

Institutionalizing drivers of reform – how to ensure sustainability of reform without imposing rigidity and more bureaucracy?

Kenya: The proposed Business Regulation Bill

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# Background

- The role of the Working Committee on Regulatory Reforms for Business Activity in Kenya has already been discussed.
- Undertook a comprehensive review of business licences in Kenya and made recommendations to the MOF:
  - Licences identified – 1325
  - Licences for elimination – 424
  - Licences for simplification - 607
  - Licences retained - 294
- Some recommendations for licence eliminations and simplifications already implemented through Licensing Laws (Repeals and Amendments) Act, 2006 and various administrative measures, and proposed for implementation through Licensing Laws (Repeals and Amendments) Bill, 2007.
- Work of the Licensing Committee has strongly emphasized the need to institutionalize efforts going forward.

# Background

- Minister in Budget Speech 2006/7 committed the Government of Kenya to establishing the following institutions:
  - a Business Regulatory Reform Unit, set up within the Ministry of Finance to liaise with the Regulators to ensure that all future licensing and regulations in line with international best practices, and that regulatory review results are not eroded by a wave of new licenses and burdensome business regulation
  - an Electronic Registry, a consolidated regulatory registry for all valid business licenses.
  - introduce an implementing Bill on Business Regulation Reform
  - develop and implement a medium term regulatory reform strategy
- Recognition by Minister of Finance of the need to put in place mechanisms that can take reforms to the next level, and sustain the results already made.

# Proposed institutional framework for regulatory reform in Kenya

- In proposing recommendations for formal institutions and processes to ensure sustained regulatory reform in Kenya, the Working Committee identified and addressed certain critical issues, and considered various of the options that may be relevant (courtesy of technical support from World Bank/FIAS).
- The FIAS Report (*Kenya – Action Plan: Building Institutions for Regulatory Reform*) identifies the various key dimensions or “building blocks” for establishing a Regulatory Impact Assessment (RIA) system in Kenya.
- The Committee has relied on these options and issues to propose recommendations for an institutional regulatory reform framework.

# RIA System

- Regulatory Impact Assessment (RIA ) system:
  - is a regulatory tool used to improve regulatory decision-making and the understanding of economic and social welfare impacts of regulation.
  - widely recognized as an important mechanism which can contribute to improving the business environment, and to promote regulatory efficiency and effectiveness.
  - a method of systematically examining impacts (both costs and benefits) arising from proposed government actions, and of communicating this information to decision makers and other stakeholders.
- The scope and methodologies of any RIA system will be a function of the country's regulatory priorities, capacities and governance traditions.

# RIA System

- A RIA system would, for example, set out rules or guidelines for:
  - Justification of regulatory proposals against clear standards for regulatory quality;
  - Intra-governmental coordination, e.g. an obligation to consult with relevant ministries/authorities and allowing a minimum period of (for example) seven working days for comments;
  - Estimation of expected impacts, e.g. an obligation to assess (quantitatively or qualitatively) the impacts on small enterprises, competitiveness, administrative burdens, public finances, etc.;
  - Public consultation, e.g. an obligation to announce the regulatory intent publicly (on the Web) and invite public comments for a minimum period of (for example) 10 weeks;
  - The format in which the results of the preparatory efforts above are presented to decision-makers.

# Building Blocks

- *Location* of the Regulatory Reform Unit (RRU) within the center of government;
- a clear *legal underpinning* of the RRU in the Business Regulation Bill;
- development of *RRU functions* that include supporting and advising regulators in preparing RIAs, vetting draft RIAs and promoting various aspects of regulatory reform;

# Building Blocks

- ensuring appropriate *staffing and pay levels* of the RRU to enhance the effectiveness and sustainability of the institution;
- recognition of the *important role played by regulators* within ministries and agencies having the responsibility of preparing RIAs;
- establishment of a *Business Advisory Council* to advise and support government reform efforts:

# Building Blocks

- consideration of the *scope of the RIA system* – what kind of regulation should be covered (in the short, medium and long term)?;
- defining *regulatory quality standards*;
- determining *the content of RIA* suitable for the Kenyan context;

# Building Blocks

- outlining *the RIA process* by defining roles of RRU and regulators;
- consideration of the *methodologies* used for RIAs and the related *data collection*;
- *capacity building* through training and guidelines (training of public officials and private sector stakeholders being a high priority); and
- considerations on setting up a *system for monitoring and evaluation* of the RIA system.

# Business Regulation Bill

- The proposed institutional framework for regulatory reform for Kenya consists of various components and these are captured in proposed Business Regulation Bill.
- Bill is one of the legal texts proposed to give effect to the recommendations of the Working Committee.
- Is still currently under consideration by the Working Committee.
- General discussion to bring out critical issues to being considered

# Business Regulation Bill

- The proposed Bill is for an act of Parliament to provide for certain matters regarding regulation of business activity, to establish a business quality review Committee and a business regulation quality review unit and for connected purposes.

# Business Regulation Bill

- Bill sets out:
  - General principles of business activity regulation – based on international best practice
  - the conditions for imposition of regulatory requirement – on grounds of health, environmental protection and public safety
  - process and requirements for the preparation and imposition of new business licences/regulation – need to hold public consultations, and submit a regulatory impact analysis to Unit
  - establishment of core institutions responsible for implementing regulatory reform strategy – functions, powers, procedures, organisational structure

# Business Regulatory Reform Committee and Unit

- Proposed Committee's Membership drawn for government from relevant government ministries responsible for business regulatory activity
- Proposed Functions - Review / advisory / supervisory / advocacy functions
- Advising government on all matters relating to business regulation
- Review existing and proposed business licences and regulation, government policy, requests for imposition of licences by regulatory authorities
- Vet the quality of and review new licenses to ensure that they are in consonance with accepted general principles - internationally accepted regulatory practices and standards
- Issuing guidance on regulatory impact analysis to regulatory authorities

# Business Regulatory Reform Committee and Unit

- Monitoring and reporting on activities of Regulatory authorities with regard to business regulatory reforms
- Promoting use of RIA and good regulatory practices across government and in the private sector
- Building capacity of regulatory authorities
- Develop medium term strategy for business regulatory reform
- Ensure that gains of the licensing review and attendant reforms are not eroded by creeping re-regulation
- Proposed Unit to act as secretariat for Committee, to assist the Committee in the discharge of its duties and functions
- Unit Staffing – Chief Executive and other staff drawn from government ministries or elsewhere

# Electronic Registry

- An electronic register of all regulatory requirements on business activity in Kenya to be maintained by the committee
- Serve as the national repository for licence requirements in Kenya (*single point of information*);
- Provide easy access to information for the business community (*facilitate transparency, accessible via internet, available to public at no cost*);
- Provide timely, correct and complete information about license requirements (*what is not in the registry is deemed not to be applicable to the business activity, notwithstanding that it is contained in an otherwise valid legal instrument*);
- Be a tool for sharing information among regulatory authorities (*the public-public communication*);

# Challenges ahead

- Does setting up a RIA system as envisaged by the proposed Bill create another inefficient layer of bureaucracy?
- Challenge of building a new regulatory culture?
  - Regulatory authorities must improve business processes for speedy issuance of licences – automation of services
  - Capacity building/training on RIA, data collection and sharing
- Challenge of compliance? Regulating the regulators?
  - Role of RRU is advisory/support/review
  - How to ensure new requirements in Bill are complied with?
  - How to handle illegal licences?
- How to gradually broaden the mandate of the regulatory reform institutions?
  - From initial focus of RIA activities on business licences, to widening the scope of the RIA system - Strategy should be developed to gradually include other selected areas of regulation

# Way Forward and Conclusion

- Formalizing regulatory reform in Kenya through institutions, laws and government strategies require:
  - continued and explicit political support to ensure that the proposed Bill is finalized and passed by Parliament in order to create a solid foundation for further regulatory reform.
  - continued dialogue with private sector stakeholders is established in order to involve them in the reform process, to lobby for enactment of the appropriate laws and establishment of and support for the institutions

# Way Forward and Conclusion

- Implementation of the proposed institutional framework will require:
  - Capacity building of the Business Regulatory Reform Unit/Committee once established, to ensure thorough expertise in RIA and regulatory reform issues. (The work and experience of the Working Committee can be instrumental in this regard)
  - Extensive advocacy efforts to ensure that the standards of regulatory quality, once defined and set out in the law, are well understood and adopted by the regulatory authorities across government – benefits of regulatory reforms must be better disseminated.

# Way Forward and Conclusion

- Training and capacity building within relevant public agencies and among private stakeholders
- Regulatory reform strategy and framework should be linked to the broader Private Sector Development Strategy, governance and anti-corruption reforms, public sector reforms
- Regulatory reform is a continuous process that requires commitment from government and all stakeholders.

**END**