STATE LAW OFFICE AND DEPARTMENT OF JUSTICE

Supplement by State Law Office and Department of Justice on The Ease of Doing Business in Kenya

Mandate of State Law Office

Derived from the Constitution of Kenya 2010, the Office of the Attorney General Act and Executive Order No 2, State Law Office and Department of Justice is mandated to promote the rule of law and public participation; support Government's investment in socio-economic development; promote transparency, accountability, ethics and integrity; spearhead policy, legal and institutional reforms; promote economic governance and empowerment; promotion, fulfillment and protection of human rights; undertake administrative management; capacity building; and enhance access to justice.

Pertinent to the articulation of its mandate, the State Law Office and Department of Justice is cognizant of its role in the advancement of Kenya's development priorities as spelt out in country's long-term development blue print, the Vision 2030, Constitution of Kenya 2010, Jubilee Coalition Manifesto, the Millennium Development Goals (MDGs) and the Sustainable Development Goals (SDGs) declarations.

The Ease of Doing Business ranking by the World Bank for any country is an indication that the regulatory environment existing is conducive to business operation thereby making it an ideal investment destination. The rankings measure regulations affecting a total of 11 areas in the life of a business; these areas include the process of starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency.

In the ***Ease of Doing Business Report, 2015*** and the ***Doing Business Reforms Report, 2015*** by the World Bank, Kenya was ranked No 2 after Costa Rica as being among the top ten countries that were noted as having registered significant improvement by having 39 regulatory reforms in place to enhance the business process. Sub-Saharan Africa alone accounted for about 30% of the regulatory reforms making it easier to do business in 2014/15, followed closely by Europe and Central Asia.

The **Registrar General's Office** based at State Law Office and Department of Justice has contributed greatly to the Ease of Doing Reforms in the Country and the World at large thereby placing Kenya at a vantage point as a choice destination of business and investment. The reforms are part of promoting economic governance in the country. The legal reforms have seen the enactment of the Companies Act 2015 and the Insolvency Act 2015 while the business registration process has been transformed significantly. There is also a draft bill on the Movable Property Security Rights; this is a bill that seeks to enhance access to credit for small and micro business enterprises by linking financial lenders to businesses and individuals with the aim of widening the scope of business and entrepreneurship in the country.

As part of the reforms, the **Automation of Registration Services** through E-governance has simplified the registration process of business names, companies, and societies in the country making it a one day affair. **The Companies Registry** commenced name search and reservation services through the on-line e-citizen portal in collaboration with **Huduma Centres**. The registration of business also incorporates PIN, NHIF and NSSF registration in one process. This provides a one stop shop for registration services, thereby facilitating a reduction in the number of steps for operationalization of business enterprises. Officers from KRA, NSSF and NHIF are currently stationed in the Companies Registry and are issuing, PIN, NSSF certificate and NHIF numbers to all companies that are being registered. Since the operationalization of the Companies Act 2015 on 1st January 2016, some **12,178** new companies have been registered, out of which 2,543 are one director or shareholder companies. In addition, all limited liability companies applying for initial registration are **NOW EXEMPT FROM STAMP DUTY** on Initial Nominal Capital. The registration fees for companies has been standardized at **10,000/-.**

1. **The Companies Act 2015** is an effective framework of law and corporate governance that aims to promote enterprise and stimulates investment in the country. **Key aspects of The Act** include:
   - It provides for one man companies; there is no need for Company Secretaries; the Common Law Doctrine of *ultra vires* has been abolished. The Act provides for the enhancement of good corporate governance provisions to enhance accountability of a company's directors and its officers. It also provides for stiff penalties including fines and default fines for directors and company officers who do not comply with the Act. The Act also allows for Derivative Actions. This is where it becomes possible for a member of a company to bring action in respect of a cause of action vested in the company, and seek relief on behalf of the company especially where the directors are negligent or are not willing to take action.
   - The Companies Act 2015 allows also that private companies do not need to hold physical annual meetings unless they positively opt to do so. It makes it easier for companies to take decisions by written resolutions rather than holding a meeting. The Act further protects minority investors against directors' misuse of corporate assets for personal gains. It also allows for increased disclosure requirements for related party transactions by requiring admission to the board of directors, shareholders and the public.
   - Shareholders can sue and hold directors liable for self-dealing, engaging in corporate malfeasance and conflict of interest; Shareholders rights and role in corporate decisions have been increased by providing that minority shareholders can call for an extraordinary meeting of shareholders; Shareholders automatically receive pre-emption rights every time a listed company issues new shares.

2. The Insolvency Act 2015

The insolvency framework in Kenya was reinforced by passing the Insolvency Act 2015 with the following provisions:

- Debtors can now file for both liquidation and reorganization or *voluntary arrangement.*
- It also allows for continuation of contracts and also allows for avoidance of undervalued transactions.
- The Act provides for creditors whose rights are affected by the reorganization plan to vote on the proposed plan and also the dissenting creditors are entitled to at least as much as they would have been received under liquidation.
- In the Act, a creditor has the right to object to a decision accepting or rejecting creditors claim.

3. Drafting of the Movable Property Security Rights Bill.

The State Law Office together with the National Treasury have initiated reforms to the legal and regulatory regime on movable collateral and other instruments in secured transactions.

The aim is to enact a new secured transactions legal, regulatory and institutional framework and establish an electronic movable assets register. The registry will be an efficient system that can be used by lenders, businesses and other practitioners in increasing secured transactions, access to credit and other forms of finance.

The Registrar General's Office together with the Kenya Law Reform Commission have developed a D**raft Movable Property Security Rights Bill.** The Bill has been subjected to stakeholder consultation and is in the final stages of drafting.

Plans are also underway to commence the procurement process for the IT firm that will install the electronic registry system as well as provide the infrastructure both hardware and software needed for the registry. It is hoped that by the end of the year the online registry will be operational.

The business registration process has been shortened from 11 steps to 3 steps.

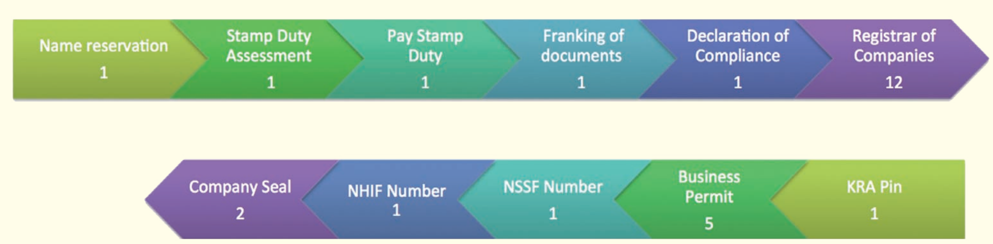
The process involves:

Starting a Business Reforms

- Submission of a Unified Application Form at Huduma Centers (One stop Shop)
- Single collection of Certificate of Incorporation, KRA PIN, NSSF registration certificate and NHIF certificate at Huduma Centers.
- Model memorandum and Articles of Association
- Standardization of registration fees to KES. 10,000
- Elimination of stamp duty assessment on nominal capital
- An Advocate is no longer required to prepare incorporation documents.
- The *Declaration of Compliance* by an Advocate before a Commissioner of Oaths is no longer required.
- Company Seal is now optional.

Starting a Business: The Number of Steps it takes to register a Company.

Old Process:



New 3 Step Process:

4. **Business Registration Service Board** which aims to delink the Registrar General's Office from State Law Office was gazetted in November 2015. It is responsible for implementation of the ease of doing business interventions under State Law Office supervision. The Board which encompasses a mixed membership of private sector professionals and government representatives is currently in the process of operationalizing its activities, and delinking from the State Law Office. **The Business Registration Services Act 2015** consolidates administration of the laws relating to the incorporation, registration, operation and management of companies, partnerships and firms; business names, bankruptcy, societies, hire purchase, chattels transfers, adoption, coat of arms, books and newspapers, the national flag, emblems and names.

The Registrar General Division at State Law Office is responsible for registration of business names, companies, partnerships, hire purchase institutions, building societies, books, and magazines. It is also responsible for official receivership duties such as handling of bankruptcy and insolvency, licensing and gazetting of marriages, church ministers to perform marriages and also adoptions.