

**Licensing Reform and Regulatory  
Governance for Private Sector  
Development  
Visit by Tanzanian Delegation to  
Nairobi, Kenya**

*Licensing Reform in Kenya*

*By*

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# Introduction and Overview

- Business licensing recognized as a major constraint on the investment climate in Kenya
- The licensing reform in Kenya started from scratch in 2005 (no true regulatory reforms had taken place before this one)
- Broad and complex network of Government bodies with regulatory functions
- No one knew how many licenses there were. 1 or more new licenses issued every week. Original estimate of business licenses, 200-300-500
- After taking stock over a period of 2 years, 1,325 (state and municipal business licenses)
- Licensing is often inappropriately used to raise revenue rather than a means of regulation for the protection of health, safety and environment
- Outcome of team effort (truly a Government report with input from the private sector along the principles of public-private sector partnership)
- Technical assistance and policy advice, FIAS
- Financial assistance: World Bank (Japan), FIAS, DFID (through FIAS) and GOK

# Approach

- Regulatory guillotine: what is it?
- Committee did not use the dogmatic guillotine approach, which would include elimination by default of all licenses that did not pass the test. All committee decisions had to go through a process of political approval by either Government or Parliament. So in Kenya we used “revised guillotine”.
- Strong “ex-ante” government mandate to Licensing Committee with cross-ministerial representation
- 2 years of work has added lots of nuance to the reform leading to a nuanced, thorough and relatively long review process
- Extensive business consultation
- Specialized consultants to review sector licenses (environment, agriculture, traceability issues, municipal governments and tourism)
- Decision memo for each of the 1,325 licenses

# Approach /2

- Review criteria
  - Legality
  - Necessity (safety, health and environment)
  - Business-friendliness
  - Convert from license to notice?
  - Extend validity period
  - Reduce target group?
  - Information available from other gov't sources?
- Parallel efforts to make sure results not eroded by new regulation
  - Electronic Regulatory Registry
  - Business Regulatory Reform Unit
  - Screening of new business regulation (“RIA lite”)

# Focus on Business priorities

- Although comprehensive special attention devoted to licenses which private sector identified as particularly burdensome: 26 “Red tape hit-list”.
- Businesses particularly critical of the Single Business Permit: deep concerns about many of the activities regulated and its implementation and enforcement
- Business sector concerns sometimes rather surprising
- Recommendations of Committee
  - Out of the 26, eliminate 16 and simplify 10
  - Rationalize and reduce number of SBP schedules from 16 to 10
  - SBP replaces all other LA business licenses
  - Immigration work permits: introduce an interim work permit valid for 6 months
  - All Government advertising licenses to be replaced by standards

# Recommendations and Status

- Final report of Committee tabled to Government on March 5 2007
- 1,325 licenses identified
- Implementation since February, 2005 and ongoing
- 424 recommended for elimination (Government concurred with 315)
- 607 for simplification (Government concurrence 379)
- 294 unchanged (Government concurrence 294)
- Status
  - Government has endorsed nearly 80% of the Committee's decisions
  - Licensing Laws (Repeals and Amendment) Bill, 2007 already in Parliament
  - State circulars upon review of local government licenses issued on 8<sup>th</sup> June, 2007 giving directions particularly on the notorious single business permit
  - Government has committed to reduce “red” tape by 25% over the next 3 years
  - Business Regulation Bill, 2007 to give legal status to regulatory reform unit and the electronic registry almost ready for publication

# Electronic Regulatory Registry

- Serve as the national repository for license requirements in Kenya (*single point of information*);
- Provide easy access to information for the business community (*facilitate transparency*);
- Provide timely, correct and complete information about license requirements (*what is not in the registry is not enforceable*);
- Be a tool for sharing information among regulatory authorities (*the public-public communication*);
- Serve statistical purposes by sorting information by business code and geographical codes.
- Status
  - Progressed technical preparations
  - Equipment
  - Location (MoF)
  - To be established by law (Business Regulation Bill)
  - In function 1 January 2008

# Business Regulatory Reform Unit

- Vet the quality of and review new licenses to ensure that they are in consonance with internationally accepted regulatory practices and standards
- Ensure that gains of the licensing review and attendant reforms are not eroded by creeping re-regulation
- Later scope extended to cover all types of business regulation
  - Unit should be authorised with strong powers to scrutinise all new licensing laws and regulations
  - Charged with a system of RIA
  - Completion of the country's regulatory reform strategy based on input from the Committee
- Status
  - Unit established in Ministry of Finance in 2006
  - Budget allocated
  - Organizational status pending
  - Operational (fully in function probably by 1 Jan 2008)

# “Side-effects”

- The business licensing reform, which started with a relatively narrow focus, has had a number of positive side effects
  - The early results generated more appetite for reform
  - Government felt confident and launched work to improve DB 2008 indicators. They asked FIAS to guide and support them in these reforms and I participated in the FIAS team advising the Government
  - Increased appetite for reform translated into a broader and deeper Regulatory Reform Strategy (initially drafted by the Committee which I chaired)
- Most importantly the dedicated support from many officials and my efforts as a Chair has led to the creation of a network of young reformers, who now understand and see the benefits of regulatory reform. 5-10 years they will be the new decision makers on regulatory reforms in Kenya

# The Role of FIAS

- The “expansion” of the project in June 2005 (into a 2 year program) following a strategic planning mission which I chaired
- The *ad-hoc* and often critical support to push politically
- Critical technical assistance, i.e. the institutional infrastructure of the new regulatory reform program
- The “new expansion” into DB 2008 and the Regulatory Reform Strategy
- Commitment to continue the regulatory reform process over the foreseeable future

# Use of Kenyan experience in Tanzania

- Tentative assessment subject to study of situation pertaining in Tanzania
  - Establish a regulatory reform committee
  - Take stock of business licenses
  - Private sector to certify priority areas
  - Review each one of them based on a designed template
  - Involve the private and public sectors in consultation
  - Implement “sound” recommendations based on the options available under the legal system
- Establish regulation control system, electronic database and strategy
- Involve local and external experts

# End

- **Tanzania should borrow a leaf from the Kenyan case study**
- **Kenya should also learn from regulatory reforms taking place in Tanzania and other African regions e.g. Rwanda**
- **Thanks to WB, FIAS, DFID**
- **Thank you to all participants of this networking event for reformers in EA region**