

International Property Markets Scorecard

Kenya Market Conditions – Desktop Survey June 2020



IHC
GLOBAL



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Scorecard Background & Information

The Scorecard reflects the status of the six Core Elements necessary for transparent and efficient property market development. Each Core Element includes three Lead Indicators that are further divided into Sub-Indicators. Color saturation signifies the strength of institutions that support market development – very strong, strong, weak and very weak.

Acknowledgement

The International Property Markets Scorecard Project is the latest development in the continued cooperative work between the Center for International Private Enterprise (CIPE) and IHC Global. The Scorecard derives from the work of an academic panel led by Richard Green, PhD., Director of the University of California’s Lusk Center for Real Estate and the University of Denver, Burns School of Real Estate and Construction Management’s Global Real Estate Project under the direction of Dr. Mark Lee Levine.

This Scorecard desktop research was conducted by Paul Baite, Chief Executive, IVX Limited Consulting.

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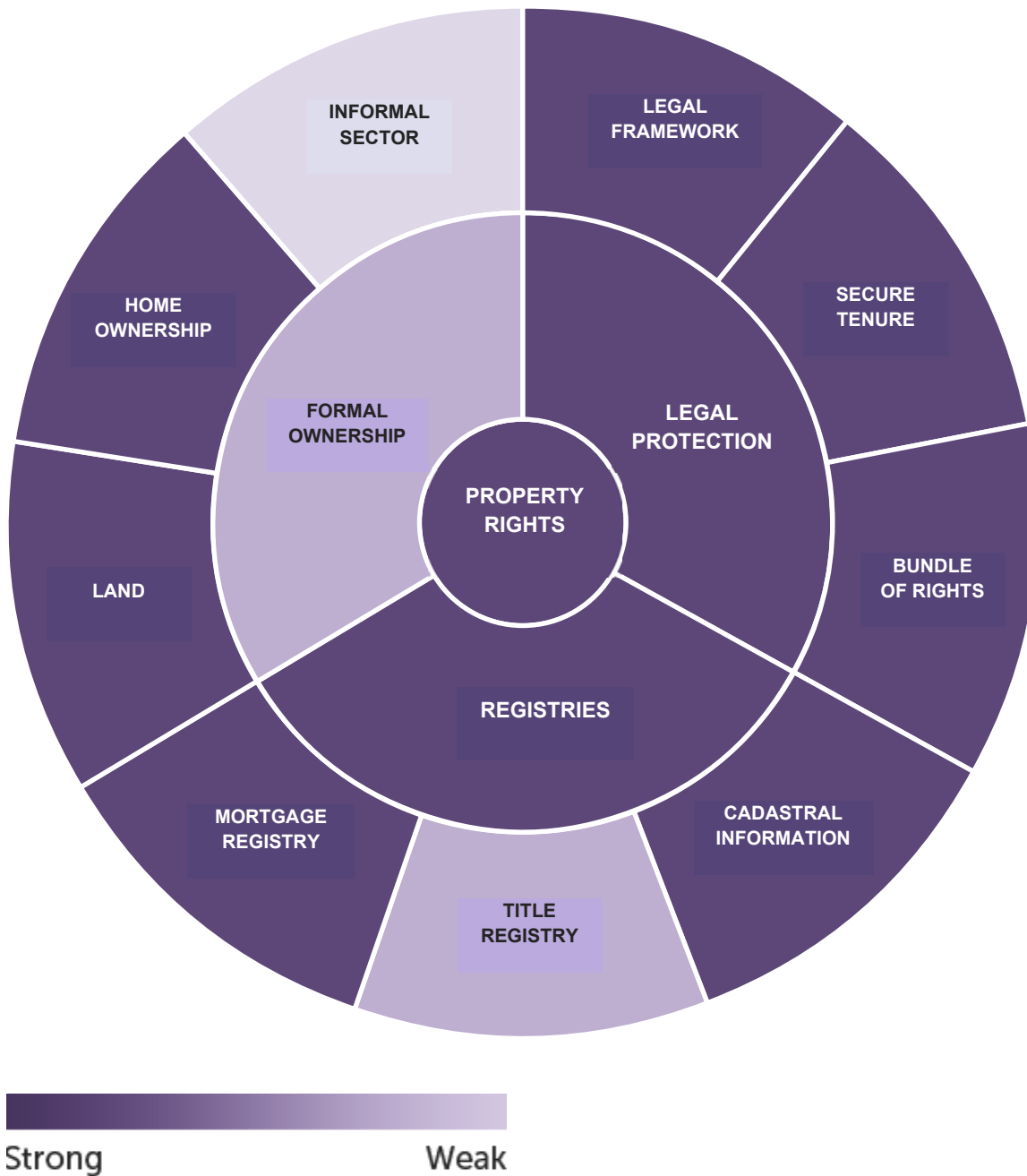


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1. Property Rights



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

1.1 Legal Protection

Core Question:	Does an effective and sufficient legal framework exist to protect property rights for all citizens? Yes – Strong, although the cumbersome and opaque process required to acquire land raises concerns about security of title, particularly given past abuses related to the distribution of public land.
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Legal Framework

1.1.1 How strong is the protection of property rights, including financial assets? **Strong – Ranking 70th out of 141; Score 53.8 out of 100 Trend ↓**

Security of Tenure

1.1.2 How easy is it for private businesses to challenge government actions and/or regulations through the legal system? **Somewhat easy – Strong – 62nd out of 141; Score 3.5 out of 7 Trend ↓**

Bundle of Rights

Survey Question

SQ1 What is the bundle of rights (group of rights such as occupancy, use and the right to sell or lease) associated with both residential and commercial property ownership? **Strong, freehold is available, however the 2013 Matrimonial Property Act, which recognized that married women have the same rights as married men, and other legal reforms are undermined in practice.**

1.2 Registries

Core Question:	Does a reliable property registry exist including cadastral, title and mortgage lien information? Yes – Strong, Kenya is moving towards digitization of land registries where certain land registries such as Nairobi, Eldoret and Kitale are almost complete.
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1.2.1 Cadastral Information

Status – Strong, although coverage is incomplete mainly because land registration, which requires cadastral mapping, has not been equally completed.

Survey Questions

- SQ 2 Is cadastral information (information about the dimensions and location of land parcels) accessible to the public? **Yes – the government of Kenya launched an initiative, in April 2018, to fast-track land titles by processing them online. It issued an order to digitize land documents in registries across the country to make it easier to provide ownership titles, especially on communally-held property.**
- SQ 3 Is zoning/permitted use information included are use regulations respected and enforced? **No – the cadaster is parcel-based, i.e. information is geographically referenced to unique, well-defined units of land parcels. The Kenyan cadaster also includes the Registry Index Map (RIM) and provisional cadastral maps such as the Preliminary Index Diagram (PID), for range land that was to be temporary but remains in use.**
- SQ 4 Are Geographic Information Systems (GIS) including Global Positioning Satellite (GPS) information used to create and update the registry? **Yes – the Land Registration Act of 2012 and the Community Land Act of 2016 require geo-referencing of all boundaries.**

1.2.2 Title Registry

Weak – Ranking – 134th out of 190 Trend ↓

- 1.2.2.1 What is the number of procedures required to register the transfer of a property from one owner to another? **10**
- 1.2.2.2 What is the duration of time in calendar days that it would take to complete the transfer? **43.5**
- 1.2.2.3 What is the total cost of the transfer including all fees, taxes, etc. expressed as a percentage of the value of the property? **5.9%**

1.2.3 Mortgage Registry

Status – Strong

Survey Questions

- SQ 5 The mandatory use of notaries or similar officials slows down and adds cost to the process. Does a notary need to be involved in the registration process? **No**
- SQ 6 Is information in the registry available electronically? **Yes, partially, the digitization process is underway.**

SQ 7 Title insurance is indemnity insurance against financial loss from defects in title and from the invalidity or unenforceability of mortgage liens. Is title insurance available to lenders?
No

1.3 Formal Ownership

Core Question:	Do citizens understand and trust property rights institutions and avoid the informal sector? No – Weak, while great progress has been made in the last decade, challenges remain in access to property rights for everyone and public trust in the system.
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Survey Questions

Land

SQ 8 What is the status of land ownership? **Strong – Land ownership is possible for citizens by way of Freehold, Leasehold and Customary/Communal ownership by a clan or ethnic community. Ownership of land by non-citizens is limited to lease hold to a maximum of 99 years.**

Home Ownership

SQ 9 What is the percentage of formal home ownership? **61.3% – Strong, albeit skewed with rural areas having 86.6% owned versus 13.4% renting and urban areas with 21.3% owned versus 78.7% rented.**

Informal Sector

SQ 10 What is the percentage of service firms that report competition with unregistered or informal firms? **83% - Very Weak Formal Sector (2013)**

Data sources:

Global Competitiveness Report 2019 – World Economic Forum (and throughout)
<http://reports.weforum.org/global-competitiveness-report-2019/>

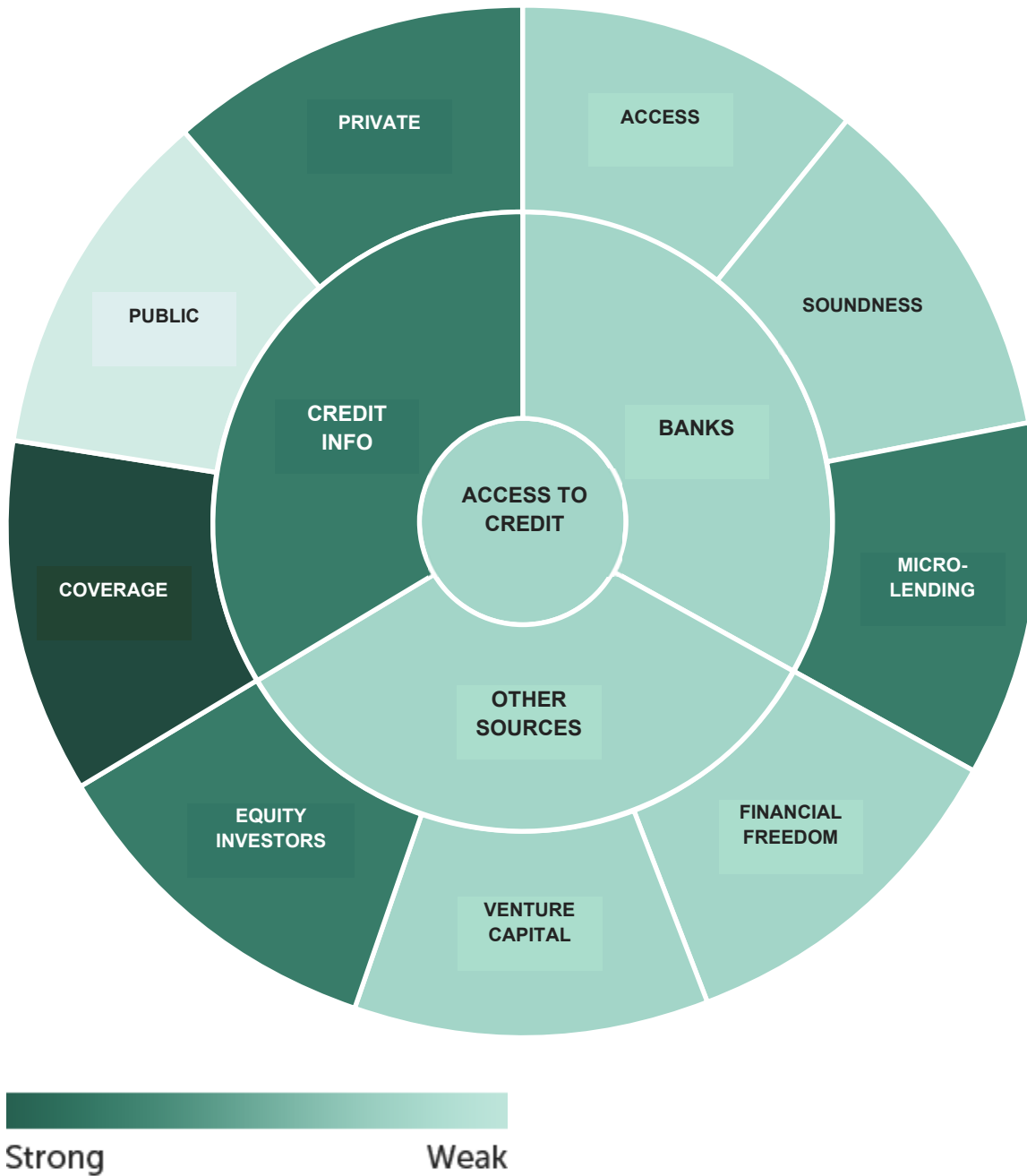
Doing Business 2017 – Registering Property, World Bank (and throughout)
<https://www.doingbusiness.org/en/data/exploreconomies/kenya#>

Ministry of Lands and Physical Planning Kenya <https://lands.go.ke/>

Research cited:

The Kenyan Cadastre and Modern Land Administration, Siriba, Winrich, and Mulaku
<https://landportal.org/library/resources/kenyan-cadastre-and-modern-land-administration>

2. Access to Credit



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

2.1 Banks

Core Question:	Are traditional banking services robust and extensive enough to serve the needs of the population to help them build wealth and purchase property? No – Weak, the financial sector remains vulnerable to government intervention as the state owns or holds shares in financial institutions and influences the allocation of credit.
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Access

2.1.1 How easy is it to obtain a bank loan? **Weak – Ranking 95th out of 141; Score 33.8 out of 100 Trend ↓**

Soundness

2.1.2 How sound are the country's banks? **Weak – Ranking 99th out of 141; Score 57 out of 100 Trend ↓**

Microlending

2.1.3 Microfinance allows citizens without traditional creditworthiness to build a credit history. What is the status of microfinance in the country? **Strong – the Microfinance Act was passed in 2006 and it was implemented in 2008.**

2.2 Other Sources

Core Question:	Are entrepreneurs free to raise capital outside the banking system including venture capital and/or by issuing stock in a well-regulated stock exchange? No – Weak, the poor investment regime lacks efficiency and transparency.
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Financial Freedom

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

Venture Capital

2.2.2 How easy is it for entrepreneurs to find venture capital? **Difficult – Weak – 79th out of 141; Score 33.7 out of 100 Trend ↓**

Equity Investors

2.2.3 How easy is it to raise money by issuing shares on the stock market? **Strong – 62nd out of 141; Score 30.4 out of 100 Trend ↓**

2.3 Credit Information

Core Question:	Is comprehensive credit information available through public and private credit organizations? Yes – Strong, coverage of Central Bank’s credit bureau has improved considerably.
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Coverage

2.3.1 What is the depth of credit information available? **Very Strong – Score – 8 out of 8 with a higher number indicating more information is available**

Public

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

Private

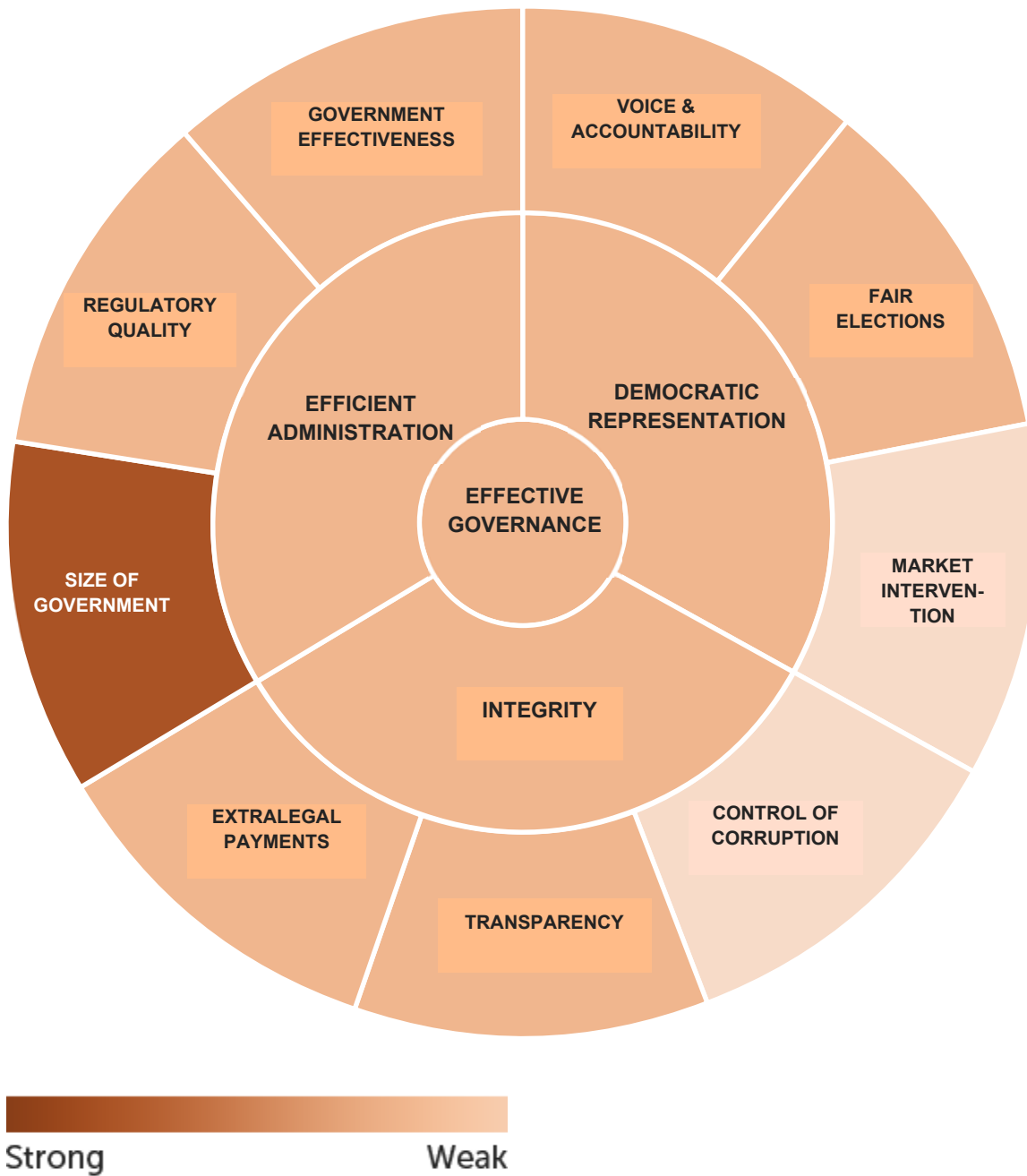
2.3.3 What is the extent of private credit bureau coverage? **Strong – 36.4%**

Data Sources:

Index of Economic Freedom, Heritage Foundation (and throughout)
<https://www.heritage.org/index/country/kenya>

Central Bank of Kenya
<https://www.centralbank.go.ke/>

3. Effective Governance



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

3.1 Democratic Representation

Core Question:	Does the country have free and open elections for the leadership and can citizens engage in free enterprise? No – Weak, the government continues to regulate prices through subsidies (for example, for electricity and maize); agricultural marketing boards; and state-owned enterprises.
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Voice & Accountability

3.1.1.1 Are citizens able to elect their government and do they enjoy freedom of expression, association and a free media? **No – Weak – Percentile Rank – 34.98 Trend ↓**

Overall Ranking – 94th out of 167

3.1.1.2 Are citizens free to form political and civic organizations free of state interference and surveillance? **No – Weak – Score 4.41 out of 10**

Fair Elections

3.1.2 Do citizens enjoy a wide range of political rights including free and fair elections? **No – Weak – Score 48 out of 100**

Market Intervention

Overall Ranking – 132nd out of 180 Trend ↓

3.1.3 To what extent does the government control prices? **Score 75 out of 100 with a higher score indicating less control**

3.2 Integrity

Core Question:	Is the public sector transparent and free of corruption? No – Weak, entrenched corruption is pervasive throughout the country.
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Transparency

3.2.1 What is the perceived level of corruption in the country? **Ranking – 137th out of 180; Score 28 out of 100 – Weak – Trend ↑**

Control of Corruption

3.2.2 How effective is the government in controlling corruption? **Very Weak – Score 19.23 out of 100 Trend ↑**

Extralegal Payments

Survey Question

SQ 11 How often do companies report that officials and/or companies expect additional payments to “expedite” services or gain business? **Weak – Score 23.9% out of 100**
Trend ↑

3.3 Efficient Administration

Core Question: Are quality services and qualified civil servants available to the public through the efficient use of public money free of corruption? **No – Weak, although the government seeks to alleviate structural obstacles to more rapid economic growth, policymaking and implementation remain vulnerable to such risks as drought, insecurity, corruption, and political squabbling.**

Size of Government

3.3.1 What is the size of government relative to GDP? **26.1% - 25 to 30% considered optimum – Strong**

Regulatory Quality

3.3.2 What is the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development?
Weak – Score 43.75 out of 100 Trend =

Government Effectiveness

3.3.3 What is the overall effectiveness of the government? **Weak - Percentile Ranking – 38.94 out of 100 Trend ↓**

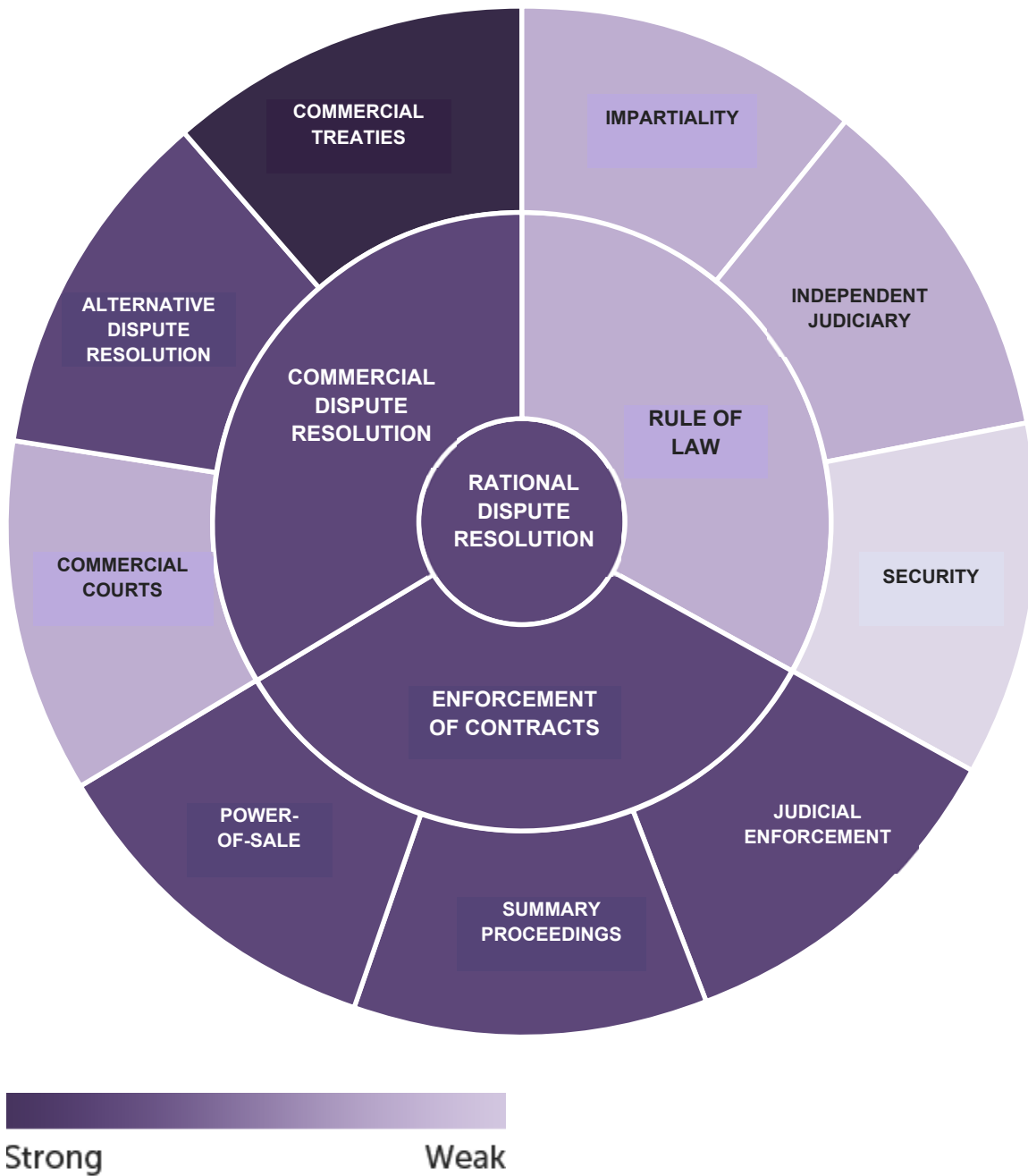
Data Sources:

Source: *Governance Matters 2018*, World Bank (and throughout)
<http://info.worldbank.org/governance/wgi/index.aspx#reports>

Source: Freedom House – *World Freedom Report Website*
<https://freedomhouse.org/report/freedom-world/freedom-world-2017>

Source: Transparency International – *Corruption Perception Index*
<https://www.transparency.org/research/cpi>

4. Rational Dispute Resolution



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

4.1 Rule of Law

Core Question:	Do all market participants abide by the rule of law and have confidence in the courts and the ability of police to control crime? No – Weak, historically, economic freedom in Kenya has been hampered by weak rule of law especially government integrity.
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Impartiality

4.1.1 What is the confidence level of the strength and impartiality of the police, courts and contract enforcement? **Weak – Percentile Ranking – 37.98 Trend ↑**

Judiciary

4.1.2 Can members of the judiciary be held accountable for their actions? **No – Score 48.6 out of 100 – Weak Trend ↑**

Security

4.1.3 What is the security situation in the country including crime, terrorism and the reliability of the police? **Ranking 109th out of 141 – Score 65.7 out 100 – Very Weak Trend ↑**

4.2 Enforcement of Contracts

Core Question:	Are systems in place for timely and efficient enforcement of contracts? Commercial – Yes – Strong Residential – Yes – Strong
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4.2.1 – Judicial Enforcement

Commercial – Strong – Ranking 89th out of 190 Trend =

4.2.1.1 What is the quality of the judicial process? **9 out of 18**

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

4.2.1.3 What is the cost of judicial enforcements as a percentage of debt value? **41.8%**

Residential – Strong

Survey Questions

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

SQ 13 What is the cost of judicial enforcements as a percentage of property value? **See below Summary Proceedings.**

4.2.2 – Summary Proceedings

SQ 14 Summary proceedings are alternative dispute resolution processes where creditors can apply for a direct court order in property disputes. What is the time between notice of intent to foreclose and loan collection in summary proceedings if available to lenders? **Summary Proceedings are allowed by law and used frequently by lenders.**

SQ 15 What is the cost of summary proceeding if available to lenders as a percentage of property value? **Unknown**

4.2.3 – Power-of-Sale

SQ 16 Power-of-sale agreements give creditors to power to sell properties after notice to the borrower without court intervention. What is the time between notice of intent to sell and loan collection for power-of-sale agreements if available to lenders? **Power-of-Sale is allowed by law and used occasionally by lenders.**

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

4.3 Commercial Dispute Resolution

Core Question:	Can commercial disputes be resolved efficiently and fairly without exorbitant expense and delay? Yes – Strong, the 2010 Constitution provides for the use of alternative forms of dispute resolution. Article 159 of the Constitution mandates the Judiciary to use Alternative Dispute Resolution mechanisms including Mediation.
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Survey Questions

Commercial Courts

SQ 18 Do specialized commercial courts exist for the handling of property disputes and foreclosures? **Yes – Weak, the environment and 2011 Land Court Act established a court of a similar jurisdiction to the High Court, with jurisdiction over cases and disputes on matters relating to land and environment but not for other property disputes.**

Alternative Dispute Resolution

SQ 19 Are alternative dispute resolution mechanisms in place including commercial arbitration, private mediation and community-based processes? **Yes – Strong, a member of the New York Convention. The Judiciary introduced Court Annexed Mediation on a pilot basis in April, 2016.**

Commercial Treaties

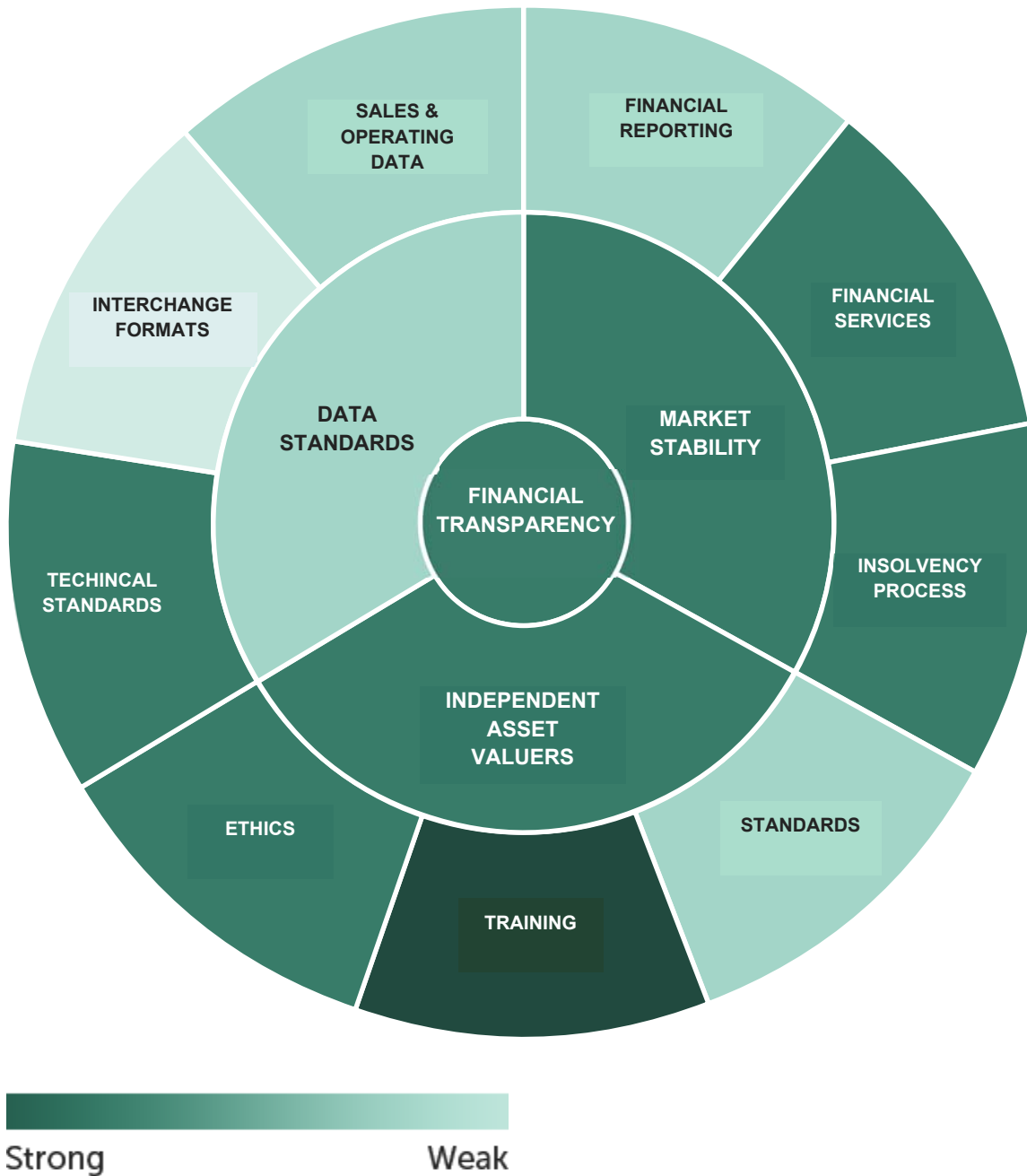
SQ 20 What bilateral, regional and international commercial treaties exist concerning business between countries? **Very Strong – a member of WTO and numerous bilateral and regional trade agreements, signed ratified and operational.**

Data Sources:

Lexology: Q&A on Real Estate

<https://www.lexology.com/library/detail.aspx?g=b67e481a-3cd0-4599-add5-72269fa8432d>

5. Financial Transparency



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

5.1 Market Stability

Core Question:	Are market risks sufficiently transparent and diversified so that efficient capital allocation can occur? Yes – Strong, Kenya is East Africa’s economic, financial, and transport hub, and its real GDP growth has been robust in recent years.
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Financial Reporting

5.1.1 What is the strength of the country’s auditing and reporting standards? **Weak – 84th out of 141; Score 57.6 out of 100 Trend ↓**

Financial Services

5.1.2 What is the depth of the financial sector? **Strong – 68th out of 141; Score 48.7 out of 100**

Insolvency Process

Strong – Ranking – 50th out of 190 Trend ↓

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

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

5.1.5 What is the recovery rate of bankruptcy proceedings? **31.8 cents on the dollar**

5.2 Independent Asset Valuers

Core Question:	Do trained, independent and ethical asset valuers exist for all types of assets? Yes – Strong, the Institution of Surveyors of Kenya is a member of the International Valuation Standards Council.
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Survey Questions

Standards

SQ 21 How easy is it to find a valuer who implements International Valuation Standards? **Weak – there are no national standards of practice but there are standards within banks and firms.**

Training

SQ 22 What is the level of training of valuers? **Very Strong – valuers are highly trained and experienced in the application of the three market-based approaches to value and continually upgrade their skills.**

Ethics

SQ 23 Are opinions offered by valuers free of influence from parties to the transaction? **Strong – a developing, independent valuation profession exists and an IVSC compliant code of conduct exists and is sporadically enforced.**

5.3 Data Standards

Core Question:	Is accurate property information available electronically in formats that are consistent with international standards? No – Weak, data exchange is in the early stages.
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Survey Questions

Sales & Operating Data

SQ 24 Are data aggregation systems where brokers and agents can widely share contracted real estate listings of properties that are for sale and for rent available? **No – Weak, some property listings services and operating data are available but they are not standardized.**

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

Interchange Formats

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

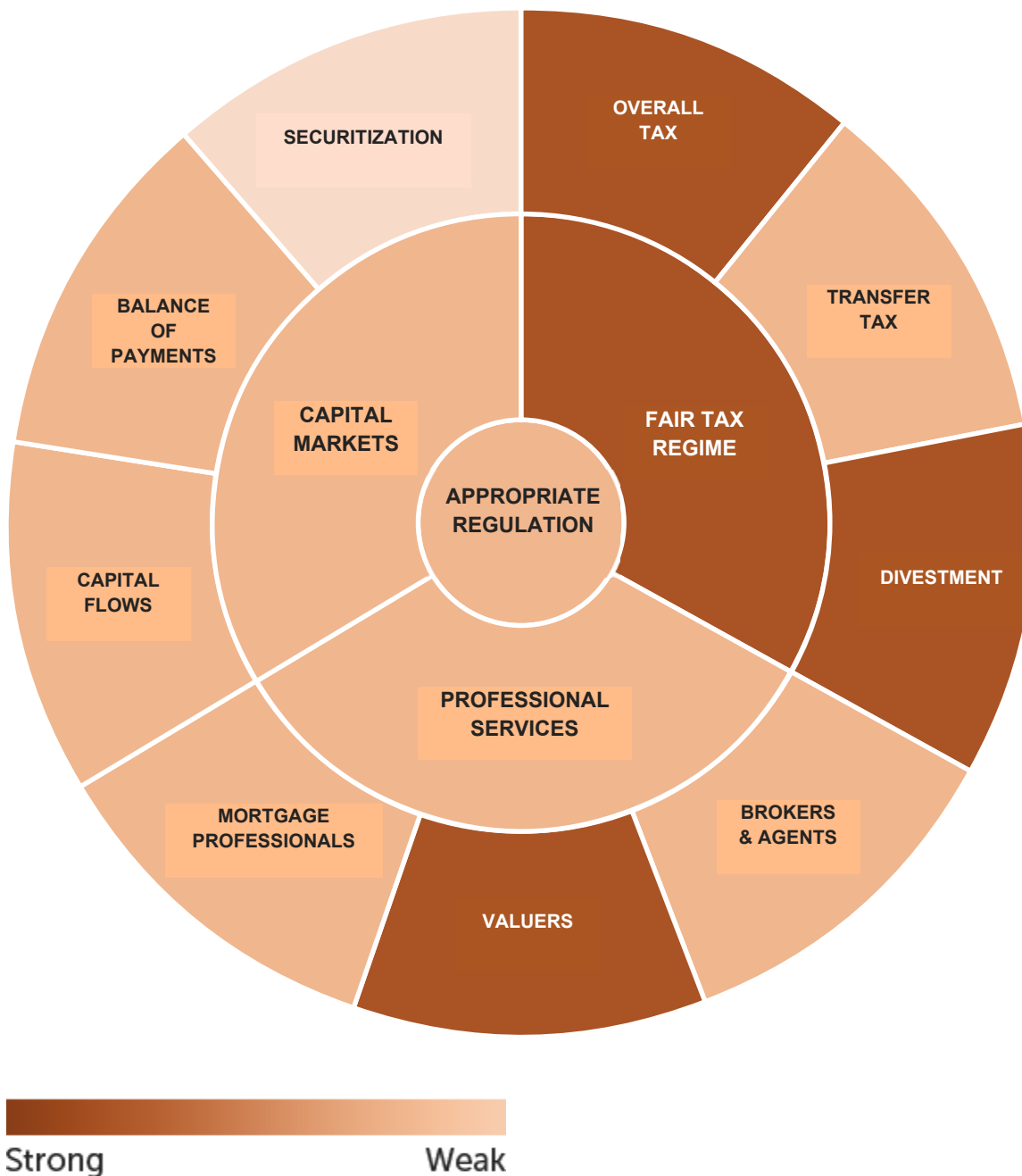
Technical Standards

SQ 27 Do building codes and office building measurement standards (ANSI/BOMA Z65.1) conform to international standards? **Yes – Strong, the Building Control Act passed parliament in 2013, however it is not fully compliant with International Standards.**

Resources:

Institution of Surveyors of Kenya https://isk.or.ke/

6. Appropriate Regulation



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

6.1 Fair Tax Regime

Core Question:	Do market participants feel the overall tax rate is fair and participate in formal transactions? Yes – Strong, the top individual income and corporate tax rates are 30 percent. Other taxes include a value-added tax and a tax on interest.
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Transfer Tax

6.1.1 What is the total property transfer tax including all duties and payments? **Weak – 5.9% Trend ↓**

Overall Tax

6.1.2 What is the overall tax rate on entrepreneurs? **37.2% – Ranking – 94th out of 190 Strong – Trend ↑**

Divestment

Survey Question

SQ 28 What is the tax on profits for foreign investors when divesting property? **Strong – there are some restrictions on foreign investors and the tax rate is from 15 to 30%.**

6.2 Professional Services

Core Question:	Are the professional services necessary for efficient and transparent property markets available and appropriately regulated and supervised? No – Weak, professionals are still largely focused on land transactions and disputes.
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Asset Valuers

Survey Questions

SQ 29 Are property valuers licensed and/or certified by the government? **Yes – Strong.**

Q 30 How effective are mechanisms in place to discipline valuers who engage in misconduct? **Weak – Licensing and certification of valuers by the government includes several levels and disciplinary procedures are in place and sporadically enforced.**

Brokers & Agents

Survey Questions

- SQ 31 Are real estate brokers and agents licensed and/or certified by the government? **No – Weak, only a small number of brokers and agents are licensed by the government with a large number of unregulated agents operating in the market.**
- SQ 32 How effective are mechanisms in place to discipline brokers or agents who engage in misconduct? **Very Weak – none in place.**

Mortgage Professionals

Survey Questions

- SQ 33 Are mortgage professionals licensed and/or certified by the government? **No – Weak - mortgage loans are only available to a small number of borrowers and the market is unregulated.**
- SQ 34 How effective are mechanisms in place to discipline mortgage professionals who engage in misconduct? **None in place – Very Weak**

6.3 Capital Markets

Core Question:	Are capital markets well-regulated and diversified enough to provide financial resources to private-sector entrepreneurs and innovators? No – Weak, the poor investment regime lacks efficiency and transparency, discouraging investment activity.
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Capital Flows

- 6.3.1 How open is the country to trade including tariffs and market openness? **Weak – Ranking 103rd out of 141; Score 52.7 out of 100 Trend ↓**

Balance of Payments

- 6.3.2 What is the country's current account balance as a percentage of GDP? **Weak (-4.69%) Trend ↑**

Securitization

- 6.3.3 What is the depth of asset-backed securities, mortgage-backed securities, high-yield bonds and highly leveraged loans? **Very Weak – capital markets are very small with low turnover.**