

# KENYA: Sustainable investment in agro- processing and light manufacturing



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Kenya: Sustainable investment  
in agroprocessing and light manufacturing



## ABOUT THE REPORT

Set within the context of increasing Chinese investment in Africa, this guide for Chinese investors shows how to embrace sustainability along their investment journey in Kenya.

The guide contains mandatory requirements and additional sustainability practices for agroprocessing and light manufacturing for the country. It shows investors how to benefit from caring for the environment and local communities. It also helps them to embed sustainability in all steps of their business operations, thus contributing to sustainable development.

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For more information on the Partnership for Investment and Growth in Africa, see: <http://www.intracen.org/piga/>

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# Foreword

International Trade Centre

The Partnership for Investment and Growth in Africa (PIGA) is supporting Kenya to attract foreign direct investment, with a high potential developmental impact in the agroprocessing and light manufacturing sectors, to contribute to job and growth creation and spillover benefits for the local economy.

Foreign investment in these two productive sectors can unlock opportunities to increase exports to regional and global markets, and better serve the local market, while contributing to the country's development agenda. To do so, investors need to implement more inclusive and sustainable social, environmental and labour practices, aligned with the United Nations Sustainable Development Goals.

With the aim to promote sustainable investment practices in Kenya, this handbook provides investors guidance on how to comply with legal requirements and presents additional practices concerning environmental and social sustainability to be considered throughout business operations in the country. It also provides information on the business case of sustainable investment.

The findings stem from extensive research within the country and in China, joining the insights of various ministries, investors, and other stakeholders with the trade expertise and support of the International Trade Centre. I hope that this investment guide proves a useful tool for companies and policymakers in Kenya.

**Aranca González**

Executive Director  
International Trade Centre

# Foreword

## KenInvest

As an authority mandated to promote and facilitate investments in Kenya, KenInvest has an obligation to ensure that investors impart enduring and maximum positive impact on the global and local environment, community and economy, and thus contribute to attaining the Sustainable Development Goals (SDGs). Chinese investment in Kenya has been on the rise during recent years and is expected to grow further.

This first handbook on sustainable investments in agroprocessing and light manufacturing, developed for Chinese investors in Kenya, is thus timely, and will guide them on how to do business responsibly and sustainably. It will also be useful for investors from all origins.

The handbook provides an understanding of the basic concepts and business case for implementing sustainable and responsible investment practices, 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 priority sectors in the country.

Further, the handbook suggests voluntary measures that contribute to sustainable and responsible investment and corporate social responsibility activities.

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

**Moses Ikiara**

Managing Director  
Kenya Invest Authority (KenInvest)

# Acknowledgements

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Andreas Beavor was responsible for data collection and the initial drafting of the handbook. Ana Batalhone and Madison Wilcox (ITC) managed and prepared the final draft, under the supervision of Joseph Wozniak (ITC). Ana Batalhone coordinated the development process. Thanks are due to Véronique Rondeau and Ingrid Colonna (ITC) for their leadership and various contributions to the handbook's development and revision under the guidance of Xuejun Jiang (ITC). Anders Aeroe, Annegret Brauss, Delphine Clement, Joseph Wozniak, Tianyu Mao, Quan Zhao and Wenwen Sheng (all ITC) provided valuable comments and feedback. Alicia Rodriguez, Helen Griffin and Ha Vu provided administrative support. Natalie Domeisen and Evelyn Seltier (ITC) managed the editorial production. Cheryl Rosebush edited the report and Iva Stastny Brosig provided graphic and layout services. Serge Adeagbo and Franco Iacovino (ITC) provided digital printing services.

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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 (SMEs). It helps SMEs 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 SMEs in developing countries and transition economies.

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

## About the Partnership for Investment and Growth in Africa

The Partnership for Investment and Growth in Africa (PIGA) is part of Invest Africa, a flagship programme of the United Kingdom Department for International Development (DFID) facilitating foreign direct investment with high development impact into selected African countries.

Under Invest Africa, PIGA aims to contribute to job creation and sustainable growth in Ethiopia, Kenya, Mozambique and Zambia by supporting these countries to 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.

PIGA is implemented by the International Trade Centre in cooperation with the China Council for the Promotion of International Trade (CCPIT) and the China–Africa Development Fund (CADFund).

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

## About KenInvest

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 in Kenya to contribute to Kenya's development strategy, Kenya Vision 2030, and its Big Four agenda. It is responsible for facilitating the implementation of new investment projects, providing After Care services for new and existing investments, as well as organizing investment promotion activities both locally and internationally.

KenInvest's 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".

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

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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.

|      |   |
|------|---|
| CSR  | Corporate social responsibility                 |
| EIA  | Environmental impact assessment                 |
| ITC  | International Trade Centre                      |
| NEMA | Kenya National Environment Management Authority |
| NGO  | Non-governmental organization                   |
| PIGA | Partnership for Investment and Growth in Africa |
| SDG  | Sustainable Development Goal                    |
| UN   | United Nations                                  |

# Executive summary

Over the past two decades, China has become Africa's biggest economic partner. More than 10,000 Chinese-owned firms operate in Africa, around 90% of which are privately owned. In manufacturing, it is estimated that 12% of Africa's industrial production, valued at some \$500 billion a year, is handled by Chinese firms.

Many Chinese enterprises have committed to long-term engagement in Africa, particularly in the manufacturing and agricultural sectors. This provides significant opportunities to support local communities and local economies in their development efforts through sustainable investment practices.

While many companies engage in sustainable business practices, there are lessons to be learned and room for improvement. Despite the strong push by the Chinese government to encourage responsible business conduct overseas, the increasing amount of mandatory standards and voluntary frameworks are unlikely to achieve their desired impact without proper dissemination, implementation, uptake and incentives.

This publication provides guidance to Chinese investors on how to comply with environmental and social sustainability requirements and additional sustainability practices in Kenya. It breaks down the mandatory requirements and voluntary guidance and standards relevant to the agroprocessing and light manufacturing sectors in the country.

The Partnership for Investment and Growth in Africa (PIGA) framework aims to increase investment-led exports and local development by promoting foreign investments and business partnerships in two productive sectors, agroprocessing and light manufacturing, in Ethiopia, Kenya, Mozambique and Zambia. Developed under the PIGA framework, this handbook also aims to support the implementation of the United Nations Sustainable Development Goals.

## How to use this handbook

### Chapter 1 – UNDERSTAND THE BUSINESS VALUE OF SUSTAINABILITY

- Review key concepts of sustainability to help you embed principles of sustainability in your investment activities.
- Understand why it makes good business sense to invest sustainably.

### Chapter 2 – GET LOCAL

- Get relevant advice to incorporate in your investment practices.
- Learn about the existing legal framework in Kenya, as well as which environmental and labour laws you need to comply with, and where to seek support.

### Chapter 3 – TOOLS FOR SUSTAINABLE BUSINESS IMPACT

- Benefit from guidance on some additional sustainability practices to maximize sustainable investment and operations.

## Why invest sustainably?

- The three pillars of sustainability (social, environmental and economic) are interconnected and interdependent, meaning that a company is unlikely to achieve long-term economic success without taking into account the social and environmental factors related to business operations.
- Businesses have a key role to play in contributing to the delivery of the 17 SDGs, which set global priorities and aspirations for 2030 in terms of social, environmental and economic development.
- The Chinese Government is increasingly putting pressure on companies to comply with environmental and social legislation and to improve reporting on corporate social responsibility practices.
- Sustainable business operations not only support the environment and workers but also help create strong, long-term business foundations. Implementing measures that improve working conditions and relationships with the community and government help companies improve efficiency, develop a better workforce, and improve their economic performance.
- It is important that investors understand and comply with environmental and labour requirements in the country of operations, but there is also a wide range of voluntary standards that businesses can adopt to increase sustainability and international competitiveness.

## Legal requirements in Kenya

- 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).
- Environmental requirements are determined by the EIA or Project Report process.
- Compliance with EIA requirements and all relevant environmental regulations will be monitored and businesses are required to submit an Environmental Audit each 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 financial penalties.
- Labour laws are determined by a range of legislation and it is important that the company understands and complies with relevant legislation.
- Investors must register their organization with the Directorate of Occupational Safety and Health Services and enlist an approved Organizational Safety and Health Act (OSHA) advisor.
- Land regulations are also important to consider, particularly in terms of leasing or purchasing land, where it is vital to ensure that alternative community or tribal rights are considered and respected.
- Sub-national requirements vary in different counties and are enforced by county government agencies. Investors should contact their county government agency to understand any additional sustainability requirements beyond the national requirements.

## Understanding additional sustainability practices

- There are many opportunities to incorporate additional sustainable measures and approaches into investment and business operations.
- Additional sustainability measures can encompass an array of practices targeting different sustainability areas such as community relations, labour rights and resource management.

- Voluntary sustainability standards are available for social accountability and environmental management and for a wide range of sector and industry-specific processes.
- There are networks throughout Africa that can also be a good source of information and inspiration.



CHAPTER 1

Why invest sustainably?

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## KEY MESSAGES

- Sustainable investment practices require operations that have a minimal negative impact and maximum positive impact on the global and local environment, community and economy. At a minimum, this requires ensuring that mandatory environmental and social regulations are fully addressed and that additional voluntary measures are considered as well.
  - The three pillars of sustainability (social, environmental and economic) are interconnected and interdependent, meaning that a company is unlikely to achieve long-term economic success without taking into account the social and environmental factors related to business operations.
  - Businesses have a key role to play in contributing to the delivery of the United Nations' 17 Sustainable Development Goals (SDGs), which set global priorities and aspirations for 2030 in terms of social, environmental and economic development.
- 

## Basic concepts

Embedding sustainable investment practices into a business means ensuring that mandatory environmental and social regulations are fully addressed while additional sustainability considerations are implemented from the start of a business, and carried out through its regular operations. Moreover, it means that business operations should be based on principles to

avoid corruptive practices internally, within their supply chains and with government stakeholders.<sup>1</sup> By adopting sustainable investment practices, businesses embrace economic, environmental and social factors in a balanced way to provide a long-term business foundation that is in harmony with the society, local communities and the environment. These practices create value that goes beyond economic profits, but also includes social benefits and reduced environmental impact in the invested country.

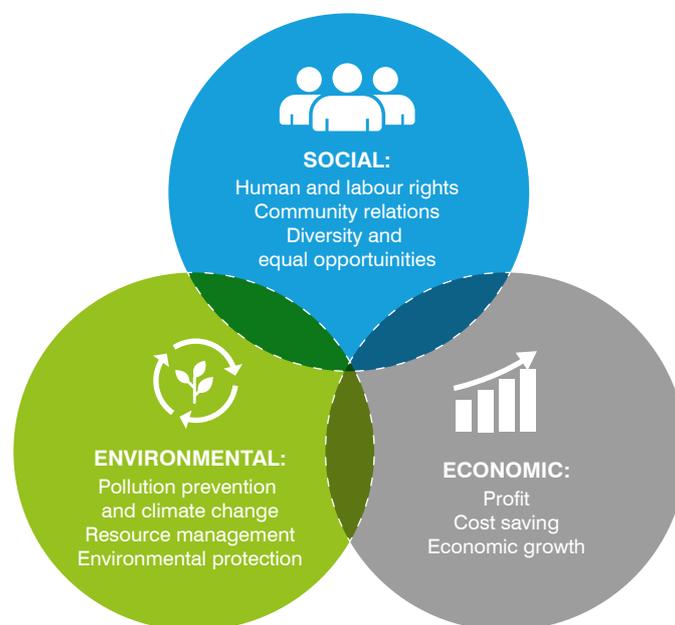


The integration of economic, environmental and social factors into business and investment decisions is the foundation of the concept of sustainability. In the business context, sustainability refers to the ability of businesses to meet the needs of the present without compromising the ability of future generations to meet their own needs.<sup>2</sup> Sustainability can also relate to the capacity of businesses to create long-term value by addressing environmental and social considerations in their business strategy.

### The three sustainability pillars

Figure 1 represents the three pillars of sustainability for investment practices, and their sub-areas. These pillars are interconnected and interdependent, meaning that long-term economic success of a company cannot exist without taking into account the social and environmental factors related to business operations. Box 1 also describes anti-corruption as a complementary and important part of sustainable investment.

**Figure 1** The three pillars of sustainability



**Social:** Proactively managing the positive impact of business operations on people and society.

**Environmental:** Balancing the way natural resources are used in business operations to maintain an ecological balance.

**Economic:** Businesses should use resources efficiently and responsibly to create long-term value creation and profitability.

#### BOX 1: Anti-corruption as a complementary sustainability pillar

Corruption encompasses different illegal and illicit acts such as bribery, extortion, embezzlement and money laundering. No business can be considered sustainable and/or responsible without embedding anti-corruption policies in its day-to-day operations. Beyond the three sustainability pillars, companies should also take into account their business conduct with employees, supply chains, surrounding communities and government officials. Adopting anti-corruption practices, in this regard, is fundamental to ensure sustainable investment practices.



## The UN Sustainable Development Goals

More companies worldwide have been integrating sustainable practices into their investment decisions and business operations. By doing so, companies contribute to the 2030 Agenda for Sustainable Development adopted by the United Nations General Assembly in 2015. This agenda sets a global development framework composed of

17 Sustainable Development Goals (SDGs)<sup>3</sup> covering the three sustainability pillars discussed above.

The 2030 Agenda highlights that private business activity, investment and innovation are “major drivers of productivity, inclusive economic growth and job creation”, calls on “all businesses to apply their creativity and innovation to solve sustainable development challenges.”<sup>4</sup>

# SUSTAINABLE DEVELOPMENT GOALS



## Sustainable investment initiatives of Chinese companies overseas

### KEY MESSAGES

- The Chinese Government endorses the global call for business action in contributing to the 2030 Agenda, particularly via SDG 17 (partnerships with private actors).
- The Chinese Government is increasingly putting pressure on companies to comply with environmental and social legislation and to improve reporting on Corporate Social Responsibility (CSR) practices.
- The national and international context requires companies to take sustainable practices seriously if they want to be competitive and retain business.
- Major risks of non-compliance with sustainability requirements include loss of reputation and/or license to operate in certain markets.

Chinese-owned companies are increasingly investing overseas, and sub-Saharan Africa is a focus area for investment in agroprocessing and light manufacturing. The rapid expansion of Chinese investments in Africa has attracted global attention. More than 10,000 Chinese-owned firms operate in Africa, around 90% of which are privately owned. In manufacturing, it is estimated that 12% of Africa's industrial production, valued at some \$500 billion a year, is handled by Chinese firms.<sup>5</sup> There is much debate and discussion on the impact of Chinese investments on the economies and governance of African countries, as well as their environmental and social conditions. Failure to commit to sustainable practices might generate a negative perception and threaten the success of Chinese companies in emerging markets.<sup>6</sup>

### China's vision

The Chinese Government explicitly aims for outbound Chinese investment to contribute to the realisation of the SDGs and the 2030 Agenda. For instance, in 2013, the Chinese Government launched Guidelines for Environmental Protection in Foreign Investment and Cooperation, which provide recommendations for companies operating abroad.<sup>7</sup>

This drive for more socially-responsible investment and operations is also reflected in the Belt and Road Initiative (BRI).<sup>8</sup> As part of this initiative, China's *Vision and Actions on Jointly Building Silk Road*

*Economic Belt and 21<sup>st</sup> Century Maritime Silk Road* paper from 2015 encourages Chinese enterprises to participate in sustainable industrial investment in BRI countries. It states that BRI will, "support localized operation and management of Chinese companies to boost the local economy, increase local employment, improve local livelihoods, and take social responsibilities in protecting local biodiversity and eco-environment."

### More Chinese companies adopt sustainability practices

In the domestic Chinese market, sustainability factors are becoming the norm, and are starting to help define a more successful approach for business operations. For example, Chinese companies that have chosen to disclose their environmental, social and governance (ESG)<sup>9</sup> data have been producing higher returns than their peers. Chinese companies ranked in the top 10<sup>th</sup> percentile according to their ESG-disclosure score gained 33% higher returns than their peers in 2018, according to Bloomberg data, outperforming the Hang Seng China stock exchange.<sup>10</sup>

Starting from 2020, Chinese listed companies will need to disclose the ESG risks associated with their operations, following requirements set by the China Securities Regulatory Commission, in collaboration with China's Ministry of Environmental Protection.<sup>11</sup>

## A win-win environment for Chinese companies going global

Creating a win-win business environment in alignment with the global development goals contributes to long-term, sustainable business operations of Chinese companies operating in any given country.

In exchange for great opportunities, going global inevitably means facing various challenges. This includes a challenging business environment, the need to understand and comply with national regulations and accessing or training an appropriately skilled workforce.<sup>12</sup> Many of the sub-Saharan African countries in which Chinese companies invest have significant development challenges, with economies constrained by limitations, including poor infrastructure, and weak education and health sectors. There are also many environmental challenges. Fragile ecosystems are

facing huge pressures from the challenges of a changing climate as well as commercial agriculture, rapid urbanisation, industrial development and population growth.

This context underpins the need to invest sustainably and responsibly in Kenya. The country has consistently demonstrated how business partnerships between China and Africa can be mutually beneficial; sustainable investment in the country is vital for longer-term success of Chinese-owned companies. If investment is focused on short-term economic gain, without ensuring that local communities and economies can benefit, or with disregard to local environmental and health issues, companies are likely to suffer from a serious backlash. This can result in increased operating costs and security risks, legal disputes and other challenges. It can also lead to a damaged reputation among customers and potential loss of business as a result.

## The business case for sustainable investments

### KEY MESSAGES

- Sustainable measures not only support the environment and workers but also help create strong, long-term business foundations. Implementing measures that improve working conditions and relationships with the community and government help companies improve efficiency, develop a better workforce, and improve their economic performance.
- Failing to ensure robust environmental and social measures, including anti-corruption, can result in significant backlash and loss of business.
- Fair remuneration helps to retain staff and reduce costs relating to high turnover and repeated training.
- Working with local supply chains can reduce costs and improve quality, as well as enhance the local economy.

The financial benefits of sustainable investment usually outweigh the costs. Furthermore, incorporating sustainability helps business owners anticipate and reduce risks before they incur monetary or reputational losses. For example, investing in workers' wellbeing, local communities and supply chains enables companies to benefit from a loyal and well-trained workforce, which is likely to lead to better quality products and higher economic returns. Moreover, companies can strengthen their business reputation and economic foundations by reducing negative environmental impacts, implementing more efficient production practices, and managing waste to ensure local communities can prosper.

The business case for sustainable investment is compelling for the long-term success of businesses in African countries. With young populations and high growth rates, they are set to grow into some of the world's most dynamic markets in the coming decades.

The key arguments for sustainable investments are set out below in terms of the business benefits that come from:

- Operating in an environmentally-responsible manner;
- Operating in a socially-responsible manner;
- Strengthening local supply chains; and
- Increased transparency and reduced corruption.

## Caring for the environment is good for business

Responsible environmental practices can serve to improve the economic bottom-line, strengthen business reputation, decrease businesses' environmental footprint and ensure a healthier local ecosystem that benefits and attracts employees. In fact, environmental responsibility has become a requirement for many companies that export their goods to international markets. Buyers are increasingly introducing codes of conduct related to environmental and social responsibility for their suppliers, and requesting them to comply with third party certification processes. Responsible environmental management can strengthen a business' reputation with its customers in China, Europe, North America, and elsewhere.

Implementing resource-efficient practices for waste management, as well as water and energy use can also lead to cost savings by reducing the quantity of inputs needed for production while improving productivity at the company level. Agriculture in particular relies on sustainable practices in order to survive. Long-term investments should strive to ensure environmental conditions that allow strong crop yields can continue into the future. Reducing the possible impact of pesticides on valuable insect populations and water resources should be a consideration of all investors in the agroprocessing sector. In general, those companies that invest sustainably have higher investor interest, as described in Box 2.

### BOX 2: Sustainability performance and access to finance

Today, the environmental and social impact of a project is an important assessment indicator in the due diligence conducted by multilateral development banks and commercial banks prior to making investments. The shift to cleaner production and a low-carbon approach in the manufacturing and agricultural sectors is also increasingly rewarded by stronger investor interest. Companies that are socially responsible often tend to be more transparent and able to provide investors with greater levels of information and therefore more confidence.

Failing to ensure robust environmental measures can result in significant backlash and loss of business. For example, in 2013, the Government of Chad suspended the operations of a Chinese oil company based in the country after it was found that their operations had resulted in numerous polluted waterways and oil spills.<sup>13</sup> Damaging the local environment can also lead to discontent from the local government and local community that supplies labour to the company.

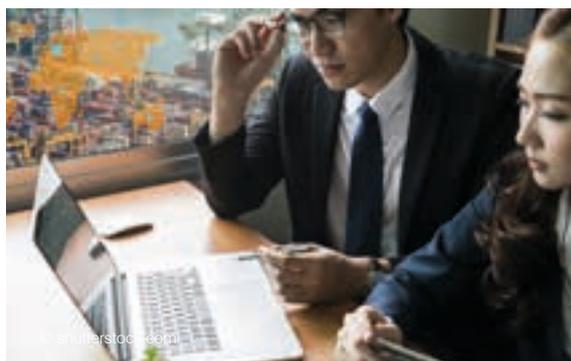
## Improving businesses' reputation through a responsible approach to workers and communities

While conducting research among Chinese-owned companies in each of the PIGA countries, it became clear that fair remuneration and labour conditions can help retain staff and reduce costs relating to high turnover and repeated training. There is a strong financial case for firms to invest in their workforces with fair wages, and provide skills training that boosts career progression and employee satisfaction.

While cheap labour is one of the attractive aspects of investing in many African countries, a sustainable system must allow workers to benefit from wages that enable them to purchase food, pay for lodging and buy basic necessities. Estimating a living wage is often dependent on the specific country and sector. However, it is important for companies to help establish operations whereby their employees are able to meet their own and their dependents' basic needs. This can go beyond increasing employees' wages and include other services, such as providing meals, transportation, housing, and education. In addition to increasing the satisfaction and productivity of workers, these services can have the added value of improving community relations.<sup>14</sup>

In some factories across sub-Saharan Africa, this is still not the case. Poverty does not lead to good productivity. There is increasing evidence that workers who are paid above average wages will be more loyal and productive.

Beyond national regulations and labour laws, there are also many additional sustainability measures that businesses can put in place to increase the wellbeing of their workers and the sustainable development of the communities in which they are located. Some of the most important are described in Chapter 3 of this handbook.



Beyond the immediate workforce, it is also important to help bring the local community along on the journey of investing in their region. Extensive consultation with local leaders and proactive and positive communication with community leaders and media outlets can help to identify and mitigate potential problems before they escalate. Moreover, investing in the local community can help develop a local economy that attracts more businesses and consumers, thereby expanding the market of the investors company and the wellbeing and productivity of local employees.

It is also important to be sensitive to land tenure in African countries. Land is seen as a family's most valuable asset. If these issues are not taken seriously, conflicts are likely to arise between investors and local communities where they operate, increasing risks to profitability and the long-term success of the business. When resettlement of local residents is required, perhaps as a result of purchasing a large area of land for agriculture or industrial use, it is important to follow appropriate national and international standards. The International Finance Corporation (IFC) Resettlement Performance Standards provide a comprehensive framework for these processes.<sup>15</sup>

### Local supply chains reduce costs and improve quality

Companies investing in Kenya can also play a role in developing local supply chain businesses. Vertically-integrated supply chains which are geographically concentrated can have many benefits in terms of reducing transport costs for materials in the supply chain, being able to easily discuss and improve synergies between manufacturing processes, and developing more of a recognized cluster and brand around a certain product. Reducing transportation distances has the added benefit of reducing the carbon footprint of products, which can be advertised as an additional

selling point to customers, many of whom are buying sustainable products at an increasing rate.<sup>16</sup>

At the same time, encouraging local suppliers to be part of the value chain can provide market opportunities for micro, small and medium-sized enterprises in the local market, where business and employment is often greatly needed and appreciated.

Supporting local innovation and entrepreneurship can also lead to higher quality local supply chains, particularly over a longer timeframe. Setting up local subsidiaries or forming collaborative arrangements with local firms can create significant benefits for investors in accessing local knowledge and understanding the political context, while transferring skills and technology to local partners.

### The value of transparency and anti-corruption policies

Corruption is one of the greatest barriers to social and economic development in African countries as reported by Transparency International.<sup>17</sup> Bribery practices cause negligence in environmental and social impact assessment processes as well as many other situations where compliance with regulations is bypassed. Bribery is, sometimes, reported by investors as a necessary part of getting anything done. However, participating in corrupt practices, even when pressured to do so by local government representatives is increasingly risky.

Many firms investing in Africa have come to realize the self-inflicted damage caused by bribery. Chinese law has evolved to address key issues for addressing breaches of legal requirements by Chinese-owned companies overseas.<sup>18</sup> Strong corporate governance and anti-corruption practice is important to minimize such risk. It also helps in the due diligence process when seeking further investment, and helps to reduce reputational risk.

## Legal requirements, voluntary standards and corporate social responsibility

### KEY MESSAGES

- A clear distinction can be made between legal requirements, voluntary measures and standards and additional corporate social responsibility (CSR) initiatives, all of which contribute to sustainable business.
- It is important that investors understand and comply with relevant legislation, as summarized in Chapter 2.
- There is a wide range of voluntary standards that businesses can comply with to increase international competitiveness.
- While business survival is the priority when starting out in a challenging business environment, it is important to stress that doing anything beyond the national legislation to improve sustainability and responsibility is better than nothing. There are several low-cost, straightforward measures that can improve working conditions and sustainable outcomes.

An important part of implementing sustainable business practices is to understand the difference between legal requirements, voluntary measures and standards, and additional CSR initiatives.

### Legal requirements: Legislation and mandatory standards

**National legislation** (sometimes referred to as hard law) relating to environmental and social requirements varies across African countries, including in Kenya. Recognising them and complying with them is the bare minimum that businesses must do (more on this in Chapter 2).

**Mandatory standards** are required by governments and are mandatory for any product or service to be legally commercialized in that market. These standards can cover product or packaging characteristics, or certain processes that need to be followed. Examples of these standards are: technical regulations; sanitary and phytosanitary measures, including health and safety regulations; product specifications; labelling requirements; quality controls; and rules of origin. They differ depending on the product and the country of export. Non-compliance with these requirements may lead to quarantining or product rejection by import countries.

### Integrating voluntary sustainability standards

Over the last decade, a new generation of voluntary sustainability standards (sometimes referred to as soft law) has emerged to cover all sectors and industries. These include voluntary guidelines, initiatives, codes and standards developed by international organisations, companies, business associations, non-governmental organizations (NGOs), governments and multistakeholder initiatives. They provide additional guidelines for sustainable business practices. Demonstrating adherence to these standards is often necessary for businesses to operate profitably in global markets.

The wide range of voluntary standards include the following schemes:

- International governance agreements and guidelines such as:
  - The International Labour Organization (ILO) Multinational Enterprises (MNE) Declaration<sup>19</sup>
  - The Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises<sup>20</sup>
  - The Global Compact, established by the UN<sup>21</sup>
  - Guiding Principles on Business and Human Rights, established by the UN Human Rights Office of the High Commissioner (OHCHR).<sup>22</sup>

- International multistakeholder initiatives providing standards for the social and environmental practices of firms at home and abroad. This includes standards developed by the International Organization for Standardization (ISO), such as the ISO 26000 standard *Guidance on Social Responsibility* launched in 2010.
- Private voluntary sustainability standards providing principles and/or requirements that producers, traders, manufacturers, retailers or service providers may be asked to meet, covering different sustainability metrics.<sup>23</sup>
- Hundreds of industry association codes are in existence, covering major areas of national and international commercial activity including manufacturing and agriculture.
- Thousands of company codes with specific policies on social and environmental issues, particularly among multinational corporations.<sup>24</sup>

The proliferation of voluntary sustainability standard schemes can cause challenges, particularly for companies operating in value chains that may be compelled to comply with numerous voluntary standard schemes that have potentially high costs to demonstrate compliance.

This has led to standard schemes often being perceived by Chinese companies as a barrier to market entry or a complication that can be avoided.<sup>25</sup> Many Chinese companies do not engage with these voluntary standard schemes because of unfamiliarity with the rules of the game, weak networks with relevant organisations, and a lack of guidance.

However, this approach could impede Chinese enterprises' international competitiveness in a market that increasingly demands environmental sustainability and social responsibility.<sup>26</sup> It is more likely that Chinese companies will become a force in shaping the next generation of sustainability standards in global markets, as a competitive edge aligned with China's broader global policies on sustainable development.<sup>27</sup> Many investors are convinced that promoting prudent and sustainable business practices, in line with both national regulations and voluntary standards, makes economic sense in the long term.

An additional point is that many national governments are increasingly using the dynamic space of voluntary standards as a testing ground for how they could inform mandatory requirements.<sup>28</sup> It is therefore better to be aware of and be able to comply with a wide range of voluntary social and environmental standards, in order to be prepared to meet legal requirements as they are introduced.

## Corporate social responsibility activities

A further distinction can be made for additional CSR activities. For the purpose of this handbook, CSR is defined as activities or initiatives that are outside of the core business activities, and include initiatives such as improving sustainable access to drinking water for local communities, and contributing to education or healthcare facilities and resources. Additional CSR initiatives can help local communities to develop, and support cultural events that are vital to engagement, integration and mutual understanding between investors and local communities.

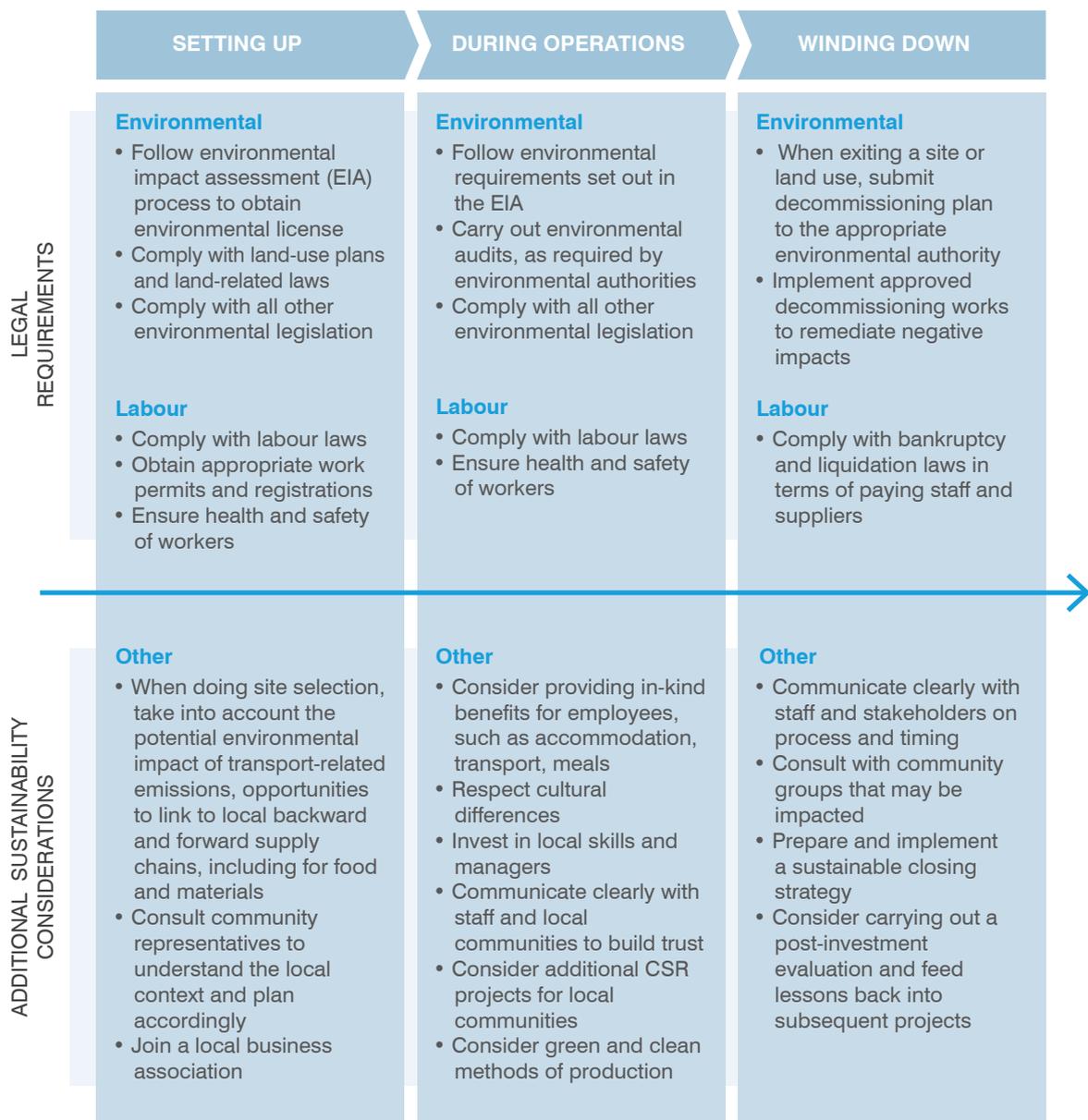
Research suggests that a high proportion of Chinese enterprises investing overseas are already aware of the positive impacts of CSR initiatives.<sup>29</sup> Interviews carried out with Chinese companies to inform this handbook found that many of them consider CSR an important part of Chinese culture to give something to the communities in which they work.

A company can achieve significant positive reputational benefits from implementing CSR initiatives. However, it is important that businesses do not use CSR as a cover to hide unsustainable business operations. It is also important that CSR initiatives are based on or compliant with national development strategies in the host country.

## Sustainability requirements and measures in business operations

Throughout the different processes to set up their business, companies are expected to comply with legal sustainability requirements established by the country, and adopt additional sustainability measures to mitigate potential sustainability impacts of their business operations. Figure 2 summarizes the main legal sustainability requirements and additional sustainability considerations that companies should adhere to during the three key stages of business operations.

**Figure 2** Legal requirements and additional sustainability considerations throughout business operations



## Areas of concern for sustainability

Table 1 provides an overview of different sustainability areas and sub-areas of concern for investors. Every project, sector and national context is unique and should be evaluated as such. Regardless of the sector, investors must ensure they properly engage with the local workforce and the environment, and that their business conduct is ethical. As such, Table 1 illustrates some examples of issues that merit closer investigation by the investor.

**Table 1 Sustainability areas of concern**

| AREA OF CONCERN   | SUB-AREA OF CONCERN           | EXAMPLES OF ISSUES <sup>30</sup>  | Please list any issues of concern for your company |
|---|-------------------------------|---|--|
| <b>ENVIRONMENTAL</b>                                      |                               |   |  |
| <b>Pollution prevention and climate change mitigation</b> | Air, emissions and climate    | <ul style="list-style-type: none"> <li>▪ Use of old technologies, vehicles and machineries and intensive use of fossil fuels</li> <li>▪ Inefficient resource use in farming and agroprocessing sites.</li> <li>▪ Overuse of pesticide application, fertilisation, and slash-and-burn agriculture</li> </ul>   |  |
|   | Waste (solid and water waste) | <p>Solid waste:</p> <ul style="list-style-type: none"> <li>▪ No system to record waste produced in processing operations.</li> <li>▪ Toxic chemicals and pollutants are released directly on surface and ground waters</li> <li>▪ Production facility is not connected to sewage network</li> </ul> <p>Wastewater:</p> <ul style="list-style-type: none"> <li>▪ Inexistence of system to dispose of and store grey water</li> <li>▪ Inexistence of system to recycle wastewater</li> </ul>  |  |
| <b>Resource management</b>                                | Inputs, chemical use          | <ul style="list-style-type: none"> <li>▪ Lack of metres to monitor the consumption of energy, water and other inputs in production processes</li> <li>▪ Water, chemical leakages in pipe system</li> </ul>  |  |
|   | Fresh water resources         | <ul style="list-style-type: none"> <li>▪ Lack of systems to identify, monitor and maintain fresh water resources impacted by production</li> <li>▪ Over extraction of groundwater resources</li> <li>▪ Waterlogging and soil salinization due to unsustainable agricultural practices</li> <li>▪ Inexistence of water management system</li> </ul>  |  |
|   | Energy and minerals           | <ul style="list-style-type: none"> <li>▪ Inadequate facilities to stock fuel</li> <li>▪ Absence or poorly insulated systems of energy distribution</li> <li>▪ Improperly vented appliances</li> <li>▪ Ventilation and air leakage</li> <li>▪ Inefficient heating systems</li> <li>▪ No energy management system in place</li> <li>▪ Lack of company interest to adopt renewable energy sources (solar, wind, biomass, etc.)</li> <li>▪ Reliance on inefficient diesel generators for energy supply during power outages or in the absence of connection to national grid</li> </ul> |  |
|   | Land and soil management      | <ul style="list-style-type: none"> <li>▪ Soil erosion, desertification and/or contamination due to overuse, salinization, acidification, or other chemical soil contamination</li> <li>▪ Lack of strategies to measure, monitor and prevent soil contamination and pollution</li> </ul>   |  |

| AREA OF CONCERN          | SUB-AREA OF CONCERN                          | EXAMPLES OF ISSUES <sup>30</sup>   | Please list any issues of concern for your company |
|--------------------------|--|--|--|
| Environmental protection | Forests                                      | <ul style="list-style-type: none"> <li>▪ Lack of procedures in place to prevent and/or remediate deforestation</li> <li>▪ Lack of procedures for the regeneration of depleted forests and woodlands</li> <li>▪ Lack of forest management plan and/or a reliable monitoring system</li> <li>▪ No systems in place to ensure that timber is of legal origin</li> </ul>   |  |
|                          | Biodiversity                                 | <ul style="list-style-type: none"> <li>▪ Lack of processes to ensure that products are not harvested at levels above sustainable yields</li> <li>▪ Lack of systems in place to identify, restore and rehabilitate natural habitats and/or ecosystems</li> <li>▪ Environmental impacts observed as a result of production and harvesting operations</li> <li>▪ Lack of procedures in place to address land-use planning and identification of conservation priorities</li> </ul>  |  |
| <b>SOCIAL</b>            |  |  |  |
| Human and labour rights  | Health and safety                            | <ul style="list-style-type: none"> <li>▪ Lack of training on health and safety practices for workers</li> <li>▪ Lack of monitoring and controlling systems to prevent health and safety hazards</li> <li>▪ Workers are exposed to hazardous substances without any protective equipment</li> <li>▪ Inappropriate working space</li> <li>▪ Improper handling, labelling and storage of hazardous materials</li> <li>▪ Lack of evacuation plans in case of emergencies</li> <li>▪ Workplace violence including physical assault, sexual and moral harassment</li> </ul>  |  |
|                          | Forced labour <sup>31</sup>                  | <ul style="list-style-type: none"> <li>▪ Physical threats or applying penalties to workers that refuse to work</li> <li>▪ Retention of workers' passports or other identity papers</li> <li>▪ Withholding pay (debt bondage) under the pretence that workers owe recruitment fees or costs of transportation to the company</li> </ul>   |  |
|                          | Child labour                                 | <ul style="list-style-type: none"> <li>▪ Employing children below the legal working age in the country. *Note that different minimum ages apply to certain types of work (e.g. light work, hazardous work)</li> <li>▪ Trafficking of children and related exploitation as workers</li> </ul>   |  |
|                          | Freedom of association/collective bargaining | <ul style="list-style-type: none"> <li>▪ Workers are not allowed to form and join trade unions</li> <li>▪ Discrimination against workers that are union members or those willing to join a union/association</li> <li>▪ The employer promotes a particular union or workers' association, and/or coerces workers to join it or leave one</li> <li>▪ The employer does not participate in collective bargaining agreements, and/or does not adhere to the agreed outcomes</li> <li>▪ Workers are not allowed to be represented in collective bargaining by a union of their choice</li> <li>▪ Inexistence of procedures for the prevention and resolution of workplace conflicts or grievances</li> </ul> |  |

| AREA OF CONCERN                          | SUB-AREA OF CONCERN                                 | EXAMPLES OF ISSUES <sup>30</sup>  | Please list any issues of concern for your company |
|--|---|---|--|
| <b>Community relations</b>               |   | <ul style="list-style-type: none"> <li>▪ Lack of consultation/engagement with local communities living around the company regarding changes or impacts from business activities on local resources and communities. It includes issues related to land management, safety, human rights violations, environmental impacts on the nature and community health among others.</li> <li>▪ Lack or poor grievance mechanism to provide fair compensation for negative impacts of operations on local communities and individuals</li> </ul>  |  |
| <b>Diversity and equal opportunities</b> | Discrimination related to employment and occupation | <p>Any distinction, exclusion or preferential treatment of workers or candidates to a position based on<sup>32</sup>:</p> <ul style="list-style-type: none"> <li>▪ Gender</li> <li>▪ Race or skin colour</li> <li>▪ Sex</li> <li>▪ Religion</li> <li>▪ Political opinion</li> <li>▪ Age</li> <li>▪ National or social origin, nationality</li> <li>▪ Sexual orientation</li> <li>▪ HIV/AIDS status</li> <li>▪ Disability</li> <li>▪ Trade union membership or activities</li> <li>▪ Workers with family responsibilities</li> <li>▪ Lack of paternity and maternity leave policies</li> </ul> |  |
| <b>ANTI-CORRUPTION</b>                   |   |   |  |
|  |   | <ul style="list-style-type: none"> <li>▪ Influencing government officials through the payment of bribes</li> <li>▪ Accepting to pay bribes to government officials in order to access services</li> <li>▪ Lack of training for workers and company management on anti-corruption practices</li> <li>▪ Retaliation against whistle blowers</li> <li>▪ Lack of mitigation procedures against bribery and other types of corruption (e.g. nepotism, extortion, patronage, among others)</li> </ul>   |  |



## CHAPTER 2

# Sustainability requirements in Kenya



## KEY MESSAGES

- Investors are required to obtain an Environmental License 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).
- Environmental requirements for the specific business are determined by the EIA or Project Report process.
- Compliance with EIA requirements and all relevant environmental regulations will be monitored and businesses are required to submit an Environmental Audit each 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 financial penalties.
- Labour laws are determined by a range of legislation and it is important that the company understands and complies with relevant legislation. The key points only are summarized in this Chapter.
- Investors must register their organization with the Directorate of Occupational Safety and Health Services and enlist an approved Organizational Safety and Health Act (OSHA) advisor.
- Land regulations are also important to consider, particularly in terms of leasing or purchasing land, where it is vital to ensure that alternative community or tribal rights are considered and respected.
- Sub-national requirements vary in different counties 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 very important 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. Ensure that you speak to the relevant government departments and follow their guidance and requirements.
- Do not rely exclusively on Chinese-owned companies 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 the right specialist (i.e. individual consultant or firm) to undertake a project brief, environmental impact assessment (EIA),<sup>33</sup> environmental audit, or a 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.
- Ensure that sufficient time is allocated 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 license 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.
- Understand if there are differences between the Chinese and 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 Chinese, as well as useful publications and updates on changes to legislation requirements, which are often produced by Chinese business associations. However, remain aware that these can become outdated. 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, which would subsequently be reflected in a legally-binding collective bargaining agreement.

## Kenya: Legal environmental and labour requirements

When setting up a business in Kenya, during operations or when decommissioning a site due to closure or relocation, there is a set of environmental and labour regulations to follow. These are summarized below, with clear 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 Chinese investors. China and Kenya enjoy strong links that can be traced back to Zheng He, the great navigator of the Ming Dynasty, who arrived in Malindi on the East coast of Kenya 600 years ago. China and Kenya established diplomatic ties in 1963 and recent partnerships between the two countries include the 2013 China-Kenya Comprehensive Cooperative Partnership, which sets a clear course for the long-term bilateral relationship between the two countries.<sup>34</sup>

Chinese-owned companies operate in Kenya across a range of sectors, including light manufacturing infrastructure development, housing and construction, and agroprocessing. Chinese-owned companies have generated a great number of jobs for Kenyan and other African employees. A survey in 2014 found that, on average, a Chinese-owned company employed 360 local employees in Kenya.<sup>35</sup> There are also many positive examples of skills and technology transfer, helping to develop the capacity of the Kenyan workforce.

Infrastructural cooperation has covered various fields, including railways, roads, airports, ports, communication, housing, water supply and power. China and Kenya are working closely on the construction of the Mombasa Special Economic Zone and Naivasha Industrial Park. In 2018, China's non-financial direct investment in Kenya doubled to about \$520 million. Both countries enjoy frequent exchanges in education, science and culture.

By the end of 2018, there were around 400 Chinese-owned companies operating in Kenya, with nearly 95% of their workforce being Kenyan.<sup>36</sup> Some of the established big firms include Huawei Technologies, Sinohydro Corporation, ZTE Kenya Limited, smartphone maker Tecno, Baus Optical, Erdemann Property Ltd, digital TV provider StarTimes, Avic International, and the China Road and Bridge Corporation that has been working on Kenya's Standard Railway Gauge.

### Environmental regulations and guidelines

The following environmental regulations must be observed in Kenya:

- Environmental Management and Coordination Act;<sup>37</sup>
- Environment (Impact Assessment and Audit) Regulations;(2003)<sup>38</sup>
- Water Quality Regulations (2006);<sup>39</sup>
- Waste Management Regulations (2006);<sup>40</sup>
- Conservation of Biological Diversity Regulations (2006);<sup>41</sup>
- Controlled Substances (Ozone Depleting Substances) Regulations (2007);<sup>42</sup>
- Wetlands, River Banks, Lake Shores & Sea Shore Management Regulations (2009);<sup>43</sup>
- Noise and Excessive Vibrations Regulations (2009);<sup>44</sup>
- Air Quality Regulations (2014);<sup>45</sup>
- \*\*Draft Deposit Bond Regulation;
- \*\*Draft Chemicals Regulation.

The Kenya National Environment Management Authority (NEMA) has also developed several technical environmental guidelines that are used within Kenya to regulate the various sectors that investment is being undertaken, including:

- National Simplified Environmental Assessment (SEA) Guidelines to take care of policies, plans and programmes at strategic levels;<sup>46</sup>
- National Solid Waste Management Strategy;<sup>47</sup>
- Asbestos handling and disposal guidelines;<sup>48</sup>
- Management of Used Oil in Kenya guidelines;<sup>49</sup>
- National Sand Harvesting guidelines;<sup>50</sup>
- National Land Use guidelines.<sup>51</sup>

## Environmental impact assessments

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

### 1. Obtaining an environmental license for a proposed investment

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

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) should submit an EIA report for consideration and approval by the National Environmental Management Authority.

For investments that are categorized as Low Risk (See Schedule 1 of the EIA Legislation for an indicative list), a Project Report setting out best practice procedures to minimize environmental impact is sufficient.

For medium and high-risk projects, the Legal requirements relating to 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 (NEMA). The Authority maintains a register of experts, available in all NEMA county offices.<sup>52</sup>
- 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. Where local populations may require relocation, for particularly large projects, appropriate resettlement provisions are to be followed, ideally based on IFC standards.
- Upon completion, the EIA report is submitted to NEMA's head office, duly signed by the investor and the EIA experts involved in the report preparation.
- 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.
- The EIA report will then be sent to lead agencies, internal review and harmonization of decision making.
- Decision making by the 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 are required to undertake an environmental audit process one year after commencing its operations. Legal requirements relating to an environmental audit are clearly stipulated in the 2003 Environment (Impact Assessment and Audit) Regulations (Legal Notice No. 101).

Below are the requirements relating to an environmental audit.

- Selection of qualified lead experts or firm of experts registered by the NEMA. The Authority maintains a register of experts, available in all NEMA county offices.
- Based on an agreed terms of reference and regulations of the EIA and environmental audit, the appointed experts or firm of experts undertake the environmental audit.
- On completion of the environmental audit report, investors must submitted it to NEMA (headquarters/field office) duly signed by the investor and the environmental audit experts involved in the preparation of the report.
- The investor must submit three hard copies of the report to the NEMA for processing.
- The report then undergoes NEMA's internal review procedures and harmonization for decision making within 30 days from the date of submission.
- Improvement orders may be served, which require 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 penalty fine of between 2 million

and 4 million KSH (roughly \$19,000-38,000), imprisonment for 1-4 years, and site closure.

- An environmental audit is required each year during operations, following the same process as set out above.
- Throughout the period of business operations, investors are required to 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 many years later, at the time of closure, an updated decommissioning plan must be prepared and submitted to NEMA.
- NEMA will then advise the business on improvements to the plan and this will then be addressed and implemented by the business. 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.

### 4. Decommissioning a site at closure

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

## Labour laws and workplace provisions

The following legislation must be observed in Kenya:

- Employment Act 2007 (Revised edition 2012);<sup>53</sup>
- 2010 National Kenyan Constitution;<sup>54</sup>
- Regulation of Wages (General) Order;<sup>55</sup>
- The Regulation of Wages (General) (Amendment) Order (2017);<sup>56</sup>
- The Regulation of Wages (Agricultural Industry) (Amendment) Order (2017);<sup>57</sup>
- Public Holidays Act;<sup>58</sup>
- Occupational Health and Safety Act 2007 (Revised 2010);<sup>59</sup>
- Health Act 2017 (provisions on breastfeeding in the workplace);<sup>60</sup>
- Persons with Disabilities Act 2003 (Revised 2012);<sup>61</sup>
- Work Injury Benefits Act (2007);<sup>62</sup>
- National Social Security Fund Act (2013);<sup>63</sup>
- National Hospital Insurance Fund Act (2012);<sup>64</sup>
- The Industrial Relations Act (2007);<sup>65</sup>
- The Industrial Training Act;<sup>66</sup>
- Local Content Bill 2018 (Oil and Gas only);<sup>67</sup>
- Trade Dispute Act;<sup>68</sup>
- Domestic Workers' Law (2011);<sup>69</sup>
- Land Registration Act (2012);<sup>70</sup>
- Community Land Act (2016).<sup>71</sup>



## Summary of key labour law provisions

Many other laws and conditions are specified in the legislation above and each employer should ensure that they understand and comply with what is relevant to their business.

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

### Working hours:

- 8 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 per 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 1); 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 all the persons 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 are also required to establish lactation rooms in the workplace that have adequately equipment and facilities.

**Paternity leave:** A man employee is entitled to two weeks paternity leave with full pay.

**Sick leave:** A worker is entitled to paid sick leave of up to 14 days per 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 compliant with ILO conventions.

**Medical insurance:** Investors must comply with requirements to contribute to the National Hospital Insurance Fund. Other private medical schemes also exist that investors can use.

**Retirement benefits:** The National Social Security Fund provides for contributions to, and the payment of, benefits out of 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. An employee with a disability is entitled to exemption from tax on all income accruing from his employment.

**Occupational health and safety requirements:**

Investors must comply with Kenya's Occupational Health and Safety Act, which provides provisions and standards for securing a safe and healthy working environment. It is the responsibility of every employer to ensure the safety, health and welfare of all employees at work. It is important to develop a safety and health-conscious culture in the work place, 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<sup>72</sup>:** 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 which 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 participation in vocational orientation or training programmes approved by the Minister, or his capacity to benefit from the instructions received.

Also, a child 13-16 years of age may not be employed in an industrial undertaking to attend to machinery. ILO 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."<sup>73</sup>

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

**Penalties for non-compliance of employers:**

There are a variety of penalties 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.



## Summary checklist

Figure 3 provides an overview of the environmental and labour requirements to be considered by potential investors in the agroprocessing and light manufacturing sectors in Kenya when setting up their business operations. The different steps included in the checklist refer to different categories of procedures that investors need to undertake in order to obtain their investment certificate and start running their business.

**Figure 3 Checklist: Kenya’s 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><b>1. Business opportunities for investing in Kenya</b></p> <p>No legal labour and environmental requirements are set at this stage for investors considering opening up business in Kenya. Nonetheless, investors should take into consideration the following aspects:</p> <ul style="list-style-type: none"> <li>Collect prior information about the labour legal system and environmental regulation in Kenya.</li> <li>Understand which sustainability areas will be impacted by the investment and include this analysis in project design.</li> <li>Understand the social, environmental, economic and political context in Kenya. For more information, refer to the ITC PIGA Investment Guide for Kenya.</li> </ul> |
|  | <p><b>2. Starting a business</b></p> <p>No legal labour and environmental requirements are set at this stage for investors considering opening up business in Kenya.</p>  |
|  | <p><b>3. Investor registration and certificates</b></p> <p>Prior to receiving the investment certificate, the Kenya Investment Authority (KenInvest) will inspect the premises to ensure the housing use is consistent with operations. These details fall under the acquisition of land and leasing of premises. Investors must still attain certificates related to health and environment beyond the initial investment certificate. Institutions involved in the process: KenInvest</p>   |
|  | <p><b>4. Foreign taxpayer registration through KenInvest</b></p> <p>No legal social and environmental requirements are set at this stage for investors considering opening up business in Kenya.</p>  |
|  | <p><b>5. Registration with national health insurance and social security funds</b></p> <ul style="list-style-type: none"> <li>Register with Kenya’s National Social Security Fund.<br/>Relevant legislation: National Social Security Fund Act (2013)<br/>Institutions involved in the process: Ministry of Labour</li> <li>Register with National Hospital Insurance Fund.<br/>Relevant legislation: National Hospital Insurance Fund Act (2012)<br/>Institutions involved in the process: Ministry of Health</li> </ul>   |
|  | <p><b>6. Work permits, special passes, and foreign national certificates</b></p> <p>No legal social and environmental requirements are set at this stage for investors considering opening up business in Kenya.</p>  |
|  | <p><b>7. Land transfer procedures</b></p> <p>Investors in Kenya must adhere to a set of labour standards on minimum wage, contracts, collective bargaining, and other workers’ rights.</p> <ul style="list-style-type: none"> <li>Contract an advocate to conduct due diligence on land.</li> </ul> <p>Relevant legislation: Land Registration Act (No. 3, 2012), and Community Land Act (No 27, 2016)<br/>Institutions involved in the process: Ministry of Land and Physical Planning, and Kenya Revenue Authority</p>  |

|   |  |
|---|--|
|    | <p><b>8. Investing in export promotion zones</b></p> <p>Investors are required to submit a short project proposal to the Export Promotion Zone Authority (EPZA) offices. EPZA evaluates the project and provides the investor with 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 EPZA offices</p> <p>Institutions involved in the process: EPZA</p>   |
|    | <p><b>9. Opening a bank account</b></p> <p>No legal social and environmental requirements are set at this stage for investors considering opening up business in Kenya.</p>  |
|    | <p><b>10. Business permits</b></p> <p>Businesses that deal with consumables will be required to pay for a health certificate and food hygiene license.</p> <p>Relevant legislation: Health Act (2017)</p> <p>Institutions involved in the process: KenInvest, and relevant local county licensing departments.</p>   |
|    | <p><b>11. Obtaining an environmental license</b></p> <ul style="list-style-type: none"> <li>▪ Acquire an environmental impact assessment (EIA) license.</li> </ul> <p>Investors in agroprocessing and light manufacturing are required to obtain an EIA license from the 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 license.</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"> <li>▪ Acquire an effluent discharge license.</li> </ul> <p>Operators of sewage systems or industrial undertakings must acquire an effluent discharge license once the factory is in place, 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> |
|  | <p><b>12. Legal considerations after commencement of business operations</b></p> <p>Environment:</p> <ul style="list-style-type: none"> <li>▪ Environmental audit to assess compliance with requirements established by the EIA</li> <li>▪ Decommissioning site at closure</li> </ul> <p>Relevant legislation: Environmental Management and Coordination Act (CAP, 387), and Environment (Impact Assessment and Audit) Regulations (2003, Legal Notice No. 101)</p> <p>Institution involved in the process: Ministry of Land and Physical Planning, and NEMA</p> <p>Labour:</p> <ul style="list-style-type: none"> <li>▪ Labour provisions described above</li> </ul> <p>Institution involved in the process: Ministry of Labour and Social Protection, and KenInvest</p>  |

## Government institutions most relevant to sustainable investment

### Kenya Investment Authority (KenInvest)

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 after care services for new and existing investments, as well as organising investment promotion activities both locally and internationally. KenInvest has a One-Stop Centre at their office, which makes it convenient to understand what is required and complete these requirements to set up a business.

Website: [www.invest.go.ke](http://www.invest.go.ke)  
 Address: [15<sup>th</sup> and 14<sup>th</sup> Floor, UAP Old Mutual Tower, Upper Hill Road, Nairobi](#)  
 Phone: [+254 730 104200](tel:+254730104200)  
 Email: [info@invest.go.ke](mailto:info@invest.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](tel:+254202729800)  
 Email: [ps@labour.go.ke](mailto:ps@labour.go.ke)  
[info@labour.go.ke](mailto:info@labour.go.ke)

### National Environmental Management Authority (NEMA)

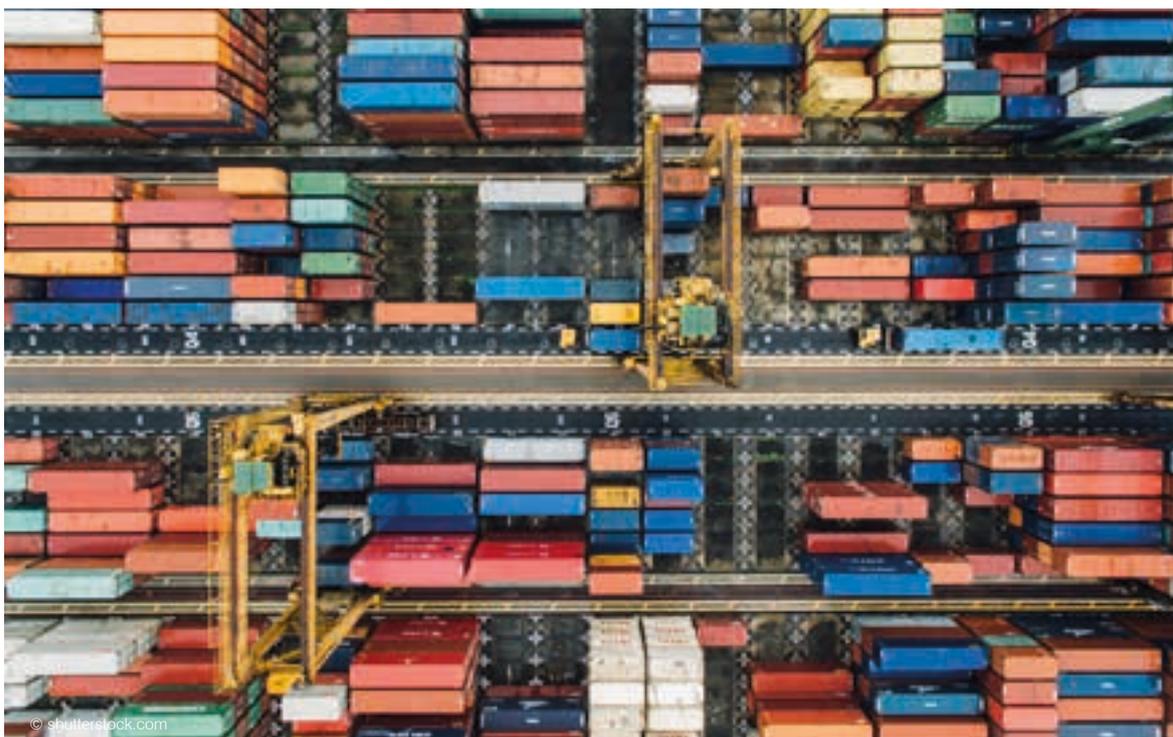
is established under the Environmental Management and Co-ordination Act (No. 8, 1999) as the principal instrument of the Kenyan government for the implementation of all policies relating to the environment. NEMA has authority to exercise general supervision and coordination over all matters relating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

Website: [www.nema.go.ke](http://www.nema.go.ke)  
 Address: [Representative available at the OneStop Centre of KenInvest](#)  
 Phone: [00254 \(0\)724 253398 / 00254 \(0\)735 013046](tel:002540724253398)  
 Email: [dgnema@nema.go.ke](mailto:dgnema@nema.go.ke)

### Ministry of Industry, Trade and Cooperatives

is responsible for updating policy and strategy relating to industrial development in Kenya.

Website: [www.industrialization.go.ke](http://www.industrialization.go.ke)  
 Address: [NSSF Building, Block A \(Western Wing\), 23<sup>rd</sup> Floor, Bishop's Road, Capital Hill, Nairobi](#)  
 Phone: [+254 20 273 1531](tel:+254202731531)  
 Email: [ps@industrialization.go.ke](mailto:ps@industrialization.go.ke)  
[cs@industrialization.go.ke](mailto:cs@industrialization.go.ke)



### *National development strategies*

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

- Government policy in Kenya is structured around an overarching strategy called Vision 2030, which is designed to help transform Kenya into a newly industrialized, middle-income economy. The strategy supports flagship and new sectors for investment. Currently, there is a law on Public Private Partnerships (PPP Act, 2013) that provides opportunity for investors to partner with the government in the development of some of the flagship/ new sector, with a focus on the infrastructure sector.<sup>74</sup>

Kenya's national development strategies include:

- National Industrialization Strategy;<sup>75</sup>
- National Export Strategy;<sup>76</sup>
- Kenya Investment Policy;<sup>77</sup>
- Agricultural Sector Development Strategy;<sup>78</sup>
- Special Economic Zones;<sup>79</sup>
- National Food and Nutrition Security Policy (2011);<sup>80</sup>
- Export Processing Zones;<sup>81</sup>
- Manufacturing under Bond scheme;<sup>82</sup>
- Food, drugs and chemical substances (i.e. food labelling, additives and standards) regulations.<sup>83</sup>

## CHAPTER 3

# Additional sustainability measures



## ADDITIONAL SUSTAINABILITY MEASURES

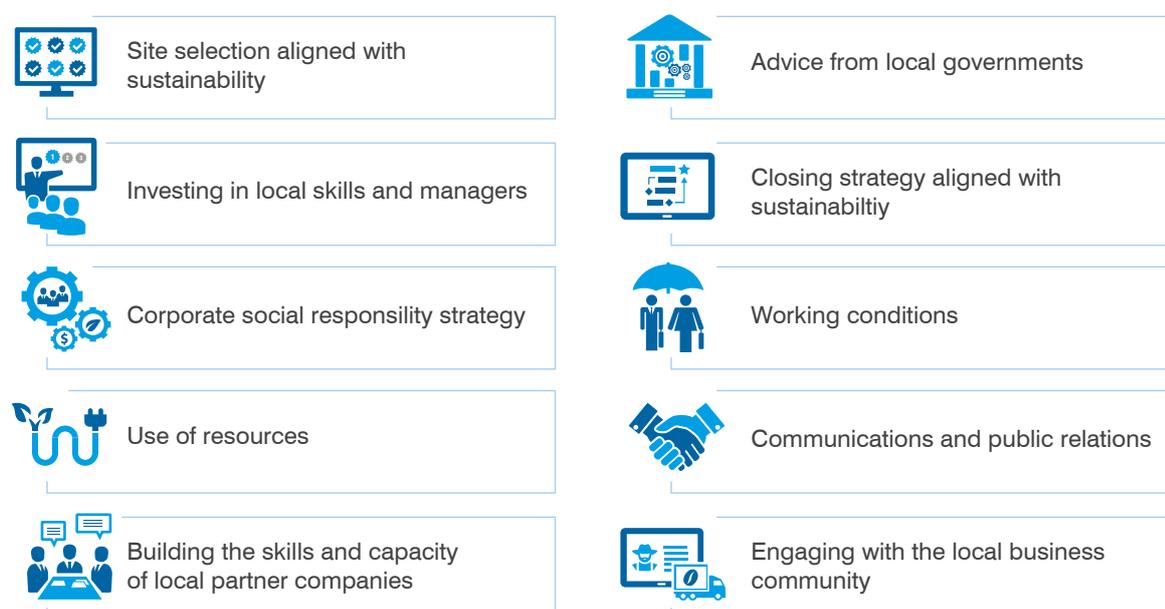
### KEY MESSAGES

- Beyond the legal requirements set out in Chapter 2, there are many opportunities to incorporate additional sustainable measures and approaches into investment and business operations.
- Additional sustainability measures can encompass an array of practices targeting different sustainability areas such as community relations, labour rights and resource management.
- Voluntary sustainability standards are available for social accountability and environmental management and for a wide range of sector and industry-specific processes.
- There are business networks and groups throughout Africa that can also be a good source of information and inspiration on sustainable investment practices.

Apart from compliance with national regulations, there are many opportunities for companies to incorporate more sustainable approaches into their operations, particularly in light manufacturing and agroprocessing businesses.

This chapter introduces a number of measures that companies can incorporate into their business operations in Kenya, to help implement a sustainable approach (summarized in Figure 4). Relevant Chinese and international voluntary standards are also highlighted at the end of the chapter.

**Figure 4** Additional measures for sustainable business conduct





### Site selection aligned with sustainability

Investors are encouraged to consider the location of their proposed manufacturing or agroprocessing site in the context of sustainable development factors. These include the following:

- **Connecting to upstream and/or downstream local value chains.** There may be opportunities to maximize the benefits to local businesses, farmers or producers of different supplies and materials such as food, building and raw materials. This can often have significant business advantages such as lower costs for materials or transport, and improved relations between investors and surrounding communities.
- **Taking a proactive approach to addressing land-related challenges.** Land rights can involve complex procedures in many countries. Even if companies follow the national laws on land compensation, there is still likely to be backlash from local communities, if they feel unfairly compensated or treated. It is advisable for companies to do their own due diligence, and speak to local community leaders in addition to local and national governments. It is most appropriate to consider this in detail at the EIA stage.

### Use of resources

Investors have a unique opportunity to develop sustainable approaches in the production or manufacturing of products. Beyond the legislation discussed in Chapter 2, it is possible to implement processes that minimize electricity or water use, minimize greenhouse gas emissions such as CO<sub>2</sub>,

or develop circular economy systems that minimize wastage. This could include the following:

- Implementing systems to capture and reuse rain water;
- Having good maintenance systems to prevent leakage and water waste;
- Maximizing the energy efficiency of machinery, lighting and buildings;
- Considering how groundwater supplies may be limited, and are shared with the surrounding community, as well as practicing the sustainable use of water sourced from boreholes.
- Adopting processing/manufacturing practices that avoid waste and reusing inputs, or whenever not possible, recycling waste appropriately.
- Reducing emissions and pollution from manufacturing processes and vehicles, and by minimizing other activities such as burning waste materials.
- Minimizing the carbon footprint of a business, through the measures above, as well as by adopting renewable energy sources and sourcing food and materials from local suppliers.
- Minimizing the use of pesticides and fertilizers, as some may have negative impacts on surrounding water quality and the health of human and animal populations.
- Using biofertilizers if possible, which are designed to reduce the harmful impacts of fertilizers on the environment while providing similar benefits to crops.



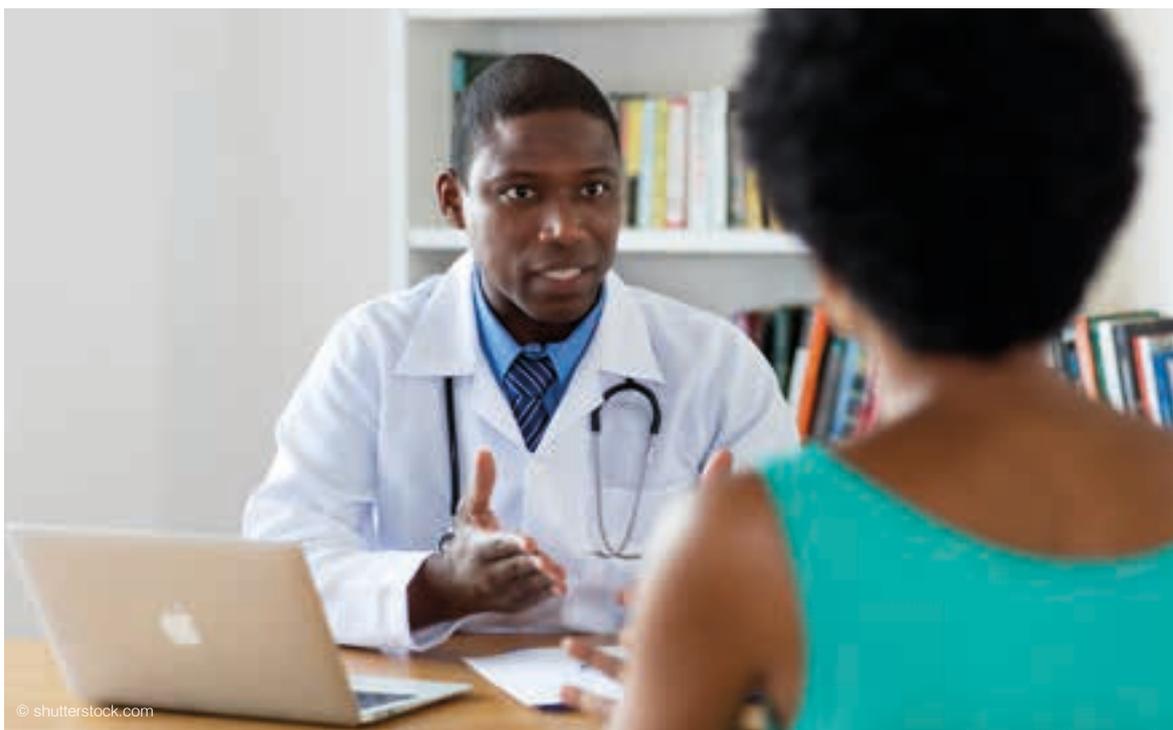
## Working conditions

Providing workers with better conditions and opportunities can lead to benefits such as higher levels of productivity, low levels of staff turnover and financial savings. Investors can consider developing a living wage for employees through an array of measures that may include adequate wages, housing, food, transportation, education and childcare, communication, and health benefits.

- **Providing local transport for workers to and from their place of employment** can provide a safe and efficient additional benefit to workers. Workers may often need to walk between home and work, so reducing the distance will also improve punctuality and energy levels at work. It will also improve safety, particularly if workers need to travel after dark.
- **Providing meals and areas to eat for workers can help boost productivity.** As discussed in Chapter 1, many workers on low wages struggle to buy enough nutritious food. Providing workers with good quality food at the workplace can help to improve morale and productivity as well as fostering longer-term loyalty.
- **Companies should consider investing in accommodation and communication capacities for workers.** Where a business wishes to invest for a long duration, a case can be made for providing housing for workers, which can significantly reduce staff turnover and increase productivity. In order to pass supply chain audits, accommodation must comply with international standards such as the ILO standards for worker accommodation.  
  
It is important to ensure that housing plans fit into local spatial development plans, where relevant. It can also be beneficial to provide means of communication for workers, especially in cases where many have travelled far from home to work in a factory or industrial zone. Providing employees with phone cards or having a company phone that can be used by employees on a regular basis can help them stay in contact with their families.
- **Employers can also play a role in improving the safety and security of their workers,** particularly women. First and foremost, employers need to be adamant in ensuring that there are no abuses within the company structure, paying special attention to power differences between managers and subordinates. There must be means of reporting abuses outside of the management chain, with the promise of anonymity so that the subordinate does not fear retaliation for reporting.

Companies can also help ensure security by providing dedicated transport and accommodation, security surveillance, and basic personal alarms for employees.

- **Respecting differences, language barriers, and cultural differences can improve efficiency.** In a recent study by McKinsey,<sup>84</sup> culture and trust was rated as the fourth top concern of Chinese firms in Africa. For African leaders, cultural barriers is rated the second top concern when dealing with Chinese investors.<sup>85</sup> It is vital to overcome these challenges with strong communications and a focus on how staff from different backgrounds can most effectively work together. Possible solutions include:
  - Ensuring compliance with the legislation specific to each country for working hours, overtime, paid leave and public holidays;
  - Investing in English or local language classes for Chinese staff;
  - Investing in Chinese language classes for local management staff;
  - Incorporating a number of Chinese and local cultural activities and celebrations into the annual calendar of the company;
  - Preparing Chinese staff for cultural differences, including in work culture and skills proficiency.
- **Investors should empower women with equal access to opportunities and equal pay.** Women's economic empowerment boosts productivity, increases economic diversification and income equality, and has trickle down benefits to the wider community.<sup>86</sup> As women bear a disproportionate amount of the burden for childcare, the economic empowerment of women has a significant impact on the education levels of their children, thereby helping to enhance local economic development prospects.
- **Provide appropriate risk management and facilities for pregnant and lactating women.** Women who are pregnant, have given birth within the past six months or are breastfeeding are vulnerable to specific risk and may require special considerations beyond the national legislation discussed in Chapter 2. The employer should take into account any risks identified in their workplace and aim to take the necessary measures to remove, reduce or control the risk.
- **Promote education and child care.** Employers can support initiatives to promote education and child care for workers' children. For instance, employers can provide direct support to establish nursing centres for mothers with small children. Beyond this, employers



can collaborate with local child care services to cover day care services for workers' children. This approach benefits workers with children and contributes to create opportunities for women in the formal labour market. Without access to free or low-cost child care programmes, many women with children face barriers to access formal work opportunities.

- **Promote health care.** Even in countries where healthcare is universally provided by the state, or available at very low costs for workers, out-of-pocket payments to cover medications and treatments represent a challenge for most people. Their inability to cover such treatments and access adequate medical healthcare directly impacts workers' productivity and wellbeing at home and in the workplace. Possible solutions that employers can adopt to overcome these challenges are:
  - Providing direct support to workers to cover costs of medical treatment;
  - Providing health insurance to workers and their families;
  - Collaborating with local health centres and NGOs acting in the region to provide medications and treatments at an accessible price.
- **Promote women's health.** Particularly where the majority of the workforce are young women and the factory is situated far away from health centres. Aim to collaborate with local community health centres or with local NGOs to provide basic services. Work with such partners to make contraceptives and vaccines available at the factory.
- **Disability inclusion can also generate substantial benefits for employers and communities.** Persons with disabilities are often marginalized but can add great value to businesses and the economy when given the right opportunity. Implement an equal opportunities policy and consider a proactive approach to employing people with disabilities for appropriate roles. Consider how best to enhance accessibility to, from and around the workplace.



## Investing in local skills and managers

Developing local talent and supporting employee growth is crucial to build workforce capacities and ensure mutually beneficial business growth. These practices can ensure that the investing company retains positive relations with the local community and its workforce and helps develop the local economy, which, in turn, will support the investing company as well.

- **Provide apprenticeship and training initiatives for youth.** Develop the skills of young people for their inclusion in the job market. This enables companies to diversify their workforce, while contributing to transferring knowledge from experienced workers to trainees.
- **Provide clear career progression.** Employers can increase proficiency in skills and management expertise with higher salaries and increased responsibility.
- **Local management staff.** It is important to ensure that there is a prominent role for local management staff members. This will help to create a working environment with more integration and understanding between Chinese and local staff, and can serve as role models for more junior local staff.
- **Additional training to develop skills.** Employers should consider providing and covering the costs of additional training to staff and managers to help build skills and competences. This could include driving lessons to obtain a license, language lessons, and management training.
- **Additional qualifications.** Employers can consider helping promising management staff the opportunity to achieve additional technical or university qualifications, via financial support or providing sufficient time off to study.



## Building the skills and capacity of local partner companies

Foreign investors can play a valuable role in developing the skills and technologies of local business through different measures such as:

- **Where appropriate, investors should consider how partnerships can help to transfer skills and technology.**

- **In the case of a joint venture or official partnership,** consider how a structured approach may maximize skills and technology transfer to the local partner.
- **Ensure fair payment terms and speedy payment for goods or services procured,** especially from local companies.
- **In cases where there may be disputes, consider alternative dispute resolution (ADL),** including negotiation, conciliation, mediation and arbitration.



## Communications and public relations

Positive and proactive engagement with the local community in which the investor is operating is crucial to establish and maintain strong communication channels. Investing companies are often perceived to be closed to community dialogue, so it is important to counter this perception with genuine outreach and a mechanism to address concerns.

- **Carry out independent due diligence and consultation when preparing to invest in an area.** Sometimes governments will bypass local concerns. Don't be tempted to take what seems like the easiest approach. Investigate local concerns.
- **Follow the principle of free, prior and informed consent (FPIC).**<sup>87</sup> FPIC refers to the right of local communities, particularly indigenous peoples, to participate in decision making about issues affecting them. Disclose the economic, social and environmental impacts that may or have already resulted from investment decisions. Full disclosure to community of plans and mitigating measures is advised.
- **Enable and respond to feedback.** Develop and enable channels for local communities to register grievances and establish systems to address them appropriately, and ensure that the project's implementation and future operations consider stakeholder concerns.
- **Manage expectations.** Investors often face complex and high expectations from local communities and NGOs that believe a company has endless resources with which to offer development benefits. It is very important to manage expectations while offering (or explaining) tangible benefits that are feasible for the investor.

- **Share the positive news, particularly with local stakeholders.** Publicize activities where appropriate so that the impact is known by the public and by customers. At the same time, do not engage in greenwashing or claiming sustainable actions without merit in order to give the perception of a socially and environmentally-conscious company.
- **Seek interaction with different stakeholders.** If community relations are a challenge, refer the issues to different stakeholders, including local or national governments, and seek assistance, rather than letting the problem grow. There is a risk that companies see everyone as a problem rather than seeking appropriate guidance.
- **Stick to what the business license allows.** Investors should follow their stated intentions, for which the environmental license was granted. If an approach needs to change, ensure the community is aware and understands the rationale.
- **Develop partnerships to increase impact.** Communicate with other investors, companies and development partners about infrastructure that would strengthen the sector. What win-win initiatives could be explored?
- **Monitor and evaluate the impact of CSR activities.** On a regular basis, monitor the implementation of CSR activities in order to capture their outcomes and impact on beneficiary communities. This enables businesses to evaluate their relevance and effectiveness in comparison to the initial activity design.



### Advice from local governments

Local governments across Africa often have dedicated units that are able to 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 consulted with local institutions include:

- Location selection to maximize sustainable outcomes;
- Sustainable production techniques;
- Where to source raw materials;
- Vertically-integrated supply chains – linking to value chains;
- Circular economy opportunities, including with other businesses;
- Resilience to the impacts of climate change evident now and likely in the future;

In Kenya, one example of institution providing environmental-related services is The Kenya National Cleaner Production Centre. It promotes resource efficient and cleaner production tools in manufacturing and service enterprises to improve competitiveness and environmental excellence. It supports companies to increase their productivity by reducing resource waste (water, energy and raw material) and their associated negative environmental impacts.

Website: [www.cpkkenya.org](http://www.cpkkenya.org)

Email: [info@cpkenya.org](mailto:info@cpkenya.org)

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

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



### Corporate social responsibility strategy

As discussed in Chapter 1, this handbook defines CSR as additional activities that a company can choose to implement beyond core business operations.

- **Develop a CSR initiative based on what is most needed by a community.** Identify key national and local development issues and how they may match the company's strengths and the interests of local communities.

**Table 2** Chambers of commerce and business associations in Kenya

| Organization   | Contact Details   |
|--|---|
| <b>Kenya National Chamber of Commerce and Industry</b> | Website: <a href="https://portal.kenyachamber.or.ke">https://portal.kenyachamber.or.ke</a><br>Email: <a href="mailto:inquiries@kenyachamber.or.ke">inquiries@kenyachamber.or.ke</a><br>Phone: +254 20 3927000<br>Address: Heritan House, Ground Floor, Woodlands Road, Off Argwings Kodhek Road, Nairobi. |
| <b>Kenya-Chinese Economic and Trade Association</b>    | Phone: : +254 711 501737  |
| <b>Kenya Association of Manufacturers</b>              | Website: <a href="http://kam.co.ke/">http://kam.co.ke/</a><br>Email: <a href="mailto:info@kam.co.ke">info@kam.co.ke</a><br>Phone: +254 722 201368<br>Address: 15 Mwanzi Road opp West Gate Mall, Westlands, Nairobi, Kenya  |
| <b>Kenya Private Sector Alliance</b>                   | Website: <a href="https://kepsa.or.ke/">https://kepsa.or.ke/</a><br>Email: <a href="mailto:info@kepsa.or.ke">info@kepsa.or.ke</a><br>Phone: +254 20 2730371<br>Address: 5 <sup>th</sup> Floor, Shelter Afrique Building, Mamlaka Rd. P.O. Box 3556-00100 Nairobi, Kenya                                   |



### Engaging with the local business community

Chinese-owned companies are encouraged to look beyond Chinese business associations and to engage more with local chambers of commerce and business associations.

Chambers of commerce provide valuable fora to share information, meet new contacts and identify potential business linkages for example, suppliers of raw materials. Interviews carried out with national chambers of commerce during the preparation of this handbook indicated that they are interested in welcoming more Chinese-owned companies as members to help support and enrich local and other international businesses. A list of the most significant chambers of commerce and business associations in Kenya is provided in Table 2.



### Closing strategy aligned with sustainability

In the event of investors closing their operations in Kenya, it is important to fully identify the likely impacts on staff and stakeholders and to address them appropriately. Below are some of the key considerations for closing or decommissioning a business.

- Follow the necessary enterprise deregistration process and ensure that all important assets and documentation are protected.
- Communicate effectively with employees, trade unions and stakeholders so that the reasons for closure, the process and timeframe are fully understood. This will help avoid employee and community dissatisfaction and potential unrest.
- Treat employees according to their rights and best interests, and properly handle employee compensation.
- As set out in Chapter 2, where the exit involves plant closure and land use exit, commission an accredited specialist to prepare a decommissioning plan to be approved by the relevant environmental authority. Implement the necessary environmental remediation to the site as it is being closed down. Comply with the relevant environmental legislation relating to pollution, biodiversity and land rehabilitation.
- Consult with community groups that may be impacted by potential closure and provide appropriate compensation if necessary.
- In the case of bankruptcy, ensure that the national regulations and requirements are understood and complied with, relating to project dissolution and bankruptcy filing.
- In the case of selling the business to other investors, ensure that labour and environmental practices are communicated to the new business owner.
- Consider carrying out a post-investment evaluation, whereby the causes for project success or failure are assessed and lessons learned can be captured and fed into subsequent projects, helping to improve sustainability and the chances of success.

### BOX 3: Chinese sustainability guidelines developed for Chinese companies working abroad

- **Guidance for Chinese Textile and Apparel Industry on Responsible Overseas Investment** (2018). Developed by the China National Textile and Apparel Council with support from the German Corporation for International Cooperation. This is also a voluntary standard. (CSC9000T: 2018) – **English version**<sup>64</sup>: <http://www.asiatex.org/Uploads/File/2019/06/06/u5cf88657e4cc9.pdf> – **Chinese version**<sup>65</sup>: <http://www.asiatex.org/Uploads/File/2019/06/06/u5cf8867280dfe.pdf>
- **Guidelines for Environmental Protection in Foreign Investment and Cooperation**, 2013. Developed by Ministry of Commerce of the People's Republic of China (MOFCOM) and former Ministry for Environmental Protection – **English version**<sup>66</sup>: <http://english.mofcom.gov.cn/article/policyrelease/bbb/201303/20130300043226.shtml> – **Chinese version**<sup>67</sup>: <http://www.mofcom.gov.cn/article/b/bf/201302/20130200039930.shtml>
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## Guidelines, voluntary standards and resources

### Chinese sector-specific guidelines

There are a number of sector-specific guidelines that have been developed for Chinese companies working abroad. Some of the most relevant are listed in Box 3.

### Voluntary sustainability standards

Investors may consider complying with relevant voluntary sustainability standards, which normally require annual audits and accreditation by an independent body. This can add great value to the brand and reputation of a company, as well as enhance market access opportunities.

There are hundreds of voluntary standards tailored to specific processes, so it is advised that investors check which ones apply to their business. The online platform Sustainability Map ([www.sustainabilitymap.org](http://www.sustainabilitymap.org))<sup>95</sup> developed by ITC provides information on over 250 voluntary sustainability standards that are active in

a wide range of countries and sectors. Companies can use this free online platform to improve their ability to identify, assess and compare voluntary standards relevant to their needs.

### Sustainability resources and networks in sub-Saharan Africa

The following sustainability resources offer valuable context, information and assistance.

#### Green Africa Directory

[www.greenafricadirectory.org](http://www.greenafricadirectory.org)

#### Africa Renewal

<https://www.un.org/africarenewal/>

#### WeSustain Africa

<https://wesustain.africa/>

**Figure 5** Free e-learning courses by sustainability area

| SOCIAL    | ECONOMIC    | ENVIRONMENTAL    |
|--|--|---|
| <p><b>Human Rights &amp; Business Learning Tool</b> (English)<br/>Developed by UN Global Compact<br/><a href="http://human-rights-and-business-learning-tool.unglobalcompact.org">http://human-rights-and-business-learning-tool.unglobalcompact.org</a></p> <p><b>Human Rights and Business Dilemmas Forum</b> (English)<br/>Developed by UN Global Compact<br/><a href="https://hrbdf.org">https://hrbdf.org</a></p> <p><b>Courses on the thematic of Decent Work</b> (English)<br/>Developed by the International Training Centre of the International Labour Organization (ILO)<br/><a href="https://ecampus.itcilo.org">https://ecampus.itcilo.org</a></p> <p><b>Courses on the thematic of Child Labour</b> (various languages)<br/>Developed by the International Labour Organization (ILO)<br/><a href="https://www.ilo.org/ipec/Informationresources/elearning/lang--en/index.htm">https://www.ilo.org/ipec/Informationresources/elearning/lang--en/index.htm</a></p> | <p><b>E-learning courses developed by ITC:</b></p> <p><b>Approaching banks for financing</b> (English)<br/><a href="https://learning.intracen.org/course/info.php?id=148">https://learning.intracen.org/course/info.php?id=148</a></p> <p><b>Introduction to business plans</b> (English)<br/><a href="https://learning.intracen.org/course/info.php?id=304">https://learning.intracen.org/course/info.php?id=304</a></p> <p><b>Considering Export Markets</b> (English)<br/><a href="https://learning.intracen.org/course/info.php?id=189">https://learning.intracen.org/course/info.php?id=189</a></p> <p><b>Introduction to International Transport and Logistics</b><br/><a href="https://learning.intracen.org/course/info.php?id=277">https://learning.intracen.org/course/info.php?id=277</a></p> <p>More courses available at:<br/><a href="https://learning.intracen.org/">https://learning.intracen.org/</a></p> | <p><b>Resource efficient and Circular Production Processes</b> (English, French, Spanish)<br/>Developed by ITC<br/>To be launched in March 2020</p> <p><b>Enterprises and Climate Change</b> (English, French)<br/>Developed by ITC<br/>To be launched in December 2019</p> <p><b>Survival and Environment</b> (Chinese)<br/>Developed by Shandong University of Science and Technology<br/><a href="http://open.163.com/special/cuvocw/shengcunyuhanjing.html">http://open.163.com/special/cuvocw/shengcunyuhanjing.html</a></p> <p><b>Environmental protection and sustainable development</b> (Chinese)<br/>Developed by Tsinghua University<br/><a href="http://open.163.com/special/cuvocw/huanjingbaohu.html">http://open.163.com/special/cuvocw/huanjingbaohu.html</a></p> <p><b>Ecology and sustainable development</b> (Chinese)<br/>Developed by Huazhong Agricultural University<br/><a href="http://open.163.com/special/cuvocw/kechixufazhan.html">http://open.163.com/special/cuvocw/kechixufazhan.html</a></p> |

**BOX 4: Courses on cross-cutting sustainability topics**

- **UNDP Massive Open Online Course (MOOC) on the Agenda 2030 for SDGs (19 modules covering the 17 SDGs)** (Chinese)  
Developed by United Nations Development Programme (UNPD)  
<https://open.163.com/undpsdgmoooc>

**ITC e-learning courses:**

- **The Role of Standards in Sustainable Supply Chains** (English)  
<https://learning.intracen.org/course/info.php?id=205>
- **Competitiveness Through Enterprise Sustainability** (English)  
<https://learning.intracen.org/course/info.php?id=237>
- **Introduction to Standards and Sustainability** (English)  
<https://learning.intracen.org/course/info.php?id=206>
- **Introduction to Corporate Social Responsibility** (English)  
<https://learning.intracen.org/course/info.php?id=244>



## APPENDICES



## APPENDIX I

### Sustainable Development Goals

The SDGs are the set of goals, targets and indicators adopted by the UN member states in 2015 providing a framework for the international development agenda and political policies. Businesses are also expected to take action towards the implementation of the SDGs by:

- aligning their strategies to the goals, targets and indicators set by the SDGs
- managing and measuring their contribution to the realisation of the SDGs.

#### The 17 SDGs are:



**Goal 1:** End poverty in all its forms everywhere



**Goal 2:** End hunger, achieve food security and improved nutrition and promote sustainable agriculture



**Goal 3:** Ensure healthy lives and promote well-being for all at all ages



**Goal 4:** Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all



**Goal 5:** Achieve gender equality and empower all women and girls



**Goal 6:** Ensure availability and sustainable management of water and sanitation for all



**Goal 7:** Ensure access to affordable, reliable, sustainable and modern energy for all



**Goal 8:** Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all



**Goal 9:** Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation



**Goal 10:** Reduce inequality within and among countries



**Goal 11:** Make cities and human settlements inclusive, safe, resilient and sustainable



**Goal 12:** Ensure sustainable consumption and production patterns



**Goal 13:** Take urgent action to combat climate change and its impacts



**Goal 14:** Conserve and sustainably use the oceans, seas and marine resources for sustainable development



**Goal 15:** Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss



**Goal 16:** Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels



**Goal 17:** Strengthen the means of implementation and revitalize the global partnership for sustainable development

More information about the SDGs:

- Official webpage of the UN SDGs: <https://sustainabledevelopment.un.org/?menu=1300>
- SDG Compass: The guide for business action on the SDGs (English version)<sup>96</sup>: [https://sdgcompass.org/wp-content/uploads/2015/12/019104\\_SDG\\_Compass\\_Guide\\_2015.pdf](https://sdgcompass.org/wp-content/uploads/2015/12/019104_SDG_Compass_Guide_2015.pdf)
- SDG Compass: SDGs (联合国可持续发展目标) 企业行动指南 (Chinese version)<sup>97</sup>: [https://sdgcompass.org/wp-content/uploads/2016/06/SDG\\_Compass\\_Guide\\_Chinese.pdf](https://sdgcompass.org/wp-content/uploads/2016/06/SDG_Compass_Guide_Chinese.pdf)

## APPENDIX II

### The UN Global Compact Principles

#### The Ten Principles of the UN Global Compact

##### HUMAN RIGHTS

**Principle 1:** Businesses should support and respect the protection of internationally proclaimed human rights; and

**Principle 2:** make sure that they are not complicit in human rights abuses.

##### LABOUR

**Principle 3:** Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

**Principle 4:** the elimination of all forms of forced and compulsory labour;

**Principle 5:** the effective abolition of child labour; and

**Principle 6:** the elimination of discrimination in respect of employment and occupation.

##### ENVIRONMENT

**Principle 7:** Businesses should support a precautionary approach to environmental challenges;

**Principle 8:** undertake initiatives to promote greater environmental responsibility; and

**Principle 9:** encourage the development and diffusion of environmentally friendly technologies.

##### ANTI-CORRUPTION

**Principle 10:** Businesses should work against corruption in all its forms, including extortion and bribery.

Available at:

<https://www.unglobalcompact.org/what-is-gc/mission/principles>

## Food and Agriculture Business Principles of the Global Compact

### **1. Aim for Food Security, Health and Nutrition**

Businesses should support food and agriculture systems that optimize production and minimize waste, to provide nutrition and promote health for all people

### **2. Be Environmentally Responsible**

Businesses should support sustainable intensification of food systems to meet global needs by managing agriculture, livestock, fisheries and forestry responsibly. They should protect and enhance the environment

### **3. Ensure Economic Viability and Share Value**

Businesses should create, deliver and share value across the entire food and agriculture chain from farmers to consumers.

### **4. Respect Human Rights, Create Decent Work and Help Communities To Thrive**

Businesses should respect the rights of farmers, workers and consumers. They should improve livelihoods, promote and provide equal opportunities.

### **5. Encourage Good Governance and Accountability**

Businesses should behave legally and responsibly by respecting land and natural resource rights, avoiding corruption, being transparent about activities and recognising their impacts.

### **6. Promote Access and Transfer of Knowledge, Skills and Technology**

Businesses should promote access to information, knowledge and skills for more sustainable food and agricultural systems.

Available at:

<https://www.unglobalcompact.org/take-action/action/food>

# ENDNOTES

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