

Kenya

Sustainable Investment Requirements



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Kenya

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About the paper

This is a national companion guide to the publication *The Business Guide for Sustainability in Foreign Investments*. The companion guide presents an overview of Kenya's environmental and social regulations for investment operations in agroprocessing and light manufacturing. It also provides contacts of relevant national ministries and enforcement bodies.

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For more information on PIGA, see: <http://www.intracen.org/piga/>

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Foreword by ITC

Foreign investment in Kenya unlocks opportunities to reach new regional and global markets and better serve the local market. The actions taken by business managers have tremendous spillover effects, not only for the local economy, but for the social and environmental conditions of the local population. As part of the post-pandemic recovery, investing sustainably is essential.

National legislation, regional trade agreements, and market demand all trend towards increased consideration for social and environmental practices. Beyond the business case for sustainability, international firms and local business must be aware of the requirements in their country of operation in order to avoid repercussions and remain competitive.

This national companion guide provides the mandatory social and environmental requirements for investing in Kenya in agroprocessing and light manufacturing. The guide details the steps businesses must take in their investment journey and the respective agencies they will contact along the way. The recommendations as well as the tools, such as sustainability checklists and resource directories, provide practical support to investors in their journey to improve their business practices.

This is a companion guide to the publication *The Business Guide for Sustainability in Foreign Investments*, which makes the business case for sustainable investment and provides common sustainability practices that firms must consider when starting operations in a foreign country.

This guide is an outcome of the research conducted for the Partnership for Investment and Growth in Africa, funded by the United Kingdom's Foreign, Commonwealth & Development Office. It is based on insights of ministries, investors, businesses and experts at the International Trade Centre.

Pamela Coke-Hamilton
Executive Director
International Trade Centre

Foreword by KenInvest

As an authority mandated to promote and facilitate investments in Kenya, the Kenya Investment Authority works to ensure that investors impart enduring and maximum positive impact on the global and local environment, community and economy, thus helping to achieve the Sustainable Development Goals. Foreign investment in Kenya has been rising in recent years and is expected to grow further.

This handbook on sustainable investment requirements in agroprocessing and light manufacturing, developed for foreign investors in Kenya, is therefore timely. It will guide them on how to do business responsibly and sustainably.

The guide sets out the legal requirements for environmental and labour laws in Kenya, and provides useful information on what to consider at each stage of the investment process in light manufacturing and agroprocessing – two of the most important sectors in the country. Investors should use this publication together with the handbook *The Business Guide for Sustainability in Foreign Investments*, which explains the basic concepts and business case for implementing sustainable and responsible investment practices.

We congratulate the International Trade Centre's Partnership for Investment and Growth in Africa project for publishing this handbook, and commit our effort in its implementation. We urge investors, our partners and other stakeholders to use this guide as we continue to contribute to the process of Kenya's transformation.

Moses Ikiara
Managing Director
Kenya Investment Authority

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About ITC

Established in 1964, the International Trade Centre (ITC) is the joint agency of the World Trade Organization and the United Nations. Its mission is to foster inclusive and sustainable economic development and contribute to achieving the United Nations Global Goals for Sustainable Development.

ITC is the only development agency that is fully dedicated to supporting the internationalization of small and medium-sized enterprises. It helps these businesses in developing and transition economies become more competitive and connected to international markets for trade and investment, thus raising incomes and creating job opportunities, especially for women, young people and poor communities. ITC works with policymakers, trade and investment support institutions, exporters and other stakeholders in the public and private sectors to enable export success of small firms in developing countries and transition economies.

Read more at <http://www.intracen.org/>

About the Partnership for Investment and Growth

The Partnership for Investment and Growth in Africa (PIGA) is part of Manufacturing Africa, a flagship programme of the United Kingdom's Foreign, Commonwealth & Development Office facilitating foreign direct investment with high development impact into selected African countries.

Under Manufacturing Africa, PIGA aims to contribute to job creation and sustainable growth in Ethiopia, Kenya, Mozambique and Zambia by helping these countries attract foreign direct investment, specifically Chinese investment, in the agroprocessing and light manufacturing sectors. PIGA is also designed to enhance the capacity of these countries for effective investment promotion.

ITC implements PIGA in cooperation with the China Council for the Promotion of International Trade and the China–Africa Development Fund.

<http://www.intracen.org/piga/>

About KenInvest

The Kenya Investment Authority (KenInvest) is a statutory body established in 2004 through an act of parliament (Investment Promotion Act No. 6 of 2004) with the main objective of promoting investments to contribute to Kenya's development strategy, Kenya Vision 2030, and its Big Four agenda.

KenInvest is responsible for smoothing the implementation of new investment projects, providing aftercare services for new and existing investments, as well as organizing investment promotion activities locally and internationally. Its mission is 'to promote and facilitate domestic and foreign investment in Kenya by advocating for a conducive investment climate, providing accurate information and offering quality services for a prosperous nation'.

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Acronyms

Unless otherwise specified, all references to dollars (\$) are to United States dollars, and all references to tons are to metric tons.

EIA	Environmental impact assessment
EPZA	Export Processing Zones Authority
ITC	International Trade Centre
KenInvest	Kenya Investment Authority
NEMA	National Environment Management Authority
PIGA	Partnership for Investment and Growth in Africa

Chapter 1

Sustainability requirements in Kenya

Key messages

- Investors are required to obtain an environmental licence for their proposed development, which is granted following the successful production and review of an environmental impact assessment (or project report/brief for low-risk projects).
- The environmental impact assessment or project report process determines environmental requirements for the specific business.
- Compliance with environmental impact assessment requirements and all relevant environmental regulations will be monitored and businesses must submit an environmental audit every year, depending on the details of the national legislation.
- Non-compliance with environmental requirements can result in improvement orders, which, if not followed, can result in closure, imprisonment and/or financial penalties.
- A range of legislation covers labour laws, and the company must understand and comply with relevant legislation. This chapter summarizes only the key points.
- Investors must register their organizations with the Directorate of Occupational Safety and Health Services and enlist an approved Organizational Safety and Health Act adviser.
- Land regulations should be taken into account, particularly in terms of leasing or purchasing land, where it is vital to ensure that alternative community or tribal rights are considered and respected.
- Subnational requirements vary from region to region and are enforced by county government agencies. Investors should contact their county government agency to understand any additional sustainability requirements beyond the national requirements.

When investing in manufacturing or agroprocessing in Kenya, it is vital to comply with the national legislation in matters relating to environmental management and working conditions for employees. The following section provides an overview of general principles applicable for investors in any country and specific legal requirements in Kenya.

General principles

- Do not ask favours from influential government representatives to shortcut processes. This is likely to lead to compliance problems at a later stage. Speak to the relevant government departments and follow their guidance and requirements.
- Do not rely exclusively on foreign investors already working in the country for second-hand knowledge that may be out of date or inaccurate. Make sure you understand what is required from relevant government departments.
- It is usually necessary to hire a specialist (i.e. individual consultant or firm) to undertake a project brief, environmental impact assessment (EIA),¹ environmental audit or decommissioning plan to ensure an objective assessment process. Environmental institutions in Kenya maintain lists of registered qualified, professional companies or individual experts who can provide these services.
- Allocate sufficient time for the EIA process. Engage with the relevant environmental agency as soon as you register a business. Six to 12 months is a reasonable timeframe for a full EIA, including public consultation and review, improvements and approval by the appropriate environmental authority, at which point an environmental licence can be granted for the proposed investment.
- Comply with land use plans where they have been developed on a participatory basis and passed into law to guide spatial development of a region or urban area.
- Be aware of differences in the local method for defining basic salary and remuneration packages. Confusion in this area could lead to a failure to comply with local labour laws.
- Try to obtain national legislation translated into your own language, as well as useful publications and updates on legislative changes (which business associations often produce). These can become outdated, however, and speaking directly to the relevant government department is usually best.
- Specific regulations may be negotiated for the operations of a particular business, with a trade union body representing your workers. This would subsequently be reflected in a legally binding collective bargaining agreement.

¹ Note that EIAs are sometimes referred to as environmental and social impact assessments. The requirements and contents of the assessment remain the same.

Environmental and labour requirements

Investors must follow a set of environmental and labour regulations when setting up a business in Kenya, during operations or when decommissioning a site due to closure or relocation. These are summarized below, with references to relevant legislation.

Country background

As one of the most dynamic economies in Africa, with well-developed regulations and a rapidly improving business environment, Kenya is an attractive destination for foreign investors. International business investors operate in Kenya across a range of sectors, including light manufacturing infrastructure development, housing and construction, and agroprocessing.

Foreign invested firms have generated numerous jobs for Kenyans and other Africans. There are also many positive examples of skills and technology transfer, helping to develop the capacity of the Kenyan workforce.

Environmental regulations and guidelines

The following environmental regulations must be observed in Kenya:

- Environmental Management and Coordination Act²
- Environment (Impact Assessment and Audit) Regulations (2003)³
- Water Quality Regulations (2006)⁴
- Waste Management Regulations (2006)⁵
- Conservation of Biological Diversity Regulations (2006)⁶
- Controlled Substances (Ozone Depleting Substances) Regulations (2007)⁷

² Environmental Management and Coordination Act, CAP, 387. Available from <https://www.nema.go.ke/images/Docs/Regulations/Draft%20%20EIA%20Regulations%20March%202018.pdf>

³ Environment (Impact Assessment and Audit) Regulations, 2003, Legal Notice No. 101 Available from <https://eregulations.invest.go.ke/media/Revised%20EIA%20Regulations.pdf>

⁴ Environmental Management and Coordination (Water Quality) Regulations 2006. Available from https://www.nema.go.ke/index.php?option=com_content&view=article&id=28&Itemid=168

⁵ Environmental Management and Coordination (Waste Management) Regulations 2006. Available from <https://www.nema.go.ke/images/Docs/Regulations/Waste%20Management%20Regulations-1.pdf>

⁶ Environmental Management and Coordination Act (No. 8 of 1999). Available from https://www.nema.go.ke/images/Docs/Regulations/Biodiversitybenefitshareregulations_1.pdf

⁷ Environmental Management and Coordination (Controlled Substances) Regulations, 2007. Available from <https://www.nema.go.ke/images/Docs/Regulations/Controlled%20substance%20regulations-1.pdf>

- Wetlands, River Banks, Lake Shores and Sea Shore Management Regulations (2009)⁸
- Noise and Excessive Vibrations Regulations (2009)⁹
- Air Quality Regulations (2014)¹⁰
- **Draft Deposit Bond Regulation
- **Draft Chemicals Regulation

The Kenya National Environment Management Authority has developed several technical environmental guidelines that are used to regulate the sectors in which investment is being undertaken, including:

- National Simplified Environmental Assessment Guidelines to take care of policies, plans and programmes at strategic levels¹¹
- National Solid Waste Management Strategy¹²
- National Guidelines on Safe Management and Disposal of Asbestos¹³
- Management of Used Oil in Kenya guidelines¹⁴
- National Sand Harvesting guidelines¹⁵
- National Land Use guidelines¹⁶

⁸ Environmental Management and Coordination (Wetlands, River Bank, Lake Shores and Sea Shore Management) Regulations, 2009. Available from

<https://www.nema.go.ke/images/Docs/Regulations/Wetlands%20regulations-1.pdf>

⁹ Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009. Available from

<https://www.nema.go.ke/images/Docs/Regulations/Noise%20regulations.pdf>

¹⁰ Kenya Gazette Supplement No. 41 (2014). Environmental Management and Coordination (Air Quality) Regulations 2014. Available from

http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2014/LN34_2014.pdf

¹¹ National Environmental Management Authority (2011). National Guidelines for Strategic Environmental Assessment in Kenya. Available from

<https://www.nema.go.ke/images/Docs/Guidelines/SEAGuidelines%20.pdf>

¹² NEMA (2014). The National Solid Waste Management Strategy. Available from

<https://www.nema.go.ke/images/Docs/Media%20centre/Publication/National%20Solid%20Waste%20Management%20Strategy%20.pdf>

¹³ NEMA (2013). National Guidelines on Safe Management and Disposal of Asbestos. Available from

<https://www.nema.go.ke/images/Docs/Guidelines/Guidelines%20asbestor.pdf>

¹⁴ NEMA (2016). Technical Guidelines on the Management of Used Oil and Oil Sludge in Kenya.

Available from https://www.nema.go.ke/images/Docs/EIA_1310-1319/USED%20OIL%20GUIDELINE%20-%20Final%20draft%20-%2006th%20February%202017.pdf

¹⁵ NEMA (2007). National Sand Harvesting Guidelines. Available from

<https://www.nema.go.ke/images/Docs/Guidelines/NATIONALSANDHARVESTINGGUIDELINES.pdf>

¹⁶ NEMA (2011). Integrated National Landuse Guidelines. Available from

<https://www.nema.go.ke/images/Docs/Guidelines/national%20landuse%20guidelines-nema.pdf>

Environmental impact assessments

Investors must comply with the following environmental management requirements as they set up, operate and decommission a business.

1. Obtaining an environmental licence for a proposed investment

An investor is not permitted to start a project unless a project brief or an environmental impact assessment has been concluded in accordance with the 2003 Environment (impact assessment and audit) Regulations, and the National Environmental Management Authority (NEMA) has issued a decision letter.

An EIA report must be submitted for consideration and approval by NEMA for any investments (i.e. low risk, medium risk or high risk) specified in the Second Schedule of the Environmental Management and Coordination Act (CAP, 387).

A project report setting out best practice procedures to minimize environmental impact is sufficient for investments that are categorized as low risk (See Schedule 1 of the EIA legislation for an indicative list). For medium- and high-risk projects, the legal requirements relating to the environmental impact assessment are clearly described in the Environment (Impact Assessment and Audit) Regulations, 2003, Legal Notice No. 101. Briefly, the requirements are as follows:

- Selection of qualified EIA lead experts or firm of experts registered by the National Environment Management Authority. The authority maintains a register of experts, available in all NEMA county offices.¹⁷
- Based on the agreed terms of reference and EIA regulations, the investor will appoint one or more independent experts or a firm of experts to undertake the EIA.
- The EIA process includes stakeholder and local community consultation. When local populations must be relocated, for particularly large projects, suitable resettlement provisions are to be followed, ideally based on International Finance Corporation standards.
- Upon completion, the EIA report is submitted to the NEMA head office, duly signed by the investor and the experts who prepared it.
- The investor is required to submit five hard copies of the EIA report to NEMA, after uploading it on the authority's online licensing portal, as set out in the First Schedule to the 2003 Environmental (Impact Assessment and Audit) Regulations.

¹⁷ NEMA's register of experts is available online at www.nema.go.ke.

- The report will then be sent to lead agencies for internal review and harmonization of decision-making.
- Decision-making by NEMA takes a maximum of 30 days for project reports and 60 days for EIA study reports, from the date of submission to NEMA.

2. Environmental audit to assess compliance with requirements

Any investments that have been approved by the EIA process and commissioned for operations must undergo an environmental audit one year after starting operations. The 2003 Environment (Impact Assessment and Audit) Regulations (Legal Notice No. 101) clearly stipulates legal requirements relating to an environmental audit.

Below are the requirements for an environmental audit.

- Selection of qualified lead experts or firm of experts registered by NEMA. The authority maintains a register of experts, available in all NEMA county offices.
- Based on agreed terms of reference and regulations of the EIA and environmental audit, the appointed experts or firm of experts undertake the environmental audit.
- Once the environmental audit report is completed, investors must submit it to NEMA (headquarters/field office) duly signed by the investor and the environmental audit experts involved in preparing the report.
- The investor must submit three hard copies of the report to NEMA for processing.
- The report then undergoes an internal NEMA review and harmonization for decision-making within 30 days from the date of submission.
- Improvement orders may be issued, obliging a business to rectify any non-compliance with the requirements set out in the original EIA or subsequently agreed requirements.
- Failure to comply with improvement orders can result in a fine of between 2 million KSH and 4 million KSH (roughly \$19,000 to \$38,000), imprisonment for one to four years, and/or site closure.
- An environmental audit is required each year during operations, following the same process set out above.
- Throughout the period of business operations, investors must comply with all relevant regulations and guidelines listed in the box above.

3. Decommissioning a site

- A decommissioning plan is required as part of the initial EIA. As the decommissioning process may happen years later, at the time of closure, an updated decommissioning plan must be prepared and submitted to NEMA.
- NEMA will advise the company what improvements it must make to the plan. A full decommissioning report must be submitted to NEMA upon completion of remediation work, detailing evidence of compliance with the measures set out in the decommissioning plan.

Labour laws and workplace provisions

The following labour legislation must be observed in Kenya:

- Employment Act 2007 (Revised edition 2012)¹⁸
- 2010 National Kenyan Constitution¹⁹
- Regulation of Wages (General) Order²⁰
- The Regulation of Wages (General) (Amendment) Order (2017)²¹
- The Regulation of Wages (Agricultural Industry) (Amendment) Order (2017)²²
- Public Holidays Act²³
- Occupational Health and Safety Act 2007 (Revised 2010)²⁴
- Health Act 2017 (provisions on breastfeeding in the workplace)²⁵

¹⁸ National Council for Law Reporting (2012). Employment Act. Chapter 226. Available from http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/EmploymentAct_Cap226-No11of2007_01.pdf

¹⁹ Constitution of Kenya. Available from: <http://kenyalaw.org/kl/index.php?id=398>

²⁰ Kenya Gazette Supplement, Legislative Supplement, 1967-06-30, No. 31, pp. 205–207 Available from https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=28441

²¹ *Ibid.*

²² *Ibid.*

²³ National Council for Law Reporting (2012). Public Holidays Act Chapter 10. Available from <http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PublicHolidaysActCap110.pdf>

²⁴ The Occupational Safety and Health Act, 2007. Available from <http://www.health.go.ke/wp-content/uploads/2015/09/OSH%20Act%202007.pdf>

²⁵ Kenya Gazette Supplement No. 101. The Health Act, 2017. Available from <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/HealthActNo.21of2017.pdf>

- Persons with Disabilities Act 2003 (Revised 2012)²⁶
- Work Injury Benefits Act (2007)²⁷
- National Social Security Fund Act (2013)²⁸
- National Hospital Insurance Fund Act (2012)²⁹
- The Labour Relations Act (2007)³⁰
- The Industrial Training Act³¹
- Local Content Bill 2018 (Oil and Gas only)³²
- Trade Dispute Act³³
- Domestic Workers' Law (2011)³⁴
- Land Registration Act (2012)³⁵
- Community Land Act (2016)³⁶

²⁶ National Council for Law Reporting (2012). Persons with Disabilities Act Chapter 133. Available from <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/69444/115499/F923058%20154/KEN69444%202012.pdf>

²⁷ The Work Injury Benefits Act, 2007. Available from <http://www.health.go.ke/wp-content/uploads/2015/09/Work%20Injury%20Benefits%20ACT%202007.pdf>

²⁸ Kenya Gazette Supplement No. 179 (2013) The National Social Security Fund Act, 2013. Available from <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/NationalSocialSecurityFundAct2013.pdf>

²⁹ National Council for Law Reporting (2012). National Hospital Insurance Fund Act Chapter 255. Available from <https://eregulations.invest.go.ke/media/National%20Hospital%20Insurance%20Fund%20Act.pdf>

³⁰ The Labour Relations Act, 2007. Available from http://www.health.go.ke/wp-content/uploads/2015/09/LABOUR_RELATIONS_ACT_2007.pdf

³¹ National Council for Law Reporting (2009). The Industrial Training Act Chapter 237. Available from <http://www.knqa.go.ke/wp-content/uploads/2018/10/Industrial-Training-act-2011.pdf>

³² The Local Content Bill, 2018. Available from <http://www.parliament.go.ke/sites/default/files/2018-11/Local%20content%20Bill.pdf>

³³ Laws of Kenya, 1980, Government Printer, Nairobi, Kenya (1980). rev. ed., Chapter 234. Available from http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=28292&p_count=96232

³⁴ International Labour Organization. Domestic Workers Convention, 2011 (2011). Available from <http://kenyalaw.org/treaties/treaties/1004/Domestic-Workers-Convention-2011>

³⁵ National Council for Law Reporting (2012). Land Registration Act Chapter 300. Available from <http://extwprlegs1.fao.org/docs/pdf/ken112133a.pdf>

³⁶ Kenya Gazette Supplement No. 148 (2016). The Community Land Act, 2016. Available from http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CommunityLandAct_27of2016.pdf

Summary of key labour law provisions

The legislation listed above specifies many other laws and conditions, and investors should make sure they understand and comply with what is relevant to their business.

Minimum wage: here are provisions for different categories under the Regulation of Wages (General) Order and recent amendments.

Working hours:

- Eight hours/day
- In general, people can work 52 hours per week. However, the prescribed normal working hours as set out in Kenya's labour laws are 45 hours a week. That is 8:00 to 17:00, Monday to Friday, and five hours on Saturdays (8:00 to 13:00), with Sunday being a day of rest.

Overtime: Overtime is paid at the rates of 1.5 times the usual hourly rate on weekdays and double the usual hourly rate on Sundays and public holidays. For anomalies, the different Regulations of Wages Orders (listed above) cover different sectors of the economy.

Rest days: An employee is entitled to at least one rest day in every period of seven days.

Paid leave: After 12 consecutive months of service, a full-time worker is entitled to 21 days of leave with full pay each year.

Paid public holidays: Workers are entitled to paid public and religious holidays. These holidays are: New Year's Day (1 January); Good Friday; Easter Monday; Labour Day (1 May); Madaraka Day (1 June); Idd-ul-Fitr (depends on moon sighting); Moi Day (10 October); Mashujaa/Kanyatta Day (20 October); Jamhuri Independence Day (12 December); Christmas Day (25 December) and Boxing Day (26 December).

Additional public holidays include Eid-ul-Azha (depends on moon sighting) and Diwali (according to the Hindu calendar), and are specified to everyone belonging to the Islamic and Hindu faiths, respectively.

Maternity leave: Women employees are entitled to three months (91 calendar days) of fully paid maternity leave upon the birth of a child. The worker must give a written notice at least seven days in advance.

Nursing: Employers are required to grant all nursing employees break intervals for nursing (or to express milk), in addition to the regular time off for meals. Employers also must provide lactation rooms in the workplace that have adequate equipment and facilities.

Paternity leave: A male employee is entitled to two weeks of paternity leave with full pay.

Sick leave: A worker is entitled to paid sick leave of up to 14 days a year, after completion of two months of service with an employer. The employer may provide fully paid sick leave for the first seven days, and half wages are paid for the remaining seven days.

Absence from work/compassionate leave: There is no provision in the Employment Act for compassionate leave. However, employers are expected to grant sufficient leave to an employee as appropriate to the situation, including for bereavement of a family member or close friend, marriage of the employee or a family member, and customary cultural practices.

Work injuries: Work injuries are divided into three categories: (i) permanent incapacity, (ii) temporary incapacity and (iii) fatal injury leading to death of a worker. They must be compensated in accordance with the relevant legislation (Work Injury Benefits Act 2007), which is in line with International Labour Organization conventions.

Medical insurance: Investors must comply with requirements to contribute to the National Hospital Insurance Fund. Investors can also use other private medical schemes.

Retirement benefits: The National Social Security Fund provides for contributions to, and the payment of benefits from, the fund. Kenya's Pensions Act (Cap 189 Rev. 2009) provides for the granting and regulating of pensions, gratuities and other allowances related to the public service of officers under the Government of Kenya. In addition, there are private retirement benefit schemes in the market.

Disability rights: Investors cannot deny a person with a disability access to opportunities for suitable employment. A qualified employee with a disability is subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees. A worker with a disability is entitled to exemption from tax on all income accruing from his/her employment.

Occupational health and safety requirements: Investors must comply with Kenya's Occupational Health and Safety Act, which includes provisions and standards for securing a safe and healthy working environment. Every employer is responsible for ensuring the safety, health and welfare of all employees at work. It is important to develop a safety- and health-conscious culture in the workplace, and encourage reporting of injuries and accidents. Prevention of child labour is also covered by the Act, especially where the child's health is exposed to risk.

Housing and other needs: An employer must provide reasonable housing accommodation for each of his employees either at or near the place of employment, or must pay the employee an additional amount to obtain reasonable accommodation.

Local content requirements:³⁷ Quotas and provisions for the extractives sector only.

Trade unions: Any employee is free to start or join a trade union.

Preventing child labour: The 2007 Kenya Employment Act defines a child in Kenya as a person below the age of 18 years. The law provides for protection from child labour under 2001 the Children Act (No. 8). Section 10 provides that every child shall be protected from any work that interferes with his/her education, or is harmful to the child's health or physical, mental, spiritual, moral or social development. No person shall employ a child who has not attained the age of 13, whether gainfully or otherwise in any undertaking. A child 13–16 years of age may be employed to perform light work that is:

- Not likely to be harmful to the child's health or development; and
- Does not interfere with the child's attendance at school, his/her participation in vocational orientation or training programmes approved by the minister of labour, or his/her capacity to benefit from the instructions received.

A child of 13–16 years of age may not be employed in an industrial undertaking to attend to machinery. International Labour Organization Convention 138 goes a step further and requires that employers not hire any workers 'under the age of completion of compulsory schooling and, in any case, shall not be less than 15 years'.³⁸

Labour inspection: Kenya's Ministry of Labour oversees a dual system of inspection covering general labour inspection (Labour Department) on the one hand, and occupational safety and health (Directorate of Occupational Safety and Health Services) on the other.

Penalties for non-compliance of employers: Various penalties are set out in the legislation for employers who fail to comply with the relevant legislation.

Resolving workplace disputes: The Industrial Court (Trade Dispute Act Cap 234) can award compensation or order reinstatement, and its decisions are final. The court has power to grant injunctive relief prohibition, declaratory orders, award damages and specific performance, apart from re-engagement and reinstatement of employees.

³⁷ Policies that require companies to source intermediate goods or services from the domestic market.

³⁸ International Labour Organization (1973). Minimum Age Convention, 1973. Available from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312283

Chapter 2

Summary checklist

Potential investors in the agroprocessing and light manufacturing sectors in Kenya should consider various environmental and labour requirements when setting up their business operations. The steps included in the checklist below refer to different categories of procedures that investors must follow to obtain their investment certificate and start running their business.

Figure 1 Checklist: Environmental and labour requirements for investors

Legend of icons per investment stage:		
		
No legal labour and environmental requirements set at the investment stage.	No legal labour and environmental requirements are set at this stage, however investors should take into account certain considerations.	Investors need to comply with legal labour and environmental requirements at this stage.
	<p>1. Business opportunities for investing in Kenya</p> <p>No legal labour or environmental requirements are set at this stage for investors considering opening a business in Kenya. Nonetheless, investors should consider the following:</p> <ul style="list-style-type: none"> • Collect information about the labour legal system and environmental regulation in Kenya. • Understand which sustainability areas will be affected by the investment and include this analysis in project design. • Understand the social, environmental, economic and political context in Kenya. For more information, refer to the PIGA Investment Guide for Kenya 	
	<p>2. Starting a business</p> <p>No legal labour or environmental requirements are set at this stage for investors considering opening a business in Kenya.</p>	
	<p>3. Investor registration and certificates</p> <p>Before an investor receives the investment certificate, the Kenya Investment Authority will inspect the premises to ensure the housing use is consistent with operations.</p> <p>Investors must still obtain health and environment certificates in addition to the initial investment certificate.</p> <p>Institution involved in the process: KenInvest</p>	

	<p>4. Foreign taxpayer registration through KenInvest</p> <p>No legal social or environmental requirements are set at this stage for investors considering opening a business in Kenya.</p>
	<p>5. Registration with national health insurance and social security funds</p> <ul style="list-style-type: none"> Register with Kenya’s National Social Security Fund. <p>Relevant legislation: National Social Security Fund Act (2013)</p> <p>Institution involved in the process: Ministry of Labour</p> <ul style="list-style-type: none"> Register with National Hospital Insurance Fund. <p>Relevant legislation: National Hospital Insurance Fund Act (2012)</p> <p>Institution involved in the process: Ministry of Health</p>
	<p>6. Work permits, special passes and foreign national certificates</p> <p>No legal social or environmental requirements are set at this stage for investors considering opening a business in Kenya.</p>
	<p>7. Land transfer procedures</p> <ul style="list-style-type: none"> Contract a lawyer to conduct due diligence on land. <p>Relevant legislation: Land Registration Act (No. 3, 2012) and Community Land Act (No. 27, 2016)</p> <p>Institutions involved in the process: Ministry of Land and Physical Planning and Kenya Revenue Authority</p>
	<p>8. Investing in export promotion zones</p> <p>Investors must submit a short project proposal to the Export Processing Zones Authority, which evaluates the project and gives the investor a letter of approval. The investor will then prepare the memorandum and articles of association and obtain environmental approval, if required, to submit to the authority.</p> <p>Institution involved in the process: Export Processing Zones Authority</p>
	<p>9. Opening a bank account</p> <p>No legal social or environmental requirements are set at this stage for investors considering opening a business in Kenya.</p>

	<p>10. Business permits</p> <p>Businesses that deal with consumables will be required to pay for a health certificate and food hygiene licence.</p> <p>Relevant legislation: Health Act (2017)</p> <p>Institutions involved in the process: KenInvest and relevant local county licensing departments.</p>
	<p>11. Obtaining an environmental licence</p> <ul style="list-style-type: none"> • Acquire an environmental impact assessment licence. <p>Investors in agroprocessing and light manufacturing must obtain an EIA licence from NEMA. They are required to contract an EIA expert who will create the EIA report and submit it to NEMA for approval. NEMA officers will randomly inspect the investment site before the investor obtains the EIA licence.</p> <p>Relevant legislation: Environmental Management and Coordination Act (CAP, 387); Environment (Impact Assessment and Audit) Regulations (2003, Legal Notice No. 101)</p> <ul style="list-style-type: none"> • Acquire an effluent discharge licence. <p>Operators of sewage systems or industrial undertakings must acquire an effluent discharge licence once the factory is built and before production starts.</p> <p>Relevant legislation: Waste Management Regulations (Legal Notice No. 121/2006)</p> <p>Institutions involved in the process: Ministry of Land and Physical Planning and NEMA</p>



12. Legal considerations after commencement of business operations

Environment:

- Environmental audit to assess compliance with requirements established by the EIA
- Decommissioning site at closure

Relevant legislation: Environmental Management and Coordination Act (CAP, 387), and Environment (Impact Assessment and Audit) Regulations (2003, Legal Notice No. 101)

Institutions involved in the process: Ministry of Land and Physical Planning and NEMA

Labour:

- Labour provisions described above

Institutions involved in the process: Ministry of Labour and Social Protection and KenInvest

Chapter 3

Directory of institutions and strategies

Local institutions often have dedicated units that can provide background context or suggestions to investors on more sustainable production processes or business approaches, within the context of their specific region. Factors to be discussed with local institutions include:

- Location selection to maximize sustainable outcomes and minimize risks to local populations and the environment;
- Sustainable sourcing and production techniques;
- Where to source raw materials;
- Recruitment of local workforce;
- Vertically integrated supply chains – linking to value chains;
- Circular opportunities, including with other businesses;
- Resilience to the impacts of climate change and biodiversity loss evident now and likely in the future.

A list of the most important government institutions and business associations available in Kenya follows:

Kenya Association of Manufacturers

Website: <http://kam.co.ke/>

Address: 15 Mwanzi Road opp West Gate Mall, Westlands, Nairobi

Phone: +254 722 201368

Email: info@kam.co.ke

Kenya Investment Authority is a statutory body established in 2004 with the main objective of promoting investments in Kenya. It is responsible for facilitating the implementation of new investment projects, providing aftercare services for new and existing investments, and organizing investment promotion activities both locally and internationally. KenInvest has a One Stop Centre at its office, which makes it convenient to understand what is required and complete these requirements to set up a business.

Website: <http://www.invest.go.ke>

Address: 15th and 14th Floor, UAP Old Mutual Tower, Upper Hill Road, Nairobi

Phone: +254 730 104200

E-mail: info@invest.go.ke

Kenya National Chamber of Commerce and Industry

Website: <https://www.kenyachamber.or.ke>

Address: Heritan House, Ground Floor, Woodlands Road, Off Argwings Kodhek Road, Nairobi

Phone: +254 20 3927000

E-mail: inquiries@kenyachamber.or.ke

Kenya National Cleaner Production Centre provides environment-related services to help firms increase their productivity by adopting resource-efficient and cleaner production tools in manufacturing and services.

Website: www.cpkenya.org

Address: Popo Road, off Mombasa Road, Kenya Industrial Research and Development Centre Premises, Nairobi

Phone: +254 20 6004870 or +254 734 412 402

E-mail: info@cpkenya.org

Kenya Private Sector Alliance

Website: <https://kepsa.or.ke/>

Address: 5th Floor, Shelter Afrique Building, Mamlaka Rd.
P.O. Box 3556-00100 Nairobi

Phone: +254 20 2730371

E-mail: info@kepsa.or.ke

Ministry of Industry, Trade and Cooperatives is responsible for updating policy and strategy relating to industrial development in Kenya.

Website: <http://www.industrialization.go.ke>

Address: NSSF Building, Block A (Western Wing), 23rd Floor, Bishop's Road, Capital Hill, Nairobi

Phone: +254 20 273 1531

E-mail: ps@industrialization.go.ke or cs@industrialization.go.ke

Ministry of Labour and Social Protection, State Department of Labour is responsible for updating, implementing and monitoring policy strategy and mandatory requirements related to labour laws.

Website: <http://labour.go.ke>

Address: NSSF Building, Block A (Western Wing), Bishop's Road, Capital Hill, Nairobi

Phone: +254 20 272 9800

E-mail: ps@labour.go.ke or info@labour.go.ke

National Environmental Management Authority is established under the Environmental Management and Co-ordination Act (No. 8, 1999) as the principal instrument of the Government of Kenya for implementing all policies relating to the environment. NEMA has authority to exercise general supervision and coordination over all matters relating to the environment. It is a semi-autonomous government agency in the Ministry of Environment and Forestry.

Website: <https://www.nema.go.ke>

Address: Representative available at the One Stop Centre of KenInvest

Phone: +254 724 253398 / +254 735 013046

E-mail: dgnema@nema.go.ke

National development strategies

National development strategies are spread across various sectors of the Kenyan economy. Investors are expected to read and understand relevant sector laws, policies, regulations and strategies as they make investment decisions in each sector. The manufacturing sector in particular has many subsector strategies.

- Government policy in Kenya is structured around a strategy called Vision 2030, which is designed to help transform the country into a newly industrialized, middle-income economy. The strategy supports flagship and new sectors for investment. A law on public-private partnerships (PPP Act, 2013) provides an opportunity for investors to partner with the government to develop some of the flagship/new sectors, with a focus on the infrastructure sector.³⁹

In the medium term (2018–2022), the Government of Kenya has selected four main pillars of growth as areas of focus. These are manufacturing, food security, affordable housing and universal healthcare, with an emphasis on more agroprocessing.

³⁹ Kenya Vision 2030 (2019). Website: <https://vision2030.go.ke/>

Kenya's national development strategies include:

- National Industrialization Strategy⁴⁰
- National Export Strategy⁴¹
- Kenya Investment Policy⁴²
- Agricultural Sector Development Strategy⁴³
- Special Economic Zones⁴⁴
- National Food and Nutrition Security Policy (2011)⁴⁵
- Export processing zones⁴⁶
- Manufacturing under Bond Scheme⁴⁷
- Food, drugs and chemical substances (i.e. food labelling, additives and standards) regulations.⁴⁸

⁴⁰ Ministry of Industry, Trade and Cooperatives (2018). The National Industrialization Policy. Available from <http://www.industrialization.go.ke/index.php/projects/124-the-national-industrialization-policy>

⁴¹ Ministry of Industry, Trade and Cooperatives (2018). Integrated National Export Development and Promotion Strategy. Retrieved from <https://www.tralac.org/documents/resources/by-country/kenya/2057-kenya-integrated-national-export-development-and-promotion-strategy-july-2018/file.html>

⁴² Kenya Investment Authority (2017). Kenya Investment Policy. Available from <https://kepsa.or.ke/download/kenya-investment-policy/?wpdmdl=16338>

⁴³ Government of Kenya (2010). Agricultural Sector Development Strategy 2010-2010. Available from <http://extwprlegs1.fao.org/docs/pdf/ken140935.pdf>

⁴⁴ Kenya Gazette Supplement No. 157 (2015). The Special Economic Zones Act, 2015. Available from <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/SpecialEconomicZonesNo16of2015.pdf>

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⁴⁶ Export Processing Zones Authority (2019). Website. <https://epzakenya.com/epz-program/>

⁴⁷ Protocol on the Establishment of East African Customs Union (2003). Article 28 Manufacturing under Bond Scheme. Available from <http://kenyalaw.org/treaties/treaties/295/Protocol-on-the-Establishment-of-East-African-Cust>

⁴⁸ Food, Drugs and Chemical Substances (Food Labelling, Additives and Standards). Regulations (Cap. 254) 1978 (2010). Available from <https://www.ecolex.org/details/legislation/food-drugs-and-chemical-substances-food-labelling-additives-and-standards-regulations-cap-254-lex-faoc106529/>

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