrupt politicians.</b>
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#### Voice & Accountability

3.1.1 Are citizens able to elect their government and do they enjoy freedom of expression, association and a free media? **No – Weak – Percentile Rank – 43.3 Trend ↑**

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Source: *Governance Matters 2008*, World Bank  
[http://info.worldbank.org/governance/wgi/sc\\_chart.asp](http://info.worldbank.org/governance/wgi/sc_chart.asp)

3.1.2 Are citizens free to form political and civic organizations free of state interference and surveillance? **No – Weak – Score 5 out of 10**

**Overall Ranking – 103<sup>rd</sup> out of 167**

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Source: *The Economist Intelligence Unit Democracy Index*  
<http://a330.g.akamai.net/7/330/25828/20081021185552/graphics.eiu.com/PDF/Democracy%20Index%202008.pdf>

#### Public Information

3.1.3 Are there regulations governing conflicts of interest in the executive and legislative branches of government? **No – Executive Score 54 out of 100 – Very Weak; Legislative Score 57 out of 100 – Very Weak**

3.1.4 Can citizens access legislative processes and documents? **No – Score 37 out of 100 – Very Weak (2008)**

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Source: *Global Integrity Report* – <http://report.globalintegrity.org/Kenya/2008>

#### Market Intervention

**Overall Ranking – Strong 90<sup>th</sup> out of 179 Trend ↓**

3.1.5 To what extent does the government intervene in the private sector including state owned industries? **Score 81.5 out of 100 with a higher score indicating less intervention**

3.1.6 To what extent does the government control prices? **Score 74 out of 100 with a higher score indicating less control**

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Source: *2009 Index of Economic Freedom* – Heritage Foundation  
[www.heritage.org/index/Country/Kenya](http://www.heritage.org/index/Country/Kenya)

## 3.2 Lack of Corruption

Core Question:	Is the public sector transparent and free of corruption? <b>No – Very Weak Tribalism, cronyism and nepotism are characteristics which run throughout Kenyan society and play an important role in encouraging corruption.</b>
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### Transparency

3.2.1 What is the perceived level of corruption in the country? **Very Weak – Ranking – 146<sup>th</sup> out of 180; Score 2 out of 10 Trend =**

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Source: Transparency International  
[www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009](http://www.transparency.org/policy_research/surveys_indices/cpi/2009)

### Integrity Mechanisms

3.2.3 A National Integrity System is a framework where the principle institutions that contribute to integrity, transparency and accountability in a society can address corruption in a systematic way. Does a National Integrity System exist? **Yes – Weak, the NIS is deeply flawed; the Executive Branch has overarching powers virtually unchecked by the legislature and the judiciary.**

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Source: Transparency International  
[www.transparency.org/policy\\_research/nis/nis\\_reports\\_by\\_country](http://www.transparency.org/policy_research/nis/nis_reports_by_country)

### Extralegal Payments

#### Survey Question

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SQ 11 How often do companies report that officials and/or companies expect additional payments to “expedite” services or gain business? **79.2% of firms say they are expected to make unofficial payments – Very Weak**

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

## 3.3 Efficient Administration

Core Question:	Are quality services and qualified civil servants available to the public through the efficient use of public money free of corruption? <b>Yes – Strong, while political patronage is still quite strong, merit based appointments are increasing as more well-qualified people are available.</b>
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## Size of Government

3.3.1 What is the size of government relative to GDP? **24.8% - 25 to 30% considered optimum – Very Strong**

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Source: *2009 Index of Economic Freedom*, Heritage Foundation  
[www.heritage.org/index/Country/Kenya](http://www.heritage.org/index/Country/Kenya)

## Civil Service

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

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Source: *Global Integrity Report* – <http://report.globalintegrity.org/Kenya/2008>

## Government Effectiveness

3.3.3 What is the overall effectiveness of the government? **Weak - Percentile Ranking – 32.2 Trend ↑**

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Source: *Governance Matters 2008*, World Bank  
[http://info.worldbank.org/governance/wgi/sc\\_chart.asp](http://info.worldbank.org/governance/wgi/sc_chart.asp)

## In-Country Assessment Information

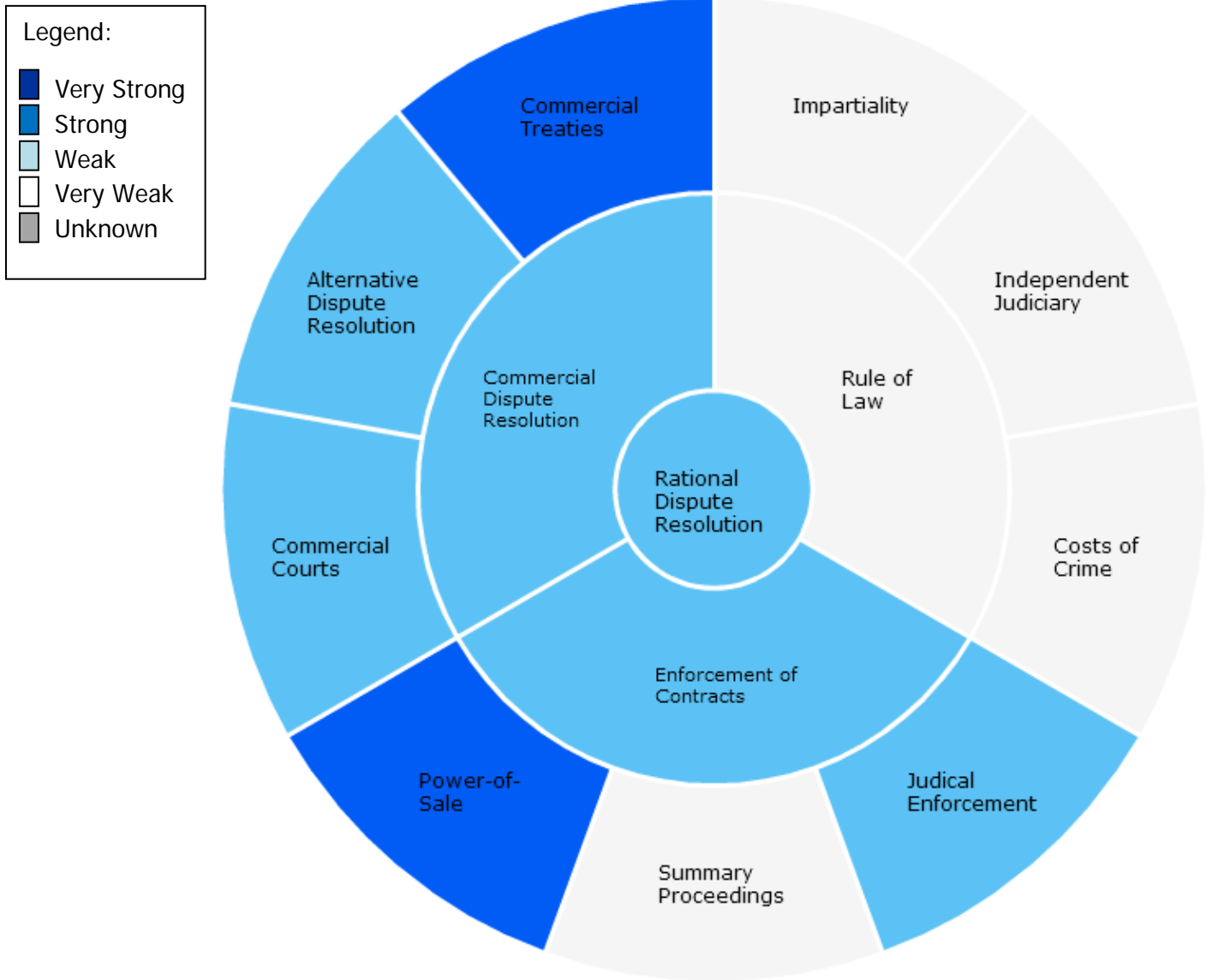
**FQ 6. What is the actual experience of practitioners in dealing with the government?**

There is a long practice of allocating public land in disregard of the procedures set forth in law. There have been frequent incidents where land and other assets have been fraudulently transferred with the active cognizance of the very officials vested with the duty of protecting property rights in the institutions responsible for land administration. It is not unusual for two titles to exist for the same property with different owners listed. This state of affairs makes lenders rather uncomfortable, as illustrated by a lender who mentioned in an interview that he was cautious in taking immovable property as collateral because it “could move”.

Each district has a Land Control Board which sits once a month and charges a fee for applications made. The Land Control Board has sweeping powers and the land owner has a very limited scope of appeal if the decision is not favorable. The bureaucratic and unpredictable decision-making process of the Land Control Boards has made agricultural land less attractive to lenders as collateral, and there are areas where banks will not consider taking agricultural land as security.

Source: Kenya Bankers Association *Cost of Collateral in Kenya: Opportunities for Development* September 2009. [www.fsdkenya.org/pdf\\_documents/09-11-24\\_Costs\\_of\\_Collateral\\_Study.pdf](http://www.fsdkenya.org/pdf_documents/09-11-24_Costs_of_Collateral_Study.pdf)

## 4. Rational Dispute Resolution



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

## 4.1 Rule of Law

Core Question:	Do all market participants abide by the rule of law and have confidence in the courts and the ability of police to control crime? <b>No – Very Weak, the judiciary rivals politicians and the police for the most criticized sector in public society. The judiciary is inherently weak as its powers are not enshrined in the constitution.</b>
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### Impartiality

4.1.1 What is the confidence level of the strength and impartiality of the police, courts and contract enforcement? **Very Weak – Percentile Ranking – 17.7 Trend ↑**

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Source: *Governance Matters 2008*, World Bank  
[http://info.worldbank.org/governance/wgi/sc\\_chart.asp](http://info.worldbank.org/governance/wgi/sc_chart.asp)

### Judiciary

4.1.2 Can members of the judiciary be held accountable for their actions? **No – Score 30 out of 100 – Very Weak**

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Source: *Global Integrity Report* – <http://report.globalintegrity.org/Kenya/2008>

### Costs of Crime

4.1.3 What are the business costs of crime and violence? **High costs – Ranking 122<sup>nd</sup> out of 1332 – Very Weak**

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Source: *The Global Competitiveness Report 2009*, World Economic Forum  
[www.weforum.org/documents/GCR09/index.html](http://www.weforum.org/documents/GCR09/index.html)

## 4.2 Enforcement of Contracts

Core Question:	Are systems in place for timely and efficient enforcement of contracts? <b>Commercial – No – Weak</b> <b>Residential – Yes – Strong</b>
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### 4.2.1 – Judicial Enforcement

**Commercial – Weak – Ranking 126<sup>th</sup> out of 181 Trend ↓**

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

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

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

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Source: *Doing Business* – [www.doingbusiness.org/ExploreEconomies/?economyid=101](http://www.doingbusiness.org/ExploreEconomies/?economyid=101)

## **Residential – Strong**

### Survey Questions

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SQ 12 What is the time between notice of intent to foreclose and loan collection in judicial enforcements? **See below for power-of-sale**

SQ 13 What is the cost of judicial enforcements as a percentage of property value? **See below for power-of-sale**

### **4.2.2 – Summary Proceedings**

SQ 14 Summary proceedings are alternative dispute resolution processes where creditors can apply for a direct court order in property disputes. What is the time between notice of intent to foreclose and loan collection in summary proceedings if available to lenders? **See below for power-of-sale**

SQ 15 What is the cost of summary proceeding if available to lenders as a percentage of property value? **See below for power-of-sale**

### **4.2.3 – Power-of-Sale**

SQ 16 Power-of-sale agreements give creditors to power to sell properties after notice to the borrower without court intervention. What is the time between notice of intent to sell and loan collection for power-of-sale agreements if available to lenders? **239 days - Strong**

SQ 17 What is the cost of power-of-sale agreements if available to lenders as a percentage of property value? **3.96% - Very Strong**

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

## **4.3 Commercial Dispute Resolution**

Core Question:	Can commercial disputes be resolved efficiently and fairly without exorbitant expense and delay? <b>No – Weak, there is a shortage of judges and judicial officers and a serve backlog of cases.</b>
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### Commercial Courts

SQ 18 Do specialized commercial courts exist for the handling of property disputes and foreclosures? **Yes – Weak, Commercial Courts exist but are ineffectual.**

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Source: Judiciary of Kenya [www.judiciary.go.ke/website/index.php](http://www.judiciary.go.ke/website/index.php)

### Alternative Dispute Resolution

SQ 19 Are alternative dispute resolution mechanisms in place including commercial arbitration, private mediation and community based processes? **Yes - Weak – a member of both New York Convention and the International Center for the Settlement of Investment Disputes but arbitration not used by lenders.**

*Civil Society Resource: Chartered Institute of Arbitrators Kenya [www.ciarbkenya.org/](http://www.ciarbkenya.org/)*

### Commercial Treaties

SQ 20 What bilateral, regional and international commercial treaties exist concerning business between countries? **Strong – a member of WTO, the Common Market of Eastern and Southern Africa (COMESA) and preferential agreements with the U.S. and E.U.**

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Source: Kenya Investment Authority [www.investmentkenya.com/](http://www.investmentkenya.com/)

### In-Country Assessment

#### **FQ 7. To what extent do practitioners report contracts as enforceable?**

The enforcement process in Kenya is slow and expensive. Even in instances of uncontested foreclosure, the lender has to issue notice of more than three months. The lender is also often required to obtain consent to facilitate a sale, which makes the success of the process dependent upon independent (or sometimes not so independent) public officials. In the event that the matter becomes contentious, the recovery process is hampered by the costly and procedural judicial process.

The first line of defense of many borrowers when faced with the threat of repossession of an asset is an injunction. In most cases during debt recovery, an interim injunction is sought pending the outcome of trial. In theory, the court must be satisfied that the claim is not frivolous or vexatious and should not attempt an in-depth assessment of either party's case and the likely outcome of the infringement proceedings at trial. In practice, borrowers routinely obtain injunctions from courts restraining the lenders from enforcing their rights of recovery.

This discreditable practice is highly prevalent despite the statute being fairly clear on the nature of statutory power of sale, statutory notice and the remedies to an aggrieved party. Courts have argued that in trying to be just, they have faced difficulty in getting lenders to justify the hefty interest rates and penalties routinely imposed on borrowers upon default, which often causes confusion over the amount actually owed. Though there have been cases where the courts have resolved not to grant indulgence to defaulting borrowers, in most cases injunctive relief has been granted, and borrowers are aware that their chances of avoiding the loss of the pledged asset via the courts is very high. As a consequence, lenders prefer to renegotiate and find alternative ways of arriving at settlements with borrowers, upon the understanding that the courts are highly unlikely to provide them with redress.

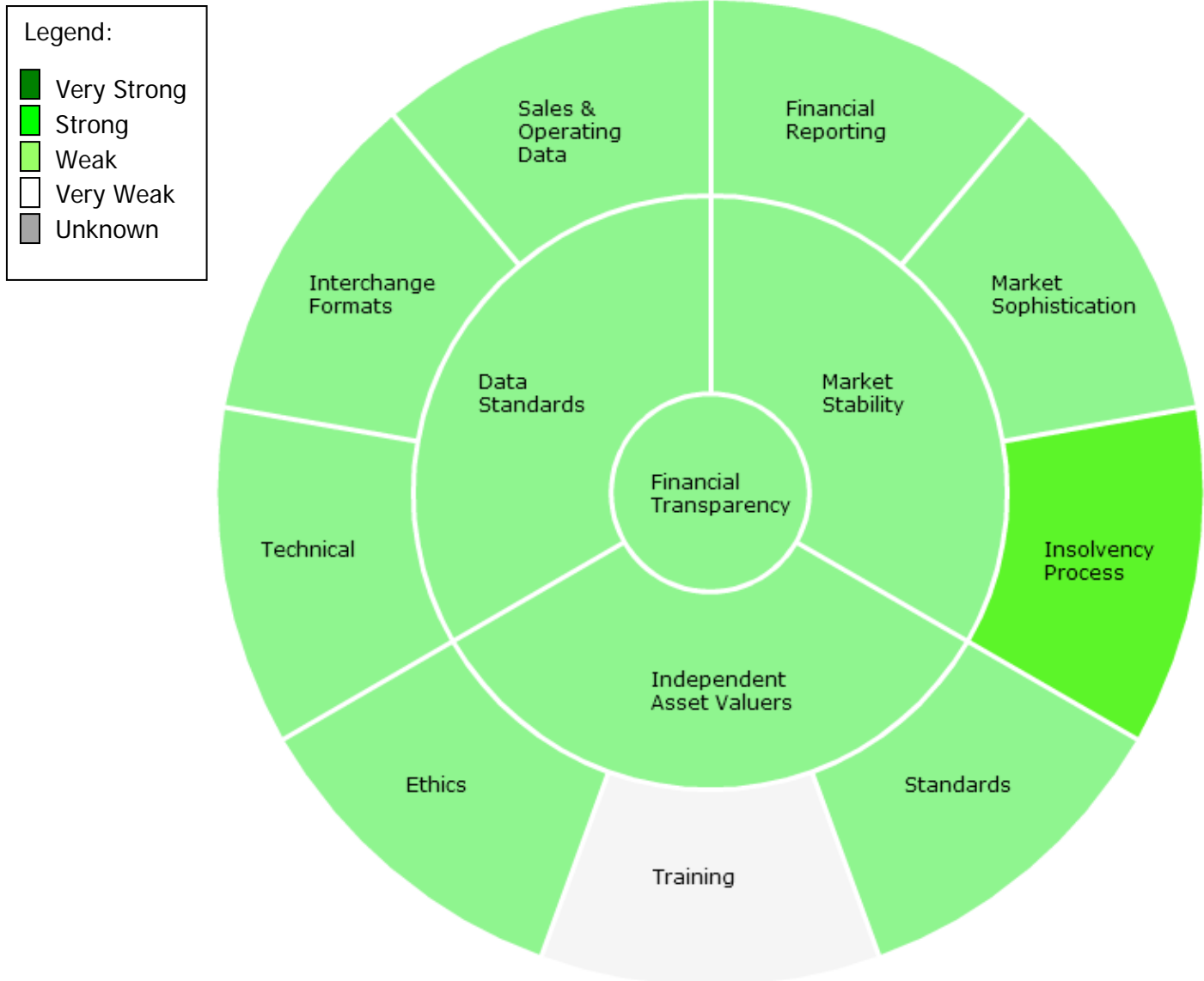
Despite the reasonable principles enumerated above, courts routinely create an imbalance between borrowers and lenders by permitting borrowers to continue to enjoy the pledged assets while not repaying the loans, thus placing lenders at a disadvantage due to their not being able to recover the monies loaned or the assets they hold as collateral.

Kenya has a modern arbitration law and a well-functioning system of alternate dispute resolution mechanisms. These have had an effect in reducing some of the case load on the commercial court system. However, these mechanisms are not used for land or lending. The experience in Kenya is that an arbitration clause in a mortgage does not assist the recovery process, as there is a perception that arbitration does not enforce contracts but rather tries to reconcile or negotiate a resolution. Consequently, lenders prefer to have their right to realize not made subject to an arbitral process.

Commercial courts have been established to expedite the realization process, but this has been ineffectual as the courts sit only in Nairobi and there is a shortage of judges and judicial officers. This has resulted in a severe backlog of cases, resulting in cases taking a minimum of three years up to a maximum of ten years before resolution. Furthermore, there is a general perception among lenders that the courts will not resolve in their favor, and that, if they do, it will be too late for any meaningful recovery to take place, as assets will have been sold, lost or damaged.

Source: Kenya Bankers Association *Cost of Collateral in Kenya: Opportunities for Development* September 2009. [www.fsdkenya.org/pdf\\_documents/09-11-24\\_Costs\\_of\\_Collateral\\_Study.pdf](http://www.fsdkenya.org/pdf_documents/09-11-24_Costs_of_Collateral_Study.pdf)

## 5. Financial Transparency



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

## 5.1 Market Stability

Core Question:	Are market risks sufficiently transparent and diversified so that efficient capital allocation can occur? <b>No – Weak – Capital markets are small, weak and inefficiently regulated.</b>
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### Financial Reporting

5.1.1 What is the strength of the country's auditing and reporting standards? **Weak – 78<sup>th</sup> out of 133; Score 4.6 out of 7**

### Market Sophistication

5.1.2 What is the overall level of financial market sophistication in the country? **Weak – 76<sup>th</sup> out of 133; Score 4.1 out of 7**

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Source: *The Global Competitiveness Report 2009*, World Economic Forum  
[www.weforum.org/documents/GCR09/index.html](http://www.weforum.org/documents/GCR09/index.html)

### Insolvency Process

**Strong – Ranking – 79<sup>th</sup> out of 183**

5.1.3 What is the average time to complete bankruptcy proceedings? **4.5 years**

5.1.4 What is the cost of bankruptcy proceedings as a percentage of the estate? **22%**

5.1.5 What is the recovery rate of bankruptcy proceedings? **31.6 cents on the dollar**

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Source: *Doing Business – Closing a Business*  
[www.doingbusiness.org/ExploreEconomies/?economyid=101](http://www.doingbusiness.org/ExploreEconomies/?economyid=101)

## 5.2 Independent Asset Valuers

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

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#### Standards

SQ 21 How easy is it to find a valuer who implements International Valuation Standards?  
**Weak – the Valuers Act spells out some very basic misconduct rules but there are no standards of practice mentioned in the law.**

Civil Society Resource: Institution of Surveyors of Kenya [www.isk.or.ke/](http://www.isk.or.ke/)

## Training

SQ 22 What is the level of training of valuers? **Very Weak – limited to holding a land economics degree and serving an apprentice program**

Civil Society Resource: International Real Property Foundation [www.irpf.org](http://www.irpf.org)

## Ethics

SQ 23 Are opinions offered by valuers free of influence from parties to the transaction? **Weak – enforcement is limited to removal from the very limited government approved valuer list.**

Civil Society Resource: International Valuation Standards Council [www.ivsc.org](http://www.ivsc.org)

## 5.3 Data Standards

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

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### Sales & Operating Data

SQ 24 A multiple listing service is an electronic exchange system where brokers and agents can widely share contracted real estate listings of properties that are for sale. Do multiple listing type services exist? **No – Weak, Internet sites are developing but the market is still largely informal.**

Civil Society Resource: International Consortium of Real Estate Associations  
[www.worldproperties.com](http://www.worldproperties.com)

SQ 25 Do resources exist for obtaining building income and expense estimates? **No – Very Weak**

Civil Society Resource: Institute of Real Estate Management [www.irem.org](http://www.irem.org)

### Interchange Formats

SQ 26 Do electronic data interchange formats conform to international standards (ebXML – electronic business using extensive markup language)? **No – Weak, geospatial data standards are in xml.**

## Technical Standards

SQ 27 Do building codes and office building measurement standards (ANSI/BOMA Z65.1) conform to international standards? **No – Weak, Building Code Review launched April 20, 2009.**

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Source: Ministry of Housing [www.housing.go.ke/Building\\_code.html](http://www.housing.go.ke/Building_code.html)

### **In-Country Assessment**

#### **Market Stability**

**FQ 9. How stable has the property market been over the last several years?**

Kenya's strong growth momentum from 2004–07 stalled in 2008 due to a series of adverse developments. Recovery from post-election violence that had disrupted agricultural and manufacturing production was cut short by high fuel and food prices. The global financial crisis led to steep decline in private capital flows, and subdued exports and tourism receipts all contributed to a further weakening of the external position. On the capital market, there was substantial capital outflow from the Nairobi Stock Exchange, where the key share index declined by 35 percent in 2008 alone. Domestic policy adjustments and improvements in the world economy helped Kenya turn in a better economic performance in 2009. As a result, Kenya's real GDP growth is now projected to accelerate to 3.2 percent in 2009/10, from 2.2 percent in 2008/09. However, some important tasks, especially in the implementation of structural reforms, remain unfinished.

Source: IMF

#### **Valuation Profession**

**FQ 10. How many independent valuers exist in the market?**

There are 250 registered valuers in Kenya. In addition to those registered, there are 500 who are apprentices that work for firms and do some of the preliminary work in valuation.

**FQ 11. How many companies exist and what is the average size of valuation companies?**

There are no exclusive valuation companies. Six major real estate firms offer multiple services including valuation.

**FQ 12. What are the valuation standards and do they conform to international and regional standards?**

While no valuation standards are codified into laws and regulation, the Institution of Surveyors of Kenya is a member of the International Valuation Standards Council.

**FQ 13. What valuation methods and techniques are used in the market?**

Land valuation techniques are more sophisticated and western firms and the larger domestic firms provide valuations according to Generally Accepted Valuation Principles.

**FQ 14. Are there valuer associations in the market? What number and percentage of practitioners belong?**

The Institution of Surveyors of Kenya manages the land surveyor and valuer registration boards, so all registered valuers and land surveyors are members of ISK.

**FQ 15. What training programs are available to upgrade the quality of valuers?**

There is no formal training, but ISK sponsors seminars and workshops 3 to 4 times each year.

**FQ 16. Are peer review mechanisms in place to assist in enforcing ethical behavior?**

If the government has determined that someone has fraudulently prepared a valuation, they will do a peer review and, in the event the fraud is proven, they will remove the fraudulent valuer from the registered list thereby taking them out of the business.

**FQ 17. What is the quality of valuation reports?** Unknown

**Data Availability**

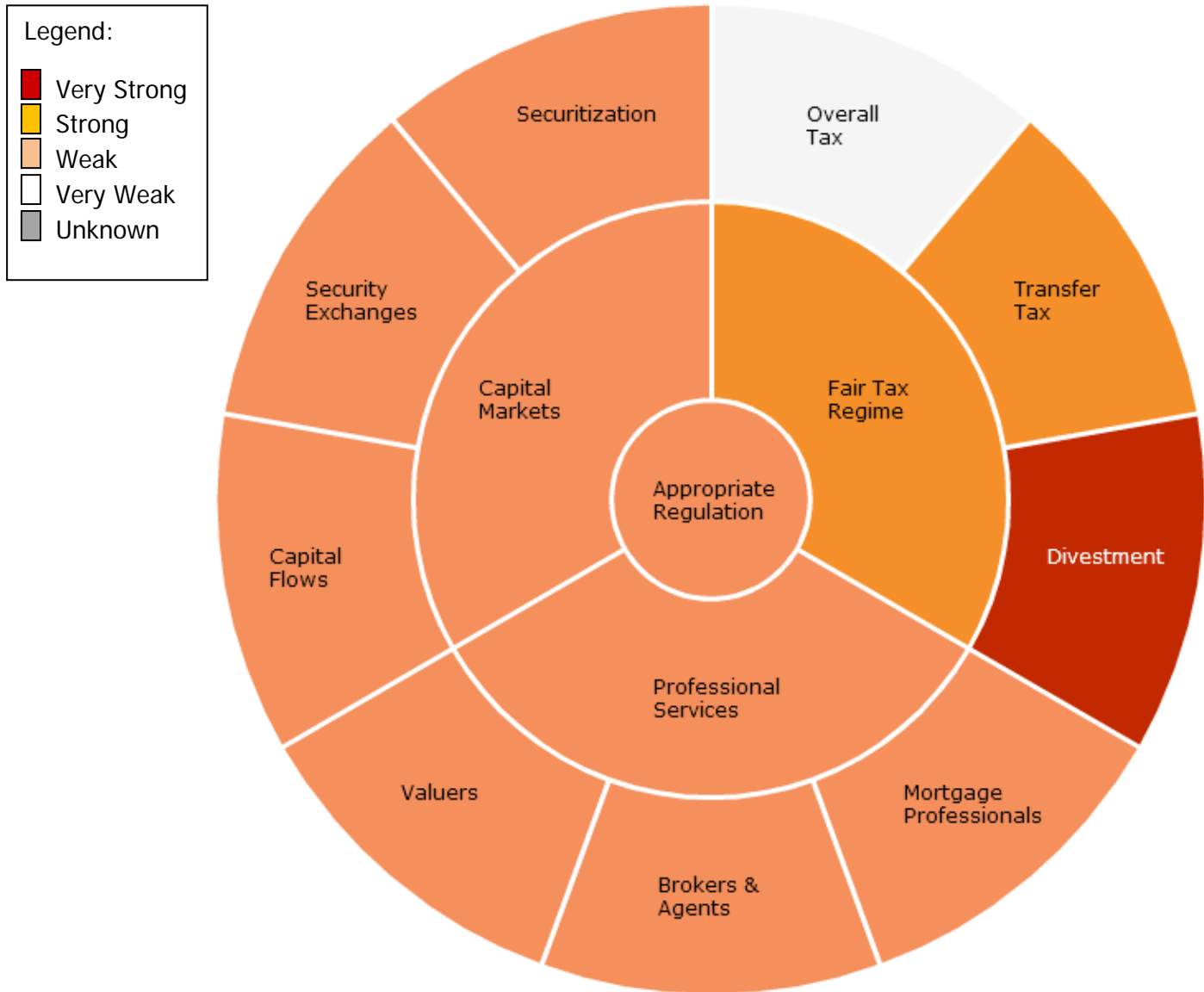
**FQ 18. What is the status of proprietary data bases that include property information?** Most firms maintain their own databases

**FQ 19. What is the status of existing data sharing mechanisms for properties that are for sale?** None, although Internet listing sites have started to develop.

**FQ 20. Do valuers have an established data sharing mechanisms?** No

Source: IRPF Assessments March 2009

## 6. Appropriate Regulation



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

## 6.1 Fair Tax Regime

Core Question:	Do market participants feel the overall tax rate is fair and participate in formal transactions? <b>Yes – Strong, personal and corporate income taxes are moderate.</b>
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### Transfer Tax

6.1.1 What is the total property transfer tax including all duties and payments? **Strong – 4.2%, 4% stamp duty plus attorney and other fees**

### Overall Tax

6.1.2 What is the overall tax rate on entrepreneurs? **49.7% – Ranking – 164<sup>th</sup> out of 183 Very Weak**

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Source: *Doing Business* – Paying Taxes & Registering Property, World Bank  
[www.doingbusiness.org/ExploreEconomies/?economyid=101](http://www.doingbusiness.org/ExploreEconomies/?economyid=101)

### Divestment

#### Survey Question

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SQ 28 What is the tax on profits for foreign investors when divesting property? **There is currently no capital gains tax in Kenya – Very Strong. There is a 30% tax on rental income and foreign corporate income tax is 37.5%. Kenya has Double Taxation Treaties with Canada, Denmark, Germany, India, Norway, Sweden, the U.K. and Zambia**

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Source: Kenya Revenue Authority [www.kra.go.ke/](http://www.kra.go.ke/)

## 6.2 Professional Services

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

#### Survey Questions

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SQ 29 Are property valuers licensed and/or certified by the government? **Yes – Weak – registration is limited to one level and primarily for land transactions.**

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Source: Ministry of Lands - [www.ardhi.go.ke/](http://www.ardhi.go.ke/)

Q 30 How effective are mechanisms in place to discipline valuers who engage in misconduct? **Weak – Valuers Act provides for disciplinary and removal procedures but limited primarily to land valuers.**

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Source: Land Valuers Act [www.isk.or.ke/mats/ValuersAct.pdf](http://www.isk.or.ke/mats/ValuersAct.pdf)

See pages 26-27 for in-country assessment information regarding valuers.

## Brokers & Agents

### Survey Questions

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SQ 31 Are real estate brokers and agents licensed and/or certified by the government? **Yes – Weak, up to 80% of those working as brokers are unregistered.**

SQ 32 How effective are mechanisms in place to discipline brokers or agents who engage in misconduct? **Very Weak – Estate Agents Act provides for removal from registry, but the majority of agents are unregistered.**

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Source: Ministry of Lands

[www.lands.go.ke/index.php?option=com\\_content&task=view&id=21&Itemid=37](http://www.lands.go.ke/index.php?option=com_content&task=view&id=21&Itemid=37)

## Mortgage Professionals

### Survey Questions

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SQ 33 Are mortgage professionals licensed and/or certified by the government? **Yes – Mortgage Finance Institutions are regulated by the Central Bank – Strong**

SQ 34 How effective are mechanisms in place to discipline mortgage professionals who engage in misconduct? **None in place as profession is small with only 2 separate mortgage finance companies – Very Weak**

## 6.3 Capital Markets

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

6.3.1 How restricted is the flow of capital into and out of the country? **Weak – Ranking 84<sup>th</sup> out of 133; Score 4.1 out of 7**

## Security Exchanges

6.3.2 Is the regulation of securities exchanges transparent, effective and free of influence from government and industry? **No – Weak, Ranking 100<sup>th</sup> out of 133; Score 3.7 out of 7**

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Source: *The Global Competitiveness Report 2009*, World Economic Forum  
[www.weforum.org/documents/GCR09/index.html](http://www.weforum.org/documents/GCR09/index.html)

## Securitization

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

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Source: Multilateral Investment Guarantee Agency - [www.miga.org/](http://www.miga.org/)

## In-Country Assessment

### Taxation

**FQ 21. What is the overall taxation system in regards to property?**

In addition to the 4% stamp duty on transactions, a property tax rate of 2 – 22% is levied according to location and use. Nairobi's tax rate in 2001 was 14%.

### Brokerage

**FQ 22. What is the number of practitioners in the country including full-time brokers/agents with formal training and part-time, informal brokers?**

There are 250-300 registered estate agents but the most commonly quoted number in the field is approximately 1,000. Even those that are registered, as one government official indicated, come in and out of being registered depending on how the market was moving. Up to 80% of the brokers are informal.

**FQ 23. What is the number and average size of brokerage companies?**

There are 50-75 companies in the marketplace. Of these companies, six are larger with between 10-20 estate agents in companies that have 80 total employees. Another 10 to 12 companies that are medium-sized with between 5 and 7 estate agents and the remaining companies are small with one or two estate agents.

**FQ 24. Are there brokers associations active in the market? What number and what percentage of practitioners belong?**

Yes, the Institution of Surveyors Kenya (ISK) provides services to estate agents.

**FQ 25. What training programs are available to enhance productivity?**

Training takes place within the companies with little offered by ISK.

**FQ 26. Is there a Code of Ethics or standards that practitioners follow? Is the Code enforced?**

The Estate Agents Act calls for the establishment of a Code of Conduct and Rules of Practice, but not appear to have been developed.

**FQ 27. Do civil society organizations exist to support the development of mortgage professionals?**

No – market not yet developed enough to support an association.

Source: IRPF Assessment March 2009

## Appendix – Procedures for Registering a Property

Source – *Doing Business* – Registering Property, World Bank

### 1. Carry out search of title at the Land Office

Time to complete: 3 days (simultaneous with procedure 2 & 3)

Cost to complete: KES 250

Comment:

In respect of searches on property registered under the Registered Land Act, a copy of the title document is required to be submitted at the time of applying for the search. Also, one cannot carry out a personal search but must instead apply for an official search.

### 2. Obtain Land Rent Clearance Certificate from the Commissioner of Lands

Time to complete: 19 days (simultaneous with procedure 1 & 3)

Cost to complete: no cost

Comment:

Seller's lawyer obtains the Land Rent Clearance Certificate from the Commissioner of Lands at no cost.

### 3. Obtain Rates Clearance Certificate from the Nairobi City Council

Time to complete: 5 days (simultaneous with procedures 1 & 2)

Cost to complete: KES 5000

Comment:

Seller's lawyer obtains the Rates Clearance Certificate from the Nairobi City Council. This certificate is important proof that there are no outstanding fees to be paid to the Municipality. Lawyers are not required to be involved in the registration process. Lawyers' fees are calculated based on a fixed scale depending on the value of the property.

### 4. File the transfer instrument at the Lands Office for assessment of stamp duty payable on the transfer

Time to complete: 8 days (simultaneous with procedure 5)

Cost to complete: 4% of property value (stamp duty)

Comment:

The draft transfer is prepared by the buyer's lawyers and needs to be approved by the seller's counterpart. The stamp duty amount to be paid is indicated when the application is filed, but it takes approximately 7 days to obtain the receipt of payment (obligated to pay with a banker's check) from the bank. The payment is made directly at the Lands Office.

## **5. Pick up banker's check and pay Stamp Duty**

Time to complete: 2 days (simultaneous with procedure 4)

Cost to complete: KES 600 (charge for Banker's check)

Comment:

It is mandatory to pay the above-mentioned stamp duty with a banker's check. The payment is made through commercial banks and the approved banks include the Kenya Commercial Bank and The National Bank of Kenya. Payment is made to the Commissioner of Domestic Taxes on behalf of the Commissioner of Lands.

## **6. Receive inspection by land officer**

Time to complete: 30 days (simultaneous with procedure 7)

Cost to complete: no cost

Comment:

Once the draft transfer has been filed at the land office, an inspector visits the site to verify the development and state of the property. Due to lack of transport, in practice, the inspector often has to be picked up in person and driven to the site. There are no prior appointments made and the actual inspection may happen within one day or, in the worst case, one month. However, note that this time is not limited and in some cases entrepreneurs may wait months for a valuation.

## **7. Obtain valuation of the property by Government valuers**

Time to complete: 7 days (simultaneous with procedure 6)

Cost to complete: no cost

Comment:

The inspector visits the site to evaluate and verify the indicated purchase price of the property in order to ensure accurate tax payment. If the assessed value differs from the one indicated by the parties, an additional payment is requested. Previously, such inspections were conducted on a random basis, but now every transaction requires such an inspection. The issues involved are similar to the inspections by the land officer and, therefore, may happen within 1 day to up to over one month. The evaluation report itself is completed within a few days of the inspection. Both inspections are required before the completion documents can be lodged with the Lands Office.

**8. Lodge the completion documents with Lands Office for registration of the transfer**

Time to complete: 6 days

Cost to complete: KES 250

Comment:

The completion documents are lodged for registration at the Lands Office.

These documents are generally obtained from seller's lawyers, these being:

- Certificate of Title

- Rates Clearance Certificate

- Land Rent Clearance Certificate

- Consent Transfer

Inform seller's lawyers of registration and pay balance of the purchase price. The certificate of the registered transfer is collected at the Lands Office.