

AID-FOR-TRADE CASE STORY

Kenya: Business Regulatory Reform Unit (BRUU)

The Business Regulatory Reform Unit (BRRU)

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EXECUTIVE SUMMARY

One of the key priorities of the Kenyan Government is to transform Kenya into a competitive investment destination. Excessive, inaccessible and burdensome licensing practices have been identified as major and tangible impediments in the achievement of this goal and broader economic development.

In response to this challenge, the Government of Kenya launched a review and reform of business licenses and permits starting from 2005, with recognized positive results and increased interest in regulatory reforms.

The Business Regulatory Reform Unit (BRRU) was formed in 2006, as a result of the 2006/2007 Budget Speech, in which the Minister for Finance proposed to set up, in the Ministry of Finance, a Business Regulatory Reform Unit to permanently keep track of all regulatory regimes and licensing in Kenya and ensure that new regulations, licenses, fees and charges do not create unnecessary burdens on business and meet international best practices. The Minister for Finance also announced that the Unit will "liaise with Regulators to ensure that all future regulations with respect to licensing conform to international best practice".

The licensing regulatory reforms emanate from the work of the Working Committee on Business Licenses in Kenya, established in 2005, which was able, for the first time ever, to have a comprehensive overview of the number of business licenses, fees and user charges in Kenya. The number was identified to be 1,325.

Since then, the Government has taken drastic action to simplify or eliminate most of these licenses while retaining 294 as per the recommendations of the Committee. The Government eliminated 110 business licenses and simplified 8 licenses during the 2006/07 financial year. Thereafter, H.E. the President assented to the Licensing Laws (Repeals and Amendment) Bill, 2007 which in effect, eliminated an additional 205 licenses and simplified another 371 licenses. In total, 379 licenses were simplified, while 294 were retained. 315 licenses were eliminated.

At present BRRU is established administratively within the Economic Affairs Department of the Ministry of Finance. The Unit works closely with the World Bank (Investment Climate Advisory Services and IFC) and is taking a leading role in identifying short-term measures aimed at improving Kenya's ranking on the World Bank's Doing Business Indicators as well as other initiatives aimed at improving the general regulatory

environment for efficient business operation and creating a conducive investment climate in Kenya.

Among key activities currently being undertaken by the Unit include the following;

1. Pursuing various Regulatory Reform activities that are aimed at creating a conducive and enabling environment for business and investment in Kenya;
2. Developing an online depository of all business licenses existing in Kenya, referred to as an e-Registry, that will be a focal point for investors in searching for information, registering and operating a business;
3. Establishing a Business Regulation Law, currently the Business Regulation Bill, that will legally establish a high profile Regulatory Reform Committee that will spearhead the reform process, with the assistance of the Business Regulatory Reform Unit (BRRU);
4. Participating in the World Bank's Doing Business Indicators annual ranking, through documenting and reporting of reforms undertaken by various institutions and improving the investment environment;
5. Supervision and screening of the quality of new licensing regulations through a Regulatory Impact Assessment (RIA) system;
6. Capacity building in line-Ministries and regulators on all aspects of Better Regulation;
7. Developing and regularly updating a Regulatory Reform Strategy;
8. Advocacy and outreach to stakeholders; and
9. Monitoring and Evaluation of the impact of regulatory reforms - tracking indicators, regular reporting and developing monitoring and evaluation benchmarks to support effective implementation of reforms.

Issues Addressed and Objectives Pursued

The main issues under consideration by the BRRU include the following:

1. **Operationalization of the e-Registry** - The role and mandate of the e-Registry is to enter, store and make available information about all business license requirements in Kenya. In principle, if the required information is not reported to the Registry as prescribed in the legislation (the Business Regulation Bill – yet to be published), the license requirements are not valid.

The Electronic regulatory registry for business licenses (e-Registry) is one of several integrated and mutually supportive measures endorsed by the Government of Kenya to establish a better regulatory business environment.

This is critical for ensuring that the beneficial results of licensing reforms are not undermined by creeping re-regulation. BRRU will vet proposed regulations for business friendliness, while the e-Registry will make available information about duly approved licenses that are in effect and enforceable.

An accessible, comprehensive and central registry of business regulation, if reliable and kept up to date, contributes significantly to improving regulatory transparency and to reducing regulatory risk and uncertainty for businesses. The full inventory of licenses is still in the process of being uploaded to the site. This should be completed in early 2011.

Main functions of the e-Registry

- The purpose of the e-Registry is to provide easy access to exhaustive information about business licenses and the formalities businesses must comply with to obtain licenses. This is in accordance with international best practice for business regulation.

- The starting point should be the ability to conduct a name search and secure a business name online. Thereafter, registration for VAT and PIN numbers should also be possible.
- Searches on licenses should provide specific information on licenses for different types of businesses, associated licenses required for that business, costs requirements, period of validity and any other relevant information.
- It should also create a platform through which users can interact with system administrators to contact, ask questions and query on any issue of importance to them.
- Reminders to registered users should be sent with regards to date of expiry of licenses, changes in regulations, office locations, inspections, and any other alerts that will be important to the users. This can include a mobile SMS service.
- It will also have a transactional platform through which all payments for licenses, fees and any charges can be done online.
- The ultimate target is that if the required information is not reported to the Registry as prescribed in the legislation, the license requirements are not valid and businesses do not need to abide by the regulation even if it is announced correctly in the Official Gazette.

2. Developing a Regulatory Reform Strategy - this comprises of the core roles of identification of regulatory practices imposing the greatest costs and risks to businesses and Foreign Direct Investments in Kenya; outreach to and systematic involvement of the private sector in design of regulatory reform priorities; baseline measurements of regulatory costs and risks in Kenya; design, piloting and implementation of a system for regulatory impact assessment (RIA); and continued capacity-building of key institutions (including the public and private sector) and stakeholders in regulatory reform.

3. Regulatory Impact Assessment - RIA is a systematic process to assess the possible impacts of intended regulation. RIA allows assessing the best way to reach policy objectives. This may be done by use of regulatory and/or non-regulatory measures to achieve those objectives. The necessary introductory training has been done to the core BRRU and a few regulators, organized by the Jacobs and Associates of Belgium.

4. Doing Business Indicators (DBIs) - the unit works on the DBIs developed by the World Bank across 183 economies in the world. These are a means of improving the investment environment in the country by tackling 10 key indicators that directly affect the business environment. These are based on assumptions that are applicable across all countries. BRRU works closely with various institutions in the country including the private sector, to prepare an annual report on Doing Business Indicators on ten main Indicators, i.e. Starting a Business, Trading Across Borders, Paying Taxes, Getting Credit, Employing Workers, Registering Property, Protecting Investors, Enforcing Contracts, Dealing with Construction Permits, and Closing a Business. This report is then forwarded to the World Bank in Washington for ranking.

5. Advocacy - Support and advice to regulators on regulatory management and reform. This involves assisting regulators with preparing regulatory impact assessments (RIA), and with leading efforts to develop regulatory training and capacity-building. The function involves promoting the use of RIA and good regulatory practices across government and in the private sector. Advocacy training was conducted in September 2008, for BRRU members.

6. Monitoring and Evaluation – BRRU assess and measures the realized and potential achievements in regulatory reforms for businesses in Kenya.

7. **Business Regulation Bill** - The Unit has been working on a Bill that is aimed at regulating the operation of business activities in Kenya. Once passed into Law, the Bill will give a legal backing to the Unit, to enable it to carry out its regulatory functions effectively as specified in the Bill.
8. **Licensing Reforms** - the Unit is responsible for implementing review and implementation of licensing reforms aimed at facilitating investments and business in the country. This is aimed at clarifying, reducing and consolidating licenses so as to streamline the licensing process.
9. **Private Sector Development Strategy (PSDS) Activities** – BRRU plays the role of Program Officer for PSDS. This is program that brings together government ministries and the private sector to work towards achieving specific deliverables designed in 5 Goals. Goal 1 focuses on ‘Improving the Business Environment in Kenya’.

DESIGN AND IMPLEMENTATION

The main approach used by the BRRU is engagement between government agencies and the private sector with the application of the guillotine approach on licenses. In all its activities, there is close coordination of all stakeholders, working through a broad committee (The Regulatory Reform Working Committee) which is further subdivided into Sub-committees that handle the specific mandates identified above.

Specific goals and targets have been identified, work-plans drawn and close implementation mechanisms developed with monitoring and evaluation modalities entrenched in the implementation process.

PROBLEMS ENCOUNTERED

Challenges have been encountered in the regulatory reform process, as would have been expected, and these have affected the pace of the reform process. Some of these include the following:

- Conflicting interests between government departments and regulators in-charge of various critical aspects of licensing businesses and investments.
- The fear of reforms and change in administrative processes, which poses a threat to lax institutions that would not want to move away from their comfort zones.
- Delays in passing regulations through the Parliamentary process
- The cost of carrying out the various activities is expensive and requires extensive planning and budgeting. Resources may fall short in some periods and thus delaying the process.

FACTORS FOR SUCCESS / FAILURE

Substantial progress has been achieved and this has mainly been because of:

- Diligent leadership and focused guidance of the reform process by the reform champions.
- Close cooperation and coordination between government agencies and the private sector, as well as all stakeholders in the reform process.
- Close monitoring of reforms and raising red flags for quick review and revision.
- Setting regulatory institutions on specific programs that are results oriented, such as the ‘Rapid Results Initiative’ that aims at achieving specified reform targets within 100 day periods.
- Keeping up the reform momentum through incentives and motivation of players in the reform process.

RESULTS ACHIEVED

A lot has already been achieved to date, with one of the most notable achievements being Kenya's award as One of the Top Ten Reformers in the World Bank's Doing Business Report ranking of 2008.

The investment climate has been improving steadily, with specific gains achieved in FDI flows, growth in local investments and business start-ups, increased macroeconomic performance of the economy, growth in employment, improved service delivery and more efficient delivery of public services.

Substantial training has also been done, thus keeping the reform momentum alive and entrenching reforms in all institutions.

LESSONS LEARNED

The most important lesson learnt is that for any project to be successful, it needs well established structures, defined targets and goals, as well as specific timelines. This should then be backed by adequate resources and release of the same at the right time.

The reform momentum should also be kept alive by developing ways of motivating people and changing the culture of drivers of reforms, as well as the general public.

CONCLUSIONS

BRRU has been a successful project, whose mandate is still on-going and its importance is needless to mention. It has carried out key reform activities in the country and has enabled far reaching changes and developments to be achieved in Kenya's investment climate and business environment.