BETTER REGULATION FOR GROWTH

GOVERNANCE FRAMEWORKS AND TOOLS FOR EFFECTIVE REGULATORY REFORM

REGULATORY CAPACITY REVIEW OF KENYA

INVESTMENT CLIMATE ADVISORY SERVICES
WORLD BANK GROUP
About the Investment Climate Advisory Services of the World Bank Group

The Investment Climate Advisory Services (IC) of the World Bank Group helps governments implement reforms to improve their business environment, and encourage and retain investment, thus fostering competitive markets, growth and job creation. Funding is provided by the World Bank Group (IFC, MIGA, and the World Bank) and over 15 donor partners working through the multi-donor FIAS platform.

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The Better Regulation for Growth (BRG) Program was launched in 2007 by the Dutch Ministry of Foreign Affairs, the UK Department for International Development (DFID) and IC, the investment climate advisory services of the World Bank Group.

The objective of the BRG Program is to review and synthesize experiences with regulatory governance initiatives in developing countries, and to develop and disseminate practical tools and guidance that will help developing countries design and implement effective regulatory reform programs. Reports and other documentation developed under the BRG Program are available at: www.ifc.org/brg
# Table of Contents

**Acknowledgment** ................................................................................ vi

**Foreword** ........................................................................................... vii

**Acronyms: Kenya** ...............................................................................viii

**Executive Summary** .......................................................................... x

**Regulatory Reform in a National Context** ............................................. 1
- Economic development context .............................................................. 1
- Administrative and legal environment .................................................. 3
- Recent regulatory reforms ...................................................................... 7

**National Policies and Institutions for Regulatory Reform** ............... 12
- Regulatory reform principles and policies ............................................. 12
- Institutions and drivers to promote regulatory reform ....................... 12
- Coordination between levels of government ........................................ 14
  - National-Local .................................................................................. 14
  - National – International ..................................................................... 15

**Administrative Capacities for Making High Quality Regulation** ......... 16
- Administrative transparency and predictability .................................... 16
- Provisions for law-making procedures ................................................. 16
- Provisions for consultation .................................................................. 19
- Current policies and practices .............................................................. 19
- Communication of regulations ............................................................. 20
- Compliance and enforcement of regulation .......................................... 22
- Public redress and appeals .................................................................. 23
- Policy instrument alternatives .............................................................. 26
- Use of RIA for understanding regulatory effects .................................. 28
- Building administrative skills for regulatory reform .......................... 29

**Updating Regulations** ...................................................................... 31
- Revisions of existing laws and regulations ........................................... 31
- Reducing administrative burdens ......................................................... 32
- Use of ICT to support regulatory reform .............................................. 33

**Roles of Donors and IFIs** .................................................................. 35

**Conclusions and Recommendations** ............................................. 37
- Assessment of strengths and weaknesses ............................................. 37
- Policy options and choices ................................................................. 38
APPENDIX A. Principles of Good Regulation ................................................. 39
APPENDIX B. DB Indicators, DB 2009 .......................................................... 40
APPENDIX C. The Legislative Process in Kenya’s National Assembly........ 41
APPENDIX D. The Judicial System in Kenya ................................................. 44
The Court system ...................................................................................... 44
The Court of Appeal ................................................................................ 44
The High Court ....................................................................................... 44
Subordinate courts .................................................................................. 44
Sources of Kenyan law ............................................................................ 45
The constitution ....................................................................................... 45
Acts of Parliament ................................................................................... 45
Specific Acts of Parliament of the United Kingdom ............................... 45
Certain Acts of the Parliament of India .................................................. 46
English statutes of general application in force in England on 12th August 1897 ......................................................... 46
The substance of common law and doctrines of equity ......................... 46
African Customary law ............................................................................ 46
Islamic law .............................................................................................. 46
International instruments ........................................................................ 46

APPENDIX E. Kenya Gazette Supplement No. 79 ...................................... 47
List of Boxes

Box 1: Cabinet Memorandum.................................................................17
Box 2: Format of Legislative Drafting Instructions.................................18
Box 3: Public Complaints Standing Committee..........................................27
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Regulatory reform has emerged as an important policy area in developing countries. For reforms to be beneficial, regulatory regimes need to be transparent, coherent, and comprehensive. They must establish appropriate institutional frameworks and liberalized business regulations; enforce competition policy and law; and open external and internal markets to trade and investment.

This report examines the institutional set-up for and use of regulatory policy instruments in Kenya. It is one of five reports prepared on countries in East and Southern Africa (the others are on Zambia, Uganda, Rwanda, and Tanzania). The report is based on a review of public documents prepared by the government, donors, and the private sector, and on a limited number of interviews with key institutions and individuals.

The report is an input to the Investment Climate Advisory Services (IC) discussions aimed at helping governments improve regulatory quality—that is, reform regulations to foster competition, innovation, economic growth, and social objectives.
## ACRONYMS: KENYA

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACC</td>
<td>Anti-Corruption Commission</td>
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<tr>
<td>ASLAG</td>
<td>Association of Local Government Authorities</td>
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<td>BAC</td>
<td>Business Advisory Council</td>
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<td>BEST</td>
<td>Business Environment Strengthening for Tanzania</td>
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<td>BPT</td>
<td>Business Premises Tribunal</td>
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<td>BRRU</td>
<td>Business Regulatory Reform Unit</td>
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<tr>
<td>CET</td>
<td>Common External Tariff</td>
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<tr>
<td>COMESA</td>
<td>Common Market for Eastern and Southern Africa</td>
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<tr>
<td>DeG</td>
<td>Directorate of e-Government</td>
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<tr>
<td>DFRD</td>
<td>District Focus for Rural Development</td>
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<tr>
<td>EAC</td>
<td>East African Community</td>
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<tr>
<td>ECR</td>
<td>Electronic Cash Register</td>
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<tr>
<td>ERSWEC</td>
<td>Economic Recovery Strategy for Wealth and Employment Creation</td>
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<td>GJLOS</td>
<td>Governance, Justice, Law and Order Sector</td>
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<td>HRDD</td>
<td>Human Resource Development Division</td>
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<td>IC</td>
<td>Investment Climate Advisory Services</td>
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<td>ICT</td>
<td>Information and Communication Technology</td>
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<td>JCA</td>
<td>Judicial Complaints Authority</td>
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<td>KAM</td>
<td>Kenya Association of Manufacturers</td>
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<td>KIC</td>
<td>Kenya Industrial Court</td>
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<td>KLGRP</td>
<td>Kenyan Local Government Reform Programme</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>KLRC</td>
<td>Kenya Law Reform Commission</td>
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<td>KRA</td>
<td>Kenya Revenue Authority</td>
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<td>LAS-DAP</td>
<td>Local Authority Service Delivery Action Plan</td>
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<td>LGRP</td>
<td>Local Government Reform Program</td>
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<td>LGTF</td>
<td>Local Government Transfer Fund</td>
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<tr>
<td>MCTI</td>
<td>Ministry of Trade, Commerce, and Industry</td>
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<td>MDG</td>
<td>Millennium Development Goals</td>
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<tr>
<td>MOF</td>
<td>Ministry of Finance</td>
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<tr>
<td>MOJNCCA</td>
<td>Ministry of Justice, National Cohesion, and Constitutional Affairs</td>
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<td>MOLG</td>
<td>Ministry of Local Government</td>
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<td>MSPS</td>
<td>Ministry of State for the Public Service</td>
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<td>MTI</td>
<td>Ministry of Trade and Industry</td>
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<td>NCLR</td>
<td>National Council for Law Reporting</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>NTBs</td>
<td>Non-Tariff Barriers</td>
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<tr>
<td>OAG</td>
<td>Office of the Auditor-General</td>
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<td>ODPM</td>
<td>Office of the Deputy Prime Minister</td>
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<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
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<td>PCSC</td>
<td>Public Complaints Standing Committee</td>
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<td>PMBO</td>
<td>Program Management and Business Analysis Office</td>
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<td>PPARB</td>
<td>Public Procurement Administrative Review Board</td>
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<td>PSC</td>
<td>Public Service Commission</td>
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<td>PSDS</td>
<td>Private Sector Development Strategy</td>
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<td>PSRP</td>
<td>Public Service Reform Program</td>
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<td>RARMP</td>
<td>Revenue Administration Reform and Modernization Program</td>
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<td>RBP</td>
<td>Regulatory Best Practice Program (Uganda)</td>
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<td>RIA</td>
<td>Regulatory Impact Analysis</td>
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<td>RRC</td>
<td>Regulatory Reform Committee</td>
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<tr>
<td>SAGA</td>
<td>Semi-Autonomous Government Agencies</td>
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<tr>
<td>SBP</td>
<td>Single Business Permit</td>
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<tr>
<td>SCM</td>
<td>Standard Cost Model</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<tr>
<td>WCRR</td>
<td>Working Committee for Regulatory Reform for Business Activity in Kenya</td>
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EXECUTIVE SUMMARY

For decades, Kenya has suffered from low and volatile economic growth: per capita real GDP growth averaged 1.2 percent over the period 1960-2000, but with wide swings. The country has had a reputation for being politically risky, marked by corruption, policy uncertainty and the importance of patronage and political connections in the business arena, added to structural weaknesses in infrastructure and public administration. Kenya began economic liberalization in the late 1980s, and the speed of reform accelerated in the 1990s. However, throughout the 1990s, Kenya's economic performance was weak, real per capita income contracted by an average of 0.5 percent annually, and social indicators worsened. In order to reverse the sustained economic downturn, the government prepared the Economic Recovery Strategy for Wealth and Employment Creation (ERS) in 2003, which laid out plans for economic and structural reforms needed for higher economic growth. Subsequently, the Private Sector Development Strategy (PSDS) was prepared specifically to address the concerns of the private sector and to enhance business growth and competitiveness in line with the ERS.

In recent years, Kenya has done better on GDP growth: over the 2003–2006 period, growth averaged 4.9 percent in contrast to virtual stagnation between 1991 and 2002, and growth has continued at even higher levels in spite of the political turbulence of the last few years. Nevertheless, Kenya, with a per capita income of $640 in 2007, remains one of the poorer countries in Africa. The government's long-term development objectives, expressed in Vision 2030, are to create “a globally competitive and prosperous nation with a high quality of life by 2030,” and call for sustained economic growth of 10 percent per annum over the period. The intermediate Millennium Development Goals (MDGs) call for annual GDP growth of at least 7 percent to reduce poverty by 50 percent in 2015 against 1990 levels.

Accelerated growth at this level will require a significant increase in private investment and savings, which will require a good investment climate. However, reforms and the recent improvements in economic performance have not altered the perceptions of the Kenyan and international business communities that the business climate in Kenya
remains generally poor. The World Bank’s Investment Climate Assessment, carried out in 2004, identified a broad range of factors that contributed to a poor business and investment climate, including (in order of perceived seriousness):

- infrastructure (particularly electricity and telecommunications);
- tax rates and administration;
- corruption;
- cost of finance;
- crime;
- informal business practices;
- regulatory uncertainty; and
- macro-economic instability.

In the case of regulatory uncertainty, some aspects of this broad category, such as business registration, labor regulation, and customs administration, did not rank highly on their own as serious constraints on investment and operations. The cumulative impact of regulations and policies was considered as high, and firms reported that these shifts in policy exacerbate the risks that they associate with doing business in Kenya and create a disincentive to invest.

Kenya has already responded to the challenge of regulatory capacity and performance through a broad range of programs and activities involving public sector and civil service reforms, decentralization and local government reform, anti-corruption campaigns, competition and competitiveness programs, and legal reform. This report reviews the current state of regulatory capacity and performance in Kenya, with a view to identifying weaknesses that must be overcome and existing strengths upon which the regulatory management system could be constructed. Much of the regulatory reform carried out to date has been directed to solving existing problems and weaknesses, but it is also essential that the capacity to make new regulations and to keep them up to date is strengthened. The government has accepted recommendations from its own Working Committee on Regulatory Reforms for Business for building a regulatory management system by adopting a broad policy on regulatory reform that establishes short and medium term objectives and focuses on implementation of better regulations and regulatory procedures.

Regulatory reform in Kenya has exhibited several important strengths. First, it has benefitted from strong support within the Ministry of Trade and Industry (MTI) and the Ministry of Finance (MOF). MTI was a crucial source of support for the reform of business licensing at the beginning of the process. Support from MOF was crucial at the point where decisions on the report recommendations had to be made, when the existing machinery for budget decisions could be used. In addition, the importance of having the reform led at that point by a central economic ministry should not be underestimated. However, the current situation where the Business Regulatory Reform Unit (BRRU) has been established under the MOF may also constitute a source of weakness.

The emphasis given to the BRRU and its work now depends to a considerable extent upon its ranking in MOF’s priorities, which are many. Without renewed pressure, there is a danger that the positive energy generated by the very favorable reception (from both the business community and donors) given to the Kenya government when it adopted the licensing reforms could be dissipated. It can be argued that the decision to disband the Working Committee and not to establish another inter-ministerial body to propel the regulatory reform is a mistake that should be rectified.

Like the other East African countries, Kenya has succeeded in framing regulatory reform within its broader development planning documents, such as Vision 2030, and drawing linkages between
the various legal, public sector, decentralization, and corruption initiatives. However, to date, these linkages do not appear to be well established at the program and operational level. Kenyan ministries still have a tendency to operate in silos, and the role of the BRRU should be to break down these barriers in the formulation and operation of regulatory initiatives. However, until the BRRU is staffed and has a clear mandate, it will be difficult for it to play such a role.

As to the future priorities for reform, implementation of the licensing reforms should be pursued aggressively. To date, the actions taken have generated positive opinions among the local and international business communities, but they have to be continued to avoid repetition of many past reforms in Kenya that have started well but ultimately lapsed. While efforts to reduce fees and the number of licenses should be continued, it is important that emphasis is also placed on reducing business costs of complying with license requirements. In addition, it is recommended that an effective monitoring system be put in place as a matter of priority so that the impact of the licensing reforms can be demonstrated.

Capacity building for regulatory reform should be emphasized. BRRU should discuss with the Ugandan government officials the training activities done under the Ugandan Regulatory Best Practice (RBP) program, and with the Tanzania Business Environment Strengthening for Tanzania (BEST) Advocacy component, in the course of developing a training, skills development, and capacity building strategy for the Kenya regulatory reform program.

Finally, the fact that the Kenya government has an established e-government program provides BRRU with the opportunity to push for implementation of the e-registry as soon as possible, and for further computerization to move to second-generation information and communication technology (ICT) projects.
Economic development context

For decades, Kenya has suffered from low and volatile economic growth: per capita real GDP growth averaged 1.2 percent over the period 1960-2000, but with wide swings. The country has had a reputation for being politically risky, marked by corruption, policy uncertainty and the importance of patronage and political connections in the business arena, added to structural weaknesses in infrastructure and public administration. Kenya began economic liberalization in the late 1980s, and the speed of reform accelerated in the 1990s after reduction of aid flows on governance grounds. Reform was also used as an attempt within the government to re-establish credibility following the Goldenburg scandal. However, throughout the 1990s, Kenya's economic performance was weak, real per capita income contracted by an average of 0.5 percent annually, and social indicators worsened. Poverty and vulnerability disproportionately affected older people, children, female-headed households and pastoral communities in the arid and semi-arid lands.

In order to reverse the sustained economic downturn, the government prepared the ERS in 2003, which laid out plans for economic and structural reforms needed for higher economic growth. The main instruments for bringing it about were to be improved law and order, a fight against corruption, and priority for infrastructure investment. Subsequently, the Private Sector Development

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1 The standard deviation was 4.8 percent over that period. Following independence, Kenya enjoyed relatively strong economic performance until the late 1970s. Thereafter, the economy slowed down significantly. The average GDP growth was 6.5 percent between the 1960s and the 1970s. In the 1980s, it fell to less than 4.5 percent and then to about 2.2 percent in the 1990s. High population growth rates throughout the period resulted in very low growth of per capita income.

2 Goldenberg International was set up in 1990 to export gold and diamond jewelry from Kenya in return for a 35 percent premium on the exchange rate in contrast to the normal premium of 20 percent for exporters. Little or no gold was actually exported; a scheme was established to round-trip the sale of export dollars to the Central Bank of Kenya (essentially, buy dollars at the official exchange rate, sell them back at a 35 percent premium as "gold exports" and then repeat the process).
Strategy (PSDS) was prepared specifically to address the concerns of the private sector and to enhance business growth and competitiveness in line with the ERS. The government’s national development agenda as articulated in the various policy documents is grounded on alleviating poverty, creating wealth, and improving the welfare of the common person. To achieve this, there is a general need to return to integrity and accountability in the management of public resources, efficient and fair administration of justice, institutionalization of democratic government, respect for and enforcement of human rights and the development of strong and stable institutions of governance.

In recent years, Kenya has done better on GDP growth: over the 2003-2006 period, growth averaged 4.9 percent in contrast to virtual stagnation between 1991 and 2002, and growth has continued at even higher levels in spite of the political turbulence of the last few years. Nevertheless, Kenya, with a per capita income of $640 in 2007, remains one of the poorer countries in Africa. About 56 percent of households were estimated to be below the poverty line in 2003, with a Gini index of 43 (the poorest 20 percent of the population received only 6 percent of national income, while the richest 20 percent took nearly 50 percent).

The government’s long-term development objectives, expressed in Vision 2030, are to create “a globally competitive and prosperous nation with a high quality of life by 2030,” and call for sustained economic growth of 10 percent per annum over the period. The intermediate MDGs call for annual GDP growth of at least 7 percent to reduce poverty by 50 percent in 2015 against 1990 levels. Accelerated growth at this level will require a significant increase in private investment and savings over current levels, which themselves represent some improvement over the levels of the 1990s, when private investment fell as a percentage of GDP. Increased private investment will require sustained improvement in the investment climate.

The reforms and the recent improvements in economic performance, however, have not altered the perceptions of the Kenyan and international business communities that the business climate in Kenya remains generally poor. The Inward FDI Potential Index of the United Nations Conference on Trade and Development (UNCTAD), for example, not only places Kenya towards the bottom of all countries (126th out of 141 countries), but, in contrast to many of its regional competitors, Kenya’s ranking has not improved in recent years. Similar conclusions are drawn through the Heritage Foundation’s Index of Economic Freedom. The World Bank’s Investment Climate Assessment, carried out in 2004, identified a broad range of factors that contributed to a poor business and investment climate, including (in order of perceived seriousness) infrastructure (particularly electricity and telecommunications), tax rates and administration, corruption, cost of finance, crime, informal business practices, regulatory uncertainty, and macro-economic instability.

More than 50 percent of respondents to the survey considered all of the above issues to constitute serious or very serious impediments to business. In the case of regulatory uncertainty, some aspects of this broad category, such as business registration, labor regulation, and customs administration, did not rank highly on their own as serious constraints on investment and operations. The cumulative impact of regulations and policies was considered as high, and firms reported that these shifts in policy exacerbate the risks that they associate with doing business in Kenya and create a disincentive to invest.

These findings on regulatory constraints are generally corroborated by the Doing Business indicators. DB 2009 ranks Kenya as 82nd globally in the “ease of doing business” synthetic indicator, and

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5th in Sub-Saharan Africa. The report identifies permitting/licensing, getting credit, and closure of businesses as areas where Kenya compares favorably to its neighbors, and business start-up, property registration, paying taxes, cross-border trade procedures and contract enforcement as areas where Kenya’s performance lags. DB2009 confirms that Kenya has gradually improved its standing in comparison to other SSA countries, but also shows that it lags well behind international best practice, although the reforms that it has made in the last year should improve the situation considerably.

Red tape and excessive government interference in private sector activities remains one of the main constraints to private sector development. One indicator of this is the large share of GDP generated in the informal sector and its continuing growth. Some 50 percent of GDP is estimated to be generated within the informal sector, and a very large proportion of enterprises are estimated to be informal to some degree. In turn, the impact of the large informal sector on formal sector enterprises can be gauged by the fact that “practices of the informal sector” was the seventh largest constraint to enterprise investment, according to the World Bank ICA survey.

Administrative and legal environment

The Kenyan legal system is based closely on that of England and Wales, and Kenyan courts widely apply principles of English common law. However, the legal system of Kenya is complicated by the fact that settlement by the British was direct and indirect – direct in the sense that the settlers came straight from Britain, and indirect in the sense that there were settlers who came from India. The settlers imported laws from Britain and British laws that had been codified in India to apply to the east African Protectorate. Customary law was also applied, and in addition the Hindus who emigrated from India were also allowed to practice Hindu customary law, while Muslims and Arabs, largely restricted to the coastal region, practiced Islamic law.

In terms of the hierarchy of legal, administrative and regulatory instruments, the Constitution is the supreme law, and any law or custom in conflict with it is null and void to the extent of its inconsistency (Article 3). The second tier of the hierarchy is statute law or Acts of Parliament, which are published in the Official Gazette. The third source of law is specific acts of Parliament from the UK and India. The fourth source is decree law. The fifth source is case law, comprising judgments from the Court of Appeal and the High Court, which serve as precedents for lower courts. The fifth source of law is customary law. The sixth source is Islamic customary law. Finally, international treaties and conventions are a source of domestic law as long as they have been ratified by Parliament. (For further details, see Appendix C)

The Republic of Kenya is described as a “multi-party, democratic state” (Article 3 of the Constitution). Chapter 5 defines a “bill of rights” for the population. The government has three branches: Legislature, which is headed by the speaker of the National Assembly (established under Chapter 3), the Executive, which is headed by the president (established under Chapter 2), and Judiciary, which is headed by the chief justice (established under Chapter 4), whose functions and powers are laid out in the 1996 Constitution. The Constitution provides for legislative supremacy of Parliament and independence of the Judiciary.

Executive power in Kenya is vested in the president (Article 23). The president, who may serve

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4 Rankings in Africa for Kenya’s regional competitors were 7th for Zambia, 10th for Uganda, 14th for Tanzania and 17th for Rwanda.

5 The current constitution was adopted in 1963 and amended in 1999. Kenya has been involved in a constitutional review process for the last three years, the population having rejected the latest amendments in a referendum in 2007.

6 Decrees may be issued under the name of the president, but have to be submitted to Parliament for ratification at its next session.
for no more than two terms of five years each (Article 9), is elected by universal suffrage through secret ballot, and can be elected by a simple majority of votes cast (Article 3). Kenyan has a Parliamentary president: he/she is both head of state and government, and also a member of parliament. Article 15 authorizes the president to appoint a vice president from the members of the National Assembly. As part of the power sharing deal that followed the disputed 2007 election, the positions of prime minister and deputy prime minister were established. This was formalized in 2008 through amendments to the Constitution, which allowed Parliament to create the positions of prime minister and deputy prime minister (Article 15A).

Article 16 authorizes the president to appoint ministers, also from the members of the Assembly; and article 19 permits the president to appoint assistant ministers (whose role is to assist the ministers) also from the membership of the National Assembly. The Cabinet, whose responsibility is to “aid and advise the President” (article 17), consists of the president, vice president, prime minister, deputy prime ministers and ministers. According to article 17, the Cabinet is collectively accountable to the National Assembly. Article 22 authorizes the president to appoint permanent secretaries, including a permanent secretary for the Office of the President, and they are officials of the public service. Finally, the president is responsible (article 54) for appointing the attorney general, who is the government’s legal adviser, whose office is in the public service (Article 26) and who is an ex-officio member of the National Assembly (Article 36). The president also appoints the controller and auditor general (Article 110), the director of personnel, the secretary to the Cabinet and ambassadors, following consultation with the Public Service Commission (Article 111).

Local government is part of the Executive branch. The Republic of Kenya is a unitary state, administratively divided into seven provinces—Central, Coast, Eastern, North East, Nyanza, Rift Valley, Western—and one area (Nairobi). The provinces and the one area are further divided into 69 districts, which have administrative responsibilities under the De-concentration Initiative, the District Focus for Rural Development (DFRD), which was introduced in 1983. Under Districts, there are divisions, locations and sub-locations. Kenya has 175 local authorities, including 67 county councils, 43 municipal councils, 62 town councils, and three city councils.

It is notable that the current Constitution makes no mention of the structure and functions of local government. The main piece of legislation governing local authorities in Kenya is the Local Government Act (Cap 265) of 1977, which has been subject to a series of amendments over the years. Other laws that affect the management of local authorities and their revenue base include: Local Government Loan Authority Act (Cap 270); Land Planning Act (Cap 303); Trade Licensing Act (Cap 497); Rating Act (Cap 267); Valuation for Rating Act (Cap 255); and Agriculture Act (Cap 218). The minister of Local Government is responsible for the administration of these Acts.
Other sector ministries also directly affect the operation of local authorities, particularly in the areas of health, education, water and roads.

Local government elections are held at the same time as those for the president and the National Assembly, local councils being dissolved after the dissolution of the National Assembly. Two-thirds of the councillors in each authority are directly elected in single-member wards for a five-year term. The minister of Local Government appoints the other one-third, with nominations made by the political parties or coalitions on the basis of their representation within each council. The district commissioner (or their representative) is also a councillor, providing a link between the local authority and district activities. The system is uniform across the country. Senior staff to local government is recruited through the Public Service Commission (PSC), with the minister of Local Government having full discretion over the most senior appointments.

There have been long-standing attempts to create an effective devolved system of local government in Kenya. As far back as 1959, local authorities established an Association of Local Government Authorities (ASLAG) to facilitate the development of an effective and viable local government system. The Kenyan Local Government Reform Programme (KLGRP) has worked since the mid-1990s to strengthen the local government system, to enable local authorities to deliver services and to increase local accountability. In 1996, the Omano Commission of Inquiry on Local Authorities pointed to a large number of small and non-viable local authorities. In September 2003, a Devolution Committee proposed a four-tier government structure, composed of central government, provincial government, district (local) government, and a fourth tier at local level. Although the government has accepted the need for structural reform of local government and the passage of new legislation, work on a draft bill to substantially amend the legislation has been suspended until a new constitution has been enacted.

The Parliament exercises its legislative powers through passage of bills by the Assembly and by the president assenting to them within 21 days of receiving the bill (Article 46). Bills introduced into the National Assembly have to be published in the *Official Gazette* 14 days before introduction. The bill is given a first reading, followed by a second reading, which is when a debate takes place on the bill’s general principles. Subsequently, the bill is referred to a Committee of the Assembly for discussion of the detailed provisions. In the event of a favorable report out of committee, the third reading takes place and the bill is voted. If approved, the bill is submitted to the president for assent. Should the president choose not to provide assent, the bill is returned to the Assembly for reconsideration. If the bill is passed again, with or without amendment, on a vote of no fewer than 65 percent of all members of the Assembly, the president is required to provide his assent (Article 46).

Parliament also plays a role in the financial authorization and control of government expenditure. Its control over revenue and expenditure is secured by the establishment of Consolidated Fund, into which all revenue of the government has to be paid. Parliament has the discretion to authorize establishment of other funds for specific purposes, and can also allow revenue to be retained by the authority receiving it rather than being paid into the Consolidated Fund.

Parliament also can act as a control and moderating force over the government, insofar as it can...
pass a “vote of no-confidence,” which can bring about the dissolution of Parliament or the resignation of the government. In situations where the size of the Executive is large and where there are also many assistant ministers, a large number of MPs are in the government, and the scope for Parliament to exert a restraining force on the government is weakened.

The Judiciary in Kenya comprises various institutions concerned with the provision of legal services, enforcement of laws, and administration of justice. The main institutions include the Court of Appeal, the High Court, and Subordinate Courts, comprising magistrate’s courts, the Kadi’s Court, Children’s Court, Industrial Court, and Tribunals. (For further details, see Appendix E). The Constitution also provides for the creation of posts of the director of Public Prosecutions (Article 56) and an investigator-general (Article 90).15

Within the Executive, the Ministry of Justice, National Cohesion and Constitutional Affairs16 has jurisdiction over legal matters. The mandate of the ministry is:

■ determining legal policy in Kenya with regard to administration of justice, constitutional matters, law reform, anti-corruption strategies, integrity and ethics, legal education, political parties legal aid and advisory services and elections;

■ promoting the efficient and proper functioning of the legal and justice sector;

■ coordinating and facilitating reform interventions in the justice sector;

■ back-stopping the legal and justice sector at the policy level;

■ handling political issues for and on behalf of the legal and justice sector at the cabinet and parliamentary levels; and

■ championing sectoral reforms.

Currently, the Ministry of Justice has a staff complement of 196, excluding the Semi-Autonomous Government Agencies (SAGAs) such as the Kenya Anti-Corruption Commission (ACC), Kenya School of Law, Kenya National Commission for Human Rights, and the Public Complaints Standing Committee (PCSC). The ministry has jurisdiction over legal matters, including the Law Development Commission. The Ministry of Justice has two chambers – namely the Attorney-General’s Chambers and the Director of Public Prosecutions, both established under the Constitution.

The Kenya Law Reform Commission was established on May 21, 1982, as a primary agency to spearhead law reform and review processes in the country. Its mandate as contained in Section 3 of Chapter 3 of the Laws of Kenya is: “to keep under review all the laws of Kenya to ensure its systematic development and reform, including in particular the integration, unification and codification of the law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments and generally its simplification and modernization.” The vision of KLRC is: “the realization of a contemporary, simple, coherent legal system that is founded on social needs, justice, equity and good governance. Its mission is: “to contribute to socio-economic, legal and political development by simplifying, harmonizing and reforming the laws of Kenya through research and consultations.” Its specific responsibilities are to:

■ receive and consider any proposals for reforming laws that may be made or referred to it;

■ prepare and submit to the AG programs for examining different branches of the law, including recommendations of the agency that should carry out the examination;

15 The investigator-general is the chairman of the Commission for Investigations.
16 The Ministry of Justice and Constitutional Affairs was created through Presidential Circular Number 1 of 2003. The addition of “National Cohesion” was made following the installation of the coalition government.
undertake, pursuant to any program approved by the AG, the examination of particular branches of the law and formulation of draft bills to implement reforms;

- prepare, at the request of the AG, comprehensive programs of consolidation to facilitate the exercise by him of his powers under the revision of laws act, and to undertake the drafting of bills pursuant to any program of consolidation approved by him; and

- provide advice and information to ministries and departments about reform or amendment of a branch of the law relevant to that ministry or department.

Recent regulatory reforms

Kenya has been engaged in reforms for the past 20 years, as outlined briefly in section 1.1, including several reforms that have implications and consequences for regulatory activities. Starting in the early 1990s, in response to a long-term decline in economic fortunes, Kenya implemented stabilization and structural adjustment reforms designed to introduce a market-based and private sector-driven economy in place of the state-enterprise-dominated system of the previous two decades. Increasing attention in recent years has been given to structural, legal, and regulatory reforms, responding to the breakdown in law and order, systemic and institutional failure, the legacy of authoritarian rule, human rights abuses, and widespread corruption that had tainted government institutions including the Judiciary in the late 1990s. The reform agenda has been broad, involving a mix of establishing a market-based economic system and reforming past policies, which included constraints and disincentives on private sector activities and continued application of out-dated laws and regulations. The government has adopted reform programs for the public sector, including local government, and the legal sector, each of which has implications and consequences for reform of business regulation, which has itself been an important component of private sector reform.

The Governance, Justice, Law and Order Sector (GJLOS) reform program is Kenya’s most ambitious effort at reforming its governance, justice, law and order sectors to date. It seeks, with a sector-wide approach, to implement far-reaching reforms in the public sector. In total, 32 government institutions and ministries are involved in this ambitious program, which attempts to strengthen anti-corruption legislation and institutions, support the process that will give Kenyans a new constitution, build mechanisms that permit greater openness and transparency, and reform Kenya’s investment and commercial laws by supporting the simplification of complex legal rules and procedures.

The Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA) has a twin role in the program. First, it is an implementing institution with a mandate to provide leadership in the formulation of legal policy, management and directing of law reforms, development of legal training and education, and the overall management of the constitutional review process. It also has overall responsibility for the legal and judicial sectors’ performance, and coordinates and facilitates the programs and activities of the sectors’ institutions. Second, it is the coordinating

17 Legal reform started in 1982 with the establishment of the KLRC, and was intensified in 1992 when the attorney general established 15 reform task forces to review and update Kenya’s laws in various areas. In 1998, The Kwach Report proposed several far-reaching recommendations, including proposals to increase numbers of judicial personnel, and improve employment terms and conditions; implement a code of conduct for judicial personnel backed by an inspectorate unit; improve facilities within the judiciary; reorganize case handling and systems; simplify court procedures mechanisms; introduce Alternative Dispute Resolution (ADR); and split the High Court into four divisions namely: the Family, Commercial, Civil and Criminal Divisions. However, in the political environment of Kenya in the 1990s, little progress could be registered.

ministry for the overall GJLOS Reform Program, and is responsible for technical leadership of the program, broad, sector-wide coordination of the program implementation, and monitoring and reporting on the overall GJLOS reform program. The GJLOS reform program is scheduled to run until 2009, by which time the reforms are supposed to have been fully internalized in the governance, justice, law and order sectors in government. However, given the size of the agenda and the limited progress made to date, it is expected that it will continue to operate beyond 2009.

The government has been pursuing public sector reform for several years, generally with an emphasis on financial management and budgeting. In 2004, the Cabinet approved “Results for Kenya,” a Public Service Reform Program under which the Public Service Reform Secretariat was given the mandate to support improvements in public services for the population.\(^{19}\) The initiative is centered on six dimensions:

- ensure that government institutions deliver services to citizens through a “rapid response” approach;
- increase capacity to deliver;
- institute a communications strategy;
- introduce consultation with citizens and stakeholders through a ministerial stakeholders forum;
- design and implement a human resources strategy for civil servants based on skills and ethics training; and
- produce a draft strategy for public service improvements.

The rapid response approach has involved the adoption of a 100-day time horizon for designing and implementing reforms in the delivery of a public service. Ministerial Management Units, consisting of three or four persons, have been established in a number of ministries to take charge of the reform process. Examples of these rapid response initiatives include the company registry,\(^{20}\) ID cards and passports. Some institutions are already involved in broad performance improvement programs. Kenya Revenue Authority (KRA) introduced the Revenue Administration Reform and Modernization Program (RARMP) in 2004/05 with the objective of transforming KRA into a modern, fully integrated and client-focused organization. The RARMP process is managed through a Program Management and Business Analysis Office (PMBO) under the Office of the Commissioner General. RARMP has now entered its second phase, which will run until 2008/09 with seven key projects:

- customs reforms and modernization;
- domestic taxes reform and modernization;
- road transport reform and modernization;
- investigation and enforcement reform and modernization;
- KRA infrastructure development;
- KRA business automation; and
- human resource revitalization.

The rapid response initiative is also being supported by the introduction of institutional performance contracts for each fiscal year, whereby ministers and permanent secretaries commit to meeting a set of goals. The intention is to push the performance contracting process to the departmental and divisional level in each ministry, and to introduce a rewards/penalty system, but these are developments for the future. There

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19 “Huduma bora ni haki yako” – public service is your right.

20 Company registration has been reduced to a single day through the reforms. However, there are questions as to whether the system is robust enough to be able to maintain this level.
has been considerable public support for performance contracting and the decision to publish league tables for ministerial performance. But there has also been a lot of criticism in early 2009 of the rankings, especially since the criteria for good performance have not been announced by the government.

The rapid response initiative has been introduced at local government level, insofar as the Nairobi City Council has been participating. Kenya has also been pursuing a broader local government reform program (LGRP) since 1996. Currently, the LGRP is part of the Office of the Deputy Prime Minister (ODPM) and Ministry of Local Government (MOLG), led by a program coordinator reporting to the permanent secretary. The reforms are designed to address the major weaknesses in local government: poor governance and capacity to deliver services; inadequate revenue mobilization; weak financial management; low level of partnership with citizens; and an unclear policy on devolution and decentralization. Over the past few years, the reform program has delivered various improvements:

- introduction of the Local Government Transfer Fund (LGTF) as a main conduit for central government transfers;
- development of a participatory planning process, called the Local Authority Service Delivery Action Plan (LAS-DAP);
- improved financial management through budget reforms and revised financial regulations, financial accounting systems compliant with international accounting standards, and audit and inspection manuals; and
- development of revised service delivery manuals.22

Current priorities for reforms include:

- decentralization and policy development consistent with constitutional reform;
- reform of the Local Government Act and other legislation, again consistent with constitutional reform;
- institutional restructuring and capacity building at local government levels;
- introduction of financial management improvements;
- improved community participation in service delivery planning and implementation;
- implementation broadly of results-based management; and
- improvements in capacity to deliver development programs.23

The proposed reform of local government will inevitably require broad changes in the legal and regulatory framework within which local government authorities operate, and therefore it offers an opportunity for principles of regulatory best practice to be applied in the process. One area where local government issues have already been infiltrated into the regulatory agenda concerns the Single Business Permit (SBP), a business license that is one of the major vehicles for revenue-raising at the local government level. Introduced in 2000 as a way of consolidating a myriad of licenses and permits required by businesses into a single payment and registration process with the local

21 Devolution is mentioned in Vision 2030 as a key mechanism for meeting the social and economic pillars. The First Medium Term Plan for the implementation of Vision 2030 identifies the major issues that have to be addressed: a basic legal and policy framework, a political and administrative framework; local government financing; local government human resource policy; and coordination mechanisms across government levels.


authority, the SBP has been regarded as an additional burden by the business community. The Working Committee on Regulatory Reforms recommended the abolition of the SBP (as well as a number of the specific licenses that the SBP had been intended to eliminate) in the longer term, and the introduction of alternative revenue-raising instruments to permit local government to finance its activities. The committee suggested that consideration also be given to transforming the license into a local business tax.\textsuperscript{24}

As an interim measure, pending completion of a broad review of local government financing options, the government introduced in late 2008 modifications to the SBP. The number of fee categories was reduced to 10, and it is no longer required for businesses to apply for separate SBPs in each of the jurisdictions in which they operate (see Appendix E). These changes were introduced without the benefit of review by the BRRU, despite the explicit recommendation in the Working Committee on Regulatory Reform's report that "it is necessary to subject the discretionary powers of local authorities to enact by-laws to not only the MOLG but also the BRRU."\textsuperscript{25} In addition, according to interviews carried out in early 2009, the modifications of the SBP were introduced without very much review by the MOLG Reform Program personnel.

Assessment of the SBP was carried out as part of the most extensive and explicit regulatory reform to date in Kenya. Following numerous studies and investigations in the early 2000s, the government acknowledged that the business community was very upset about licensing, which was deemed to be an onerous administrative burden, financially costly and a strong disincentive to investment and operation of enterprises.

A Working Committee for Regulatory Reform for Business Activity in Kenya (WCRR) was formed by the government\textsuperscript{26} in February 2005, with a mandate to provide input to government decisions on the following issues:

- review of all business licenses in Kenya;
- creation of an electronic regulatory registry for all business licenses;
- establishment of a BRRU; and
- preparation of a medium term regulatory reform strategy.

The Committee carried out its work in two phases: phase I commenced in March, 2005, and ended in June, 2005, after review of 86 licenses, while phase II started in July, 2005, and ended in March, 2006, after review of 1,325 licenses.

The recommendations of the WCRR were presented in a final report,\textsuperscript{27} which recommended that, of the 1,325 licenses identified and reviewed by the Working Committee, 424 should be eliminated, 607 simplified and 294 retained without modification. The report also identified broad findings that are extremely relevant for future regulatory reform:

- the network of government bodies involved in business regulation is extensive and complex;\textsuperscript{28}
- their responsibilities are often vaguely defined with overlapping and often contradictory responsibilities;

\textsuperscript{24} Because the fee structure is loosely linked to the gross turnover of the business, it essentially is a progressive corporate income tax much more than it is a regulatory process for which a standard fee would be paid. However, under Kenyan law, only the KRA is authorized to levy taxes.\textsuperscript{25} Para 2.78 of the Working Committee's report.

\textsuperscript{26} Through a Ministry of Finance Circular Ref. No. Conf.262/02/(3) of 24 February 2005 as read with Kenya Gazette Notice No. 7521 published in the Kenya Gazette of 23rd September, 2005. The government subsequently continued the committee's mandate until 31 December, 2006 (subsequently extended to 28 February, 2007).


\textsuperscript{28} More than 60 central government ministries and agencies, and 175 local government authorities have legislative powers to issue licenses.
- licensing has been used for revenue purposes rather than legitimate regulatory purposes and that licensing, even when justified in terms of regulatory need, often fails to assure proper regulation because of deficiencies in manpower and information; and

- the regulatory system in Kenya was virtually out of control, lacking checks and balances to avoid discretionary and arbitrary behavior by government agencies and personnel.
Regulatory reform principles and policies

Governments should be clear about why they are pursuing private sector development and reforming regulation. They should also be clear about the principles and objectives of reform and the responsibilities of the groups involved in reform. The most effective way to do this is to establish an explicit regulatory reform policy, including a set of best practice principles against which reform policies can be measured. An example of these principles is provided by the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulations (see Appendix A).

As detailed in the previous sections, Kenya has been pursuing numerous policy reforms that have legal, administrative and regulatory implications. There are several projects within various ministries that involve review and reform of laws, regulations, policies and institutions affecting the investment climate and business environment. However, to date, Kenya has not promulgated an explicit policy statement for regulatory reform and the principles and objectives of regulatory reform, in order to ensure that the reforms are mutually consistent and supportive of each other. Currently, pursuant to a commitment made by the Minister of Finance in the 2006–2007 Budget Speech, the BRRU is developing a regulatory reform strategy that will establish explicit principles and objectives of regulatory reform. A draft strategy is being circulated for stakeholder consultation within the next few months. The government has already established one clear institutional principle – that the MOF has lead responsibility for regulatory reform.

Institutions and drivers to promote regulatory reform

Mechanisms with explicit responsibilities and authorities for managing and tracking reform inside the administration are needed to keep reform on track and on schedule, and to ensure regulatory quality standards continue to improve. It is often difficult for ministries to reform themselves, given countervailing pressures and deficient financial and human resources. Initiating and taking up a reform agenda, maintaining its consistency and
pursuing systematic approaches across the entire administration is necessary if reform is to be broad-based. This requires the allocation of specific responsibilities and powers to agencies at the center of government. Considerable experience across the OECD has shown that central oversight units are most effective if they have the following characteristics:

- independence from regulators (i.e. they are not closely tied to specific regulatory missions);
- operation in accordance with a clear regulatory policy, endorsed at the political level;
- horizontal operation (i.e. they cut across government);
- expert staffing (i.e. they have the information and capacity to exercise independent judgment); and
- links to existing centers of administrative and budgetary authority (centers of government, finance ministries).

In the 2006/2007 budget speech, the minister of finance proposed to establish in the ministry a BRRU to monitor all regulatory regimes in Kenya, to ensure that new regulations, licenses, fees, and charges did not create unnecessary burdens on businesses, and to liaise with regulators to ensure that all future regulations conform to international best practices.29 The BRRU has subsequently been set up through administrative order30 within the Ministry of Finance, and is in the process of establishing its staffing and administrative procedures and its work program. In principle, the BRRU will have three core functions:31 providing support and advice to regulators in preparing RIAs and in developing training and capacity-building; reviewing quality of regulatory proposals, and providing recommendations to decision-makers; and promoting good regulatory processes across government.32

Functioning of the BRRU has been inhibited to date by the fact that it does not have a full-time head and that it has few staff. One officer is designated as the head of the unit but she has a number of other responsibilities and so cannot devote her full attention to regulatory reform. She is supported by one member of staff who is dedicated to regulatory reform and 3-4 other staff members who are utilized by the BRRU on an ad-hoc basis.

The report of the Working Committee also recommended creation of a Regulatory Reform Committee (RRC) to provide political leadership of the reform, to take policy decisions on regulatory proposals, and to provide a platform for dialogue with private sector business organizations. The report also raised the possibility of the creation of a Business Advisory Council (BAC) to institutionalize consultation on regulatory issues.33 So far, there has been no progress on the creation of either the RRC or the BAC.

A Regulatory Reform Working Committee has been constituted to work in this area pending the promulgation of the business regulation bill. It has begun to work actively in this area. A number of ministries have been instrumental to date in promoting and supporting regulatory reform in general and licensing reform in particular. The Ministry of Trade, Commerce and Industry (MCTI) was the champion for licensing reform, and has remained actively engaged even after the leadership of that effort moved over to the Ministry of Finance. The other two ministries that have been actively championing the licensing reform have been the Ministry of Justice, through the

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29 The final report of the Working Committee on Regulatory Reforms for Business Activity in Kenya: Review of Business Licenses, March 5, 2007, made this recommendation.
30 The intention is for BRRU to receive legal authorization through passage of the business regulation bill.
31 BRRU will also serve as the secretariat for the Task Force on Doing Business Indicators.
32 Including leading work on preparation of the Medium-term Regulatory Reform Strategy, development of a system for RIA, and supporting the establishment of the Electronic Regulatory Registry.
33 The Committee also recommended that the proposal for a BAC should be evaluated in terms of other advisory and consultative bodies that might be set up as part of the PSDS.
Solicitor General’s Office, and the MOLG. MOLG and the Office of the Prime Minister (OPM) have now taken an active interest and are expected to be supporters of this process going forward. For instance, the prime minister recently chaired a round table on private sector development issues and emphasized the government’s commitment to regulatory reform in a number of areas.34

Coordination between levels of government

It is good practice for governments to support reform at all levels. This difficult task is increasingly important as regulatory responsibilities are shared among many levels of government, including supranational, international, national, and sub-national levels. High quality regulation at one level can be undermined by poor regulatory policies and practices at other levels, while conversely coordination can vastly expand the benefits of reform. The policies and mechanisms for coordination between levels of administration are thus becoming increasingly important for the development and maintenance of an effective regulatory framework.

National-Local

In the 1990s and the current decade, the Kenyan government, similarly to many other African governments, initiated a series of market-orientated economic reforms, followed by a comprehensive program of reforms also in the public sector and local government. However, Kenya’s governance model of “democratic centralism” has constrained the country’s ability to undertake comprehensive political decentralization whereby effective power and autonomy are transferred to subnational levels. Given the unitary structure of the state, no sub-national governments exist that are constitutionally empowered to make decisions over a specified range of government functions and services. Rather, the country has multiple subordinate levels of the same government (e.g., central, provincial, district). The current legislation gives all local authorities – City, Municipal and Town Councils – similar responsibilities. In practice, however, the established municipal councils are able to provide a wider range of services than the cities, towns, and some newer municipalities.

In terms of management, the districts are headed by the district commissioners, appointed by the president and assisted by divisional officers, chiefs and sub-chiefs. Divisional officers, chiefs and sub-chiefs have responsibility for the divisions, locations, and sub-locations. The district commissioner is accountable through the provincial administration to the Office of the President. The City and Municipal Councils are led by a mayor, whereas the Town and County Councils fall under the leadership of a chairperson, elected by the councillors following the local elections. A town clerk, appointed by the PSC, is the head of the paid service in the city, municipal and town councils; a country clerk, also appointed by the PSC, is the chief officer in the country councils.

The business licensing reform demonstrated in practical and specific terms the need for cooperation between central government and local government in carrying out consistent regulatory reform. Initially, the Working Committee did not contain representation from the MOLG, primarily because licensing was considered to be a central government issue (the introduction of the SBP several years previously having been thought to have rationalized licensing at the local authority level).

However, the review carried out by the Working Committee revealed, first, that the SBP violated good licensing practice, in that many of the licenses issued by local authorities were for revenue-raising rather than regulatory purposes, and, second, that the adoption of the SBP had not

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34 “Statement by the Prime Minister during the press conference held on 18th May 2009 at the KICC following the 3rd Round Table meeting between the government and private sector”
prevented introduction of other licenses by local authorities. Consequently, the committee invited the MLG to participate in its work and discussions. MLG’s participation in the licensing reform was important because it provided a forum for discussing the implications of licensing reform on local governments’ revenue position.

National – International

Kenya is a member of the East African Community and the Common Market for Eastern and Southern Africa (COMESA).

The Treaty for the Establishment of the EAC was signed on Nov. 30, 1999, at Arusha, Tanzania, by the three partner states: Kenya, Tanzania, and Uganda. It entered into force on July 7, 2000, after the necessary ratification. It rose from the ashes of the former Community which was formally dissolved in 1977 in an atmosphere of mutual recrimination, barely 10 years after its creation in 1967. The first step has been to create a Customs Union, the protocol for which was signed in 2005. A common tariff was adopted in 2007. Currently, a draft protocol for the creation of a Common Market is being finalized.35

Kenya has created a Ministry of East Africa Community Affairs. The ministry has a senior level position for regulatory reform, which has not yet been filled.

Regulatory reform in Kenya has not yet been driven by the demands of the EAC, since the EAC has yet to devise formal regulatory standards for its members. However, there are a number of regulatory reform areas that are now being developed as a result of the Customs Union and the Common Market. In the case of the Customs Union, each of the member countries is carrying out customs modernization projects, which are meant to lead to harmonization of customs procedures. In addition, attention is being paid to non-tariff barriers (NTBs), which have been identified as serious hindrances on trade and business operations.

Following the signing of the Customs Union in 2004, the East Africa Business Council36 commissioned a study to identify the scope and severity of NTBs. The study found that NTBs have evolved around business registration and licensing, customs procedures, police road checks, road axle regulations, and standards and certification requirements. Between November 2006 and February 2007, a follow-up Community Business Climate Index Survey was conducted to assess the business climate and to estimate the impact on business operations. Subsequently, the NTB Monitoring Mechanism was developed as a joint initiative of the EABC and the EAC Secretariat to identify, report on, and monitor the status of NTBs.37 It is to be expected that the Kenyan government, and in particular the MCTI, will be examining more closely the harmonization of its policies and regulations with those to be adopted by the EAC.

Kenya is also a member of COMESA, which is planning to introduce formally a Customs Union at its next Head of States meeting in mid-2009, with the first step being an agreement on the Common External Tariff (CET), a set of taxation rules, which will be binding to all countries in the trading bloc. There will be implications for national Kenyan regulations in the future as the Customs Union is implemented.

One issue that has emerged as these international agreements are discussed within Kenya is whether the MCTI has a clear mandate for negotiating treaties. Calls have been made for Parliament to formally endorse the Ministry’s rights to negotiate these treaties.

35 The draft protocol is being presented to the 7th meeting of the Sectoral Council on Legal and Judicial Affairs, scheduled for April 16-24, and then to the Summit of Heads of EAC Governments, scheduled for April 29-30, 2009.

36 A consortium of traders from the member countries.

37 For details, see “Proposed Mechanism for the Elimination of NTBs in EAC,” a study carried out for EAC and EABC by Simon Ngatia Ihiga (Trade and Investment Consortium, Nairobi) and ICON Institute, under the GTZ Project “Support of Regional Business Organizations in East Africa (SRBO-EA).”
Administrative transparency and predictability

Transparency of the regulatory system is crucial to establishing a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps ensure against undue influences by special interests. It reinforces the legitimacy and fairness of regulatory processes, but it is not easy to establish in practice. Transparency involves a wide range of practices, including standardized processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; and implementation and appeal processes that are predictable and consistent.

Provisions for law-making procedures

Transparent and consistent processes for making and implementing laws and regulations are fundamental to ensuring public confidence in the rulemaking process. Kenya does not have specific requirements or procedures for making laws and regulations. However, the Constitution provides a basic framework for the law-making process. Section 30 of the Constitution gives Parliament the right to make laws, and stipulates that no other person or body has this right, except when conferred by an Act of Parliament, and allows the Cabinet and individual MPs to propose bills to Parliament.

Procedures in Kenya for policy- and law-making are well established, but there is no unified policy process, or minimal standards that must be adhered to. Each ministry tends to develop its own procedures. Government policy is ordinarily formulated within a ministry, with policy proposals submitted to Cabinet for deliberations by the originating ministry. Policy proposals must be discussed and formally adopted at Cabinet meetings, reflecting the principle of collective responsibility, which is enshrined in section 17 of the Constitution. Subsequently, policy papers may or may not be translated into law. One of the criticisms of policy- and law-making in Kenya is that the policy development is too often truncated,
and it is left to the legal drafting to establish the policy principles. Policies that need to be translated into law are subjected to the legislative process, which is summarized below and detailed in Appendix D. The administrative process of originating legislative proposals from government ministries, in principle, permits no exceptions or short-cuts. The proposals must be presented at the Cabinet level, defended by the relevant ministry and discussed and adopted by the Cabinet.39

When a ministry identifies a need for legislation on a particular issue, the ministry concerned prepares a non-legal draft paper setting out the objectives of the legislation and the problems it seeks to solve. The Attorney General’s (AG) office40 is supposed to offer its legal comment and advice on the proposed legislative action before the proposal is submitted to the Cabinet for approval. Before the bill is drafted, the relevant ministry should submit a memorandum to the Cabinet seeking its approval and outlining the purpose of the proposal (see Box 1 for details of the contents of the memorandum). This request must be presented by the sponsoring minister under cover of a letter to the Secretary to the Cabinet.

The Cabinet will consider the memorandum and if it approves, the approval shall be communicated to the sponsoring ministry in a letter signed by the secretary to the Cabinet and copied to the AG. This letter gives directions for the preparation of the formal legislation concerned. The communication from the Secretary to the Cabinet authorizes the sponsoring minister, through the schedule officer of the ministry, to issue full drafting instructions to the legislative Drafting Division of the AG’s office. Drafting instructions are in the format shown in Box 2.

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*Box 1: Cabinet Memorandum*

The Cabinet Memorandum should specifically set out the following:

(a) the purpose of the memorandum;
(b) the background of the proposed legislation;
(c) issues for consideration by Cabinet;
(d) inter-departmental or inter-ministerial consultations that have been held with bodies or agencies of relevance;
(e) financial considerations of the proposed legislation supported by a statement that the Ministry of Finance has been consulted;
(f) employment considerations, if any;
(g) whether or not there is existing legislation based on the same policy;
(h) whether amendment or new legislation is required, and
(i) the action recommended (by the Minister) to be taken by Cabinet.

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38 Section 30 of the Constitution vests legislative power in Parliament, which consists of the president and the National Assembly. Under section 31 of the Constitution, the National Assembly comprises elected and nominated members of Parliament and *ex officio* members - attorney-general and the speaker of the National Assembly. Parliament exercises its legislative power through bills passed by the National Assembly. A bill is the formal expression of the will of the National Assembly and becomes law upon receiving a formal assent from the president.

39 Some exceptions to the general process, however, exist:

- **Private members’ bills** Private members are permitted to originate bills for discussion in the House, although it is uncommon due to the technical aspects of drafting a bill and because procedures are stricter and more time-consuming than for public bills.
- **Combining the readings** Under Standing Order no. 108, a vote can permit more than one stage of a bill to be considered in one sitting.
- **Period between publication and debate** A bill must be published in the Kenya Gazette before it is introduced in the House, and after publication, 7 days (for consolidated fund bills, appropriation bills or supplementary appropriation bill) and 14 days (for other bills) must lapse before the bill is introduced in the House. This can be shortened by a House vote under Standing Order no. 107.
- **Subsidiary legislation** Under the provisions of the Interpretation and General Provisions Act (Cap. 2), certain officers in government, including ministers, may promulgate rules, regulations, orders and directives that derive their force of law from parliamentary legislation. Delegated legislation is designed to save time of the legislature and to cater for matters that are too detailed to be specified in a bill; matters that require flexibility; and those in which future developments cannot be foreseen.

40 The AG is the principal legal advisor to the government and is also an *ex-officio* member of Parliament under section 36 of the Constitution. His/her role in Parliament is advisory and non-voting.
When drafting the bill, the legal drafters are expected to make a thorough examination of the provisions of all the relevant domestic and international legislation and to fit the provisions of each bill into the structure of statutes in Kenya as a whole. During this stage, there will be, if necessary, consultations between the Legislative Drafting Division and the sponsoring ministry until the drafting is finalized.

Upon finalization, the draft bill is submitted to the sponsoring minister and the AG, who both ensure that it conforms to the original proposals agreed to, that personal liberties are sufficiently protected, and that it is unlikely to face any procedural traps during its debate in Parliament. The draft bill, accompanied by an explanatory memorandum, is then submitted by the relevant minister to the Cabinet for approval before it is tabled in Parliament for debate. If approved by the Cabinet, the secretary to the Cabinet communicates the approval to both the AG and the sponsoring ministry.

Upon communication of approval to the AG’s Office, the Legislative Drafting Division of the AG’s Office sends the bill to the government printer, where it is printed and published in the Kenya Gazette for 14 days, as provided by the Parliamentary Standing Orders. The 14 day period gives members of Parliament, the public, and professional bodies the opportunity to peruse the Bill and make any representations before it is debated. As an outcome of any representations made and emerging new factors, the responsible ministry may make amendments to the bill. The AG’s office must then be consulted on the form of such amendments and on whether those involve consequential changes to other provisions of the bill. If any proposal to amend a published bill raises a matter of principle, it may be necessary for the relevant minister to consult the Cabinet.

Upon printing of the final draft bill, the required number of printed copies is sent by the government printer to the clerk of the National Assembly, the relevant ministry and to the attorney-general. The clerk also distributes copies to members of Parliament. After the expiry of the 14 days, or earlier in exceptional circumstances, the bill is tabled in Parliament by the sponsoring minister and goes through the parliamentary process of passage into an Act of Parliament. The fundamental stages before a bill becomes law are: presentation and first reading; second reading; committee stage, report stage, and third reading (for details of these stages, see Appendix D). After the third reading, a final vote is taken and, if approved, the bill is deemed successfully passed by the National Assembly. The clerk prepares the bill into a draft Act of Parliament with the same name as the bill and submits it to the AG for checking and onward transmission to the government printer for proofreading. The AG arranges for presidential assent, after which

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Box 2: Format of Legislative Drafting Instructions

Legislative drafting instructions follow the contents of the Cabinet memorandum and include:
(a) objectives intended to be achieved by the bill;
(b) reports on the policy matter including any relevant legal opinions offered;
(c) references to relevant existing legislation;
(d) indication of any consequential amendments, transitional or savings provisions required;
(e) prospective commencement date, if required, and
(f) the name of the schedule officer in the sponsoring ministry, department or agency, who is to liaise with the Legislative Drafting Division of the AG’s department.

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41 According to the Standing Orders, all bills other than appropriation bills (Consolidated Fund bills) should be published in the Kenya Gazette not less than 14 days before their First Reading in the National Assembly. However, where it is determined and certified by a Committee of Parliament that the subject matter of a bill is urgent, the bill may be introduced in Parliament without publication. A bill may also be laid in Parliament after it has been published in the Kenya Gazette, but before the fourteen day period has elapsed if Parliament considers the matter to be urgent.
the Act is then published in the *Kenya Gazette*, as provided under the Constitution (Section 46(6)), without which the law cannot come into operation. However, Parliament may defer implementation of the law and can make laws with retrospective effect.

Due to the large number of bills set for debate at any time, Parliament is unable to discuss all of them. This is principally because the legislative sessions in Kenya are very short. As a result, the Drafting Priorities Committee has to settle the order in which bills are to be discussed in the House.42

The concentration of government legislative drafting in the AG’s office ensures consistency. However, the department is woefully undermanned. There are few personnel in the AG’s office who are trained to draft legislation and those that do get trained tend to be recruited away. This has left the department with 4-5 staff members who handle work that used to be done by more than 10 people five years ago.

**Provisions for consultation**

Consultation is a systematic attempt to discover the opinions of groups affected by regulation and to obtain data useful in regulatory development and analysis. It may be general (e.g. advertisement for comment) or specifically targeted (e.g. focus groups, working parties). Consultation can contribute to regulatory quality by bringing new ideas, perspectives and data to the attention of regulators; helping to balance opposing interests and reduce the risk of capture; identifying unintended effects and practical problems; gathering information on compliance issues; and providing a quality check on the administration’s assessment of costs and benefits. Consultation can also enhance voluntary compliance by creating a sense of “ownership” of the resulting regulations, reducing reliance on enforcement and sanctions.

**Current policies and practices**

*Consultation within government:* Consultations among ministers and the relevant government departments must precede submission of proposals (by the responsible minister) for discussion at the cabinet level. The permanent secretary of the sponsoring ministry is responsible for ensuring that other affected government departments are adequately consulted in advance and that other ministries are briefed for discussion at the cabinet level. Once the proposal is submitted to the cabinet, the cabinet office circulates all the supporting documentation to all the ministers before the issue is discussed at the appropriate cabinet committee. After discussions at the cabinet committee, the committee tables a report before the cabinet for approval by the entire cabinet. As a matter of practice, the cabinet and its committees do not vote on issues presented before them for discussion. Rather, the president or the relevant committee chairperson calls for consensus after ministers have been given an opportunity to express their views on the issue. Once consensus is reached, the Cabinet Office, which is the Secretariat of the Cabinet, communicates the decision to the relevant ministry.

*Public Consultations:* There is no requirement for stakeholder consultations during the development of the initial cabinet papers, but equally there is nothing that prevents such consultations, and in practice, ministries usually hold stakeholder consultations on matters that are highly technical or are likely to have far reaching consequences. For matters that would require technical input or investigations before a policy is developed, the government often forms a task force, whose terms of reference include seeking views from stakeholders before presenting its report. However, even where

42 The bills are categorized as follows:

a) Absolutely necessary bills: these include finance and borrowing power bills requiring renewal before expiry of previous legislation;

b) Bills touching on treaty provisions;

c) Bills on government’s main policies e.g. those concerning political pledges and administrative changes or reforms;

d) Law reform bills; and

e) Bills in reserve: these include those that can be brought forward if a place becomes available for them.
such stakeholder consultations are undertaken, the ministry involved is under no obligation to take into account what stakeholders say. It is not unusual, therefore, to have situations where the government ignores stakeholder sentiments.

One of the avenues through which the business community, the civil service and other interested groups can express their views on any proposed legislation is through comments and representations after a draft law has been published in the *Kenya Gazette*. In the case of tax issues, the KRA has introduced procedures for consulting with clients/customers. The experience appears to be seen in a favorable light by the stakeholders. PSF and other representative groups are gaining experience in representing their positions to government and dealing with policy issues.

However, there appears to be considerable variety in the extent to which stakeholders outside the government are involved in the process. The government has introduced consultation with selected stakeholders (civic society, business associations and donors) in the development of major strategy documents – such as ERS, Vision 2030, PSD Strategy and PSDS PIP.43 The Public Service Reform Program (PSRP) has emphasized citizen/stakeholder consultation in the development of reform programs, and the PSRP secretariat has developed its own techniques and methodologies for conducting consultations. The business licensing reform project also carried out extensive consultations with both the regulators and business associations through a series of workshops focusing on sectoral licenses. These consultations were important in establishing priorities for reform.

Kenya’s transfer into a multi-party system of governance has been followed by a rapid growth in civil society networks and groups. Growth in civil

Communication of regulations

Another dimension of transparency relates to the need for the authorities to effectively communicate the existence and content of all regulations to the public. This means that the regulations are available to the public at reasonable cost, in a language that can be easily understood. Communication is also essential to achieving effective compliance.

Kenya has taken important steps to make its laws available to the population over the past 20 years. In 1994, responding to inadequate infrastructure for publication of legislation, the National Council for Law Reporting Act created the National Council for Law Reporting (NCLR), which was given an exclusive mandate for: “publication of the reports to be known as the Kenyan Law Reports45 which shall contain judgments, rulings and opinions of the Superior Courts of record and also undertake such other publications as in the opinion of the Council are reasonably related to or connected with the preparation and publication of the Kenya Law Reports” (section 3 of the act). Although

43 In the case of PIP, it was subjected to stakeholder consultation between January and March 2007, when three workshops were held to confirm the priorities.

45 The Kenya Law Reports are the official law reports of the Republic of Kenya which may be cited in proceedings in all courts of Kenya (section 21 of the act).
constituted in 1996, the NCLR did not start effective operations until 2002, when the government provided staff and financial resources. The NCLR has established the following objectives:

- to accelerate the publication of the Kenya Law Reports, in order to bring itself up to date with the courts’ calendar in the shortest time possible;
- publish simultaneously both previous and current law reports in book form and also over the medium of the internet via the domain name: www.kenyalaw.org;
- liaise with the government printer in the online publication of Kenyan statute law and other legal materials;
- publish monthly and weekly commentaries on emerging legal issues as embodied in judicial opinions;
- make representations to the Kenya Law Reform Commission in areas of law that may be in need of reform;
- assist the members of the public, learning institutions, non-governmental organizations and government departments in the acquisition of case law and other relevant legal information.

The first volume of the re-launched Kenya Law Reports, the [1981] KLR, was released in January, 2002. The Council has subsequently published 11 years of this backlog (1981–1991) and simultaneously published law reports for four recent years (2001-2004). In 2006, the Council began publishing specialized law reports dedicated to specific areas of law, beginning with Environment and Land Law reports. NCLR now publishes largely through its Web site (http://www.kenyalaw.org/update/), which contains copies of all legislation and legal judgments of the various courts in Kenya.

An unofficial source of legislation and related materials is provided by a Web site (http://www.mzalendo.com/2006/05/), which is geared to publicizing the actions of Parliament and its members.

While communication of legislation and court cases is now well-established, it appears that, in general, communication of regulations and secondary legislation is less adequate. Regulations are required to be published in the Official Gazette, and this is the primary source of information for the business community, other than making use of the information-gathering activities of private lawyers. A computer-based registry for business licenses is under construction as a result of the business licensing reform program, but it is not yet functioning because of delays in appointing staff.

One general issue that affects the communication of information from government agencies to the population is the existence of the Official Secrets Act, which imposes a statutory obligation on all civil servants and officials not to release information obtained in the course of their duties. There

46 The NCLR, which is a corporate body, is managed by a board comprising the chief justice; attorney general; two judges, one each from the High Court and the Court of Appeal; a public officer; two advocates representing the Law Society of Kenya; the Dean of the Faculty of Law, University of Nairobi; the government printer or his representative; and the person appointed as the editor of the Kenya Law Reports under the Act.

47 The affairs of the Council are presently managed from its secretariat situated on the ground floor of the Milimani Commercial Courts Building, off Ngong Road in the Upper Hill area of Nairobi.

48 This does not appear to be the case of local government licenses. Para 2.78 of the report of the Working Committee on Regulatory Reform states “most (licenses) have not been published in the Kenya Gazette and are actually not available for inspection by the public or even by the business people who are affected by them. This has led to a lot of confusion and misunderstanding amongst the private sector while at the same time creating rampant opportunities of corruption for the licensing and enforcement officers.”

49 There is a statutory requirement for each official to swear and sign an oath that any information acquired in the course of official duties shall not be released to any person...
have been instances when the Act has been used to conceal important governance, judicial, and law and order information from the public. These cases have lead to requests from the media and the public for the Official Secrets Act to be repealed or modified through the passage of a Freedom of Information Act that would allow public access to information and to impose an obligation on government to publish information. To date, there has been no progress in resolving this issue.

Compliance and enforcement of regulation

The adoption and communication of a law or regulation is only part of the regulatory process. The law can achieve its intended objective only if it is adequately implemented, applied, complied with and enforced. A low level of regulatory compliance threatens the effectiveness of regulations, public policies, and ultimately the capacities and credibility of governments in taking action. Compliance and enforcement issues can be considered in terms of processes and practices as well as institutional structures.

There are extensive requirements in the country’s regulatory regime for inspection on a regular basis. According to the DB2009, these requirements for inspection often lead to significant delays in completing regulatory processes, because of a shortage of inspectors or because the agency has insufficient transport. Inspections conducted by different agencies are rarely coordinated, in part because of the difficulty of sharing documentation.

In general, levels of compliance with basic business and investment climate regulations are less than the government would like to see. The size of the informal sector is testament to the fact that businesses can avoid inspections and compliance obligations related to licensing and permitting. This reflects the fact that many agencies have insufficient staff and resources to be able to cover all enterprises. This compels them to adopt a “triage strategy” whereby only the more significant enterprises are covered. Another reason why compliance is not as high as government intends may be costs, as is suggested by the extent of the informal sector. The costs of complying may be high in absolute terms for many businesses or high in relation to any benefits that flow from compliance.

In addition, the fact that government agencies typically do not share information may mean that a business that is part of the formal sector in one area of policy is not part of the formal sector in another area of policy. Work conducted under the GJLOS Program has revealed that the most easily enforced laws and regulations are not those backed by compulsion but those that are responsive to and have the backing of citizens, that is, are in tune with society’s expectations and standards. Laws and regulations should therefore align themselves as much as possible to the societal realities; where proposed laws and regulations are not in alignment, they need to be backed by activities that are geared to changing expectations and realities.

An area of concern has been the uneven enforcement of regulations. In part due to a shortage of staff but also corruption. It is reported that those who refuse to pay bribes can have their premises inspected on a Friday afternoon to be arrested and kept in jail over the weekend. This is a source of concern for businesses in Kenya. The prime minister recently announced that he will issue a directive to stop these practices.

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50 Such as in the Goldenberg and Anglo Leasing scandals.
51 During the preparation of the Administrative Barriers Study in 2003/4, IC learned that businesses frequently were required to provide transport to officials in order to accelerate inspections.
52 For example, a small business in the rural areas may be paying a license fee to the local authority for its single business permit, but may be eluding the tax authorities because it is not registered as a taxpayer.
Public redress and appeals

Mechanisms to redress regulatory abuse must also be in place, not only as a fair and democratic safeguard in a rule-based society, but also as a feedback mechanism to improve regulations. The first stage of seeking redress is to complain directly to the government agency that has taken the decision; the second stage is to seek review by the courts; and there may be other institutions for redress, such as arbitration, mediation or an Ombudsman.

The first stage of seeking redress against administrative and regulatory decisions in Kenya is to request reconsideration by the agency that has taken the decision. In a number of cases, legislation defines the redress procedures; in other cases, legislation may provide for such procedures without necessarily providing clear guidelines for how the process should be structured. In 2006, the Ministry of Public Service published a Service Charter which, inter alia, provided guidelines for how the government should deal with complaints and enquiries. One agency that has been in the forefront of recent efforts to set up complaint and enquiry machinery is the (KRA). KRA has established a 24-hour Complaints and Information Center under the office of the Commissioner General, equipped with hotlines, fax line, voice mails, and e-mail facilities to receive complaints and information on irregularities.

The second avenue for dealing with disputes related to business is to resort to court proceedings under civil law. The main types of appeals in Kenya are appeals from subordinate courts and tribunals to the High Court, and appeals from the High Court to the Court of Appeal. In Kenya, especially in Nairobi, there are specialized commercial courts that deal exclusively with disputes of a commercial nature.

Courts are accessible to all businesses as long as they satisfy the requirements for institution of cases, which may be either pecuniary or territorial. Pecuniary jurisdiction is determined by the value of the subject: magistrate’s courts have a pecuniary limit on the matters they can handle, while the High Court has unlimited jurisdiction and can handle any matter regardless of the monetary value. Territorial jurisdiction depends on where the dispute has occurred; a dispute may only be instituted in the area where it has occurred. The courts can deal with both cases between businesses and also cases between business and the government.

The High Court is empowered through law to check administrative excesses. Administrative law relates to decisions of public officers or organs of central government or public authorities, which may affect the rights or liberties of the citizens and which are enforceable by the courts of law. The High Court has power to grant the orders of mandamus, prohibition, and certiorari to any party that applies for judicial review of decisions. An order of mandamus is issued where there is a duty of a public or a quasi-public nature imposed by statute, and compels the fulfillment of a duty where there has been indolence on the part of the body or officer concerned. An order of certiorari is addressed to inferior courts and requires the proceedings of that court to be transferred into a higher court and examined for validity. An order of prohibition prevents implementation of an order that has been issued where there is no valid jurisdiction.

The process of applying for judicial review involves two stages, namely, application for leave and the substantive application for judicial review orders. As the first step, the applicant, without giving notice to the administrative authority whose order is to be challenged, seeks permission from the court to apply for judicial review. During the application for leave, the court’s duty is to conduct a preliminary view of the merits of the application.

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54 http://www.kra.go.ke/customercare/complaintsandinformationcentre.html
55 The substantive jurisdiction is found in the Law Reform Act (Cap. 26), while the procedural aspects are provided for under Order 53 of the Civil Procedure Rules made under the Civil Procedure Act (Cap.21).
on the basis of the relief sought and the grounds upon which it is sought. If the court is satisfied with the application, it will grant leave to fill a substantive application for judicial review. After leave has been given to apply for judicial review, the second stage entails a formal, substantive application, which is brought to the High Court by way of a notice of motion. The suit is heard in open court, and the court will adjudicate.

Courts are considered to have both advantages and disadvantages. On the positive side, courts are open to all litigants, court orders are final and enforceable, and specialized commercial courts are available to deal with commercial disputes. On the other hand, court cases are expensive, especially for small and medium enterprises (SMEs), and the courts tend to suffer from a backlog of cases.

There are also various administrative tribunals in Kenya. Established by acts of Parliament, tribunals are bodies that are given the powers of an administrative or quasi-judicial nature and which may be regarded as a separate courts dealing with some specific rights and duties. Administrative tribunals that deal with business-related issues include the following:

(a) **Kenya Industrial Court:** The Kenya Industrial Court (KIC) is established in accordance with the provisions of the Labor Institutions Act. Its objective is to adjudicate on disputes between employers and employees, such as those dealing with dismissal and non-payment of dues to employees. Decisions of KIC in any trade dispute can be appealed to the Court of Appeal: the appeal, however, is restricted to matters of law only and not facts.

(b) **The Business Premises Rent Tribunal:** The Business Premises Rent Tribunal (BPT) is established under section 11 of “The Landlord and Tenants (Shops, Hotels and Catering Establishments) Act (Cap. 301). The Tribunal handles disputes touching on rental businesses premises that fall under the Act. The Business Premises Rent Tribunal is established to set out reasonable tenancy standards and to ensure that the landlords do not charge excessive rents for business premises. The powers of this tribunal are set out in Section 12 of the Act.

(c) **The Public Procurement Administrative Review Board:** The Public Procurement Administrative Review Board (PPARB) is a continuation of the Public Procurement Complaints, Review, and Appeals Board, which was established under the Exchequer and Audit (Public Procurement) Regulations, 2001 (now repealed). The PPARB was established to promote and uphold fairness in the Public Procurement System through judicious and impartial adjudication of matters arising from disputed procurement proceedings. Any candidate to a procurement process who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by the Public Procurement and Disposal Act or the Public Procurement and disposal Regulations, 2006, may seek administrative review. The Board is autonomous and has nine members appointed by the minister; six of the members are nominated by the Kenya Association of Manufacturers (KAM), Law Society of Kenya, Architectural Association of Kenya, Institute of Certified Public Accountants of Kenya, Kenya Institute of Supplies Management, Chartered Institute

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56 This Act defines a “controlled tenancy” as a tenancy of a shop, hotel, or catering establishment, which is in written form and is for a period not exceeding five years. The term “shop” means premises used wholly or mainly for the purposes of a retail or wholesale trade, or business, or for the purpose of rendering services for money, or money worth. This definition is wide enough to cover offices, clinics, etc. A “hotel” is a place in which meals and/or accommodation; are supplied, or available for supply, to at least five adult persons. A “catering establishment” means premises in which food or drink is sold for consumption on the premises by persons boarding on the premises.

57 Established through Section 25 of the Public Procurement and Disposal Act, 2005 (PPDA).

(d) Restrictive Trade Practices Tribunal: It is established under Section 64 of the Restrictive Trade Practices, Monopolies & Price Control Act, Chapter 504. The Tribunal falls administratively under the Minister for Finance, but operates independently as a court of first appeal. Once constituted by the Minister for Finance, the Tribunal is absolutely independent of the Office of the Minister and the Office of the Commissioner of Monopolies and Prices. The principal functions of the Tribunal is to arbitrate over competition policy disputes resulting from ministerial orders made on recommendations made by the Commissioner for Monopolies and Prices. The principal functions of the Tribunal is to arbitrate over competition policy disputes resulting from ministerial orders made on recommendations made by the Commissioner for Monopolies and Prices under the Act. The Tribunal has powers to overturn, modify, confirm or refer back to the minister orders appealed against by aggrieved parties. It deals with cases already handled by the minister where the parties are not in agreement. Such cases will normally have been investigated and handled by the Commissioner for Monopolies and Prices before being considered by the minister. Orders and decisions of the Tribunal are subject to appeal to the High Court of Kenya.\(^58\)

(e) Tax Appeal Tribunal: This Tribunal is established under section 32 of the Value Added Tax Act to deal with disputes arising under the Act. The Tribunal’s decisions may be appealed to the High Court.

(f) The Co-operative Tribunal: Established under the Co-operative Societies Act, the Tribunal handles all matters relating to Co-operative Societies in Kenya.

(g) Water Appeals Board: This is an administrative board established under the Water Act of 2002 to deal with disputes under the Act.

(h) Sugar Arbitration Tribunal: This Tribunal is established under section 31 of the Sugar Act. It arbitrates on disputes between parties under the Sugar Act.

(i) Energy Tribunal: Established under the Energy Act (Act No.12 of 2006), it deals with appeals from decisions of the Energy Commission established under the Act.

(j) Capital Markets Tribunal: This Tribunal is established under section 35A of the Capital Markets Act (Cap.485) to handle disputes arising under the Capital Markets Act.

Administrative Tribunals in Kenya are considered to have both advantages and disadvantages. On the one hand, decisions are handed down relatively quickly because the tribunals are not overburdened with cases, procedures are straightforward and generate low costs to the appellants, experts in their fields are hired, and the tribunals are accorded discretionary powers so that they can be flexible. On the other hand, discretion may be so wide that decisions are inconsistent, proceedings are sometimes held in private, and parties are denied representation by lawyers, and there are accusations that officials working on the Tribunal do not always act impartially.

Kenya has also established a number of institutions that have the potential to provide redress against administrative and regulatory abuse. These include:

(i) Anti-Corruption Commission (ACC). Established in 1980, it has three main functions: prevent corruption; investigate and prosecute offenders; and educate the public about corrupt practices and foster public
support in the fight against corruption. The ACC consists of five part-time commissioners who are answerable to Parliament and supervise the director-general who heads the directorate. The ACC has established offices in all the provincial centers of the country. A review of ACC’s strategy and organizational structure was conducted in 2003, following which revisions were introduced. Also in 2003, a National Governance Baseline Survey was carried out to measure public perceptions of corruption and public service delivery, and to develop a comprehensive strategy to combat corruption and enhance public service delivery. The FNDP committed the government to a follow-up National Governance Survey.

ii) Commission of Investigations. Established in 1973, the Commission is charged with redressing grievances from members of the public and employees in the public service which arise as a result of maladministration or abuse of office by public organizations. In 2004, the Commission handled a total number of 825 grievances, out of which 526 were concluded. In 1998, a strategic plan for restructuring the commission was developed for the following five years, but was never formally approved and implemented.

iii) Judicial Complaints Authority (JCA). Established in 1999, the JCA began operating in 2003, with a mandate to investigate complaints from the public on alleged misconduct by judicial officers and to make recommendations for disciplinary action.

iv) Office of the Auditor-General (OAG). Established under the Constitution, the OAG’s function is to submit an audit report to the president on the accounts relating to the general revenues of the country and expenditures appropriated by Parliament, and accounts relating to the stocks and stores of the government. The OAG is also mandated to audit every statutory body, all private institutions that receive government grants, subsidies or subventions, government ministries and departments, and to report to Parliament on the results of the audit. The OAG also conducts environment, IT and performance audits.

Finally, Kenya has created an ombudsman function. The official name for the ombudsman is the PCSC, a public body established by the president in June 2007 as part of the government’s efforts to provide Kenyans with better public services. The PCSC is essentially a “one-stop-shop” (see Box 3) where any case of misuse of office, corruption, unethical behavior, breach of integrity, maladministration, delay in provision of necessary services, any form of injustice, courtesy, incompetence, misbehavior or any efficiency or ineptitude on the part of public officials can be reported, by fax, e-mail, by post or hand delivery.

Policy instrument alternatives

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. In the OECD, the range of policy tools and their use are expanding as experimentation occurs, learning is diffused, and understanding of the markets increases. Increasingly, guidelines for regulators in OECD countries require ministries and agencies to consider whether “command and control” regulation is likely to be the most effective policy instrument or whether other options might succeed in achieving policy goals at lower cost. But the use of regulatory alternatives in OECD countries, while

59 Judicial officers are judges, including the chief justice, deputy chief justice, chairman and vice chairman of the Industrial Relations Court, magistrates, Local Court justices, and all persons who have the power to hold or exercise the judicial powers of a court.


61 The complaints have to be written and signed by the complainant.
increasing, is still at a relatively low level. At the same time, administrators, rule-makers and regulators often face risks in using relatively untried tools. A clear leading role – supportive of innovation and policy learning – must be taken by reform authorities if alternatives to traditional regulations are to make serious headway into the policy system.

Government intervention should be based on clear evidence that a problem exists and that government action is needed. This should include assessments of the size of the problem, of likely government effectiveness and of the likely costs of government intervention. Good practice in this area is increasingly seen as requiring consideration of both regulation and alternative policy tools.

In the absence of any policy guidelines in Kenya, ministries that are responsible for regulatory processes are not required to consider alternatives to regulation of the traditional “command and control” type. To the extent that the purpose of regulatory reform in Kenya has been clearly stated by the government in its various strategies, there is clearly scope for ministries to take innovative approaches. However, there is little documentation of such approaches having been evaluated or considered.

However, one area in which self-regulation has developed within Kenya has been for NGOs. In the late 1990s, improvements in government-NGO relationships resulted in changes in the government’s perception of NGOs, enabling meaningful dialogue (including discussions concerning the desire of NGOs to regulate themselves) to be developed. In addition, donor pressures, particularly from the IMF and the World Bank, resulted in imposition of conditions for the grant of aid, the reform of laws, and the introduction of regulatory frameworks that would improve the governance capacity. The Kenya self-regulatory model has consisted of
internal rules that govern the operations of NGOs, rules of conduct for their boards, and their internal financial practices, developed within a legislative framework that permits self‐regulation. Such delegation by the government of its powers was an attempt to strike a reasonable balance between the freedom of NGOs to regulate themselves without undue political interference, and the government’s duty to protect its citizens from the activities of unscrupulous NGOs.63

Use of RIA for understanding regulatory effects

RIA provides a systematic basis for choosing the best regulatory (or non‐regulatory) alternative to respond to a problem. A range of different approaches to RIA exist, depending on policy preferences and administrative capacities. At the core of any RIA system, however, are the following:

- an assessment of selected types of impact of specific types of regulation;
- assessment methodology according to pre‐defined standards and procedures; and
- a process of quality control by an independent government agency/unit.

Currently, a particular approach to RIA has not been developed for systematic application within the Kenyan government. However, the government’s statements over the past two years suggest that introduction of an RIA methodology to assess the costs and benefits of regulation will be introduced gradually as part of the government’s overall regulatory reform strategy. The PSDS Implementation Plan (PIP) for 2007-2012 takes as a given that RIAs will be conducted, and stipulates that RIAs will include assessments of gender‐related business issues and impacts of environment policies and regulations upon businesses.64

Intermediate steps have been taken to introduce a broader concept of cost in the evaluation of regulations, through use of the Standard Cost Model (SCM), which seeks to estimate compliance costs incurred by the businesses being regulated. The first effort was made during the licensing reform exercise, when an estimate of “administrative burdens”66 was made for two of the most important licenses in Kenya, the SBP and Electronic Cash Register (ECR).67 A second effort was made during 2008, when a study was conducted, using the SCM approach, to measure the realized and potential reductions in compliance costs for

62 The Kenya legislation covers a broad range of issues, including: provision for the creation of the right environment for NGO activities; the maintenance of integrity of NGOs; the upholding of “core values”; provision for technical and financial management training for its members; strengthening communication channels between NGOs and government; ensuring that NGO activities are consistent with national policy objectives; setting guidelines for NGO fund‐raising and other programs; and improving NGOs’ networking activities.


64 Chapter 5, Cross‐Cutting Issues, pages 52 and 53, PIP.


66 Administrative burdens are all costs borne by private enterprise related to administrative obligations, and consist of administrative procedures and procedural operations in and by firms, which are mandatory to comply with legislation. Administrative burdens constitute part of the regulated entities’ compliance costs, and administrative costs comprise labour, cost of materials and cost of outsourcing. Administrative burdens are of two types – structural or regular (or annual) and once‐off costs. Structural burdens form an integral part of those administrative costs that recur regularly, for example every month or year. Once‐off burdens occur only once in the life of an enterprise and fall into two categories. The first category applies when changes within existing laws and regulations occur or when new laws or regulations are being introduced. An example of such a category is the introduction of a permit to establish a business. The second category of once‐off burdens occurs as a result of event‐driven obligations, for example applying for VAT registration. Once these once‐off costs are incurred, regular costs then kick in as part of ongoing compliance.

67 Although subject to criticism because of the heroic assumptions required to carry out the calculations, the study had a powerful impact, because it was able to show that the burden of the ECT was some 28 billion shillings, including once‐off costs of 22 billion shillings and structural costs of 7 billion shillings and that the burden for the SBP was 1.35 billion shillings annually.

businesses resulting from the business license reforms undertaken between 2006 and 2007. This study extended the previous study's definition of administrative burdens/costs, by including first, the costs of submitting the licenses, second, the direct financial costs of enterprises incurred when they pay the fees, and third, the opportunity costs of waiting for replies. The study measured licensing costs at three points in time: first, before the reforms were started; second, in mid-2008, when some reforms had been introduced; and third, a future time when all of the reforms in licensing recommended by the BLRC and accepted by government have been implemented. On the basis of the assumptions and calculations, the report estimated that licensing costs were approximately 23 billion shillings before reform, 18.5 billion in mid-2008 and would be approximately 12 billion when all reforms have been implemented. Therefore, licensing costs would be almost halved at the end of the reform implementation, and in GDP terms, licensing costs would have fallen from 1.3 percent to 0.7 percent of GDP.

The second report identifies an agenda for further elaboration of the SCM approach and the incorporation of other costs. The report alludes to the fact that reforms carried out to mid-2008 had resulted mainly in reductions in licensing fees (rather than streamlining of processes and reduced waiting time), and focuses on the fact that this reduction can be reversed by the imposition of other taxes and charges on businesses. The SCM approach captures a significant part of the regulatory costs incurred by businesses, but there are other costs, outside of the compliance costs, that may need to be identified and quantified. In addition, the SCM approach does not capture the costs of administering the licensing system that are incurred by the regulatory agencies themselves. And finally, the focus so far in the measurement of

Kenya's reform impact has been on the cost side, and implementation of a more complete RIA system would necessitate attention being given to estimates of the benefits of regulation.

Building administrative skills for regulatory reform

A skilled and well-trained civil service recruited on the basis of merit is a prerequisite for developing and maintaining high-quality regulations and regulatory policies.

Civil service training in general is managed through the Human Resource Development Division (HRDD), one of four main technical divisions in the Ministry of State for the Public Service (MSPS). HRDD has been placed in the Office of the Prime Minister to coordinate matters regarding the training of civil servants for the current government. The policy objectives governing HRDD's activities are: to ensure that training and capacity building activities undertaken within the public sector advance national goals and priorities; to manage the training function in the public sector in a professional and systematic way; to develop and implement a system in which training funds are targeted to training the right people in critical areas; and to raise the performance levels of the public sector by designing training that is demand-driven, cost-effective, gender sensitive and proactive. HRDD's strategy has been described in the following way:

- to increase the training allocation to at least 1 percent of the recurrent budget;
- to operationalize and harmonize a comprehensive training policy for the public service;
- to integrate private sector contributions to human resource development in the public service;
- to encourage ministries and departments to adapt modern Human Resources Information

69 The study estimated costs through two versions of the SCM: first, a “SCM-light” estimate of the compliance costs of the most costly 20 percent of licenses (which are assumed to generate 80 percent of total compliance costs); and a full SCM estimate of “high priority” licenses.
Systems for effective and efficient management of training;

- to develop client-centered training programs for the public service; and

- to promote career-long training and skills development.

The HRDD’s policy for training is put into effect through a range of civil service training institutes.70

Currently, there are no courses for regulatory reform and RIA being offered within the public sector training institutes. Individuals who have been involved in the Working Committee on Licensing Reform have received on-the-job training, and have been exposed to new skills through the local and international consultants who have been involved in the project.

The final report of the Working Committee recommended that one of the first priorities of the BRRU should be to “develop a plan for training and capacity building of the Unit, and shortly thereafter of other regulatory reform stakeholders, including other business regulating ministries, private sector organizations, parliament.”71

A training program for BRRU and key stakeholders was held last year and two BRRU staff attended an RIA course in Brugge.

70 They include the Kenya Institute of Administration, the Kenya Development Learning Center, and four government Training Institutes at Baringo, Mombasa, Embu and Matuga.

Revisions of existing laws and regulations

Assessment of new regulation is not enough to ensure a high quality regulatory structure. As technology, the economy and society change, existing regulations often become less relevant and effective. Regulatory management should involve periodic reevaluation of whether existing regulations still constitute the best available solution to the problems they seek to address. A systematic approach is required to ensure that all regulations are regularly subjected to this reassessment.

There have been several programs and projects in Kenya to revise and modernize the laws. Like the other east African countries, Kenya is now defining its legal reform programs within the broader context of poverty alleviation and growth, and to bring them into line with its current economic, social and political priorities. The government that came to power in 2002 developed the Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC), whose investment program outlined a three-fold economic recovery agenda consisting of economic growth, equity, and poverty reduction and governance. Since then, the GJLOS reform program has been the central legal reform program, with a primary goal to “improve the quality of life for Kenyans, especially the poor, marginalized, and the vulnerable.”

The GJLOS started from the standpoint that good governance is required for economic development, and that without good governance all other reforms would be difficult to achieve. Financed by a group of 15 donors, the GJLOS program has been implemented in more than 30 government institutions.

To date, the agenda for law reform has been dictated largely by the government. A semi-autonomous agency does exist in Kenya for

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72 This five-year program was launched in November 2003, when a one-year Short-Term Priorities Program (STPP) was started to establish quick wins. A year later, a four-year Medium Term Strategy (MTS) was adopted, which was designed to produce sector-wide reforms in priority areas of governance, ethics and integrity; to promote respect for human rights in government institutions, and to improve access to justice; to promote crime prevention and police and penal reform.

review of legislation: the Kenya Law Reform Commission (KLRC) was established in 1982 with a mandate to spearhead law reform and review legal and judicial processes in the country. Its mandate as contained in Section 3 of Chapter 3 of the Laws of Kenya is: “to keep under review all the laws of Kenya to ensure its systematic development and reform, including in particular the integration, unification and codification of the law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments and generally its simplification and modernization.” KLRC is expected to:

- receive and consider any proposals for reform of the law that may be made or referred to it;
- prepare and submit to the attorney general programs for the examination of different branches of the law with a view to reform, including recommendations as to the agency by which the examination should be carried out;
- undertake, pursuant to any program approved by the attorney general, the examination of particular branches of the law and the formulation by means of draft bills or otherwise, of proposals for reform therein;
- prepare, at the request of the AG, comprehensive programs of consolidation to facilitate the exercise by him of his powers under the revision of laws act, and to undertake the drafting of bills pursuant to any program of consolidation approved by him; and
- provide advice and information to ministries and departments in the government with regard to the reform or amendment of a branch of the law appropriate to that ministry or department.

74 The KLRC’s Web site gives as its vision statement “the realization of a contemporary, simple, coherent legal system that is founded on social needs, justice, equity and good governance,” and defines its mission as “to contribute to socio-economic, legal and political development by simplifying, harmonizing and reforming the laws of Kenya through research and consultations.”

To further strengthen the role of the KLRC, a bill, The Kenya Law Reform Commission Bill, is currently being drafted. The bill seeks to give KLRC greater operational autonomy, to make it more effective and to redefine its objectives, functions and composition. This effort stems from an assessment made by the KLRC commissioners themselves that it is able to work only on government priorities, and that the work program has been established in response to crises rather than a coherent reform program based on policy analysis. There is also a concern that the need for KLRC to respond to these legal crises in a compressed period precludes effective consultation with stakeholders in the drafting of the laws and results in the government facing problems in Parliament.

Reducing administrative burdens

Regulatory paperwork and government formalities can be unnecessarily burdensome on regulated groups if coordination between regulators is lacking, if new technologies are not used to assist in information gathering, and if unnecessary information is sought by regulators. Governments worldwide are adopting programs to reduce the administrative burdens associated with regulatory requirements.

The Report of the Working Committee on Regulatory Reforms for Business recommended that the government adopt a target for reducing by 25 percent the costs of compliance incurred by businesses in selected high-priority areas of regulation, with the objective of securing a serious reduction in the administrative burdens facing enterprises. As part of the 2007–2008 Budget Speech, the minister for finance announced the government’s commitment to reduce red tape imposed on businesses by 25 percent in key regulatory areas over the next three years. While these kinds of targets are useful to bring focus to reform

75 For example, money-laundering bill, international crimes bill, witness protection.
efforts, they need to be translated into more precise measures, which also requires a monitoring and evaluation capacity to generate the baseline and post-reform information that can be used to judge whether targets have been met. There is also one inherent danger in these targets, in that they can encourage reforms to be limited to the numerical target, even where more ambitious changes are feasible.

Use of ICT to support regulatory reform

Once government procedures have been streamlined and redesigned as part of regulatory reforms, use of computerized databases and registries can lead to further improvements in regulatory performance, particularly for enterprises that are a long distance away from the agencies with which they have to deal. ICT can be used to provide information to the users of government procedures, and can also enable users and applicants to submit requests for services in a structured and consistent fashion. Moreover, use of ICT for regulatory and administrative tasks within the public sector is increasingly seen as an important way of combating corruption.

Kenya established its e-Government Program in June 2004, with the objective of providing better and efficient delivery of information and services to its citizens, promoting productivity among public servants, and encouraging participation of citizens in the process of government. An earlier effort had been launched in 2000, when the Ministry of Finance and Planning prepared a Cabinet Memorandum to set up a National Council for ICT. However, the Memorandum was neither discussed nor ratified by the cabinet because by the time the report and memorandum were ready, the National Communications Secretariat (NCS) had been formed in the Ministry of Information, Transport and Communications in accordance with the Kenya Communications Act of 1998. The NCS was given responsibility for advising the Government on ICT policy matters.

The institutional framework for e-Government includes:

- Cabinet Committee on ICT, chaired by the Minister of State for Provincial Administration and National Security, and containing the Minister for Finance, Minister for Tourism, Minister for Information and Communications, Minister for Education, Minister for Higher-Education, Science and Technology, and Minister for Transport. The role of the Committee is to oversee the implementation of the e-Government Strategy.

- The Permanent Secretaries Committee, chaired by the Head of the Public Service and consisting of Permanent Secretaries and Accounting Officers. This Committee is charged with coordinating implementation of e-Government initiatives and ensuring institutional support and resources for implementation of e-Government. The Committee meets at least once a month.

- Ministerial e-Government Committees, which review the various ICT policy initiatives in the Ministries, undertake audit of ICT capacity, identify technical and institutional gaps and inadequacies, and make recommendations for future activities. Each Committee is chaired by the Permanent Secretary, and consists of the Head of the Central Planning Unit, the Chief Finance Officer, Senior Principal Personnel Officer, Deputy Secretary/Administration and Head of ICT Unit. The Ministerial Committee meets once a month.

The Directorate of e-Government (DeG), under the Head of Public Service, is the technical team which serves as the e-Government Secretariat, charged with the coordination and preparation of the overall e-Government Strategy, including the implementation plan, and monitoring and
evaluation of the process. DeG was established in June 2004, and is headed by the ICT Secretary at the Presidency and Cabinet Affairs Office, Office of the President.

A major program of e-government has been to improve intra-government communications. Public sector organizations at all levels have had problems with inter- and intra-agency communications. With disparate departmental messaging systems and use of different IT platforms (which prevents sharing of records, documents and materials), most public sector organizations have urgent needs for an agency-wide collaboration strategy. An important step in this process has been introduction of an e-mail solution for all civil servants, EMACS (Enterprise Messaging and Collaboration System). DeG is also involved in numerous projects to improve interaction between government agencies and the public, including several that relate to regulatory activities. To date, activities have included e-Government solutions for customs, tax and corruption reports, and computerization of registries at the Lands Office, Company Registry, Pensions Department and the Registration of Persons Office. To some extent, these activities have been “first generation” solutions, in that they allow only for one-way communication of information from government agencies to the customers without an ability to download forms, etc; however, KRA has introduced online tax filing and customs applications as well as the ability to download forms. The KRA ICT strategy has been developed to serve as the blueprint for all future automation programs at KRA.

The Kenyan government is in the process of setting up an e-registry. In the first phase this will provide information on valid licenses, as well as downloadable application forms. In the second phase applicants will have the facility to apply online. There are also plans to link this into the wider e-government network over time.

DeG is also pursuing research and monitoring and evaluation activities aimed at providing information about how people interact with government in Kenya and overseas, how citizens use government services and find government information over the Internet, and what citizens expect from government agencies. This research is designed to support the broader reform efforts that require government agencies to be more people-oriented and results-oriented in the way they design services. It would be reasonable to assume that much of this research and monitoring and evaluation findings would be useful input into the design of regulatory reform.

77 The Directorate of e-Government has the following functions: to develop, coordinate and define ways so that electronic and information technology business strategies assist government to operate more effectively and efficiently in delivering services to citizens; to provide coordination and advice on issues pertaining to electronic business, telecommunications and technology; to plan and develop strategies and direct government-wide activities to support other agencies; and to participate in the development, analysis and evaluation of government wide technology issues, policies and legislation.

78 For details of the e-government program, see http://www.e-government.go.ke/

79 EMACS includes the following features: E-mail, calendar and scheduling, personal information management (PIM) directory functions, discussion databases, team-rooms, and reference databases (document library) with basic workflow functions.

80 The Simba system was implemented to facilitate self-assessment, and the post-clearance audit (PCA) function was strengthened. There were significant hiccups in the implementation of Simba beginning in 2005. KRA’s experiences in implementation of ICT may offer some lessons for other organizations, particularly in demonstrating that the time horizon for such reforms is long rather than short. Implementation of an Integrated Tax Management System has also been longer than planned.

81 http://www.kra.go.ke/rarmp/rarmp.html
In economies where public revenue is scarce, donors have often stepped in to finance the costs of regulatory reform programs. The financing horizon of donors has been variable: some donor-assisted programs have been relatively short, focused on achieving “quick wins,” while others have been geared to capacity building and creation of a new approach to making policies, laws and regulations that requires a long-term commitment. Irrespective of the donor time horizon, the issue of an exit strategy and the transfer of program costs to the host government remain important. In addition, there is often an issue of donor coordination and dialogue; increasingly, donors are introducing jointly financed programs (often through donor pools) with “harmonized” procurement and financing arrangements.

Current Situation As has been demonstrated in earlier sections of this report, Kenya is implementing a wide range of economic, social and political reforms that support improvements in governance and how the government deals with its citizens, whether as individuals or in civic or business groups. All of these reforms, which share a common feature of legal, administrative and regulatory changes, are supported by individual donors or groups of donors.

In general, it appears that these reform programs have adopted ad-hoc and variable approaches to the process of policy making, legal drafting and preparation of secondary legislation or regulation. All the donors in Kenya have emphasized the need for consultation and an orderly process for designing and introducing reforms, whether they are for development goals, public sector reform and governance, legal reform or anti-corruption programs. As a result, there are various experiments that have been conducted in the area of consultation with stakeholders.

However, it does appear that there has been relatively little interchange between donors or between the government and donors as to how effective these experiments have been. An evaluation of reform processes and tools used for conducting policy analysis and consultation might be very useful, and offer approaches that have worked well and could be replicated in other circumstances.
This might obviate the natural tendency to import from other countries processes for reform design and implementation and to ignore successful experiments locally. As Kenya begins to develop an overall and systemic approach to regulatory reform and design, it should be incumbent upon donors to incorporate it into the programs that they are supporting.

The experiences of other East African countries have shown that donor support for regulatory reform needs to be long-term, and not geared to a few “quick-win” projects. Donors in Kenya are already supporting long-term programs in the areas of corruption, public sector reform, local government and the like, so it should not be an insurmountable obstacle for them to deliver a long-term commitment to regulatory reform support. Moreover, it is important for donors (and the government) to realize that regulatory reform will be successful in Kenya only if the major underlying problems of the rule of law, corruption and public service ethics are dealt with effectively. For this reason alone, the development of the regulatory strategy and programs for implementing regulatory reform have to be linked to these broader legal and administrative issues, not only at the level of concept (as has been done in Vision 2030 and the Private Sector Development Strategy, for example), but also at the level of specific implementation.
Assessment of strengths and weaknesses

Regulatory reform in Kenya has exhibited several important strengths. First, it initially benefitted from strong support within the MTI and MOF and more recently strong support from the MOLG and OPM. MTI was a crucial source of support for the reform of business licensing at the beginning of the process. The support came from the permanent secretary and director levels, even though the minister was lukewarm. It was an act of political courage for these individuals to place their name on the reform process, in part because they faced internal ministry opposition and partly because of the prevalence of grand and petty corruption. The support from MOF was crucial at the point where decisions on the report recommendations had to be made, when the existing machinery for budget decisions could be used. In addition, the importance of having the reform led at that point by a central economic ministry should not be underestimated. More recently the prime minister and his office have made statements in support of regulatory reform.

However, the current situation where the BRRU has been established under the MOF may also constitute a source of weakness. The emphasis given to the BRRU and its work now depends to a considerable extent upon its ranking in MOF’s priorities, which are many. The head of the BRRU is ranked at a deputy director level, which may be too low to give the BRRU the necessary “clout” within the ministry, and BRRU’s position has certainly not been helped by the fact that the current BRRU head has other important responsibilities which prevent a full-time concentration on BRRU’s start-up activities.

There is a danger that the positive energy generated by the very favorable reception (from both
the business community and donors) given to the Kenya government when it adopted the licensing reforms could be dissipated. It can be argued that the decision to disband the Working Committee and not to establish another inter-ministerial body to propel the regulatory reform was a mistake. This seems to be recognized as a Regulatory Reform Working Committee has been re-established.

Like the other East African countries, Kenya has succeeded in framing regulatory reform within its broader development planning documents, such as Vision 2030, and drawing linkages between the various legal, public sector, decentralization, corruption initiatives. However, to date, these linkages do not appear to be well established at the program and operational level. Kenyan ministries still have a tendency to operate in silos, and the role of the BRRU should be to break down these barriers in the formulation and operation of regulatory initiatives. However, until the BRRU is staffed and has a clear work program, it will be difficult for BRRU to play that role effectively.

Policy options and choices

First and foremost, implementation of the licensing reforms should be pursued aggressively. To date, the actions taken have generated positive opinions among the local and international business community, but they have to be continued to avoid repetition of many past reforms in Kenya that have started well but ultimately lapsed. While continued action on reducing fees and reducing the number of licenses should be taken, it is important that emphasis is placed on reducing the costs to businesses of complying with license requirements that will continue in future. In addition, it is recommended that an effective monitoring system be put in place as a matter of priority so that the impact of the licensing reforms can be demonstrated.

Capacity building for regulatory reform should be emphasized. BRRU should discuss with the Ugandan government officials the training activities done under the RBP Program, and with the Tanzania BEST Advocacy component, in the course of developing a training, skills development and capacity building strategy for the Kenya regulatory reform program.

Finally, the fact that the Kenya government has an established e-government program provides BRRU with the opportunity to push for the implementation of the e-registry as soon as possible and for further computerization to move to second generation ICT projects.
APPENDIX A. PRINCIPLES OF GOOD REGULATION

The 1997 OECD Report on Regulatory Reform includes a coordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These were:

A. BUILDING A REGULATORY MANAGEMENT SYSTEM
   1. Adopt regulatory reform policy at the highest political levels
   2. Establish explicit standards for regulatory quality and principles of regulatory decision-making
   3. Build regulatory management capacities

B. IMPROVING THE QUALITY OF NEW REGULATIONS
   1. Regulatory Impact Analysis
   2. Systematic public consultation procedures with affected interests
   3. Using alternatives to regulation
   4. Improving regulatory coordination

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS
   1. Reviewing and updating existing regulations
   2. Reducing red tape and government formalities

The OECD report recommended adoption of a set of regulatory quality standards based on the OECD principles as follows:

“Establish principles of “good regulation” to guide reform, drawing on the 1995 Recommendation on Improving the Quality of Government Regulation. Good regulation should: (i) be needed to serve clearly identified policy goals and effective in achieving those goals; (ii) have a sound legal basis; (iii) produce benefits that justify costs, considering the distribution of effects across society; (iv) minimize costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.”

## APPENDIX B. DB INDICATORS, DB 2009

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Legislative proposals go through a number of steps before being enacted as Acts of Parliament. They are as follows:

a) Presentation and first reading

This stage is a mere formality. The speaker of the National Assembly calls upon the clerk of the National Assembly who reads out the long title of the bill; at the request of the speaker, the member-in-charge of the bill (the prime minister or a cabinet minister) names a day for the second reading, usually the next available date on the Parliamentary calendar. At this stage, no debate on the bill takes place because there is no motion before the House; however, issues relating to the constitutionality of the bill or its objectives can be raised at this stage.

b) Second reading

This is the most important stage for a bill, when detailed debate on the elements of the bill takes place. Amendments are suggested, agreeable clauses approved and others rejected. On the day set for the Second Reading, the member-in-charge of the bill moves a motion “That the (name of the bill) bill be read a second time,” and makes a speech in favor of the bill, explaining the importance/reasons for the introduction of the bill and expounding on the principles of the legislative measure. Since the bill is discussed as a whole, no specific amendments to the bill itself can be moved. The speaker calls upon the House to decide on whether the bill may be read a second time. If the House decides in the negative, an amendment is made to the motion to read the bill a second time after the expiration of a six month period, which is usually during the next session of Parliament. A second reading debate on the bill may continue for several days and is formally closed by the second speech of the member fronting the bill.

c) Committee stage

If the bill goes through the Second Reading, an ordinary bill will be considered before a Committee of the Whole House, unless a member of the House moves, immediately after the Second Reading, that the bill be committed to a Select
Committee. At this stage, the bill is scrutinized in detail, and may be amended, if necessary, by a majority of members voting. Every clause of the bill is considered separately by the Committee and must be agreed to or rejected, with or without debate. Since the fundamental principles of the bill are agreed on at the Second Reading Stage, any amendments which would negate the purpose of the bill cannot be considered at the Committee Stage. It is also not permissible to move amendments which are inconsistent with what has been agreed in committee.

The clerk calls severally each part of the bill. If no amendment is proposed or when all proposed amendments have been considered, the chairman of the Committee proposes that the amendment stands as part of the bill. Members speak on the issue after which the chairman puts the question to the Committee for decision.

On a motion to insert a new clause, the same is deemed to have been read the first time, and the question is then proposed that it is read a second time. If agreed, amendments may then be proposed to the new clause. The final question to be proposed is usually that the clause (as amended) be added to the bill.

At the conclusion of the proceedings in the Committee on a bill, the member responsible moves that the bill (as amended) be reported back to the House, and the question thereon is decided with or without debate. If the motion is carried, the chairman of the committee forthwith leaves the chair and the House resumes whereupon he, or if the speaker has taken the chair in the committee, the member-in-charge of the bill reports this to the House.

Where a bill is referred to a select committee, it is considered in the same way as in the Committee of the whole House. The Select Committee reports to the House.

d) Report stage

This involves reporting the deliberations of the Committee to the whole House. This is done by the chairman of the committee. When a bill is reported with or without amendment, the report may be adopted immediately, or the adoption may be deferred to the future. Ordinarily no amendment, adjournment or debate is allowed on the Motion for the adoption of the report. However, a member may propose amendment to add at the end of the motion the words, “Subject to the committal of the bill (in respect of some specified part or of some proposed new clause or new schedule).” If a motion is carried with such an amendment, the bill is “recommitted.” “Recommittal” of the bill is only allowed if, upon receiving a bill after its treatment in the Committee, the House feels that work still needs to be done on it. In such a case, any member may succeed in moving specifically that the bill be recommitted. Recommittal most often happens where a bill is reported from a Select Committee, when it may be the case that members of the House who were not members of the Select Committee may have additional and valuable ideas to put forward. Upon re-committal, members have an opportunity of moving amendments to take into account new situations or government concessions in committee. At this stage, ministers can also make drafting corrections.

e) Third reading

Ordinarily, this stage usually follows immediately after the report stage. Debate on the bill is restricted, and discussions do not usually go outside the parameters of the bill as it was discussed at the Committee stage, unless the legislative measure is one that invites controversy.

A final vote is taken and, if approved, the bill is deemed successfully passed by the National
Assembly. After that, the bill remains in the custody of the clerk of the National Assembly awaiting Presidential Assent. The clerk prepares the bill into a draft Act of Parliament with the same name as the bill and submits it to the AG for checking and onward transmission to the government printer for proofreading.

The government printer will send back the proof to the clerk, who, having satisfied himself that it is correct, sends it back to the AG for the production of what is known as a “vellum proof.” The government printer furnishes three copies of the vellum proof to the clerk who scrutinizes it a final time and forwards it, together with a certificate confirming the authenticity and correctness of the draft Act, to the AG, who arranges for presidential assent.

f) Presidential assent

Upon assent by the president, the Act is returned to the clerk who arranges for the announcement of the assent by the speaker in the National Assembly.

The Act is then published in the *Kenya Gazette* as provided under the Constitution (section 46(6)) without which the law cannot come into operation. However, Parliament may defer operationalization of the law and can make laws with retrospective effect.
The Court system

The hierarchy of the judicial branch is as follows: the Court of Appeal, the High Court, and Subordinate Courts.

The Court of Appeal

The Court of Appeal is the highest court in the country. It is presided over by the Judges of Appeal, who are appointed by the president. Article 64 of the Constitution stipulates that the Court shall comprise the Chief Justice and at least two other judges. The Court of Appeal deals only with appellate matters brought before it from the High Court or the Kadhi Courts. Its decisions are binding on all other subordinate courts, including the High Court. The Court of Appeal sits mainly in Nairobi, the capital of Kenya, but travels on circuit to other principal towns in Kenya to hear appeals.

The High Court

Established under Section 60 of the Constitution, the High Court is presided over by judges of the High Court, who are appointed by the president. It is a superior court of record with unlimited original jurisdiction in civil and criminal matters. It has power under Section 65(2) to supervise any criminal or civil proceedings before a subordinate court. It also has jurisdiction to hear cases relating to constitutional matters.

Subordinate courts

Under Section 65, the Constitution of Kenya under Section 65 gives the Kenya Parliament power to establish courts subordinate to the High Court. The jurisdiction of these courts is determined on a territorial and monetary basis. They are presided over by magistrates. The magistrate's courts are in order of hierarchy, with the Chief Magistrate's court being the highest, followed by the Senior Principal Magistrate's Court, Principal Magistrate's Courts, Senior Resident Magistrate's Courts, Resident Magistrate's Courts and the District Magistrate's courts. The High Court under section 65(1) of the Constitution has power to give direction to these subordinate courts.
**Kadhi’s Courts** – Established under the Kadhi’s Courts Act, (Chapter 11 Laws of Kenya), they are presided over by the Chief Kadhi or a Kadhi. The court has jurisdiction to determine questions of Muslim law relating to personal status, marriage, divorce and inheritance in proceedings in which all the parties profess the Muslim religion. Appeals from the Kadhi’s courts lie to the High Court, which sits with the Chief Kadhi or two other Kadhis as assessors.

**The Children’s Court** – Established in 2001, it is a special court which deals with cases concerning children. It hears cases concerning parental responsibility, children’s institutions, custody and maintenance, orders for the protection of children, and children in need of care and protection. It also hears cases where a person has been charged with an offense under the Children’s Act. However, it does not hear cases where the child is charged with murder, or jointly with adults.

**Tribunals** – These are quasi-judicial bodies established piecemeal to deal with specific matters. The more prominent tribunals are:

- **The Industrial Court** – Although called a “court,” it does not form part of the Kenyan Court structure. It is presided over by judges appointed by the president and eight other members appointed by the minister of Labor. Its function is to settle trade disputes generally and trade disputes in essential services.

- **Rent Tribunals** – These deal with matters concerning landlord and tenant relations.

Part 3 of Chapter 4 of the Constitution also deals with the establishment and responsibilities of the Judicial Service Commission (JSC). The JSC consists of the chief justice, attorney general, two other judges from the High Court and Court of Appeal, and the chairman of the Public Service Commission. The Commission has responsibility for appointing judges and for disciplinary matters.

**Sources of Kenyan law**

The primary sources are enumerated in Section 3 of the Judicature Act (Chapter 8 Laws of Kenya), and include:

**The constitution**

It is the supreme law of the land, taking precedence over all other forms of law, written and unwritten. If any other law is inconsistent with it, the constitution prevails, and the other law, to the extent of its inconsistency, is void. Many acts of Parliament are made pursuant to particular provisions in the Constitution.

** Acts of Parliament**

These are passed by Parliament, and also include subsidiary legislation, that is, laws made under the authority of an Act of Parliament.

**Specific Acts of Parliament of the United Kingdom**

These are cited in the schedule to the Judicature Act, and include:

- The Admiralty Offences (Colonial) Act, 1849.
- The Evidence Act, 1851, Sections 7 and 11.
- The Foreign Tribunals Evidence Act, 1856.
- The Evidence by Commission Act, 1859.
- The Admiralty Offences (Colonial Act), 1860.
- The Foreign Law Ascertainment Act, 1859.
- The Foreign Law Ascertainment Act, 1861.
The Conveyancing (Scotland) Act, 1874 Section 51.

The Evidence by Commission Act, 1885.

Certain Acts of the Parliament of India
The Transfer of Property Act, 1882, of India contains the procedural law applicable where the Registration of Titles Act, the Land Titles Act and the Government Lands Act are applied.

English statutes of general application in force in England on 12th August 1897
The English statutes of general application passed before 12th August 1897 (the reception date) are law in Kenya, unless a Kenyan statute, or a later English statute made applicable in Kenya, has repealed any such statute. A statute of general application, if repealed by a later English statute, would still be law in Kenya. Statutes of general application include public Acts of Parliament, that is, those which apply to the inhabitants at large and which are not limited in their application to prescribed persons or areas. The statutes are also applicable in Kenya in the form that they had at the reception date. Any subsequent amendments of such statutes in England have no effect in Kenya. The only way to alter such statutes is for the Kenya Parliament to amend these by independent legislation.

The substance of common law and doctrines of equity
These are only applicable to Kenyan inhabitants insofar as the circumstances of Kenya permit, subject to such qualifications as those circumstances may make necessary.

African Customary law
This is applicable only in civil cases where one or more of the parties is subject to or affected by it, insofar as it is applicable and is consistent with any other law. African Customary law differs from tribe to tribe.

Islamic law
This is a very limited source of law in Kenya. It is applied in Kadhi’s Courts when all the parties profess the Muslim religion, but only concerning questions relating to personal status, marriage, divorce and inheritance issues.

International instruments
Though not listed in the Judicature Act, international law is a source of Kenyan law. The government is party to a number of international legal instruments, and Kenyans can use these as an additional tool for the advancement of their rights. However, such law only becomes enforceable in Kenya after it has been incorporated into Kenya’s domestic legal system through implementing legislation.

LEGAL NOTICE NO. 147

THE LOCAL GOVERNMENT ACT
(Cap. 265)

IN EXERCISE of the powers conferred by section 271 of the Local Government Act, the Deputy Prime Minister and Minister for Local Government makes the following Rules.

THE LOCAL GOVERNMENT (SINGLE BUSINESS PERMIT) RULES, 2008

1. These rules may be cited as the Local Government (Single Business Permit) Rules, 2008.

2. In these rules, unless the context otherwise requires—“Single business permit” means a permit issued by a local authority under section 163 of the Act.

3. These Rules shall apply to all local authorities.

4. Where a person is issued with a Single Business Permit by one local authority to such permit shall be valid for the distribution of goods or provision of services within the area of any other local authority.

5. The form of registration for a Single Business Permit shall be in such form as the Minister may, from time to time, prescribe.

6. (1) The fees payable in respect of a Single Business Permit in respect of the various classes of local authorities shall be as set out in the Schedule.

   (2) The fees specified in the Schedule shall be applicable as follows:

   (a) for Cities, columns 8, 9 and 10;
   (b) for Municipalities, columns 4, 5, 6, 7, 8 and 9;
   (c) for Town and County Councils, columns 1, 2, 3, 4 and 5

   (3) No local authority may base its fees and charges on a range which is higher than that specified for it in the Schedule.
(4) Notwithstanding paragraph (3), a local authority may base its fees and charges on a range which is lower than that which is specified for it in the Schedule.

(5) Any local authority which, on the date of coming into operation of these Rules, has fees and charges at a range which is higher than that specified in the Schedule shall adopt the charges specified therein at the beginning of the financial year beginning on the 1st July next following that date.

7. (1) A local authority may select the appropriate range of fees to impose on business within its jurisdiction depending on the class under which it falls as indicated in the Schedule.

(2) A local authority shall, upon selecting a range of fees and charges as provided in paragraph (1), impose its fees and charges in amounts only within that range.

8. The selection of a range of fees and charges as required under these Rules shall be preceded by consultations held by the local authority with the business community and other stakeholders within its area of jurisdiction in the manner specified in Rule 9.

9. (1) Where a local authority intends to adopt or change a range of fees and charges, it shall publish a notice of the intention to do so –

(a) in a newspaper of wide circulation in its area of jurisdiction;
(b) on a conspicuous part of the local authority notice boards; and
(c) in any other manner so as to bring it to the attention of the business community and stakeholders.

(2) The notice under paragraph (1) shall contain –
(a) the proposed fees and charges and their likely effect on business;
(b) an invitation to stakeholders to forward their comments and recommendations; and
(c) the date, venue and time of a consultative forum which shall be held to discuss the proposed fees and charges.

10. (1) A local authority shall forward its proposed new fees and charges to the Minister for approval after the conclusion of the consultative process set out in rules 8 and 9.

(2) The Minister may approve the proposals forwarded where he is satisfied, that the local authority has observed all the procedures prescribed under these Rules.

11. Notwithstanding any other provision of these Rules, all local authorities shall hold consultative meetings with the business community and representatives of stakeholder organizations within their areas of jurisdiction once in every quarter.
<table>
<thead>
<tr>
<th>BRIMS CODE</th>
<th>CATEGORIES OF BUSINESS</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
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<th>6</th>
<th>7</th>
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<th>10</th>
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</thead>
<tbody>
<tr>
<td>100</td>
<td>GENERAL TRADE, WHOLESALE, RETAIL, STORES, SHOPS, PERSONAL SERVICES</td>
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<td></td>
<td>Such as: Distributors, Traders, Wholesalers, Hypermarkets, Department Stores,</td>
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<td></td>
<td>Supermarkets, Retailers, Shops, Boutiques, Chemists, Butcheries, Personal Service</td>
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<td>Providers, Kiosks</td>
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<tr>
<td>10</td>
<td>60 Base Value</td>
<td>250</td>
<td>300</td>
<td>350</td>
<td>400</td>
<td>500</td>
<td>600</td>
<td>700</td>
<td>850</td>
<td>1,000</td>
<td>1,200</td>
</tr>
<tr>
<td>103</td>
<td>Mega Store, Hypermarket Large Multi-Department Store, Hypermarket Over 100</td>
<td></td>
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<tr>
<td></td>
<td>employees or Premises over 3,000 m². Prime Location</td>
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<tr>
<td>105</td>
<td>Large Trader, Shop, Retail Store or Personal Service From 21 to 100 Employees</td>
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<td>&amp;/or Premises from 300 to 3000 m². Fair Location</td>
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<td>110</td>
<td>Medium Trader, Shop or Retail Service From 5 to 20 employees &amp;/or premises</td>
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<td>from 50 to 300 m². Fair Location</td>
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<td>115</td>
<td>Small Trader, Shop or Retail Service Up</td>
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<td></td>
<td>to 4 employees &amp;/or Premises less than 50 m². Fair Location</td>
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<tr>
<td>120</td>
<td>Kiosk Light or Temporary construction</td>
<td></td>
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<td>less than 5 m²</td>
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(Continued)
<table>
<thead>
<tr>
<th>BRIMS CODE</th>
<th>CATEGORIES OF BUSINESS</th>
<th>1</th>
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<th>6</th>
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<th>8</th>
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<th>10</th>
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</thead>
<tbody>
<tr>
<td>195</td>
<td>Other Wholesale Retail Traders, Stores, Shops and Services</td>
<td>4</td>
<td>1,000</td>
<td>1,200</td>
<td>1,400</td>
<td>1,600</td>
<td>2,000</td>
<td>2,400</td>
<td>2,800</td>
<td>3,400</td>
<td>4,000</td>
</tr>
<tr>
<td>200</td>
<td>INFORMAL SECTOR Including: Hawkers, Street Vendors &amp; Small Traders and Service Providers operating on the street, verandah or temporary building.</td>
<td>Base Value</td>
<td>250</td>
<td>300</td>
<td>350</td>
<td>400</td>
<td>500</td>
<td>600</td>
<td>700</td>
<td>850</td>
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</tr>
<tr>
<td>205</td>
<td>Hawker with motor vehicle 1 person with motor vehicle</td>
<td>5</td>
<td>1,250</td>
<td>1,500</td>
<td>1,750</td>
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<td>3,500</td>
<td>4,250</td>
<td>5,000</td>
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<tr>
<td>210</td>
<td>Hawker 1 person without a motor vehicle</td>
<td>4</td>
<td>1,000</td>
<td>1,200</td>
<td>1,400</td>
<td>1,600</td>
<td>2,000</td>
<td>2,400</td>
<td>2,800</td>
<td>3,400</td>
<td>4,000</td>
</tr>
<tr>
<td>215</td>
<td>Small Informal Sector Trader/Service Provider Shoeshine, Shoe repair, Street Vendor (newspapers, sweets, soda, cigarettes)</td>
<td>2</td>
<td>500</td>
<td>600</td>
<td>700</td>
<td>800</td>
<td>1,000</td>
<td>1,200</td>
<td>1,400</td>
<td>1,700</td>
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<tr>
<td>220</td>
<td>Semi Permanent Informal Sector Trader Up to 2 persons operating in verandah or temporary building</td>
<td>3</td>
<td>750</td>
<td>900</td>
<td>1,050</td>
<td>1,200</td>
<td>1,500</td>
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<td>295</td>
<td>Other Informal Sector Operation</td>
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<td>1,400</td>
<td>1,700</td>
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<tr>
<td>305</td>
<td>Large Transportation Company Over 30 vehicles</td>
<td>80</td>
<td>20,000</td>
<td>24,000</td>
<td>28,000</td>
<td>32,000</td>
<td>40,000</td>
<td>48,000</td>
<td>56,000</td>
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<td>Code</td>
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<td>12,000</td>
<td>15,000</td>
<td>18,000</td>
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</tr>
<tr>
<td>310</td>
<td>Medium Transport Company From 6 to 30 vehicles</td>
<td>30</td>
<td>7,500</td>
<td>9,000</td>
<td>10,500</td>
<td>12,000</td>
<td>15,000</td>
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<tr>
<td>315</td>
<td>Small Transport Company From 2 to 5 vehicles</td>
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<td>3,500</td>
<td>4,000</td>
<td>5,000</td>
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<tr>
<td>320</td>
<td>Independent Transport Operator</td>
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<td>1,750</td>
<td>2,000</td>
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<td>3,500</td>
<td>4,250</td>
<td>5,000</td>
</tr>
<tr>
<td>325</td>
<td>Large Petrol Filling Station Over 6 pumps or with garage workshop &amp; retail shop</td>
<td>20</td>
<td>5,000</td>
<td>6,000</td>
<td>7,000</td>
<td>8,000</td>
<td>10,000</td>
<td>12,000</td>
<td>14,000</td>
<td>17,000</td>
<td>20,000</td>
</tr>
<tr>
<td>330</td>
<td>Medium Petrol Filling Station From 4 to 6 pumps or with garage workshop or retail shop</td>
<td>10</td>
<td>2,500</td>
<td>3,000</td>
<td>3,500</td>
<td>4,000</td>
<td>5,000</td>
<td>6,000</td>
<td>7,000</td>
<td>8,500</td>
<td>10,000</td>
</tr>
<tr>
<td>335</td>
<td>Small Petrol Filling Station Up to 3 pumps and without garage workshop or retail shop</td>
<td>7</td>
<td>1,750</td>
<td>2,100</td>
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<td>3,500</td>
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<td>4,900</td>
<td>5,950</td>
<td>7,000</td>
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<tr>
<td>340</td>
<td>Large Cold Storage Facility Over 1,000 m2, insulated walls, cold production equipment</td>
<td>55</td>
<td>13,750</td>
<td>16,500</td>
<td>19,250</td>
<td>22,000</td>
<td>27,500</td>
<td>33,000</td>
<td>38,500</td>
<td>46,750</td>
<td>55,000</td>
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<tr>
<td>345</td>
<td>Medium Cold Storage Facility Between 100-1,000 m2, insulated walls</td>
<td>25</td>
<td>6,250</td>
<td>7,500</td>
<td>8,750</td>
<td>10,000</td>
<td>12,500</td>
<td>15,000</td>
<td>17,500</td>
<td>21,250</td>
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<tr>
<td>350</td>
<td>Small Cold Storage Facility Up to 100 m2</td>
<td>12</td>
<td>3,000</td>
<td>3,600</td>
<td>4,200</td>
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<td>6,000</td>
<td>7,200</td>
<td>8,400</td>
<td>10,200</td>
<td>12,000</td>
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<tr>
<td>355</td>
<td>Large Storage Facility Over 5,000 m2, Godown Warehouse, Liquid Storage Tanks Complex</td>
<td>50</td>
<td>12,500</td>
<td>15,000</td>
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<tr>
<td>360</td>
<td>Medium Storage Facility From 1,000 to 5,000 m2</td>
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<td>5,000</td>
<td>6,000</td>
<td>7,000</td>
<td>8,000</td>
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<td>4,000</td>
<td>5,000</td>
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</tr>
<tr>
<td>370</td>
<td>Large Communications Co Over 100 employees &amp;/or Premises over 5,000 m2</td>
<td>90</td>
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<td>27,000</td>
<td>31,500</td>
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<td>63,000</td>
<td>76,500</td>
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<tr>
<td>375</td>
<td>Medium Communications Co From 16 to 100 employees &amp;/or Premises from 1,500 to 5,000 m2</td>
<td>55</td>
<td>13,750</td>
<td>16,500</td>
<td>19,250</td>
<td>22,000</td>
<td>27,500</td>
<td>33,000</td>
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<td>380</td>
<td>Small Communications Co Up to 15 employees &amp;/or Premises up to 1,500 m²</td>
<td>30</td>
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<tr>
<td>395</td>
<td>Other Transport, Storage and Communications</td>
<td>7</td>
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<tr>
<td>400</td>
<td>AGRICULTURE, FORESTRY &amp; EXPLOITATION OF NATURAL RESOURCES Such as: Production of Coffee, Tea, Fruits, Flowers, Cereals, Vegetables and Horticultural products, Grain Storage and Processing, Mills &amp; Posho Mills, Bakers, Forestry and Timber Production, Sawmills, Coal Production, Animal Breeding, Dairy Products Processing, Slaughter Houses, Mining and other Natural Resources Extraction Activities.</td>
<td>405 Large Agricultural Producer, Processor, Dealer, Exporter Over 50 employees</td>
<td>65</td>
<td>16,250</td>
<td>19,500</td>
<td>22,750</td>
<td>26,000</td>
<td>32,500</td>
<td>39,000</td>
<td>45,500</td>
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<tr>
<td>410</td>
<td>Medium Agricultural Producer/Processor/Dealer/Exporter From 11 to 50 employees</td>
<td>25</td>
<td>6,250</td>
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<td>8,750</td>
<td>10,000</td>
<td>12,500</td>
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<tr>
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<td>2,800</td>
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<tr>
<td>420</td>
<td>Large Mining or Natural Resources Extraction Operation over 50 employees</td>
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<td>32,000</td>
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<tr>
<td>425</td>
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<td>15,750</td>
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<tr>
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<td>Description</td>
<td>Base Value</td>
<td>Value for 5 employees</td>
<td>Value for 10 employees</td>
<td>Value for 15 employees</td>
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<td>Value for 30 employees</td>
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<td>Value for 40 employees</td>
<td>Value for 45 employees</td>
</tr>
<tr>
<td>------</td>
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<td>------------------------</td>
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</tr>
<tr>
<td>430</td>
<td>Small Mining or Natural Resources Extraction Operation Up to 3 employees. Includes quarries &amp; small mining operations</td>
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<td>6,250</td>
<td>7,500</td>
<td>8,750</td>
<td>10,000</td>
<td>12,500</td>
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<tr>
<td>495</td>
<td>Other Agricultural, Forestry and Natural Resources</td>
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<td>6,800</td>
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<tr>
<td>500</td>
<td>ACCOMMODATION AND CATERING Such as: International Hotels, Tourists Camps, Lodging Houses, Restaurants, Bars, Eating Houses, Tea &amp; Coffee Houses, Butcheries with Meat Roasting &amp;/or Soup Kitchen Facilities, Membership Clubs, Night Clubs &amp; Casinos</td>
<td>Base value</td>
<td>250</td>
<td>300</td>
<td>350</td>
<td>400</td>
<td>500</td>
<td>600</td>
<td>700</td>
<td>850</td>
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<tr>
<td>503</td>
<td>Large High Standard Lodging House/Hotel D Class. Over 100 rooms</td>
<td>100</td>
<td>25,000</td>
<td>30,000</td>
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<td>50,000</td>
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<td>70,000</td>
<td>85,000</td>
<td>100,000</td>
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<td>506</td>
<td>Medium High Standard Lodging House/Hotel D Class. From 41 to 100 rooms</td>
<td>70</td>
<td>17,500</td>
<td>21,000</td>
<td>24,500</td>
<td>28,000</td>
<td>35,000</td>
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<tr>
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<td>Small High Standard Lodging House/Hotel D Class. Up to 40 rooms</td>
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<td>25,000</td>
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<td>35,000</td>
<td>42,500</td>
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<tr>
<td>512</td>
<td>Large Lodging House with Restaurant &amp;/or Bar B/C Class. Basic Standard. Over 15 rooms</td>
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<td>11,250</td>
<td>13,500</td>
<td>15,750</td>
<td>18,000</td>
<td>22,500</td>
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<td>31,500</td>
<td>38,250</td>
<td>45,000</td>
</tr>
<tr>
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<td>Medium Lodging House with Restaurant &amp;/or Bar B/C Class. Basic Standard. From 6 to 15 rooms</td>
<td>35</td>
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<td>17,500</td>
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<tr>
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<td>Small Lodging House with Restaurant &amp;/or Bar B/C Class. Basic Standard. Up to 5 rooms</td>
<td>25</td>
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<td>7,500</td>
<td>8,750</td>
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<td>12,500</td>
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<td>17,500</td>
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<td>25,000</td>
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<tr>
<td>521</td>
<td>Large Lodging House B/C Class. Basic Standard. Over 15 rooms</td>
<td>40</td>
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<td>14,000</td>
<td>16,000</td>
<td>20,000</td>
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<td>Medium Lodging House B/C Class. Basic Standard. From 6 to 15 rooms</td>
<td>25</td>
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<td>7,500</td>
<td>8,750</td>
<td>10,000</td>
<td>12,500</td>
<td>15,000</td>
<td>17,500</td>
<td>21,250</td>
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| 527  | Small Lodging House. Basic Standard B/C Class. Up to 5 rooms | 15 | 3,750 | 4,500 | 5,250 | 6,000 | 7,500 | 9,000 | 10,500 | 12,750 | 15,000 | 18,000 | (Continued)
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<th>3</th>
<th>2</th>
<th>1</th>
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</thead>
<tbody>
<tr>
<td>540</td>
<td>Large Restaurant with Bar/Membership Club Over 30 customers/members</td>
<td>30</td>
<td>21,000</td>
<td>25,000</td>
<td>30,000</td>
<td>18,000</td>
<td>15,000</td>
<td>12,000</td>
<td>10,000</td>
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<tr>
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<td>3,500</td>
<td>4,000</td>
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<td>7,000</td>
<td>8,500</td>
<td>10,000</td>
</tr>
<tr>
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<td>Small Restaurant with Bar Up to 10 customers</td>
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<td>2,800</td>
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<td>4,000</td>
<td>4,800</td>
<td>5,600</td>
<td>6,800</td>
<td>8,000</td>
</tr>
<tr>
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<td>Large Eating House; Snack Bar; Tea House &quot;Hotel,&quot; no lodging. No alcohol served. Over 20 customers</td>
<td>15</td>
<td>3,750</td>
<td>4,500</td>
<td>5,250</td>
<td>6,000</td>
<td>7,500</td>
<td>9,000</td>
<td>10,500</td>
<td>12,750</td>
<td>15,000</td>
</tr>
<tr>
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<td>Medium Eating House; Snack Bar; Tea House &quot;Hotel,&quot; no lodging. No alcohol served. From 6 to 20 customers</td>
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<td>2,500</td>
<td>3,000</td>
<td>3,500</td>
<td>4,000</td>
<td>5,000</td>
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<td>7,000</td>
<td>8,500</td>
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<tr>
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<td>8,000</td>
<td>10,000</td>
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<tr>
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<td>Butchery with Roasted Meat and/or Soup Kitchen Any size</td>
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<td>7,000</td>
<td>8,500</td>
<td>10,000</td>
</tr>
<tr>
<td>547</td>
<td>Large Bar/Traditional Beer Seller Over 150 customers</td>
<td>30</td>
<td>12,500</td>
<td>15,000</td>
<td>17,500</td>
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<td>22,500</td>
<td>25,000</td>
<td>30,000</td>
<td>40,000</td>
<td>60,000</td>
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<tr>
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<td>9,000</td>
<td>10,500</td>
<td>12,000</td>
<td>13,500</td>
<td>15,000</td>
<td>18,000</td>
<td>21,000</td>
<td>25,000</td>
</tr>
<tr>
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<td>Small Bar/Traditional Beer Seller Up to 50 customers</td>
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<td>3,000</td>
<td>3,500</td>
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<td>4,500</td>
<td>5,000</td>
<td>5,500</td>
<td>6,000</td>
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</tr>
<tr>
<td>550</td>
<td>Large Night Club/Casino Over 500 m²</td>
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<td>10,500</td>
<td>12,000</td>
<td>13,500</td>
<td>15,000</td>
<td>18,000</td>
<td>21,000</td>
<td>25,000</td>
</tr>
<tr>
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<td>Medium Night Club/Casino From 101 to 500 m²</td>
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<td>10,500</td>
<td>12,000</td>
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<td>18,000</td>
<td>21,000</td>
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<tr>
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<td>Small Night Club/Casino Up to 100 m²</td>
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<td>7,000</td>
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<td>Value 3 (500 m2)</td>
<td>Value 4 (700 m2)</td>
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<td>Value 6 (1000 m2)</td>
<td>Value 7 (10 employees)</td>
<td>Value 8 (20 employees)</td>
<td>Value 9 (25 employees)</td>
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<tr>
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</tr>
<tr>
<td>595</td>
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<td>3,500</td>
<td>4,200</td>
<td>4,900</td>
<td>5,950</td>
<td>7,000</td>
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<tr>
<td>600</td>
<td>PROFESSIONAL &amp; TECHNICAL SERVICES Such as: Firms &amp;/or Individual offering Services on Legal issues, Financial, Management, Engineering, Architecture, Valuing, Surveying, Accountancy, Secretarial Support, Data Processing, etc. Stock &amp; Insurance Brokering, Security Protection, Clearing Forwarding Goods, Book Making, Kenya Sweepstakes Charity included. Banks, Forex Bureau Money Lenders; Hire-Purchase Company; Insurance Company; Real Estate Developing Financing Company</td>
<td>250</td>
<td>300</td>
<td>350</td>
<td>400</td>
<td>500</td>
<td>600</td>
<td>700</td>
<td>850</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td>605</td>
<td>Large Professional Services Firm Over 10 practitioners &amp;/or International affiliation</td>
<td>90</td>
<td>22,500</td>
<td>27,000</td>
<td>31,500</td>
<td>36,000</td>
<td>45,000</td>
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<td>63,000</td>
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<tr>
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<td>Medium Professional Services Firm From 3 to 10 practitioners</td>
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<td>15,750</td>
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<td>22,500</td>
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<td>31,500</td>
<td>38,250</td>
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<tr>
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<td>10,000</td>
<td>12,000</td>
<td>14,000</td>
<td>17,000</td>
<td>20,000</td>
</tr>
<tr>
<td>620</td>
<td>Independent Technical Operator 1 person acting individually (Typist, Accountant, Book Keeper, etc.)</td>
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<td>2,100</td>
<td>2,450</td>
<td>2,800</td>
<td>3,500</td>
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<td>4,900</td>
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<tr>
<td>625</td>
<td>Large Financial Services Over 25 employees or premises over 300 m²</td>
<td>95</td>
<td>23,750</td>
<td>28,500</td>
<td>33,250</td>
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<td>47,500</td>
<td>57,000</td>
<td>66,500</td>
<td>80,750</td>
<td>95,000</td>
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<tr>
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<td>Medium Financial Services From 6 to 25 employees</td>
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<td>16,250</td>
<td>19,500</td>
<td>22,750</td>
<td>26,000</td>
<td>32,500</td>
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<tr>
<td>635</td>
<td>Small Financial Services Up to 5 employees</td>
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<td>13,500</td>
<td>15,750</td>
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<td>22,500</td>
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<td>31,500</td>
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<th>6</th>
<th>7</th>
<th>8</th>
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<th>10</th>
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<tbody>
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<td>PRIVATE EDUCATION, HEALTH AND ENTERTAINMENT SERVICES Such as: Private Education Institutions, including Universities, Museums, Nurseries, Primary and Secondary Schools, Professional Training Centers/Polytechnic Institutes teaching computer-accountancy-secretarial skills, etc. Private Health Clinics and Doctor’s Surgeries; Consulting Offices of Doctors, Dentists, Physiotherapists, Psychologists &amp; other health professionals. Herbalists and Traditional Medicine Practitioners, Funeral Homes Entertainment Facilities including Cinema, Theatre, Video Show/Amusement Arcade, Juke Box Arcade, Games Machines Arcade/Sports Club, Gym</td>
<td>250</td>
<td>300</td>
<td>350</td>
<td>400</td>
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<td>600</td>
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<td>1,000</td>
<td>1,200</td>
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<tr>
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<td>Private Higher Education Institution Any type of private University, College or higher education institution</td>
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<tr>
<td>710</td>
<td>Large Private Education Institution Over 100 pupils or fees over Kshs.50,000 per year</td>
<td>30</td>
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<td>Medium Private Education Institution From 31 to 100 pupils or fees from Kshs.30,001 to Kshs.50,000 per year</td>
<td>15</td>
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<tr>
<td>720</td>
<td>Small Private Educational Facility Up to 30 pupils or fees up to Kshs.30,000 per year</td>
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<tr>
<td>725</td>
<td>Large Private Health Facility Hospital, Clinic, Nursing Home, providing overnight accommodations. Over 30 beds Funeral Homes</td>
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<td>85</td>
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<tr>
<td>730</td>
<td>Medium Private Health Facility From 11 to 30 beds Funeral Home</td>
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<td>45</td>
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<tr>
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<td>Small Private Health Facility Up to 10 beds</td>
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<tr>
<td>740</td>
<td>Health Clinic; Doctor’s Surgery Doctor Dentist Physiotherapist Psychologist etc. Consult office. No overnight accommodation available</td>
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<tr>
<td>745</td>
<td>Traditional Health Services Herbalist, Traditional Healer, etc</td>
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<td>8</td>
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<td>2,400</td>
<td>2,800</td>
<td>3,200</td>
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<tr>
<td>750</td>
<td>Large Entertainment Facility Cinema-Theatre-Video Show Over 100 seats Amusement Juke; Box Games Machines Arcades; Over 10 machines Sports Club Gym. Over 50 members</td>
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<td>45</td>
<td>11,250</td>
<td>13,500</td>
<td>15,750</td>
<td>18,000</td>
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<tr>
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<td>Medium Entertainment Facility From 50 to 100 seats/from 4 to 10 machines/from 16 to 50 members</td>
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<td>15,000</td>
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</tr>
<tr>
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<td>Small Entertainment Facility Up to 50 seats/Up to 3 machines/ Up to 15 members</td>
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<tr>
<td>795</td>
<td>Other Education, Health and Entertainment Services</td>
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<tr>
<td>805</td>
<td>Large Industrial Plant over 75 employees or premises over 2,500 m2</td>
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<td>810</td>
<td>Medium Industrial Plant From 16 to 75 employees or premises from 100 m² to 2,500 m²</td>
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<tr>
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<tr>
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<td>Large Workshop/Service Repair Contractor over 20 employees or premises over 500 m²</td>
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<td>Small Workshop, Service Repair Contractor Up to 5 employees or premises up to 25 m²</td>
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<td>Other Manufacturer, Workshop, Factory, Contractor</td>
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</tbody>
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Dated the 17th October, 2008.