KENYA
KAPLAN & STRATTON

FIRM INFORMATION

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KENYA I KAPLAN & STRATTON

1. SOURCES AND OVERVIEW

1.1 Main substantive ESG-related laws in in the Republic of Kenya ("Kenya")

Kenya does not currently possess a unified, codified ESG statute. Instead, the country's ESG landscape is built upon a patchwork of environmental, social, and corporate governance statutes, supported by policy instruments, regulatory guidelines, and emerging judicial interpretations. The statutory framework demonstrates a growing convergence with international best practices, particularly under the auspices of Kenya's Vision 2030, its commitments under the Paris Agreement, and its alignment with the United Nations Sustainable Development Goals (SDGs).

In relation to environmental law, the foundation of Kenya's environmental regulatory regime is the Environmental Management and Co-ordination Act ("**EMCA**"), 1999, which remains the primary legislation governing environmental protection and conservation. It establishes the National Environment Management Authority ("**NEMA**") and creates a framework for environmental impact assessments ("**EIAs**"), environmental audits (EAs), and strategic environmental planning. A core feature of EMCA is its procedural requirement for environmental licensing prior to the commencement of any project likely to have a significant environmental impact. This process is participatory and includes public consultation, thereby providing a platform for stakeholders to raise environmental and social concerns.

The Climate Change Act, 2016, represents a landmark statute as it creates enforceable climate obligations not only for public institutions but also anticipates their extension to the private sector. The Act establishes institutional mechanisms such as the Climate Change Directorate and the National Climate Change Council and mandates the mainstreaming of climate change responses into all levels of government and development planning. The statute obliges state organs and public entities to integrate climate change mitigation and adaptation measures in their strategies and performance contracting. It also imposes obligations on private entities engaged in climate-sensitive activities to report on climate related risks and mitigation actions, though enforcement remains at a formative stage.

In relation to social issues, the legal framework comprises several laws addressing labour rights, inclusion, equity, and community welfare. The Employment Act, 2007 codifies minimum employment standards, including non-discrimination, equal remuneration for work of equal value, and safe working conditions. The Occupational Safety and Health Act (OSHA), 2007 prescribes detailed health and safety obligations for employers, particularly in high-risk sectors such as construction, manufacturing, and extractives. Meanwhile, statutes such as the Persons with Disabilities Act, 2025, the Children Act, 2022, and the National Gender and Equality Commission Act, 2011 provide rights-based protections to vulnerable groups, including mechanisms for redress and enforcement.

On the governance front, Kenya's Companies Act, 2015 integrates modern corporate governance principles, including the duties of directors to act in good faith, to exercise care and skill, and to promote the success of the company. These duties are increasingly understood through the lens of ESG considerations, particularly as directors are required to consider the long-term interests of stakeholders, including employees, communities, and the environment. The Capital Markets Authority ("**CMA**"), empowered under the Capital Markets Act, CAP 485A has promulgated the Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015, which imposes substantive governance and disclosure requirements, including board independence, gender diversity, and audit committee effectiveness. These governance requirements have direct ESG implications and are applicable to all listed entities.

In summary, while Kenya does not currently possess a single ESG statute, its legal framework integrates ESG principles across environmental, labour, governance, and corporate accountability statutes. The legislative trajectory is clearly moving toward greater formalisation and enforcement of ESG obligations, particularly under climate change law and capital markets regulation.

1.2 ESG disclosure requirements in Kenya

ESG disclosure obligations in Kenya vary across sectors and regulatory regimes and are currently undergoing a shift from discretionary to semi-mandatory status, particularly for listed entities and entities operating in high-impact sectors. These obligations are shaped by domestic regulations, voluntary codes, and growing investor pressure to align with international standards such as the Global Reporting Initiative ("GRI"), Sustainability Accounting Standards Board (SASB), Task Force on Climate-related Financial Disclosures ("**TCFD**"), and the International Integrated Reporting Council ("**IIRC**").

At the domestic level, the Nairobi Securities Exchange ("**NSE**") launched an ESG Disclosures Guidance Manual in 2021, which encourages listed companies to make voluntary ESG disclosures in accordance with international standards. While not legally binding, the guidance is becoming increasingly influential, as issuers and investors adopt it as a de facto reporting standard. The manual recommends disclosures in respect of environmental impact, social performance (including labour practices and community engagement), and governance metrics (such as board composition, risk oversight, and anti-corruption measures). The guidance is particularly aligned with the GRI Standards and the TCFD framework.

In parallel, the Capital Markets Authority's governance code for listed issuers mandates certain disclosures related to board practices, diversity, internal controls, and stakeholder engagement. While the ESG components are embedded within corporate governance disclosures rather than separately articulated, they are nonetheless significant, especially where non-compliance may lead to sanctions, including delisting or administrative penalties.

In the banking and finance sector, the Central Bank of Kenya ("**CBK**"), through the Kenya Bankers Association ("**KBA**"), has promoted the Sustainable Finance Guiding Principles, which require banks to integrate ESG risks into lending decisions and to disclose sustainability practices. Though the CBK has not yet made these disclosures mandatory, most Tier 1 banks have begun issuing sustainability or integrated reports.

In the extractives, agriculture, and manufacturing sectors, the reporting obligations are tied to environmental compliance under EMCA and sectoral regulations. For instance, companies in the extractive sector are required to submit environmental audits to NEMA annually, disclosing their environmental management practices and compliance levels. In addition, Kenya's alignment with the Extractive Industries Transparency Initiative (EITI) reflects a move towards greater transparency in mineral and oil revenues and community benefit disclosures.

Internationally, large Kenyan corporates with global operations or supply chains are increasingly adopting TCFD and GRI disclosures voluntarily to meet investor and stakeholder expectations, particularly those tied to the European Union or United Kingdom jurisdictions.

1.3 Compulsory versus discretionary ESG-related disclosures in Kenya, and the frequency of such disclosures

At present, ESG disclosures in Kenya are largely discretionary, save for certain governance disclosures mandated for listed companies and environmental audits required for projects licensed under EMCA. The NSE's ESG guidance remains voluntary, but influential, particularly among listed entities wishing to attract sustainable capital or maintain high governance scores.

That said, for public bodies and state-owned enterprises, the Climate Change Act, 2016 imposes a legal obligation to mainstream climate risk reporting and mitigation into their operational and strategic frameworks. Public entities are also expected to report climate performance as part of their performance contracting with the government, although enforcement is uneven and largely policy driven.

In terms of frequency, ESG disclosures, where made, are typically provided annually through sustainability reports or embedded in integrated annual reports. There is currently no uniform requirement for quarterly or bi-annual ESG updates.

1.4 If ESG-related disclosures are discretionary, are compulsory ESG disclosures being considered by the regulators in Kenya and is it envisaged that such disclosures will, at some stage, become compulsory?

There is a strong and growing momentum toward making ESG disclosures compulsory in Kenya, particularly for listed entities, financial institutions, and firms operating in environmentally sensitive sectors. The CMA has indicated, through public consultations and circulars, that it intends to gradually formalise ESG reporting obligations, potentially through amendments to the corporate governance code or listing regulations.

Similarly, the Climate Change Directorate has proposed revisions to the Climate Change Act that would require private entities above a certain threshold of emissions or sectoral exposure to register with the National Climate Change Registry and submit periodic disclosures. These amendments are currently under review and are expected to be introduced within the next two legislative cycles.

Furthermore, Kenya is actively engaging with international standards-setters such as the International Sustainability Standards Board ("**ISSB**"), and it is anticipated that ISSB standards will serve as the backbone for a unified sustainability disclosure framework once adopted.

1.5 Significant private sector initiatives relating to ESG-related laws and/ or disclosures in Kenya

The private sector in Kenya has shown commendable initiative in advancing ESG compliance and disclosure, driven by a combination of investor demand, brand positioning, and international market access requirements.

The NSE has launched a dedicated ESG Data Platform, which allows listed companies to publish their ESG metrics, offering transparency and benchmarking to investors. The Kenya Private Sector Alliance (KEPSA) has established a Sustainability and Circular Economy Committee to assist member firms with ESG compliance and to lobby for conducive policies.

Meanwhile, individual corporates have emerged as leaders in ESG disclosure. Leading telecommunications companies have consistently published integrated sustainability reports aligned with GRI and TCFD, with detailed reporting on climate risk, employee wellbeing, and digital inclusion. Tier 1 banks have similarly published ESG-aligned reports and have embedded ESG risk assessment into their lending and investment decisions.

Industry associations such as the Kenya Association of Manufacturers (KAM) have launched ESG training programmes and sustainability awards to encourage uptake. Furthermore, voluntary adherence to standards such as UN Global Compact, ISO 26000 on social responsibility, and IFC Performance Standards is increasingly common, especially among export-oriented and capital-intensive businesses.

2. PRINCIPAL SOURCES OF ESG PRESSURE

2.1 Investor and Asset/ Investment Manager Perspectives on ESG Compliance and Influence Strategies

In Kenya, both domestic and international investors are increasingly recognising that environmental, ESG factors have a material impact on risk-adjusted returns. While ESG integration remains more prevalent among foreign institutional investors and development finance institutions ("**DFIs**"), the local investment landscape is gradually evolving to reflect similar priorities.

Development financiers have long imposed strict ESG requirements as a condition of financing. These institutions typically mandate pre-investment ESG due diligence and continuous post-investment ESG reporting. Investment managers working with these institutions must therefore adopt ESG-aligned investment screening tools, ESG covenants in investment agreements, and measurable environmental and social key performance indicators ("**KPIs**"). These KPIs are often tied to loan pricing mechanisms in sustainability-linked financing instruments.

Within Kenya's domestic market, fund managers, particularly those managing assets under pension funds or insurance pools, are becoming more ESG-conscious, though the sophistication and depth of ESG screening vary significantly. A few leading asset managers have begun adopting internal ESG investment policies, which are periodically approved by their boards and align with frameworks such as the United Nations Principles for Responsible Investment (UN PRI) and the Equator Principles. These internal policies may set thresholds for carbon-intensive investments, exclude high-risk sectors such as coal, and prioritise ESG-aligned sectors such as renewable energy, health, and education.
The exertion of ESG influence manifests both internally and externally. Internally, investment committees may maintain formal ESG compliance checklists that must be satisfied before approval of investment proposals. Some institutional investors also use proprietary ESG scoring models to assess portfolio companies on parameters such as board diversity, water usage, and community engagement.

Externally, ESG considerations are increasingly influencing capital allocation. Investors have started to either divest from, or refuse to fund, companies whose operations conflict with ESG objectives. This has been particularly evident in sectors such as tobacco, cement, plastics, and extractives, where high environmental impact and social controversy create reputational and regulatory risks. For instance, several private equity investors operating in East Africa have publicly stated that they will no longer invest in companies engaged in deforestation, high-emissions manufacturing, or with opaque governance structures.

Despite this progress, challenges remain. The lack of a standardised ESG taxonomy in Kenya, combined with limited regulatory enforcement, means that investor scrutiny is still largely discretionary and often dependent on the ethos of particular firms or funders.

2.2 Stakeholder Influence on ESG Compliance

Outside of investors, a growing array of stakeholders in Kenya are exerting direct and indirect pressure in favour of ESG compliance. Among the most influential are commercial banks, insurance providers, donor agencies, and civil society organisations.

Commercial banks, under the guidance of CBK and the KBA, have increasingly embedded ESG principles into credit decision-making processes. The KBA's Sustainable Finance Initiative (SFI), launched in 2015, guides banks in evaluating environmental and social risks in lending. Several major banks now require ESG assessments as part of credit applications, particularly for large borrowers and those in environmentally sensitive sectors. Where an ESG assessment flags non-compliance or elevated risk, banks may either price the risk accordingly or decline the application outright.

Donor and grant funding institutions, including routinely require detailed environmental and social management plans (ESMPs) as part of funding agreements. These institutions also monitor compliance throughout the project lifecycle, creating a strong incentive for non governmental organisations ("**NGOs**") and social enterprises to embed ESG into their operations and reporting.

Shareholders and community stakeholders are also beginning to assert influence. Though Kenya has not witnessed the scale of shareholder activism seen in jurisdictions such as the US or UK, there have been instances where shareholders have raised questions about ESG performance at AGMs, particularly in relation to environmental stewardship, executive remuneration, and social inclusion. In community contexts, resistance to large-scale projects that ignore ESG concerns has taken the form of litigation, protest, and negative publicity, effectively raising the cost of capital and delaying project timelines.

One example is the vigorous opposition faced by a foreign-backed coal project in Lamu, where local communities, environmental activists, and human rights groups challenged the project on both environmental and procedural justice grounds. The resulting legal battle led to the suspension of the project and ultimately influenced investor withdrawal.

In the agribusiness and horticulture sectors, buyers and off-takers in the EU and UK have imposed ESG conditions on Kenyan suppliers, particularly around labour practices, pesticide use, water conservation, and fair wages. Failure to comply can lead to cancellation of contracts and loss of certifications such as Fairtrade, Global G.A.P., and Rainforest Alliance, which are essential for market access.

2.3 Principal regulators of ESG compliance in Kenya and their focus areas

Kenya's ESG compliance landscape is regulated by a multi-agency structure, with different regulators focusing on specific aspects of ESG. The key regulatory bodies are -

2.3.1 **NEMA** – established under EMCA, NEMA is responsible for enforcing environmental regulations, conducting environmental audits, reviewing EIAs, and taking enforcement action against violators;

2.3.2 **The Climate Change Directorate** – operating under the Ministry of Environment and Forestry, this Directorate administers the Climate Change Act and leads the implementation of national climate policies and reporting obligations. It is also tasked with maintaining the Climate Change Registry and overseeing compliance by public and private entities;

2.3.3 **CMA** – responsible for overseeing the governance of listed entities, the CMA enforces governance disclosures and is increasingly focused on sustainable finance and ESG transparency. Through its regulatory sandbox, the CMA is piloting ESG-related financial innovations, including green bonds and ESG-focused collective investment schemes;

2.3.4 **The CBK** – supervises the financial sector and promotes ESG integration through sustainability guidelines and periodic reporting; and

2.3.5 **The Directorate of Occupational Safety and Health Services ("DOSHS")** – enforces workplace safety and social protections under the Occupational Safety and Health Act.

Collectively, these regulators are pressing issues such as environmental degradation, climate resilience, fair labour practices, board accountability, gender representation, and transparency in sustainability-related financial products.

2.4 Liability and Penalties for ESG Non-Compliance: Piercing the Corporate Veil

The penalties for failing to comply with ESG-related obligations in Kenya depend on the specific statute breached. Under EMCA, for example, the failure to obtain an Environmental Impact Assessment licence prior to the commencement of a project may attract substantial fines (up to KES 2 million), suspension of operations, or criminal liability. Repeat or egregious violations may result in imprisonment of directors or closure orders.

Similarly, under the Climate Change Act, public entities can be sanctioned for failing to integrate climate measures into their operations. Although the enforcement of climate obligations against private companies remains nascent, the legislation does allow the Climate Change Directorate to recommend administrative or civil penalties for persistent non-compliance.

In employment-related ESG matters, violations of the Occupational Safety and Health Act can result in prosecution, fines, or orders for corrective measures. The Employment and Labour Relations Court has not hesitated to award compensation in cases of workplace discrimination, unfair termination, or violations of employee welfare.

As to the liability of directors and stakeholders, Kenyan law adheres to the principle of separate legal personality established under Salomon v. Salomon & Co., and the corporate veil is generally respected. However, courts have been willing to pierce the veil where there is fraud, reckless trading, or gross negligence, particularly in the context of environmental harm or deliberate regulatory evasion. The Companies Act, 2015, as well as judicial decisions under EMCA, confirm that directors may be held personally liable where they authorised or consented to unlawful acts or failed in their fiduciary duties with a degree of culpability.

There is, however, no statutory framework enabling regulators to impose ESG-related penalties on employees, funders, or investors per se, unless they are directly implicated in wrongdoing. That said, reputational risk and contractual mechanisms (e.g., warranties and indemnities in financing agreements) may create significant exposure for these parties in practice.

2.5 Material ESG Enforcement Actions in Kenya

Material enforcement actions in Kenya relating to ESG compliance have historically been limited in scope, but in recent years there has been a marked increase in regulatory assertiveness, particularly from environmental and labour regulators. These actions provide insight into both the direction of regulatory enforcement and the kinds of ESG violations likely to attract official intervention.

One prominent example is the action taken by NEMA against industrial operators discharging untreated effluent into water bodies in violation of environmental licensing conditions. In such cases, NEMA has exercised its powers to suspend operations, levy administrative fines, and in some instances, initiate criminal proceedings. For example, a notable case involved the temporary closure of a plastic recycling facility in Athi River due to persistent complaints from surrounding communities regarding air pollution and occupational health hazards. NEMA's intervention was based on both non-compliance with its environmental audit requirements and the facility's failure to implement mitigation measures agreed upon during the EIA process.

Similarly, DOSHS has intervened in multiple instances to sanction companies, particularly in the textile and floriculture sectors, for breaching health and safety standards. In these enforcement actions, DOSHS has cited employers for failure to provide adequate protective gear, improper waste disposal, and non-compliance with statutory health and safety audits. While penalties are typically administrative, the reputational consequences and resultant supply chain disruptions for export-oriented firms are often significant.

In the context of climate-related compliance, enforcement actions have remained more limited. However, the Climate Change Directorate, operating under the Ministry of Environment, has in recent years issued formal notices to several county governments and state-owned enterprises for failure to integrate climate action into their strategic plans, contrary to the requirements of the Climate Change Act. Though these notices have not yet matured into litigation or penalties, they represent a growing willingness by the regulator to hold public institutions accountable for non-compliance with climate obligations.

Beyond regulatory enforcement, ESG non-compliance is also increasingly leading to informal but commercially consequential sanctions, such as the withdrawal of international funding, suspension of trade certifications, or the loss of market access. For instance, horticultural exporters have faced supply chain disruptions due to failure to meet international standards on pesticide use, labour practices, and traceability. These actions, though not formal regulatory sanctions, have an equivalent, and often more immediate, commercial effect.

2.6 ESG Litigation Risks and Emerging Legal Exposure

While Kenya is not yet home to a high volume of ESG litigation in the conventional sense, the legal landscape is increasingly fertile for such claims. The combination of robust constitutional protections, sector-specific regulatory requirements, and increasing contractual enforcement by financiers creates a multidimensional litigation risk profile for entities operating in the country.

The most developed ESG litigation trend involves environmental rights enforcement under the Constitution of Kenya, 2010. Article 42 guarantees every person the right to a clean and healthy environment, enforceable under Article 70 by any person, whether or not they have suffered direct harm. As a result, community groups and civil society organisations have successfully challenged infrastructure and industrial projects on grounds of inadequate environmental assessments, failure to implement mitigation measures, or destruction of ecologically sensitive areas. The Environment and Land Court (ELC) has repeatedly issued orders halting construction, cancelling project approvals, and directing restoration of degraded ecosystems. These outcomes reflect a maturing body of jurisprudence with real legal and financial consequences for ESG breaches.

Closely related is the growing risk of litigation for breaches of labour and social protections, particularly in sectors such as manufacturing, floriculture, and construction. Under the Employment Act, Occupational Safety and Health Act, and the Constitution, employees have successfully brought claims for workplace injuries, discrimination, underpayment, and failure to provide statutory benefits. The Employment and Labour Relations Court has demonstrated its readiness to award substantial compensation, especially where violations intersect with rights to dignity, equality, and fair labour practices. These cases increasingly raise ESG considerations even if they are not expressly framed in that language.

A further and increasingly significant angle of ESG-related legal exposure arises from contractual enforcement mechanisms embedded in financing and investment documents. DFIs, international lenders, and private equity investors are now routinely including ESG-specific warranties, covenants, and reporting obligations in loan agreements, shareholder agreements, and investment term sheets. Breach of such provisions , for example, a failure to maintain environmental licences, non-compliance with anti-bribery commitments, or adverse human rights findings, can give rise to contractual remedies, including early termination, step-in rights, penalties, or acceleration of repayment obligations. These remedies may be enforced through arbitration or litigation, depending on the dispute resolution mechanism agreed in the contract.

Unlike regulatory enforcement or constitutional claims, contractual ESG disputes often play out in confidential proceedings, but they are no less impactful. Their significance lies in the fact that they are driven not by activism but by commercial risk mitigation, and they affect a company's access to capital and financial stability. As ESG-linked financial instruments, such as green bonds and sustainability-linked loans, become more prevalent in the Kenyan market, these private enforcement mechanisms are expected to become a leading source of ESG accountability.

In conclusion, ESG litigation risk in Kenya cuts across three main vectors: public interest environmental claims, statutory labour and social rights enforcement, and private contractual enforcement by investors and financiers. Entities that fail to integrate ESG compliance into both their operations and their legal risk management frameworks face not only reputational harm but also growing exposure to legal challenge from multiple fronts. The direction of travel is clear: ESG is no longer a policy aspiration, it is becoming a source of hard legal risk.

3. ENVIRONMENTAL METRICS AND GOALS

3.1 Carbon Footprint Disclosure Requirements: Scope 1, 2 and 3 Emissions

Kenyan law does not currently impose a general statutory obligation on private organisations to calculate or disclose their carbon footprint, whether in terms of Scope 1 (direct emissions), Scope 2 (indirect emissions from purchased energy), or Scope 3 (value chain emissions). However, certain legal and policy instruments create sector-specific or context-specific reporting obligations, and the broader policy trajectory indicates that emissions tracking and disclosure will become a growing area of regulatory focus.

The Climate Change Act, 2016 creates a legal framework for climate mainstreaming in public policy and operations. It imposes reporting obligations primarily on public entities, requiring them to integrate climate change measures into their functions and to report on progress toward climate adaptation and mitigation. The Act empowers the Climate Change Directorate to develop and maintain a National Climate Change Registry, which records mitigation actions, including emissions reductions, by public and private entities. However, the inclusion of private sector actors in this reporting system remains voluntary unless specified by regulations.

For private companies, particularly those in high-emission sectors such as cement manufacturing, energy production, and transport, the calculation of carbon emissions is increasingly expected, not by statute, but by investors, financiers, and international stakeholders. Large Kenyan corporates participating in global supply chains (notably in agriculture and manufacturing) are already required to quantify and disclose emissions to satisfy the requirements of foreign regulators, such as the EU's Corporate Sustainability Reporting Directive (CSRD) and importers' internal ESG standards.

Additionally, the NSE encourages listed entities to disclose emissions data in line with TCFD recommendations. This is voluntary but increasingly adopted by leading corporates as part of integrated sustainability reporting.

In summary, there is no current legal obligation for private entities in Kenya to calculate Scope 1, 2, or 3 emissions in a uniform manner. Nonetheless, regulatory and market forces are converging toward de facto emissions reporting, especially for large emitters, listed entities, and internationally exposed businesses.

3.2 Emissions Reduction Targets and Enforcement in Kenya

Kenya has committed to a nationally determined contribution ("**NDC**") under the Paris Agreement, which forms part of its obligations as a party to the United Nations Framework Convention on Climate Change (UNFCCC). The updated NDC, submitted in 2020, commits Kenya to reduce greenhouse gas emissions by 32% by 2030, relative to the business-as-usual scenario. This target is partially conditional on international support, including climate finance and technology transfer.

While this national target is binding on the State in terms of international law and public accountability, it is not directly enforceable against private sector actors in its current form. That said, Kenya's climate policy framework allocates sectoral responsibilities for emissions reduction, particularly in energy, transport, industry, waste, and agriculture. These sectoral goals are being gradually operationalised through planning instruments, licensing regimes, and environmental audits.

The Climate Change Act gives the Cabinet Secretary powers to make regulations requiring certain private entities, especially those engaged in climate-sensitive sectors, to submit reports and implement mitigation measures. Although the implementation of these provisions has been slow, draft regulations and policy discussions suggest that binding targets or reporting thresholds may be introduced in the coming years.

At present, therefore, Kenya's emissions reduction targets are national in scope and voluntary in application to the private sector, but increasingly relevant as a risk consideration for companies involved in regulated sectors or with international exposure.

3.3 Sector-Based Environmental Disclosure Requirements

Environmental impact monitoring and disclosure obligations in Kenya are governed primarily by the EMCA and sector-specific licensing regimes. Under EMCA, any project likely to have significant environmental impact must undergo an EIA prior to licensing. Once licensed, the project proponent is legally required to conduct and submit annual environmental audits to NEMA.

These audits must report on key environmental parameters, including -

3.3.1 water consumption and sources;

3.3.2 waste generation (solid, liquid, and hazardous);

3.3.3 energy use;

3.3.4 air and noise emissions;

3.3.5 wastewater treatment and disposal; and

3.3.6 biodiversity and ecological impacts.

Thus, while there is no generalised reporting obligation for all companies, entities with operations requiring EIA licensing, typically in construction, manufacturing, mining, agro processing, and transport, are required to monitor, document, and disclose their environmental performance as a condition of licence.

In some sectors, additional rules apply. For example, water-intensive industries must comply with water use permits issued by the Water Resources Authority (WRA), which require measurement and periodic reporting of abstraction, use, and discharge. Similarly, companies generating hazardous waste must register with NEMA and comply with detailed regulations under the Environmental Management and Co-ordination (Waste Management) Regulations, 2024, which include reporting and disposal obligations.

By contrast, service-oriented companies, such as those in ICT or financial services, are not subject to these obligations unless they engage in activities with environmental risk or fall under the scope of voluntary sustainability frameworks.

3.4 Statutory Obligations for Renewable Energy and Efficiency Reporting

There is currently no statutory requirement in Kenya for organisations to publicly disclose their use of renewable energy or energy efficiency measures, unless such disclosures form part of an EIA, environmental audit, or sustainability report. However, government policy strongly encourages adoption and internal monitoring of renewable energy use, especially in industrial and public sector operations.

The Energy Act, 2019 empowers the Energy and Petroleum Regulatory Authority ("**EPRA**") to promote energy efficiency and renewable energy adoption. Regulations issued under this Act, including the Energy (Energy Management) Regulations, 2025, require large energy consumers (those consuming over 180,000 kWh per year) to carry out energy audits at least once every four years and thereafter submit an energy audit report to EPRA, and to implement cost-effective energy conservation measures. Such entities must submit energy management plans and implementation reports to EPRA.

While this framework does not mandate public disclosure, EPRA may publish summaries of compliance levels and best practices, and entities may choose to disclose performance voluntarily in sustainability reports or to satisfy lender requirements.

In future, as Kenya pursues its climate goals and expands its green financing market, it is likely that renewable energy usage and energy efficiency indicators will become part of ESG disclosure expectations, particularly for high-energy consumers, listed companies, and government contractors.

3.5 Biodiversity Disclosure Obligations in Operations and Supply Chains

Biodiversity protection in Kenya is primarily governed by the EMCA, the Wildlife Conservation and Management Act, 2013, and the Forest Conservation and Management Act, 2016. Under these statutes, biodiversity risks and impacts must be assessed at the project planning stage through the EIA process. NEMA is required to evaluate biodiversity-related impacts where proposed developments are likely to affect ecologically sensitive areas, water catchments, wildlife corridors, or forests.

However, there is no general obligation requiring companies to measure or disclose biodiversity impacts on a regular or ongoing basis, unless this forms part of their environmental licence or is imposed through sectoral regulation. In sectors such as mining, infrastructure, and large-scale agriculture, biodiversity monitoring is often a condition of environmental approval, particularly where resettlement or habitat restoration is involved.
Disclosure obligations may also arise contractually, for instance, from requirements imposed by development financiers, international certifications (e.g., Rainforest Alliance), or voluntary adoption of frameworks such as the Taskforce on Nature-related Financial Disclosures (TNFD).

While Kenya does not yet mandate biodiversity disclosures in supply chains, this is an emerging area of interest. The government, through the Ministry of Environment and Forestry, is engaging in biodiversity mainstreaming as part of its post-2020 commitments under the Convention on Biological Diversity. Future reforms may expand statutory obligations to cover biodiversity risks across value chains, especially in agriculture, forestry, and extractives.

4. CLIMATE RISK ASSESSMENT

4.1 What physical climate risks have been identified in your jurisdiction?

Kenya is already facing the concrete impacts of climate change, which manifest as both acute and chronic environmental disruptions. The most notable physical risks include prolonged and recurrent droughts, erratic rainfall patterns, floods, and rising ambient temperatures. These effects are particularly pronounced in the arid and semi-arid lands (ASALs), which comprise the majority of Kenya's land mass and house a significant portion of the country's agricultural and pastoral communities.

These climate-related hazards pose material risks to infrastructure, food systems, water security, and public health. Their growing frequency and intensity have made them a central concern not only for public policy but also for commercial operations, project finance, and insurance underwriting. As a result, environmental risk assessments now regularly feature climate vulnerability indicators, particularly in sectors such as energy, agriculture, infrastructure, and real estate development.

Climate risks are also being increasingly considered in legal compliance audits, due diligence processes, and project approval frameworks, with environmental impact assessments requiring greater scrutiny of resilience measures. Although the private sector is not under a statutory obligation to assess or disclose physical climate risk, institutional lenders and development finance institutions now routinely require such assessments as a condition for financing.

4.2 Challenges of Transitioning to a Low-Carbon Economy

Kenya is undergoing a structural shift toward a lower-carbon and more climate-resilient economy. This transition brings with it a range of legal, regulatory, and commercial risks, collectively referred to as transition risks. These include -

4.2.1 **Regulatory risk**, as government introduces new obligations for emissions reduction, energy efficiency, and climate disclosure, particularly for sectors such as manufacturing, transport, construction, and agribusiness;

4.2.2 **Market risk**, as export-dependent sectors face increasing ESG requirements from foreign buyers, especially within the European Union and the United Kingdom. Kenyan exporters of tea, flowers, horticultural products, and textiles are under growing pressure to demonstrate environmental compliance and ethical labour practices;

4.2.3 **Technological and operational risk**, as industries reliant on carbon-intensive or outdated technologies may become economically unviable or suffer capital flight if they fail to adopt low-emissions innovations; and

4.2.4 **Reputational and financing risk**, as investors and financial institutions adjust capital allocation policies to align with ESG benchmarks. Companies that are perceived to ignore or downplay transition risks may find themselves excluded from sustainable investment portfolios or subject to divestment.

These risks are not theoretical. Commercial banks, private equity funds, and export finance agencies are increasingly conditioning financing on demonstrable ESG integration, particularly in long-term infrastructure and industrial projects. Companies must now assess whether their business models are compatible with the regulatory and financial landscape that is rapidly evolving in favour of sustainability and low-carbon development.

4.3 Statutory Integration of Climate Risks into Enterprise Governance

At present, there is no express statutory requirement under Kenyan law that mandates private sector entities to integrate climate-related risks into their risk governance frameworks. However, the Climate Change Act, 2016 obligates public institutions, including state agencies and county governments, to mainstream climate change into all planning, budgeting, and performance contracting processes. This statutory obligation applies across all levels of the public sector and influences procurement, infrastructure development, and public-private partnerships.

For private sector actors, the integration of climate risk remains a matter of commercial practice rather than legal compulsion. Nonetheless, regulatory guidance is evolving. The NSE, through its ESG Disclosure Guidance Manual, encourages issuers to adopt globally recognised frameworks, such as the TCFD, which promote the disclosure of climate-related risks and their integration into governance, strategy, and financial planning.

Similarly, the Kenya Bankers Association has adopted Sustainable Finance Initiatives that call upon banks to assess the environmental and climate-related implications of their lending and investment decisions. This has led to the informal mainstreaming of climate risk governance, particularly among borrowers in energy, construction, transport, and agriculture.

In practice, companies that fail to account for climate risks may be exposed to legal, operational, and reputational liability, especially where stakeholder expectations or contractual obligations with financiers require climate-aligned risk assessments.

4.4 Insurance Coverage for Climate Hazards and Anticipated Exclusions

Kenya's insurance sector has begun to respond to climate-related risks, although not uniformly. While there is no explicit blanket exclusion of extreme weather events in general insurance policies, many underwriters apply exclusions under generalised categories such as "natural catastrophes," "force majeure", or "acts of God", which may encompass climate-induced events.

Agricultural insurance has been most responsive to climate risk, with the development of index-based insurance products for drought and flood coverage. However, these products often provide limited coverage, for instance, they may exclude losses not tied to indexed triggers or exclude secondary losses such as disease outbreaks exacerbated by climate events.

Some insurers are also adjusting premiums and deductibles in response to elevated climate risk in certain regions or sectors, though actuarial modelling specific to climate impact remains underdeveloped.

There is no statutory framework mandating insurers to exclude or include climate risk coverage. However, there is growing recognition among insurers and the Insurance Regulatory Authority that climate exposure must be incorporated into risk modelling, capital adequacy frameworks, and reinsurance treaties. As such, policyholders in high-risk sectors should expect greater scrutiny and, potentially, narrower coverage over time.

4.5 Climate Adaptation Strategies by State, Business and Civil Society

Kenya has adopted several adaptation strategies through policy, institutional, and financial instruments. At the national level, key climate adaptation priorities include water resource management, food security, disaster risk reduction, and climate-resilient infrastructure.

County governments have become increasingly active in this space, often establishing local adaptation plans and accessing devolved climate finance through structures such as County Climate Change Funds. These funds are used to enhance access to climate finance and to channel that funding to the community level through, for instance, adopting finance community-based adaptation measures such as water harvesting systems, flood defences, and early warning mechanisms.

The private sector, particularly in agriculture, energy, and transport, has also begun integrating adaptation into operations, for example, by deploying drought-resistant crop varieties, relocating supply chains, or reinforcing physical infrastructure. These actions are often incentivised by investor requirements, lender covenants, or the need to secure insurance coverage.

Charitable organisations, NGOs, and development partners also play a significant role in supporting adaptation, especially through technical assistance and pilot projects that demonstrate scalable community resilience.

Adaptation in Kenya is thus an emerging legal and operational concern, and while it is not yet subject to comprehensive statutory obligations, the commercial and reputational pressures to adopt proactive adaptation strategies are steadily increasing.

5. INTEGRATION OF ESG INTO STRATEGY, BUSINESS OPERATIONS AND PLANNING

5.1 ESG Oversight: Board and Management Responsibilities

Under the Companies Act, 2015, directors of Kenyan companies are legally obliged to act in good faith, exercise reasonable care and skill, and promote the success of the company. These fiduciary duties are increasingly interpreted to include oversight of material ESG risks, particularly where environmental or social issues may impact long-term value creation, regulatory compliance, or reputational standing.

For listed companies, the Capital Markets Authority's Code of Corporate Governance Practices (2015) explicitly assigns responsibility for ESG oversight to the board. Boards are required to approve sustainability strategies, monitor non-financial performance, and ensure that the company addresses material environmental and social risks. They must also oversee stakeholder engagement frameworks, particularly in sectors with high environmental or social exposure.

Executive management bears primary responsibility for operationalising ESG policy. This includes implementing internal controls, managing ESG-related risks, tracking KPIs, ensuring internal reporting to the board, and responding to external disclosure obligations. Larger companies increasingly designate ESG officers, sustainability committees, or cross-departmental working groups to ensure consistent ESG performance across the organisation.

5.2 Statutory Governance Mechanisms for ESG Oversight

Kenyan law does not prescribe mandatory ESG-specific committees for all companies. However, regulated entities — particularly listed companies and financial institutions, are subject to governance frameworks that support structured ESG oversight.

The CMA Governance Code encourages the formation of board committees, such as audit, risk, or sustainability committees, tasked with monitoring non-financial risks and aligning ESG efforts with corporate strategy. Boards are expected to receive regular reports on ESG matters, and to document such oversight in board minutes and public disclosures.

In the financial sector, the KBA's Sustainable Finance Principles and the Central Bank of Kenya's Prudential Guidelines require banks to incorporate ESG considerations into credit risk assessments, portfolio management, and enterprise governance. Similar sector-specific guidance exists in insurance, energy, and extractives, often tied to licensing conditions or industry codes of conduct.

Although such governance mechanisms are not yet universally required for unlisted or smaller entities, market expectations, particularly from funders, regulators, and institutional investors, are driving broader voluntary adoption.

5.3 ESG-Linked Remuneration and Incentive Structures

There is currently no express statutory requirement in Kenya to link employee or executive compensation to ESG performance. However, there is a growing trend among listed companies, financial institutions, and companies with international shareholders to integrate ESG metrics into remuneration policies.

In practice, ESG-linked compensation may take the form of KPIs related to carbon footprint reduction, workplace diversity, health and safety performance, or social impact initiatives. These KPIs can influence executive bonuses, long-term incentive plans, and eligibility for share option schemes.

Companies engaged in sustainability-linked finance arrangements, such as green bonds or sustainability-linked loans, may also be contractually required to adopt ESG performance targets that affect internal incentive structures. This is particularly true for businesses in energy, infrastructure, and agriculture that rely on international debt markets.

While ESG-linked remuneration is still in its early stages of development in Kenya, it is gaining traction as a mechanism to align internal accountability with external ESG commitments.

5.4 Operational Integration of ESG Compliance Across Sectors

Kenyan companies are increasingly embedding ESG considerations into their day-to-day operations, driven by legal risk, reputational concerns, access to capital, and supply chain requirements.

In procurement, many corporates now apply supplier codes of conduct that mandate compliance with environmental, labour, and anti-corruption standards. For exporters, international buyers often impose ESG compliance clauses, requiring certification under standards such as Fairtrade, Rainforest Alliance, or ISO 14001. Failure to comply with such obligations can result in contract termination or exclusion from supply chains.

Operationally, companies are adopting environmental management systems, occupational health and safety protocols, and anti-discrimination policies. There is also growing attention to employee wellness, inclusion, and gender equity, particularly in financial services and the tech sector. Financial institutions have incorporated ESG screening into credit and investment processes, and insurance firms are piloting ESG-related underwriting tools.

These practices are becoming standard in due diligence, risk audits, and board reporting processes, even where no statutory requirement applies.

5.5 Determining ESG Materiality for Disclosure and Reporting

Kenya does not yet have a statutory test for determining ESG materiality. However, market participants are encouraged to adopt international frameworks — including the GRI, TCFD, and more recently, the IFRS Sustainability Disclosure Standards — to structure ESG materiality assessments.

The Nairobi Securities Exchange ESG Disclosure Guidance Manual advises issuers to determine materiality based on the likelihood and impact of ESG issues on enterprise value, stakeholder concerns, and sector-specific risks. This includes both financial materiality (impact on business) and double materiality (impact of business on the environment and society).

In practice, companies conduct stakeholder mapping, peer benchmarking, risk assessment exercises, and board-level deliberations to determine what ESG issues merit disclosure. Multinationals and companies with external investors are particularly active in applying structured materiality methodologies to ensure compliance with lender or shareholder expectations.

5.6 Board and Management Adaptation to ESG Oversight Requirements

Boards and executive teams in Kenya are increasingly adapting to the expectation that ESG is a matter of corporate governance, not just public relations or sustainability reporting.

Boards are incorporating ESG into board charters and risk management frameworks, and some have formed dedicated sustainability or ESG subcommittees. Directors are undergoing ESG training, either through internal workshops or programs offered by governance institutes and law firms.

Management teams are responding by allocating clear ESG responsibilities within corporate structures, hiring specialist staff, and integrating ESG KPIs into operational dashboards. Companies engaged in international trade or capital markets are especially advanced in aligning ESG oversight with investor demands, often treating ESG compliance as a core legal and reputational risk.

5.7 Data Security and Privacy Requirements for Organisations in Kenya

The Data Protection Act, 2019 is the principal legal framework governing data privacy and security in Kenya. It imposes comprehensive obligations on data controllers and processors, including requirements to collect personal data lawfully, ensure data minimisation, obtain informed consent, and implement technical and organisational safeguards to prevent unauthorised access or loss.

Organisations must register with the Office of the Data Protection Commissioner (ODPC), conduct Data Protection Impact Assessments (DPIAs) for high-risk processing, and respond to data subject access requests. Non-compliance attracts regulatory sanctions, including fines, enforcement notices, and reputational damage.

Data privacy and cyber risk are increasingly treated as governance issues, falling squarely within the "G" of ESG, and are regularly included in ESG assessments by investors and business partners.

5.8 Cybersecurity Risk Management Requirements for Organisations

Cybersecurity is not currently regulated as a standalone ESG issue under Kenyan law, but it is subject to sector-specific rules and broader legal obligations. The Computer

Misuse and Cybercrimes Act, 2018 criminalises unauthorised access, system interference, and identity theft, and requires companies to safeguard their digital infrastructure.

Regulated entities such as banks, telcos, and insurers are subject to regulatory circulars and guidelines requiring periodic vulnerability assessments, incident reporting, and cyber resilience planning. For instance, the Central Bank of Kenya has issued cybersecurity guidance to financial institutions, making board oversight of ICT risk a regulatory requirement.

Organisations are expected to maintain firewalls, intrusion detection systems, staff awareness programmes, and disaster recovery protocols, all of which are increasingly seen as part of ESG compliance under the governance pillar.

5.9 Compliance with Global Data Protection Standards (e.g. GDPR)

While the Data Protection Act, 2019 applies primarily within Kenya, many Kenyan organisations, particularly those operating in tech, finance, or cross-border trade, are subject to foreign data protection regimes such as the EU General Data Protection Regulation ("**GDPR**").

Kenya's legislation mirrors key GDPR principles, including transparency, accountability, purpose limitation, and cross-border data transfer safeguards. Organisations handling data on behalf of EU entities or serving EU-based individuals are expected to implement GDPR-compliant policies, especially where personal data is stored in or processed from Kenya.

Compliance is often addressed in contractual agreements with overseas clients, and failure to meet foreign data protection standards can result in legal liability, termination of commercial relationships, or restriction from international markets.

6. FINANCE

6.1 How Financiers Apply ESG Ratings in Kenya

In Kenya, the use of ESG ratings by financiers and investors is growing but remains at an early stage of institutionalisation. Local banks, DFIs, pension funds, and private equity funds increasingly consider ESG factors in their investment decisions. However, few rely exclusively on externally published ESG scores; rather, they tend to use internally developed ESG evaluation tools tailored to their sectoral focus and risk appetites.

DFIs which are active in Kenyan transactions, typically apply their own ESG due diligence frameworks based on international standards. These standards are often contractually embedded in financing documents through compliance covenants and representations.
Institutional investors such as insurance companies and pension schemes, regulated by the Retirement Benefits Authority (RBA) and Insurance Regulatory Authority ("IRA") — are beginning to integrate ESG considerations into portfolio strategy, particularly for infrastructure, green energy, and real estate investments.

Commercial banks have adopted the KBA Sustainable Finance Principles, which require ESG assessment in credit risk analysis, especially for high-impact sectors. In practice, this has translated into internal ESG scorecards rather than formal reliance on third-party ESG ratings.

6.2 Top ESG Rating Agencies in Kenya

Kenya does not yet have a formal domestic ESG rating agency ecosystem comparable to that in developed markets. However, a few local and regional advisory firms have begun offering ESG advisory, assurance, and scoring services, often aligned with global frameworks. Notable actors include -

6.2.1 audit firms, which provide ESG assurance and reporting readiness services to listed firms and banks;

6.2.2 firms with risk insights, which offer ESG scoring and benchmarking for NSE-listed companies; and

6.2.3 credit rating agencies that provide ESG assurance services.

Most Kenyan corporates, particularly those with international exposure, rely on global rating agencies, especially in procurement and financing contexts. However, there is no statutory requirement for companies to obtain a formal ESG rating, and uptake is currently voluntary and investor-driven.

6.3 Ensuring Consistency in ESG and Financial Reporting in Kenya

Companies operating in Kenya are increasingly expected to ensure consistency between their financial disclosures and ESG-related reporting. This is especially the case for entities preparing integrated reports under the IIRC or aligning with GRI or TCFD standards.

While no statutory "double materiality" obligation exists, market best practice is converging around that principle, namely, disclosing not only how ESG factors impact financial performance, but also how the company's operations affect the environment and society.

For listed companies, the NSE ESG Disclosure Guidance Manual encourages such integration by requiring issuers to link sustainability disclosures to strategy, governance, and financial results. Misalignment between financial results and ESG claims may expose companies to investor scrutiny or accusations of selective disclosure.

In regulated sectors such as banking, ESG-linked metrics increasingly influence capital allocation decisions, and banks are expected to ensure that sustainability-linked loan conditions are reconciled with financial risk reporting and compliance statements submitted to CBK. Additionally, recent tools like the CBK's Climate Risk Disclosure Framework and Green Finance Taxonomy released in April 2025, are expected to enhance integrated and consistent ESG disclosures over time.

6.4 Role of Green and Social Bonds in Kenya

Green bonds have begun to play a role in Kenya's capital markets, though uptake remains limited. The first green bond was issued in 2019 by Acorn Holdings (a student housing developer), raising KES 4.3 billion (~USD 40 million) for sustainable real estate. The bond was listed on both the Nairobi Securities Exchange and the London Stock Exchange.

That issuance was supported by the Green Bond Programme Kenya, a public-private platform that provides certification, technical assistance, and policy advocacy for green debt instruments. The programme aligns with international principles such as the Green Bond Principles (ICMA) and aims to scale up green infrastructure investment and points to strong potential for broader uptake of both green bonds in the near future.

Social bonds have yet to take root in the Kenyan market, but several DFIs and microfinance institutions have expressed interest in developing such products to finance gender, health, and inclusive education initiatives.

While the legal framework permits the issuance of these bonds under existing securities law, market depth remains shallow, and most projects continue to rely on concessional loans or blended finance.

6.5 Role and Outlook of Sustainability-Linked Bonds in Kenya

Sustainability-linked bonds ("**SLBs**"), which tie coupon rates or financial terms to the issuer's achievement of ESG targets, are not yet widely used in Kenya. However, there is growing interest, particularly among issuers in the energy, agribusiness, and financial sectors that wish to align their financing with ESG outcomes.

DFIs and ESG-conscious investors are encouraging the development of SLB frameworks, and several companies have begun ESG performance tracking in anticipation of future issuances. The legal feasibility of SLBs is well supported under Kenya's capital markets regime, but successful development depends on credible ESG KPIs, verifiable baselines, and independent verification mechanisms.

It has been reported that the Government of Kenya, with support from the World Bank is in the process of preparing to issue Africa's first SLB targeting USD 500 million. Such an issuance is likely to catalyse broader adoption of SLBs in Kenya, particularly among corporates and financial institutions seeking performance-based sustainability financing.

As sustainability reporting improves, SLBs are likely to become a more attractive alternative to conventional financing, particularly for corporates that are not able to meet green bond criteria but wish to demonstrate ESG alignment.

6.6 Key Barriers to Sustainable Bond Adoption in Kenya

Several structural and regulatory factors affect the uptake of ESG-labelled bonds in Kenya -

6.6.1 nascent regulatory framework, with Kenya's green finance regulations evolving but not yet fully institutionalised or legally binding;

6.6.2 limited pipeline with few eligible or bankable green or social projects structured for capital markets;

6.6.3 Limited investor familiarity, with ESG-labelled instruments and the underlying performance metrics;

6.6.4 high verification and certification costs, especially for smaller issuers;

6.6.5 shortcomings in ESG data, particularly at the SME level, which hinders impact measurement;

6.6.6 absence of tax incentives or regulatory capital benefits for investing in green or social bonds; and

6.6.7 currency risk, as many investors demand hard currency protection, complicating local bond issuance.

That said, targeted regulatory reforms, including support from the Capital Markets Authority and international climate finance institutions, are expected to reduce these barriers and catalyse the next wave of ESG-aligned bond issuances.

6.7 Assurance and Regulation of Green Bond Verification in Kenya

The assurance and verification of green bonds in Kenya is currently guided by voluntary standards based on international frameworks, particularly the Green Bond Principles and the Climate Bonds Standard. Under the Green Bond Programme, issuers are encouraged to appoint an external verifier to assess the environmental credentials of the bond and provide a pre-issuance and post-issuance assurance report.

While not yet mandated by law, verification is considered market best practice and is often required by institutional investors and international co-lenders. The absence of a statutory regime for ESG verification means that assurance quality depends heavily on the qualifications and independence of the verifier.

There is currently no designated regulatory body overseeing ESG assurance providers in Kenya. However, the CMA has expressed interest in developing a registration framework for ESG certifiers and assurance professionals as part of a broader effort to formalise Kenya's sustainable finance ecosystem.

7. TRENDS

Material trends related to ESG Compliance and disclosure in Kenya

Kenya is undergoing a gradual but increasingly deliberate shift towards ESG-aligned business regulation and governance. While the ESG legal framework remains largely principles-based and market-driven rather than prescriptive, several material trends are emerging that are shaping both regulatory policy and commercial behaviour, including regulatory Momentum Toward ESG Formalisation.
There is growing political and regulatory will to embed ESG principles into statutory and policy frameworks. Sectoral regulators, including the CMA, the CBK, and the IRA, are strengthening their ESG expectations, often through guidelines and circulars that are increasingly treated as quasi-binding by regulated entities.

For instance, the NSE ESG Disclosure Guidance Manual has evolved from a voluntary framework to a de facto reporting expectation for listed issuers. Similarly, the CBK's push for sustainable finance within the banking sector is intensifying, with ESG risks now embedded in credit, operational, and governance assessments.

ESG Due Diligence as a Transactional Norm. Across banking, private equity, infrastructure, and real estate transactions, ESG risk assessment is fast becoming standard practice in both legal and financial due diligence. Lenders, investors, and acquirers are routinely seeking ESG representations and warranties, environmental audits, and compliance undertakings as part of their investment processes. This trend is driven in part by pressure from DFIs and impact investors, who are requiring robust ESG baselines and post-investment monitoring as conditions precedent to disbursement.

This shift is also leading to the inclusion of ESG default triggers in loan and shareholder agreements, and in some cases, variable pricing tied to the achievement (or breach) of agreed ESG milestones.

Integration of ESG into Corporate Governance Practices. Corporate governance practices are evolving to include ESG oversight as a board-level responsibility. The CMA Code of Corporate Governance Practices requires boards of listed companies to monitor sustainability risks and ensure stakeholder interests are taken into account in strategy and operations. In practice, this has translated into the establishment of sustainability or board risk committees, ESG training for directors, and the appointment of ESG officers within company secretariats and compliance teams. This governance shift is increasingly being seen in non-listed companies, particularly those with institutional investors or exposure to international markets.

ESG-Linked Capital as a Market Differentiator. Access to ESG-linked capital, including green bonds, sustainability-linked loans, and climate-focused private equity, is emerging as a key differentiator for Kenyan corporates. Issuers that can demonstrate credible ESG performance and reporting capacity are more likely to access concessional rates, patient capital, and longer tenors. Institutions such as FMO, Proparco, IFC, and EIB are actively structuring such instruments in Kenya, thereby creating a new pricing benchmark for ESG-compliant companies.
The demand for sustainability-linked instruments is also filtering into procurement contracts and trade finance structures, with large buyers and financiers imposing ESG conditions throughout the supply chain.

Rise of ESG Disclosures and Reporting Tools. Although not yet mandatory for all entities, ESG disclosure practices are becoming increasingly sophisticated, particularly among NSE-listed firms, multinational subsidiaries, and entities operating in regulated sectors. Organisations are beginning to adopt international reporting frameworks such as GRI, and TCFD, either independently or as part of integrated reporting. The rise of ESG ratings, climate risk scenarios, and sustainability-linked KPIs is also driving the need for consistent and verifiable data, prompting investment in ESG reporting software, external assurance services, and data governance systems.

Climate Risk as a Corporate Governance Issue. Boards and management teams are starting to treat climate risk as a core business issue rather than a CSR concern. There is increasing recognition that climate-related disruptions, such as water shortages, energy instability, and supply chain interruptions, present financial and operational risks that must be captured in enterprise risk management systems. This has led to climate-related scenario planning, stress testing, and (in advanced cases) incorporation of climate risks into capital allocation and investment planning decisions.