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**Complying
with
Business Regulation in Kenya**

**A Benchmark Study of the Trade Licensing
and
Registration of Business Names Acts, 1997-98**

by
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List of Abbreviations

BDS	Business Development Services
CBD	Central Business District
CG	Central Government
DCs	Developed Countries
DFID	Department for International Development
DS	De-regulation Section
GoK	Government of Kenya
IDS	Institute for Development Studies
LA	Local Authority
LDCs	Least Developed Countries
MOH	Ministry of Health
MPND	Ministry of Planning and National Development
NGO	Non-governmental Organisation
NCC	Nairobi City Council
ODA	Overseas Development Administration
RBN	Registration of Business Names
REME	Research, Monitoring and Evaluation
SMEs	Small and Micro Enterprises
SSJKE	Small-scale <i>Jua Kali</i> Enterprise
STF	Special Task Force

Foreword

The Benchmark Study of De-Regulation in Kenya was conducted by the Institute for Development Studies (IDS), University of Nairobi. This report of the study is a product of the Research, Monitoring and Evaluation (REME) Project at IDS with funding from the Department for International Development (DFID) of the British Government. The study aimed at providing an understanding of the policy and regulatory framework within which Small and Micro Enterprises (SMEs) operate. It specifically sought information on compliance rates and costs of compliance and non-compliance as well as perceptions of both policy makers and the general public on the activities of SMEs. The key finding of the study is that there is a high level of compliance with both the Trade Licensing Act and the Registration of Business Names Act. Enterprises could therefore benefit substantially from the streamlining of the regulation process. The finding is policywise relevant and timely in view of the recognition on the part of the Kenya Government of the need to remove or reduce unnecessary regulatory barriers affecting operations of SMEs. This is evidenced by the setting up of the De-regulation Section (DS) within the Ministry of Planning and National Development. The IDS is looking forward therefore to working closely with the DS to produce the desired high quality well grounded information for decision making as well as an assessment of the impact of existing or planned interventions. I consequently find this report a source of great encouragement for the Ministry of Planning and National Development, the Department for International Development and the IDS, University of Nairobi to continue with the De-regulation Project. The research and evaluation work of the project will not only inform policy but also promises to result in academic gains for the researchers themselves.

Prof. Patrick O. Alila
Director, IDS

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This research owes its outcome to the policy makers, general public and 300 entrepreneurs, without whom this research would not have been possible. The respondents availed their precious time for interviews, discussed the issues and made the work of researchers and field assistants manageable.

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De-regulation Team: Peter K'Obonyo, Gerrishon K. Ikiara, Winnie Mituilah, Charles Abuodha and Grace Ongile.

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Executive Summary

The Government of Kenya (GoK) has recognised a need to remove or reduce unnecessary regulatory barriers affecting Small and Micro Enterprises (SMEs) since there are a number of restrictive regulations that affect their operation. In an effort to address the restrictive environment, the GoK with the support of the British government's Department for International Development (DFID) set up the De-regulation Section (DS) within the Ministry of Planning and National Development. The DS is one of the DFID projects being researched, evaluated and monitored by the University of Nairobi, Institute for Development Studies (IDS) Research, Monitoring and Evaluation (REME) Project.

The DS aims at the removal of superfluous and unnecessarily restrictive regulations which inhibit economic activity. The DS has been examining laws and regulations that impact on the growth and development of SMEs. Their work revealed that the licensing laws and by-laws which were set up to control, prohibit or regulate various business activities are the single greatest deterrent to entry into and growth of business in the private sector in Kenya.

The benchmark study of the Trade Licensing and Registration of Business Names Acts conducted by IDS, REME Project aimed at understanding the policy and regulatory framework within which SMEs operate. The study sought to establish compliance rates and the costs of compliance and non-compliance. The research also sought to know the perception of both policy makers and the general public on the activities of SMEs. Samples (for analysis) were drawn from six towns: Nairobi, Nakuru, Kakamega, Siaya, Nyeri and Kajiado. The six were purposively selected for the benchmark survey on de-regulation. The selection was guided largely by considerations of the nature of the regulatory environment rather than a need for geographical representation. The sample covered a total of 300 entrepreneurs and 54 suppliers, consumers and people staying near SMEs.

The majority (73.7%) of enterprises were sole proprietorships, and most entrepreneurs started doing business in 1980. There was no difference in when men and women started doing business. Enterprises were mostly trading in the sectors of manufacturing (20.7%), commerce and trade (21.3%), hotel and restaurants (10.3%), repairs (11.7%), food and food processing (11.0%). Others included construction and building (8.7%), transport (8.0%) and fish trade (8.3%). Most (32.0%) of the enterprises covered in the survey were operating within the central business districts (CBDs) of urban areas. This was followed by roadside/highway (17.0%), open air markets (16.7%) and residential shopping centres (15.3%).

The study determined the extent to which small-scale entrepreneurs are in

compliance with government regulations. Trade licensing and registration of business names received most attention, but the investigation also included questions about other regulations. Despite the fact that the Registration of Business Names Act (Cap 499, Laws of Kenya) is very clear about who is required to register, the study found that there was confusion about registration. When asked if their business was registered, 123 entrepreneurs (42.0%) out of 300 replied in the affirmative. Only 73 of these, however, gave the Attorney-General's Chambers as the body with whom they had registered. The others named agencies such as the Ministry of Social Services, Ministry of Health and Fisheries Department. Such registrations have nothing to do with business name, yet the fact that the enterprises lumped all together is an indication of the confusion surrounding the term *registration*.

The Trade Licensing Act (Cap 497, Laws of Kenya) requires that all business activities be licensed. Of the 300 firms in the enterprise survey, 89 were engaged in trading activities requiring a licence. Of these, 73 (82.0%) reported having the required licence, 15 (16.9%) said they had no licence and one respondent (1.1%) did not reply to the question. Those with licences seem to keep them up-to-date. Nearly all (95.3%) of those who have licences said that they were current. Those without licences tend to be traders without fixed premises, operating in open air markets and along the roadside.

The sample data were used in conjunction with data from Kenya's national baseline studies of small and micro-enterprises (Parker 1994, Daniels *et al* 1995) to estimate the number of enterprises in compliance in the country as a whole. The estimates are a direct extrapolation from the sample percentages. Over 480,000 businesses are in compliance with the Registration of Business Names Act, and over 350,000 are in compliance with the Trade Licensing Act.

Most firms in the sample (68.3%) are in compliance with the requirements of the Registration of Business Names Act. Of the 205 complying firms, 73 were actually registered. For those not required to register, the only cost of compliance is that of obtaining information on the act. Registered businesses, however, have additional costs: the direct cost of registration, travel time and the cost of displaying the registration certificate.

The survey examined three broad types of costs of non-compliance. The first are the money costs of preventing the authorities from taking punitive action as a result of the enterprise's failure to comply. The most common item in this category is the payment of "public relations" money to the enforcement officers. The second group includes the financial consequences of punitive action actually taken by the authorities. The authorities are known to close businesses, evict firms from their premises, demolish premises and confiscate goods. Such actions have direct costs. Finally, both preventive measures and dealing with the consequences of the punitive action take time, a costly commodity in the business world.

Businesses out of compliance with the Registration of Business Names Act pay an estimated KSh 273 million in public relations (bribe) money to protect themselves from punitive action. Firms whose names are unregistered also suffer from evictions, arrests, demolitions and confiscation of goods. These costs are estimated at KSh 356 million annually. Finally, firms whose names are not registered spend time valued at KSh 128 million dealing with the consequences of their non-compliance. The total cost for the estimated 224,000 out-of-compliance firms is estimated to be KSh 757 million. Unlicensed trading firms pay an estimated KSh 23 million in public relations money to prevent the authorities from taking punitive action against them. Firms without trade licences also incur costs when they are evicted or arrested and when their premises are demolished or their goods confiscated. These costs are estimated to amount to KSh 141 million annually. The most costly part of non-compliance with trade licensing is not the direct payments but the lost time. The estimated 77,000 entrepreneurs who do not comply with the Trade Licensing Act lose an estimated KSh 236 million annually as a result of the time needed to cope with actual or threatened punitive action.

The study assessed the perceptions of the public and policy makers on the importance and benefits of regulation and de-regulated environment for SMEs and the government's ability and commitment to de-regulation. The members of the public—suppliers, consumers and those staying near SMEs—felt that they faced a number of problems in running their operations. These problems included lack of business development facilities, inadequate infrastructure, poor location and access to services, inadequate shelter, insecurity, lack of markets, pollution, health risks, noise and unfair competition from large licensed businesses. Despite the positive aspects of employment opportunities and income generation from SMEs, the public had mixed reactions about the importance and benefits of regulations, with the majority pointing out that regulations encouraged corruption and only large businesses should be subjected to registration and licensing. Evidence from discussions with members of the public and with government officials supports the general need for making the regulatory framework simpler and more fair. The main concern was in the area of public health, where members of the public wanted strict and well-enforced regulations to ensure that they are not exposed to health hazards.

Discussions with policy makers revealed that they were aware of the local government circular about the need for de-regulation. They acknowledged the fact that procedures of licensing are tedious and cumbersome and that de-regulation is necessary. Some councils had begun re-organising departments involved in licensing in preparation for the de-regulation programme requirement of a one-stop-shop office for handling all matters of licensing. Policy makers at the Ministry of Trade indicated that the implementation of the one-stop-shop policy would create unemployment for the many officers who had been dealing with

issuing licences.

The benchmark study found a high level of compliance with both the Trade Licensing Act and the Registration of Business Names Act. The study found that enterprises could benefit substantially from streamlining the regulation process. Time was found to be the largest single cost of complying with the Registration of Business Names Act. This is because all registration is done in Nairobi, forcing business owners located elsewhere to take considerable travel time. De-centralising the registration process would substantially reduce the costs to the enterprises without interfering with government revenue. The study found that non-compliance is also costly, especially to enterprises suffering from punitive measures taken by the Central Government or Local Authorities. It is not surprising, therefore, that many businesses choose to make "public relations" payments to avoid these costs.

Evidence supports the need for continued effort to reduce the regulatory burden. The study noted that de-regulation as a concept is recent in Kenya, and many members of the public are still not aware of it. Furthermore, members of the public have lost faith in government performance and are therefore not sure that the de-regulation programme will be put in place. There is need for information and awareness campaigns.

1

INTRODUCTION

As most developing countries struggle to undertake economic reforms, it has become necessary to free business enterprises from cumbersome procedures and regulations. In Kenya, existing regulations and procedures have been observed to be a major bottleneck to small and micro enterprises (SMEs). This realisation has contributed to several efforts from both government and non-governmental organisations (NGOs) aimed at improving the policy environment and the operations of SMEs.

This study is aimed at understanding the policy and regulatory framework within which SMEs operate. It was conceptualised within the broad framework of the British Department for International Development (DFID) and Institute for Development Studies (IDS) Research, Monitoring and Evaluation (RIME) project. The project examines three aspects of support for SMEs: business development services (BDSs), financial services and de-regulation. This report contains the findings of a benchmark study on de-regulation.

The study covered six towns in Kenya, selected on the basis of the operation of the regulatory regime; 300 entrepreneurs and 54 members of the public were interviewed. The study sought to establish compliance rates and the costs of compliance and non-compliance. Additionally, the researchers investigated the perceptions of policy makers and the general public regarding activities of SMEs, especially those that might be affected by de-regulation.

Chapter 2 provides an overview of the enterprise situation in Kenya by highlighting the policy environment, prevailing regulations and procedures and focussing particularly on the Trade Licensing Act and the Registration of Business Names Act. The chapter also describes the de-regulation project. Chapter 3 is about the purpose and scope of the study and highlights the research issues and key variables addressed. Chapter 4 presents the methodology used, whereas Chapter 5 is a literature review in the area of de-regulation. Background on respondents and enterprises is discussed in Chapter 6. Chapters 7-10 present the analysis of the main research issues; Chapter 11 draws conclusions from the analysis and highlights some issues to be pursued in subsequent studies.

BACKGROUND

Small and micro enterprises (SMEs) have become important in all sectors of the Kenyan economy. They provide employment and income to a majority of people in both rural and urban areas. By 1995, Kenya was annually producing nearly 500,000 people for the labour market, but on average, the modern and small farm sectors could only accommodate 240,000 new workers. The balance of the labour force was engaged in economic activities outside the formal sector, including SMEs (Daniels *et al* 1995). The importance of the SME sector is further illustrated by national projections which show that between 1990 and the year 2010, employment in the sector will increase as follows: 439,000; 870,000; 1,321,000; and 2,366,000 for the years 1990, 1996, 2000 and 2010, respectively, with an average annual growth rate during the period of 8.8% (Kenya 1996).

Evolution of Small and Micro Enterprise Policy in Kenya

Though there is mention of government support for small-scale businesses in a number of documents (e.g., national development plans), the nature of this support was not clearly articulated in a policy document for a long period of time. However, with the increasing importance of SMEs, resulting partly from economic reforms under liberalisation policies and decline and slow growth rate of employment in the formal sector, the Government of Kenya turned in desperation to acknowledge and support SMEs. The reforms reduced the workforce of large parastatals and the Public Service Commission, thereby making many employees jobless. A number of those made redundant turned to SMEs.

The pressure for economic liberalisation and adoption of free market economic principles also pushed the Kenya government to re-examine laws and regulations governing businesses. This was done on the premise that a free market regime is necessary for economic growth, contrary to the prior situation where the government had a negative attitude towards SMEs and largely viewed their operations as obstacles to "planned development".

The change of government attitude is clearly reflected in Sessional Paper No. 1 of 1986, the basic theme of which was renewed rapid economic growth. This was to be attained using a number of measures, including establishing "a dynamic informal sector that creates jobs at low cost and that caters for the needs of people at all income levels" (Kenya 1986:1). This paper was immediately followed in 1987 by a special task force (STF) charged with reviewing all policies, laws and regulations with a view to identifying those considered punitive to small-scale *jua*

kali enterprises (SSJKEs).

The work of the STF formed a basis for the 1989 government publication, "Strategy for Small Scale and *Jua Kali* Enterprises Development in Kenya: Towards the Year 2000". The strategy was later translated into a policy and published as Sessional Paper No. 2 of 1992 (De-regulation Section, Ministry of Planning and National Development 1997). In the paper, the GoK acknowledges that a tightly regulated economy works to the disadvantage of small businesses. The paper further notes that the SSJKE sector has reached a stage at which further growth is not possible without strong, effective and coordinated support from government, aid agencies, the business community and people at large (Kenya 1992).

"Sessional Paper No. 2 of 1996 on Industrial Transformation to the Year 2020" reaffirms the government's commitment to support SSJKEs. The paper notes that the sector provides an essential training ground for developing the entrepreneurial skills that are essential to Kenyan industrialisation. The paper observes that SSJKEs have the potential to form one of the pillars of industrialisation in Kenya. It further notes that the sector must be fostered to continue to expand and grow, for it is expected that more jobs will be created in this sector than any other off-farm sector. Licensing and other regulations that have been identified as being impediments to SSJKE development will be amended or removed (Kenya 1996).

Another policy area concerns land and infrastructure. Legal regulations relating to premises on which SMEs operate have been a matter of concern since the majority operate on premises officially considered illegal. Specific issues include availability and expansion of premises, location of enterprises in private or public land, informal plans and structures, and statutory protection (Kibwana 1989). These issues also affect the provision of a number of essential services such as power, water and sanitation. For example, most SMEs are located on public and/or private land without any legal title making them unable to access electricity because the Electricity Power Act (Cap 314) limits electricity power installation to "permanent" and secured properties.

The GoK has been addressing the issues of land and infrastructure through the Small Scale and *Jua Kali* Division of the Ministry of Planning and National Development (MPND). The Division is charged with coordination of implementation of various activities undertaken by key actors—line ministries, private sector and NGOs. The Division also monitors the implementation status of various policies and programmes, identifying possible capacity gaps and assessing the impact of policies and programmes on target beneficiaries (Kenya 1997). Thus, through the programme, the government aimed at mobilising resources for sheds, access roads, water and electricity, among others. This stated policy has hardly been realised partly due to ineffective resource mobilisation, regulations and procedures.

Besides the stated policy and the few programmes that the government has put in place, an assessment by the British Development Administration (ODA) identified dismal performance with the execution of small enterprise policy framework. The assessment noted that poor performance was not due to lack of programme and project initiatives but a combination of factors. One factor is the failure to address key issues such as land, infrastructure and credit; and the failure to establish an enabling environment through de-regulation, especially at the micro level. Another factor is the negative attitudes of many influential policy makers towards SMEs. A third factor is the fact that SMEs are regarded as an isolated sector rather than as a central issue of development strategy (ODA 1994). The poor performance is clearly reflected in the stringent regulations and procedures relating to SMEs, as discussed below.

Regulations and Procedures

Regulations and procedures are requirements of any orderly development and/or business activities. They affect enterprises, the public, policy makers and administrators. Most written regulations and procedures in Kenya owe their origin to the Colonial Period, when regulations were aimed at controlling and regulating growth of indigenous enterprises. At Independence, other related requirements were introduced by the Kenya Government to ensure that certain types of business activities were deliberately reserved for Kenyans of African origin. In fact, Africanisation of the economy was stressed in "Sessional Paper No. 10 of 1965 on African Socialism and Its Application to Planning in Kenya". Over the years, the regulations and administrative procedures multiplied, and with passage of time, the regulatory framework proved a major impediment, particularly to the establishment and growth of the African-owned businesses that they were intended to support, protect and promote.

Regulations and procedures appear to be a bottleneck to the development of SMEs. Traders have complained of a lengthy and cumbersome annual licensing process and excessive discretionary powers of officials which create opportunities for corruption (Kenya 1997). This has created a large number of entrepreneurs who do not bother to follow any regulations or procedures. This exposes them to problems with authorities, including harassment, eviction and conviction; others merely devise coping mechanisms which include closing business and even running away in order to avoid physical beating (Graham *et al* 1998).

Excessive regulations are also costly to government in terms of personnel, time and amount of paperwork and associated costs that go into the process. Local Authorities spend a large percentage of their budget on processing licences and enforcement of regulations which are seldom followed. Most enforcement officers appear more interested in taking bribes than enforcing regulations (Graham *et al* 1998). It has been suggested that a repeal of licensing provisions would provide

an opportunity to re-deploy licensing personnel to other activities (Kenya 1997).

Regulations and procedures are enacted and enforced by both the Central and Local Government Authorities (LAs). It is therefore relevant to provide an overview of the government bureaucracy that is responsible for these functions. The following section discusses licensing, registration of business names and other relevant legislation related to trade licensing.

Government Bureaucracy

SMEs interact with both central and local government agents during licensing, registration and enforcement. There is a multiplicity of licences and duplication of licensing requirements between different Central Government ministries and LAs which impose additional burden on traders and also make the enforcement of trade licensing very difficult (Kenya 1997:1). Registration is centralised in Nairobi which is out of reach for most enterprises that are spread nation-wide.

Licensing as a concept means "all the rules that operate to authorise or permit the carrying out of any trade or business activity. Non-compliance with this requirement makes such trade or business activity illegal" (Nyamweya 1995). In Kenyan law, the effect of a licence is "to authorise the licensee to conduct a business or businesses specified in the licence at the premises so specified" (Cap 497: 11, 7(7), Laws of Kenya). All businesses engaged in wholesale or retail trade or brokerage are required to be licensed (Cap 497:1, 2(1)). Trade licensing has two functions: to control certain activities and to raise revenue. The Trade Licensing Act was passed to Africanise businesses and secure an orderly transfer of gainful activities from non-citizens to Kenyan citizens (Nyamweya 1995)

At Central Government (CG) level, a number of departments and ministries handle different aspects of licensing. They include various departments of the Ministry of Trade, Office of the Vice-President and Ministry of Planning and National Development, Ministry of Tourism and Wildlife, Ministry of Energy, Police, Ministry of Health; Ministry of Agriculture, Livestock Development and Marketing; Ministry of Environment and Natural Resources, Ministry of Finance, Ministry of Transport and Communications, Ministry of Information and Broadcasting.

The Ministry of Trade through District Trade Officers directly deals with actual licensing at CG level. Prior to the changes which began being implemented in January 1998, licensing at CG level was said to be cumbersome. For new licences, traders operating within urban councils had to meet a number of requirements, including proof that they are licensed by the urban authority and a letter from the landlord before their applications could be processed. In the new procedure, traders are supposed to be given licences without any conditions.

Local Authorities derive their powers from the Local Government Act (Cap 265, Laws of Kenya) which empowers them to make by-laws necessary for

planning and managing their areas of jurisdiction. They also prescribe penalties for any breach of by-laws. Local Authority licensing is based on licensing by-laws which give great discretionary powers to the LAs. All LAs, especially urban councils, deal with many different types of unlicensed traders. Licensing officers often insist on payment of all arrears due in respect of business premises before a licence is renewed. On the other hand, those getting new licences have to go through several departments before getting clearance to have a trade licence. In most urban councils, licensing is done by the town clerk's or treasurer's department and it is a main source of revenue. A licence is valid for 12 months. In small urban councils, a licence is given by the District Trade Officer, while revenue is collected by the District Treasurer.

Acts, By-Laws and Regulations

Registration of Business Names Act

According to the Registration of Business Names Act (Cap 265, Laws of Kenya) firm founders who want to do business under a "business name" must register that name with the Registrar General's office in Nairobi. Like licensing, registration of business names (RBN) gives the Registrar General powers to decide whether a business should be registered or not. Although registering an enterprise under the RBN Act gives an enterprise a legal description, identity and capacity, SMEs do not have to comply with the act, since registering a business name is optional.

The act requires every individual, firm or corporation having a place of business or carrying on business under a business name other than the individual's surname, surnames of all individuals who are partners or its corporate name to be registered with the Registrar General's office (Nyamweya 1995). For example, Kamau and Wambui can each trade using their surnames or can jointly trade as Kamau and Wambui. This does not require registration of business name. However, should Kamau or Wambui add other names (e.g., Kamau Splendid Grocery or Wambui First Class Fashions), then the law requires that the business name be registered. The RBN Act, section 6(h), requires married women to give full names of their husbands in addition to their own. There is no similar requirement for married men to give full names of their wives.

A number of businesses are known not to be keen on registering their businesses for fear of paying tax. Further, most small-scale enterprises operate either with no business name or merely using their surnames and are therefore not required through the act to register a business name. This partly denies them recognition as business entities and may also have an influence on access to benefits or qualification for a programme of support which requires a business to be a legal entity. Evidence of a legally registered business enterprise is required by banks and other financial institutions before loans can be advanced under the

name of the business enterprise. This requirement is totally determined by banking lending requirements and has nothing to do with government requirements. Thus, although a business name is not mandatory, it facilitates access to credit facilities from formal banking as well as trust and recognition from other formal businesses.

Centralised registration in Nairobi is cumbersome to entrepreneurs operating far away from the capital. In addition, formalities involved in registration are too complicated for sole proprietors running their small enterprises. Once a business is registered, it is required to compile and file audited accounts with the registrar. Most SMEs, especially those run on sole proprietorship basis, hardly do proper bookkeeping and may not be in a position to satisfy such requirements.

Public Health Act

The Public Health Act (Cap 242, Laws of Kenya) is aimed at securing and maintaining public health. It ensures that matters affecting public health are addressed in the construction of dwelling houses and other premises. Section 115 of the Act states, "no person shall cause to exist on any land or premises owned or occupied by him/her any nuisance or other conditions liable to injurious as dangerous to health". It also empowers Local Authorities to enact by-laws as to specification of buildings, works and fittings to ensure adequate sanitation. The by-laws may specify the nature of materials to be used in construction, the space, lighting, ventilation, height and safety measures in the buildings. Such by-laws may also prohibit erection of temporary or moveable buildings for businesses or dwelling purposes (Nyamweya 1995).

Building Code

Section 126(a) of the Building Code—dealing with nuisance, injury to health, use of temporary and moveable buildings—has been used by the Nairobi City Council and other Local Authorities to justify the demolition of kiosks and eviction of hawkers and street vendors. Demolition of kiosks and business sheds used by SMEs is rampant in most urban centres of Kenya. The standards set in the Building Code prior to 1995 review were unrealistic and difficult for small-scale operators to satisfy.

Nairobi City By-Laws

According to the 1963 Nairobi City By-Laws, licences are required for shining shoes, hairdressing and transporting with hand-carts. Most of the traders involved in these activities are also required to get licences under other statutes such as the Trade Licensing Act. In addition, restaurants and eating houses are required to be licensed under the Hotels and Restaurants Act (Cap 494, Laws of Kenya). This is an example of the multiplicity of charges and licences with which some SMEs must cope.

Local Authority Service Charge Act

The Local Authority Service Charge Act (Cap 274, Laws of Kenya) service charge is based on business classification without any regard to actual income. The charges also vary across Local Authorities with Nairobi having the highest service charge per enterprise. A food eating kiosk is required to pay as a class A hotel, *jua kali* mechanic enterprise as an established garage and a *jua kali* hair saloon as a modern beauty parlour.

Land Planning Act

The Land Planning Act (Cap 303, Laws of Kenya) deals with the making of plans and schemes for the planning and development of both urban and rural land. Such plans and schemes lay down the level of development permitted in the area concerned and also control the form which that development must take from the points of view of public health, public safety and amenities of the neighbourhood (Nyamweya 1995). According to section 10(1), permission is required from the relevant planning authority before any development on the land can take place. Many SMEs do not seek this approval, rendering most of their premises illegal. The situation is compounded by the fact that they do not own the land on which the structures are built. The provisions in this act and the Building Code are invoked when demolishing kiosks and evicting SME traders and hawkers.

Hotel and Restaurant Act

The Hotel and Restaurant Act (Cap 498, Laws of Kenya) requires a licence for operations and manager as well as compliance with health and building standards. A training levy to facilitate staff training is imposed along with accommodation tax on residents. As was the case with Nairobi City By-Laws, the Hotel and Restaurant Act leads to a multiplicity of requirements and licences for a single business enterprise.

Local Government Act

The Local Government Act (Cap 265, Laws of Kenya) empowers Local Authorities to enact by-laws prohibiting, controlling and regulating various trades and occupations. These powers inhibit the development of SMEs, and the De-regulation Section has recommended that "the act be amended to reflect that the power of local authorities to regulate trades and occupations is limited to regulation for the purposes of ensuring that trades are conducted in an orderly manner, and for ensuring that standards relating to security, public safety and the environment are preserved and can be monitored" (Kenya 1997: 6).

The Process of De-regulation

Because of the existence of a restrictive regulatory framework affecting the operation of SMEs, a need was recognised by the Government of Kenya to

remove or reduce unnecessary regulatory barriers. The De-regulation Project is one of the activities of the De-regulation Section aimed at addressing some of these issues. It is one of the DFID supported projects being researched, evaluated and monitored by the IDS REME Project. The main objective of the De-regulation Project is "to enable the freer operation of markets in trade with minimal involvement of government in those markets, and with the effect that market forces operate as the most efficient mechanisms for the allocation of scarce resources. Thus, the de-regulation project aims at the removal of superfluous and unnecessarily restrictive regulations which inhibit economic activity" (Kenya 1997:14).

Since the establishment of the Special Task Force in 1987 charged with reviewing all policies, laws and regulations with a view to identifying those considered punitive to SSJKE the GoK has shown some commitment in effecting policy and bureaucratic changes relevant for realising its policy positions on SMEs. This commitment was reflected in the upgrading of the SSJKE Unit to a division in 1996 and the establishment of the Directorate of Applied Technology to cater for a *jua kali* development programme for purposes of employment creation. The SSJKE Division has two main sections: policy and de-regulation. The Policy Section has the mandate to deal with policy development, implementation, monitoring, coordination, information dissemination and impact assessment. The De-regulation Section (DS) has a mandate to facilitate creation of an enabling environment for SSJKE promotion by addressing the existing constraints, specifically those laws and regulations that have proved punitive to SSJKE development.

The DS has been examining laws and regulations that impact on the growth and development of SMEs. Their work revealed that "the licensing laws and by-laws which were set up to control, prohibit or regulate various business activities are the single, greatest deterrent to entry into, and growth of business in the private sector in Kenya" (Kenya 1997). The DS has criticised the concept of licensing, noting that basically it was used as a means of regulating and controlling business activities. Regulating and controlling businesses has increasingly become inappropriate because of the general trend towards de-regulation and the necessity to promote investment and economic performance. Secondly, many regulations pertinent to licences are not enforced because the enforcement authorities do not have the capacity to enforce them. Another reason is that licensing creates market distortions at small and medium enterprise level.

The De-regulation Section (1997:3-7) has recommended the repeal and/or amendment of 13 acts in relation to trade licensing and consolidation of by-laws. This is because the enforcement authorities do not have the capacity to manage and enforce them. Acts and by-laws recommended for repeal, merger or consolidation are listed below. Acts which the DS proposes to examine in future include those which impact on the horticultural sector and the fishing and mining

industries. The DS concluded that changes to two acts (Registration of Business Names and Trade Licensing) could have a very positive impact on business, government and, ultimately, Kenyan consumers.

Acts recommended for repeal

Trade Licensing Act (Cap 497)
Stock Traders Licensing Act (Cap 498)
The Hides, Skin and Leather Trade Act (Cap 359)
The Tourist Industry Licensing Act (Cap 381)
The Transport Licensing Act (Cap 404)
The Hotel and Restaurant Act (Cap 494)
The Scrap Metal Act (Cap 503)
The Motor Vehicle Components and Accessories Act (Cap 520).

Acts recommended for amendment

The Films and Stage Plays Act (Cap 404)
The Factories Act (Cap 514)
The Local Government Act (Cap 265).

Acts recommended for merger

The Liquor Licensing Act (Cap 121)
The Traditional Liquor Licensing Act (Cap 122).

By-laws recommended for consolidation

The Food, Shops and Stores By-laws, 1958
Hawkers By-laws, 1963
Licensing of Premises and Trades By-laws, 1991
Taxi-Cab By-laws, 1963
Sale of Ice-cream By-laws, 1949
Surveyor of Milk and Dairies General By-laws, 1949
Slaughter House By-laws, 1986
Omnibus Stations By-laws, 1977
Laundry and Dry Cleaning General By-laws
Hairdressing and Barbers General By-laws, 1949
Hamali Carts and Hand Carts General By-laws, 1948
Restaurants, Eating Houses and Snack Bars By-laws, 1981
Sweepers (Private) General By-laws, 1948.

In respect of Local Authority licensing, as detailed in a ministerial circular issued by the Minister of Local Government in October 1997, detailing implementation of LA licensing reform, the Kenya government agrees with the DS in principle. The Minister for Finance, during the 1996/97 budget speech, stated that the duplication of local and CG licensing is an impediment to investment and in

order to minimise the licensing burden on business, LAs should consolidate their own licensing so that only a single payment is required. In a practical sense, a single business registration permit would replace the existing licensing system. The circular from the Minister of Local Government specifies that the change will be implemented in two phases. The 1998/99 budget speech reiterated the same point. In the first phase, entrepreneurs are expected to pay a single licensing fee as from January 1998, equal to the total of all licences held in 1997. The licensing fee was to remain unchanged in 1998 and LAs were to establish a one-stop-shop for issuance of licences without conditions. The LAs are to compile a business register of all enterprises in their jurisdiction. A new tariff schedule was to be designed in 1998 based on which single business registration fee would be payable by all enterprises to all LAs in 1999. Necessary amendments to the Local Government Act and new model by-laws were to be drafted in cooperation with Nairobi City Council (NCC). In the second phase, a single business registration fee (as from January 1999) would be charged for the issuance of a permit/receipt without conditions in a one-stop-shop based on the new tariff schedule and business register (Clive Davis, DS, pers. com. 1998).

PURPOSE AND SCOPE OF THE STUDY

This benchmark study provides basic information on the business regulatory environment in Kenya. It establishes the costs of regulations to businesses, the importance of a de-regulated environment and both public and policy maker perceptions of the benefits and costs of de-regulation. It also examines the extent to which SMEs comply with regulations, the costs of either defying or complying with regulations and both SME and public perceptions of government ability and commitment to de-regulation.

The main research issues addressed in this initial study are compliance costs and non-compliance costs. It costs money and time to comply with government regulations. Business premises (building) must be constructed to an acceptable planning and health requirement, products must meet certain quality standards, employees must be paid minimum prescribed wages and safety devices must be provided. With respect to business registration and trade licensing, the business operator pays the prescribed fees and further bears indirect costs in the form of time spent preparing and submitting applications, following up the application and then waiting for the decision and action of the authorities.

Non-compliance with regulations occurs when businesses operate without fulfilling the legal and administrative requirements. This includes operating without registration and/or trade licence. The costs of non-compliance, i.e., operating informally, include high costs of credit, continuous relocation, bribes to regulatory officials, unprotected property rights, frequent harassment by regulatory agents (causing anxiety, loss of business and lack of planning arising from unpredictability of the environment), loss of goods through confiscation by local government security personnel and social stigma associated with informal activities.

The specific objectives of researching the above issues are to:

- establish the extent to which small-scale enterprises comply with regulations,
- assess the costs incurred by enterprises in complying with regulations,
- establish the costs incurred by enterprises in defying regulations,
- assess costs of regulations to the public,
- establish the perceptions of small-scale entrepreneurs and the public on the need for regulations,
- gauge the perceptions of small-scale entrepreneurs and the public on the importance of a de-regulated environment,
- assess the perceptions of small-scale entrepreneurs and the public regarding

government ability and commitment to the de-regulation programme,

- gauge the perceptions of policy makers on the benefits and costs of de-regulation.

Due to time and financial constraints, the benchmark study on de-regulation covered only the Registration of Business Names Act (Cap 499) and the Trade Licensing Act (Cap 497). These two acts were selected for various reasons. The DS in the Ministry of Planning and National Development expects the de-regulation programme to be implemented in a number of phases over several years. The Trade Licensing Act was to be the first of a series of acts to be de-regulated, making it a prime candidate for the benchmark study. The impact of de-regulation on businesses can only be assessed if de-regulation has been carried out. The Trade Licensing Act is the backbone of the regulatory system affecting micro-scale enterprises. Moreover, the effect of de-regulation of the Trade Licensing Act will be felt throughout the Kenyan economy since it cuts across all industries and sectors. The Registration of Business Names Act is expected to be retained. However, it will be revised to eliminate or reduce existing sources of frustration to entrepreneurs. It was appropriate to include it in the benchmark study since the revised act was expected to be ready by early 1998.

A number of key variables were used in gathering information and assessing the research objectives in a measurable way. This was required in the areas of policy, enterprise and issues concerning the general public.

Cost of compliance to the enterprise was determined by analysing data about actual licensing fees, opportunity cost (time taken to acquire a licence) and amount of money paid to facilitate processing the licence (illegal payment). Cost of non-compliance to enterprise considered value of property destroyed and amount of business income lost due to harassment or closure.

Non-compliance cost to the general public included reduced opportunity for job creation, employment loss from harassment or destruction of property, reduced investment, estimated loss of employment and investment to the economy through multiplier effect and higher price of goods to the consumer.

METHODOLOGY

Research Design

This study utilised both primary and secondary data. The primary data were collected at three different levels: enterprise, policy maker and general public. Secondary data included both published and unpublished works done by both academicians and practitioners in the general area of small-scale enterprises and de-regulation in particular. The main instruments of primary data collection were questionnaires directed at micro and small-scale enterprises, issue-based check-lists directed to general public (suppliers, consumers and those staying near SMEs) and key informant interviews of policy makers and administrators. The latter included senior officers in both central and local government.

Study Population

The population for this study was drawn from micro and small-scale enterprises, and key informants included policy makers, administrators and the general public. Enterprises directly relate and deal with requirements of trade licensing and registration of businesses. Though the latter is expected, SMEs do not have to comply with the Registration of Business Names Act since registering of a business name is optional. It has been recognised that small and medium enterprises face regulatory constraints that threaten their business competitiveness. These constraints impose costs and inflexibilities that hinder the growth of small and medium enterprises. This study attempts to quantify a number of costs that enterprises incur with respect to compliance which include both official and unofficial costs of licensing and registration. Non-compliance incurs direct and contingency costs, cost of harassment, costs of confiscation of goods, relocation costs, threats and social stigma. The study examines these along with perceptions of level of harassment. The opportunity costs of compliance and non-compliance are also quantified.

At the policy level, discussions were held with policy makers in the Ministry of Planning and National Development (MPND), De-regulation Section; Ministry of Health (MOH), particularly the Public Health Department within the Local Authorities; Ministry of Local Government; and Ministry of Trade.

The population of the general public consisted of suppliers to micro- and small-scale enterprises, the customers of these enterprises and members of the general public living close to areas where such enterprises are located.

Sampling and Sample Size

Samples (for analysis) were drawn from six towns: Nairobi, Nakuru, Kakamega, Siaya, Nyeri and Kajiado. The six were purposively selected, and selections were guided largely by consideration of the nature of the regulatory environment.

The six areas are representative of the country to the extent that they contain geographical locations experiencing high, medium and low levels of harassment by the law enforcement authorities. Based on the researchers' information from the news media, Nairobi and Nakuru represent areas with high level of harassment of SMEs, Kakamega and Nyeri represent areas with medium level of harassment, while Kajiado and Siaya represent areas with low levels of harassment. Each of the six areas of the study contributed to the overall study sample according to proportion of total population of SMEs.

The manufacturing and commerce and trade sectors were covered in all the six sampled towns. The hotel, restaurants and tourism, food industry, transport, construction and building, and fish trade sectors were only covered in towns where such activities were dominant.

Purposive and random sampling techniques were used in identifying the actual samples for data collection and analysis. First the key sectors to be covered in the survey were purposively selected based on an identification of key sectors to be covered in each town. After identifying the key sectors in each town, entrepreneurs to be interviewed were randomly picked in the various towns.

A total sample size covered 300 enterprises. They were distributed in the towns as follows: Nairobi (90), Nakuru (52), Nyeri (40), Kakamega (41), Kajiado (37) and Siaya (40). In total, the samples were further distributed across the sectors as follows: manufacturing (20.7%), commerce and trade (21.3%), repairs (11.7%), food and food processing (11.0%), hotel, restaurants and tourism (10.3%), construction and building (8.7%), fish trade (8.3%) and transport (8.0%).

At the policy level, discussions were held with policy makers and administrators in government ministries and local authorities dealing with registration and licensing. The discussions focused on functions of the departments, types of licences issued, stages of licensing, geographical coverage, problems faced and expected changes relating to licensing and registration of business names.

The samples of the general public interviewed was also based on purposive sampling technique. Suppliers, customers and those staying near SMEs were purposively picked based on the choice of enterprises. The rationale for adopting the purposive sampling technique was that suppliers and customers were easy to find using the enterprise as a basis. The entrepreneurs were able to give us names of their suppliers, while customers were interviewed as they purchased their commodities. The neighbours of enterprises interviewed were also accessible and could easily be reached. In total, 54 suppliers, consumers and those staying near SMEs were interviewed.

Data Analysis

Quantitative data were analysed using the Statistical Package for the Social Sciences (SPSS). Given the preliminary nature of this study, no attempt was made to weight our own data. In calculating total compliance and non-compliance costs, however, we drew heavily on Kenya's national baseline survey and its follow-up for proxy variables in cases where it was felt that the survey data might not be representative of the larger SME population (Parker 1994, Daniels *et al.* 1995). Qualitative data were analysed using content analysis of information gathered from policy makers, administrators and the general public.

REVIEW OF LITERATURE

The period immediately after the Second World War was characterised by rapid expansion of the role of government in the national economies of many countries especially in the third world. This was largely due to the then spreading popularity of socialist and communist ideology in Eastern Europe and many parts of the developing world, growth of Keynesian economics since the 1930s and the emergence of independent African and Asian nations whose policies supported a strong government to facilitate rapid socio-economic growth and correct past economic injustices. Enhanced role of the government in the economy was accompanied by increasing levels of regulation in virtually all sectors of the economy. While some of the regulations were generally well intentioned, the regulatory environment was so heavy in many countries by the end of the 1970s that they were a major constraint to the growth of business firms, especially the SMEs.

It was not until the publication of Hernando de Soto's work (1989) on the Peruvian economy that the full direct and indirect implications of tight bureaucratic and regulatory environments on the growth, performance and behaviour of small-scale enterprises in the developing world started to be appreciated. De Soto's pioneering work has not only ignited intense interest in studying business regulatory environments and their implications in many countries, it has also led to the current push by donors and governments for radical de-regulation of economic activities.

In view of rapidly changing economic realities in Kenya, most of the laws and regulations had, by the 1980s, ceased to serve the purposes for which they were established and were increasingly seen as impediments to the growth of indigenous enterprises. Trade licensing laws and by-laws, initially established to control certain business activities, are now perceived as the major impediments to the growth of small-scale enterprises in the country (Kenya 1997). Apart from an unconducive environment, SMEs have limited access to markets, acquisition of non-financial inputs and operating capital, poor infrastructure and inadequate access to technology (Gichira 1991, Parker 1994).

Regulatory Environment in Kenya

Literature on Kenya's business regulatory environment and de-regulation process has grown rapidly in the last decade, with research work emanating from the academic community, NGOs, donor organisations and government ministries

(Kibwana 1989, Kenya 1997). There have been numerous regulations on business operations in Kenya, and their enforcement has been a major obstacle to the growth of the small-scale enterprise sector. A number of studies (Gichira 1991, USAID 1995, Kenya 1997) clearly show that cumbersome licensing procedures have been a major headache to SME entrepreneurs. Other problems identified by entrepreneurs are illegal payments demanded by enforcement agents, evictions, demolition of business premises, confiscation of goods and equipment and cash payments frequently required by commercial centres in urban areas.

Harassment of small-scale entrepreneurs, especially those operating from temporary structures, has been most prevalent in urban areas. Harassment has been directed at enterprises in the service and commercial sectors, especially those operating from traditional markets and trading centres (Parker 1994: 36). Research on women street vendors in Kenya showed that 56.6% of the vendors had experienced harassment once in a while (31.2%), daily (13.8%), on alternative days (11.1%), weekly (1.6%) or monthly (1.6%). However, 40.7% did not experience any harassment (Graham *et al* 1998).

The Ministry of Planning and National Development has identified licensing as a key issue to be addressed as part of the de-regulation exercise. It has been observed that licensing, as a pre-condition to the lawful conduct of trade or business, is increasingly regarded as an unnecessary barrier. Promotion of trade would be achieved if restrictions are confined to the preservation of necessary standards relating to public health, public order, security, safety and the environment. Trade restrictions which go beyond these parameters act as a constraint to business (Kenya 1997:49).

The licence fees vary immensely between Local Authorities and business types. They are higher for business operations within the CBD followed by the urban areas and rural areas, in that order. (Sebstad *et al* 1995, Gichira 1991).

The De-regulation Section (1997) has isolated a number of problems associated with the existing licensing procedures. For example, licensing procedures request detailed information and compliance with numerous administrative requirements before a licence can be issued, leading to much bureaucracy and long delays. The multiplicity of licences and administrative agencies creates confusion and delays. The wide discretion given to licensing officers as per legislation and licensing by-laws has been noted to be problematic. It creates numerous loopholes for different interpretation and also increases opportunities for corruption and other illegal deals. Criteria for setting licence fees are increasingly arbitrary, unrealistic regarding the ability of businesses to pay periodically and do not reflect the level of services provided. The high cost of licensing results from the multiplicity of licences and the need to offer financial incentives to officials to speed up the approvals. Local authorities often link licence application approvals to other fees payable, e.g., land rates arrears (the responsibility of the property

owner) and service charges (the responsibility of employees). Such fees are demanded before licences can be renewed.

It has been noted that some charges are levied without adequate differentiation of the various sizes and levels of business activities. This is especially evident in the case of the local authorities service charge (Cap 274, Laws of Kenya). The amount of service charge payable by legal persons, for example, is highly regressive because it is based on business classification without any regard to actual income. The service charge for a Class A hotel costs KSh 1,800 in Nairobi, KSh 1,350 in other municipalities, KSh 1,080 in towns and KSh 720 in counties (AEFC 1995:18). This infers that a food eating kiosk is required to pay as a Class A hotel. The same situation applies to other trades such as a *jua kali* mechanic who has to pay as an established garage and a *jua kali* hair dresser who pays as a modern beauty salon. Another example is the annual business licensing fee which also varies across LAs, with Nairobi charging the most. For example, a tea kiosk licence in Nairobi costs KSh 575, while in Nyeri it costs KSh 100; a licence for a small bakery in Nairobi costs KSh 3,000 but KSh 300 in Nyeri (Gichira 1991).

The De-regulation Section (Kenya 1997) gives an example of multiplicity of licences and charges using an illustration of the Hotel and Restaurant Act (Cap 494). It is noted that a one-star hotel in Kisii Town requires 12 licences, seven from the CG and five from LAs. All these amount to KSh 45,600 (Table 5.1) but each is processed individually, making the entire ordeal cumbersome and costly. The problems related to licensing increase the opportunities for corruption and decrease the profitability of SMEs.

Table 5.1 Multiplicity of licensing for a one-star hotel, Kisii Town

Type of licence	Amount (KSh p.a.)
Liquor	1,100
Catering	9,000
Retail bar	1,100
Lodging	6,600
Hotel manager's fees	300
Catering levy	5,000
Hotel	3,000
Subtotal GoK	26,100
Bar and restaurant	6,000
Meat roasting	2,000
Sign board	500
Boarding and lodging	6,000
Subtotal LAs	14,500
Music copyrights (MSK)	5,000
Total	45,600

Source: Kenya 1997

Effects of Laws and By-Laws on SMEs

About 70% of SMEs in Kenya operate without being formally registered partly due to the inconvenience and associated costs of having the central registry in Nairobi and partly due to the misconception that registration would lead to payment of income tax (USAID 1995). The long delays experienced in processing applications are often due to the desire by issuing officers to extract illegal financial inducements from traders. In 1995, about 43% of traders seeking business licences took a month before they could receive them (Sebstad *et al* 1995). The problem of long delays is more widespread in the larger towns with 60% of traders in Nairobi, 65% in Mombasa and 62% in Eldoret taking a month or more before they could obtain the licences.

In most instances, traders found it difficult to raise the required fees, given their low volume of operations. For instance, the consolidated annual fees payable by traders in Mombasa varied between KSh 1,300 and KSh 3,800. Traders operating shops and keeping various items were often required to pay for separate licences for each of the activities in addition to a service charge (USAID 1995).

The rapidly growing literature on SME regulatory environment shows that various costs arise from regulations to the government or the enterprises (de Soto 1989, Bannock 1994, Gichira 1991). Some of these include direct costs to enterprises arising from the payment of various charges such as licensing fees or extra costs to meet various officially set standards. Costs are incurred by enterprises in the form of time as well as financial resources in their efforts to comply with the regulations. Costs are incurred by the government in administering and enforcing the regulations. Consequently, a tight regulatory environment has come to be regarded as a regressive investment which places unnecessary burdens on small-scale enterprises. Available evidence shows clearly that the cost of complying with existing business regulations both in terms of time and direct financial payments places a heavy burden on SME entrepreneurs in the country. Kenya is thus a typical case of many developing countries stifling the regulatory environment which has been graphically depicted in the Peruvian case (de Soto 1989).

Cost Implications of Regulations

The costs of regulations are many and varied. The incidence of costs of regulation differ between large and smaller firms and also between developed countries (DCs) and least developed countries (LDCs). For any given level of regulation the incidence of costs is undoubtedly higher in LDCs (which have fewer resources) than in DCs (Bannock 1994:2). The impact of regulations is felt by individual businesses, the government and consumers. They include administrative and enforcement costs of the regulatory authorities, direct costs on businesses, indirect

costs arising from market distortions and compliance costs (understanding regulations, applying for licences, etc.) and opportunity costs. The non-compliance costs such as convictions, social stigma due to harassment and confiscation of property and indirect costs arising from lack of competition constitute a major threat to business enterprises.

Incidents of harassment by law enforcement officers have increased over the years for enterprises which fail to comply with some regulations. In the early 1990s, about 47% and 15% of SMEs had been fined (KSh 500–3,000) and imprisoned for 1–3 months, respectively (Gichira 1991). In Mombasa, about 81% had bribed law enforcement officers to avoid penalties (USAID 1995:38).

Most existing laws and regulations have high costs of compliance to the entrepreneur. They also divert skilled resources away from productive activities. For instance, the long bureaucratic procedures involved in obtaining and renewing the licences impose heavy costs to both entrepreneurs and administrators. Further, entrepreneurial skills may be diverted from business activities into regulatory avoidance and evasion while skilled personnel may waste their time dealing with paperwork and bureaucracy. The Nairobi registration venue and multiplicity of licences further raise costs to entrepreneurs.

The DS has observed that by reducing the costs of setting up and operating businesses and by opening up competition, de-regulation can act as a powerful tool to improve economic efficiency, raise economic growth and increase employment opportunities. Other benefits would include facilitation of more extensive, stronger linkages among SMEs and other sectors of the economy, thus maximising the impact of investments in SMEs.

It is further observed that specific SME policies usually discriminate against services without any clear basis. In the process, they fail to assist the manufacturing sector for which they are designed. This has particular significance because experience suggests that more service support to the manufacturing sector is required if the sector is to expand.

The De-regulation Process

De-regulation, to some extent, has been part of Kenya's economic reforms in the last decade. The process of de-regulation is regarded as an important strategy for the promotion of SMEs (Kenya 1992, Kenya/UNDP 1994). De-regulation is the most powerful means of promoting SMEs. The government has indicated willingness to undertake an assessment and review of all acts which adversely affect the operations of small-scale enterprises (Bannock 1994). However, actual implementation of the review has not occurred.

One of the reasons why de-regulation has not had dramatic impact in Kenya is that some of the other necessary policies have not been simultaneously implemented. It has been argued, for instance, that de-regulation works better if it is

implemented together with formulation of anti-monopoly policies, macro-economic reforms, infrastructural development and land reform programmes (Bannock 1994:1). Many of these have not been effectively put in place in Kenya.

There has been considerable resistance to fundamental changes in regulatory institutions and bureaucratic procedures in the country due to a number of factors such as fear of the consequences of de-regulation. There is usually lack of clear understanding of the true costs and benefits of de-regulation. Further, bureaucrats are afraid of the impact of de-regulation on public health, public order and the environment. There is lack of inter-ministerial coordination and cooperation. It is usual to find that while individual ministries might understand the measures that need to be carried out to promote SME growth, they may be powerless to effect the required changes. For instance, whereas the Ministry of Planning and National Development is clear about the impact of the laws and regulations that need urgent repeal or amendment, some of the implementing ministries may be reluctant to do so or may lack the technical expertise to carry out the review/design. Lack of political will also exists. Paid civil servants usually feel that their rent seeking opportunities are threatened by de-regulation. On the other hand Local Authorities see regulation as an income generating activity only and therefore oppose changes that appear to reduce this income.

BACKGROUND ON RESPONDENTS AND ENTERPRISES

This chapter reports on the demographic characteristics of those covered in the sample survey and the general public—mainly consumers, suppliers and those who reside near SMEs. Analysis based on the sample survey is more comprehensive than the one on the general public because the data is derived from a checklist as opposed to a standard questionnaire.

The majority (73.3%) of respondents covered in the survey of 300 entrepreneurs were men, whereas only 26.7% were women. This trend was the same for the sample covering the public which had 71.2% men. This minimal representation of women in the sample survey can be explained by the main sectors covered: manufacturing, commerce and trade, building and construction, transport, hotel, restaurants and tourism. Sectors such as building, construction and transport are operated predominantly by men. Women are largely found in the service and trade sector activities which had minimal samples. On the other hand, it is not easy to explain the dominance of men among the public interviewed. The bias could have risen from the enumerators who were not specifically advised to ensure fair representation.

In the sample, 77.1% were married, whereas 18.7% and 4.2% were single and widowed, respectively. A large percentage fell within the age bracket of 25–40 as reflected in Table 6.1. The mean age for the sample survey was 36.6, with the youngest and oldest being 17 and 66 years, respectively. The age structure among the sample of the public was similar to that of the sample survey. The majority were 35 years and below, with the age bracket 23–30 dominating at 48%, and only four respondents were above 50 years. The data show that most of those engaged in SME activities fall within the dynamic working age. Studies have shown that the sector attracts a relatively young and economically active segment of the labour force (McCormick 1988, Kinyanjui 1997, Otunga *et al* 1997, Wegulo 1997).

A significant number of respondents had upper secondary education (36.6%), upper primary (18.8%), lower secondary (12.9%) and university (10.8%) as reflected on Table 6.2. In the sample of the public, the majority (61.8%) had secondary education, with 17.6% being university graduates. Only one respondent had no formal education, and three had primary education; the rest did not specify their education level. The trend in level of education of SMEs has been changing over the years as reflected in Table 6.2. It shows that a sizable percent are

Table 6.1 Age of entrepreneurial respondents

Age	No. of Respondents	%
Below 18	1	0.4
18–24	35	12.5
25–30	66	23.2
31–35	50	17.6
36–40	41	14.5
41–45	25	8.8
46–50	30	10.7
51–55	16	5.7
56–60	11	3.9
Above 60	8	3.0
Missing	17	-
Total	300	100

university graduates. The education trend shows a movement from low levels to higher levels of education attainment. Other studies also show this trend (Otunga *et al* 1997, Khayesi 1997, Njeru *et al* 1997). In the Otunga *et al* study, out of a total sample of 304 women interviewed, 118 had attained secondary education, two had post-secondary qualifications and four had university degrees. SMEs are becoming alternative income and employment sources as the public sector continues to re-trench staff and freeze employment. This is attracting more people to SMEs.

Apart from education levels improving, about half (49%) of the respondents had formal training, while 32.8% had informal training, largely through apprenticeship; 4.5% did not have any form of training. The rest did not respond to the question. The length of training in months ranged from 1 to 361 with a mean score

Table 6.2 Education level of entrepreneurs in the study

Education Level	No. of Respondents	%
Upper secondary	105	36.6
Upper primary	54	18.8
Lower secondary	37	12.9
University	31	10.8
Lower primary	27	9.4
No formal education	15	5.2
High school (Form 5 and 6)	13	4.5
Adult education	5	1.7
Missing	13	-
Total	300	100

of 35.9. Areas of training included tailoring, driving, masonry, accounting, leather work and shoe making, food technology, mechanics, metal and wood work, business management, building and construction, survey, electrical, watch and radio repair, teaching and architecture, secretarial and general management, among others. A significant percentage were not pursuing economic activities in line with their areas of training.

The respondents in the sample survey were trained in diverse areas and were mostly running their own enterprises. On the other hand, the sample of the public was dominated by business persons who had come to the survey enterprises either to purchase or sell commodities.

The majority (73.7%) of enterprises were sole proprietorships; 16.7% were partnerships, 7.3% limited liabilities, 1.3% companies and 1.0% cooperatives. The enterprises began operating largely between 1985 and 1997, with 33.0% having begun their operations between 1995 and 1997. The data show that most entrepreneurs started doing business in 1980. This could imply that for some entrepreneurs, these enterprises were not their first initiative. There was no difference in when men and women started businesses. Siaya had the most experienced business owners, followed by Nakuru; Kajiado had the least experienced.

Enterprises were mostly in the sectors of manufacturing (20.7%), commerce and trade (21.3%), hotels and restaurants (10.3%), repairs (11.7%), food and food processing (11.0%). Others included construction and building (8.7%), transport (8.0%) and fish trade (8.3%). Data analysis shows that manufacturing enterprises are most recently started with a mean year of 1991. Food and construction enterprises are the oldest with a mean of 1985. Nakuru had the oldest enterprise, while Kajiado has the newest with a significance of .0759. Dominant activities included tailoring and repair of clothes (16.7%), fish trade (8.0%), transport (7.0%), building and construction (5.7%), masonry and carpentry (5.3%), among others.

Most (32.0%) of the enterprises surveyed were operating within the CBD of urban areas. This was followed by roadside/highway (17.0%), open air markets (16.7%) and residential shopping centres (15.3%) as reflected in Table 6.3.

Table 6.3 Location of business enterprises

Location	Number	%
Central business district	96	32.0
Roadside/highway	51	17.0
Open air market	50	16.7
Residential shopping centre	46	15.3
Industrial site	26	8.7
Home/house	15	5.0
Mobile business	11	3.7
Hotel	2	0.7
Railway station	1	0.3
Missing	2	-
Total	300	100

Upper secondary	105	35.0
Upper primary	54	18.0
Lower secondary	37	12.3
University	13	4.3
Lower primary	27	9.0
No formal education	15	5.0
High school (Form 5 and 6)	13	4.3
Adult education	5	1.7
Missing	3	1.0
Total	300	100

EXTENT OF COMPLIANCE

The study attempted to determine the extent to which small-scale entrepreneurs are in compliance with government regulations. Trade licensing and registration of business names received most attention, but the investigation also included questions about other regulations.

For purposes of this study, a small-scale entrepreneur is considered to be in compliance with licensing or registration regulations when either of the following is true: a) The terms of the relevant act do not include the enterprise among those required to be licensed or registered, or b) The terms of the relevant act include the enterprise among those required to be licensed or registered, and the enterprise has fulfilled the requirement.

Compliance is, therefore, discussed with reference to particular legal requirements. A firm can be in compliance with one regulation and out of compliance with another. For example, "Meeting and Eating," *hoteli* (small restaurant) in a small town has the appropriate operating licence under the Hotels and Restaurants Act but has not registered its business name, even though it is required to do so under the Registration of Business Names Act. Although it is also possible to define "full compliance," meaning that an enterprise has fulfilled all of the requirements imposed on it by the current legal and regulatory framework, the present study did not attempt such a comprehensive assessment of compliance. Rather it focuses on two acts with fairly broad coverage: The Registration of Business Names Act (Cap 499, Laws of Kenya) and the Trade Licensing Act (Cap 497, Laws of Kenya). The Trade Licensing Act and Local Authority licensing by-laws are very important as instruments of regulation whereas the Registration of Business Names Act is optional but nevertheless operated with considerable bureaucratic delays and centralisation.

According to the Registration of Business Names Act (Cap 499), firms and individuals having a place of business in Kenya and carrying on business under a business name which does not consist of the surname(s) of all persons involved in the business or, in the case of corporations, the exact corporate name, must register the name of the business. Thus, businesses with a name distinct from the surname of the owner must register that name while businesses with no name or which operate only under the owner's surname need not register.

Despite the fact that the act is very clear about who is required to register, there seems to be a good deal of confusion about registration. When asked if their business was registered, 123 entrepreneurs (42.0%) out of 300 replied in the

affirmative (Table 7.1). Only 73 of these, however, gave the Attorney-General's Chambers as the body with whom they had registered. The others named other agencies such as the Ministry of Social Services, Ministry of Health and Fisheries Department. Such registrations have nothing to do with business name, yet the fact that the enterprises lumped all together is an indication of the confusion surrounding the term *registration*. The confusion about terminology of registration may have arisen due to lack of understanding of the SMEs on the term *registration* which is a common term with numerous meanings. This may not have been made clear to the entrepreneurs since the questionnaire did not ask follow-up questions on registration. It is important to note that medium sized firms were more likely to know about registration than small sized firms. Furthermore, for entrepreneurs operating far from Nairobi, registration of business name becomes too complicated and time consuming, particularly when they are small businesses. While meeting the registrar's requirements and travelling to Nairobi may never be easy for small sized sole proprietorships, some entrepreneurs may be reluctant to register their business for fear of paying tax. Thus, despite the fact that the Registration of Business Names Act is very clear, confusion arises both from entrepreneurs and law enforcing officers.

Table 7.1 Enterprise registration

Is your enterprise registered?	Enterprises	
	N	%
Yes	123	42
No	170	58
No response	7	missing
Total	300	100

Examination of the names of the 170 businesses that claimed to be unregistered indicates that 69 of them are probably subject to the Registration of Business Names Act. Since their business names have not been registered, these firms are out of compliance. They constitute 23.0% of the sample. An additional 47 businesses who claim to be registered are, in fact, not registered with the AG's Chambers. Further scrutiny of their names suggests that 19 of these are out of compliance with the act. Overall, then, 205 firms (68.3%) were in compliance with the act, 88 businesses (29.3%) have not complied and seven firms (2.3%) did not respond. Of those in compliance, 73 (37%) were actually registered while the rest were not required to register.

The Trade Licensing Act (Cap 497, Laws of Kenya) requires that all businesses be licensed. The particular occupations named in the act are regulated trade, importing or exporting of goods, commission agent, manufacturer's representative, produce dealer or produce broker, business broker or management consultant, insurance agent and estate agent. The act also gives the Minister the power to add to this list.

Compliance with the Trade Licensing Act is high, especially among businesses with fixed premises. Of the 300 firms in the enterprise survey, 89 were engaged in trading activities requiring a licence. Of these, 73 (82.0%) reported having the required licence, 15 (16.9%) said they had no licence and one respondent (1.1%) did not reply to the question. Those with licences seem to keep them up-to-date. Nearly all (95.3%) of those who have licences said that they were current. Those without licences tend to be traders without fixed premises or operating in illegal premises. Ten of the 15 unlicensed traders were found in open air markets or along the roadside.

Some businesses have to register and/or obtain other types of licences. These vary from one type of business to another. A pharmacy, for example, needs a licence from the Pharmacy and Poisons Board; a dairy needs a Dairy Board licence. The study team was not able to probe all of the licensing requirements, but it was noted that rates of compliance appear to differ by sector. Although overall, approximately three-quarters (75.3%) of the enterprises claimed to be licensed, the rate of licensing varies from a high of 96.6% for hotels and restaurants to just over half (56.5%) for transport firms.

The sample data can be used in conjunction with data from Kenya's national baseline studies of SMEs (Parker 1993, Daniels *et al* 1995) to estimate the numbers of enterprises in compliance in the country as a whole (see Table 7.2). The estimates are a direct extrapolation from the sample percentages. Over 480,000 businesses are in compliance with the Registration of Business Names Act, and over 350,000 are in compliance with the Trade Licensing Act.

Table 7.2 Compliance with Registration of Business Names Act and Trade Licensing Act

Compliance	Registration		Trade Licensing	
	Enterprises	%	Enterprises	%
Sample				
In compliance	205	68.3	73	82
Not in compliance	88	29.3	15	16.9
Missing	7	2.3	1	1.1
Total	300	100	89	100
National totals				
In compliance	483,828	68.3	352,011	82
Not in compliance	224,558	31.7	77,271	18
Total	708,386	100	429,282	100

Sources: Survey 1997, Parker 1993, Daniels *et al* 1995

Examination of the names of the 170 businesses that claimed to be unregistered indicates that 69 of them are probably subject to the Registration of Business Names Act. Since these business names have not been registered, these firms are not in compliance. They constitute 23.0% of the sample. An additional 4 businesses who claim to be registered are, in fact, not registered with the ACU. Of the 19 that state they are in compliance with the act, 19 (68.3%) were in compliance with the act, 88 businesses (29.3%) have not complied and seven firms (2.3%) do not respond. Of those in compliance, 73 (37%) were actually registered while the rest were not required to register.

COSTS OF COMPLIANCE

Compliance can be costly. This chapter analyses the main costs incurred by firms which comply with the Registration of Business Names Act and the Trade Licensing Act. The first cost, in time at least, is the cost of obtaining information about the regulation. Once the enterprise has sufficient information to allow a decision about registration and/or licensing to be made, it begins to incur other costs. If the decision is to comply with the regulation, it incurs compliance costs which are discussed below. If the decision is negative, the firm may begin to incur non-compliance costs. These are discussed later.

Information Search

Before they can decide whether or to what extent to comply with government regulations, business owners need information. They need first of all to know which licences and registration certificates are required, where to obtain them, the ease of obtaining them, their cost, the frequency of renewal and the risks involved in non-compliance.

Owners of small enterprises tend to obtain such information from other businesses (Abuodha 1995). The field data indicate that only 1.0% of firms were unaware of the need for licensing. A somewhat larger proportion (11%) did not know of the need for registration. The difference may be due to the fact that checks on licensing are more frequent than on registration, and penalties for lack of a licence are also more severe. Thus, most entrepreneurs and potential entrepreneurs know that a licence is a necessary part of doing business. This means that the information costs associated with licensing are probably fairly low and can safely be ignored.

Information about registration of the business name is both less widespread and less accurate. As discussed earlier, the term *registration* is used loosely to describe the recording of a business with various government ministries and other organisations. For this reason accurate information about whether a business is required to register under the Registration of Business Names Act may not be readily available since other entrepreneurs may not be as reliable a source of information as they are for licensing. Business owners may have to spend more to get the information or assume the risk of operating on misinformation.

The study did not attempt to quantify information costs for either licensing or registration.

Compliance with the Registration of Business Names Act

As indicated in Chapter 7, most firms (68.3%) in the sample are in compliance with the requirements of the Registration of Business Names Act. Of the 205 complying firms, 73 were actually registered. For those not required to register, the only cost of compliance is that of obtaining information on the act. Registered businesses, however, have additional costs: the direct cost of registration, travel time and the cost of displaying the registration certificate. This last one is thought to be small and will be ignored.

Estimates of the costs of compliance are summarised in Table 8.1. It is important to emphasise that these are very rough estimates. Since registration is usually effected only once in the life of a business, the figures given as costs are necessarily based on respondent recall of a process that may have taken place one, two, ten, or even twenty years ago. Furthermore, no attempt was made to adjust for changes in the value of the Kenya shilling over time. The inclusion of older, lower amounts in the means creates a downward bias in the data. In other words, the costs of registration are probably somewhat understated.

These costs have been extrapolated to obtain estimates for all small and micro enterprises in Kenya by referring to information contained in the national baseline survey (Parker 1994) and its update (Daniels *et al* 1995) which estimated that there was a total of 708,386 small and micro enterprises in the country. Assuming this study sample to be representative, it is estimated that 24.3% of these, or 172,374 firms, have actually registered their business names.

The direct cost of registration is the combination of the official and unofficial costs. The official cost is the sum of the fees applicable to the business as specified in the act. Unofficial costs are amounts required to be paid to "facilitate" the registration process. They take the form of bribes, mandatory "contributions" to officials' fundraising functions, etc.

Table 8.1 Enterprise costs of compliance with the Registration of Business Names Act

Type of cost	N	Mean cost (KSh)
Official	56	4,189
Unofficial	21	3,466
Travelling	*	1,000
Time	**	5,533
Total		14,188

* Travelling costs were based on very rough estimates for 1–2 round trips to Nairobi for each business located in another town.

** The cost of time was based on 58 enterprises giving time estimates combined with the mean weekly income for all registered firms.

Three quarters (76.7%) of the 73 registered businesses provided information on reported official costs. The amounts reported ranged from KSh 20 to KSh 30,000. Some of the variation in cost is explained by the different times at which businesses were registered. The mean per enterprise was KSh 4,189. Several of those not giving information on costs were registered in the 1960s and 1970s. Other missing information may be attributed to lack of record keeping or to reluctance to disclose any information of a financial nature. Extrapolating these figures to the entire population suggests that small and micro enterprises in Kenya are paying a total of KSh 722 million in official registration costs.

A total of 21 firms (28.8%) reported paying unofficial amounts to obtain their registration. The amounts ranged from KSh 10 to KSh 15,000, with a mean of KSh 3,466 per enterprise. Those not reporting unofficial payments may have paid nothing or they may have been unwilling to reveal that they had obtained their registration through dubious means. These figures yield an estimate of KSh 597 million in unofficial costs of registration.

Neither official nor unofficial costs of registration appear to vary from one sector or location to another. The analysis of costs by sector did not reveal any significant differences. Analysis of mean official costs by location of the business suggests that firms in Nairobi and Nakuru are paying more than those in other towns, but the small number of registered firms in the smaller towns meant that the differences were not statistically significant. A similar attempt to analyse unofficial costs by location resulted in even more unreliable figures because of the small numbers.

The questionnaire did not ask questions on travelling cost and number of trips made in connection with business registration. Since all registration is centralised in Nairobi, travelling costs can be significant for businesses located far from the capital. A very rough estimate based on 1–2 round trips to Nairobi for each registered business located in another town, yields travel costs of approximately KSh 1,000 per registered enterprise. This would translate into an additional investment in registration of nearly KSh 164 million on the part of firms located outside Nairobi. The national baseline studies (Parker 1994, Daniels *et al* 1995) estimate that 92.3% of small enterprises are located outside of Nairobi and Mombasa. Based on the population of these two cities, we estimate that 95% of firms are located outside of Nairobi.

Of the registered firms, 58 provided information on how long it took them to register. The time taken ranged from one week to nearly one year (48 weeks). The mean was 7.6 weeks, or nearly 2 months. There were some variations in time taken according to the sector in which the firm operates. Food processing and fish trading businesses took significantly longer than average, while construction and repair businesses took less time. The reasons for these variations are not immediately apparent and probably need to be investigated further. Somewhat

surprisingly, there was no significant variation by location of the business.

The time an entrepreneur uses to pursue registration is not without its cost. Kenya's national baseline survey provides data on annual profits in various types of small enterprises (see Table 8.2). These range from a low of KSh 20,878 per annum in food and food processing enterprises to a high of KSh 700,000 in transport firms. Using these figures as a proxy for the incomes of the 73 registered entrepreneurs yields an estimated mean weekly income of KSh 3,641. If the owner spends an average of one day per week on registration, then the cost of the time taken to obtain registration amounts to KSh 728 per week or KSh 5,533 for the 7.6 weeks (1 day per week). This amounts to KSh 954 million for all registered firms in the country. Information on other costs such as phone calls pursuing registration to direct production cost was not collected.

Table 8.2 Profit estimates for micro and small enterprises by sector

Sector	Estimated profits (KSh)	
	Per year	Per hour
Manufacturing	32,844	15.30
Commerce and trade	30,871	14.40
Hotels, restaurants	517,761	240.60
Food and food processing	20,878	9.70
Repairs	27,571	12.80
Construction and building	47,873	22.30
Fish trade	60,000	27.90
Transport	700,000	325.00

Adapted from Daniels *et al* 1995

Licensing

Some form of licensing is required by almost all businesses. Overall, 220 firms (73.3%) said that they were licensed, 72 (24.0%) said they were not and 8 (2.7%) did not reply to the question. Trade licences were the most frequently reported, held by 88 firms or 38.6% of those licensed. The next most common were licences issued by Local Authorities, mentioned by 47 enterprises (20.6%). The remaining licences depended on the particular activities undertaken by the firm, and included fisheries, hotels and restaurants, dairy, pharmacy, hawking and TV/radio repair.

The following is a general treatment of licensing costs. The data in this section need to be treated with caution because most businesses reported on only one licence, whereas in some cases they may have or be required to have more than one licence.

The direct cost of licensing, like the direct cost of registration, is a combination of official and unofficial costs. The official cost is the licence fee specified in the applicable regulation. Unofficial costs are the bribes and other payments made to ensure that the licence is obtained and/or obtained in a reasonable time.

Nearly all of the licensed businesses (99.5%) provided information on the official costs of their licences. These ranged from KSh 20 to KSh 40,000. The overall mean official cost for licence acquisition was KSh 3,032, but half of those licensed paid KSh 1,500 or less and over two-thirds (69.8%) paid less than KSh 3,000.

Only 54 firms, or 24.5% of those licensed, reported the unofficial costs of their licences. Anecdotal information on the level of corruption in business licensing in Kenya suggests that the proportion of firms reporting unofficial costs may be understating the reality. Some of those not reporting may not have recalled the costs; others may have been reluctant to disclose the payment of a bribe to an unknown interviewer. Reported unofficial costs ranged from KSh 10 to KSh 24,640. The mean cost was KSh 2,388, but half of the firms paid KSh 800 or less.

Both official and unofficial costs vary considerably from one type of licence to another. Table 8.3 shows the mean official and unofficial costs for selected licences. Unofficial costs associated with these licences range from KSh 500 to over KSh 2,000. Interestingly, none of those with fisheries licences reported unofficial costs. Not only do the official costs vary considerably, but the unofficial costs are in some cases nearly as much as the official and, in others, considerably less. Data for some categories are not fully reliable because of small numbers, but consideration of the two most common licences illustrates the point. Unofficial costs add 25.1% to the cost of obtaining a licence from Local Authorities but nearly double the cost of a trade licence. Overall, unofficial costs exceed 50% of official costs for four types of licences: hawker's (92.0%), trade (87.8%), transport (81.8%) and taxi (77.4%).

Table 8.3 Official and unofficial costs of selected licences

Licence type	Mean official cost		Mean unofficial cost	
	N	Amount (KSh)	N	Amount (KSh)
Hotels and restaurants	4	9,075	1	500
Local Authorities	44	3,891	9	978
Trade	85	2,687	19	2,358
Hawkers	4	2,175	1	2,000
Fisheries	13	362	0	n.a.

The De-regulation Section (Kenya 1997) cites the findings of a study of eight towns carried out by the Small Towns Development Project in the Ministry of Local Government. Licensing generated between 15% and 40% of the revenue of the small towns before grants. However, revenue generated from Central Government licensing comprised a very small percentage of total government revenue. The Trade Licensing Act was expected to generate K£ 15.5 million or 39% of the CG licensing revenue totalling K£ 39.7 million according to the 1996/97 estimates of revenue of the Government of Kenya for the year ending June 1997.

According to the DS, the key problems related to issuing of licences are discretion given to licensing officers, lengthy and cumbersome approval procedures, multiplicity of licences, criteria for setting licence fees, inadequate licence classification system, high cost of licensing, linkage of licence application approvals with payment of other fees and inappropriate enforcement mechanisms. The study may have under-estimated the unofficial costs of selected licences due to recall problem. Having established the existence of unofficial costs, the key point to emphasise is that taking into consideration the problems cited, it is important to ask how much of the official cost is accounted for as actual revenue. In other words, what amount of the official cost reaches the Treasury in the form of government revenue? It is in this light that the DS recommends the repeal or amendment of trade licensing legislation which give rise to CG licensing revenue. A business registration fee administered by Local Authorities is proposed, and the income generated would be retained by the Local Authorities.

Enterprises can take care of most licensing in their own district headquarters. The travelling costs per enterprise are therefore considerably less than those for registration of the business name. Of the 220 licensed enterprises, 145 responded to the question about how many trips they took in connection with licence acquisition. A total of 52 enterprises (35.9%) were able to get their licence in a single trip. The rest made 2–30 trips to the licensing authority. The mean number of trips was 3.2. The number of trips needed to secure a licence differed significantly from one jurisdiction to another. In Nyeri, businesses could obtain a licence with an average of 1.6 trips, while businesses in Nakuru required over five trips (Table 8.4).

Public transport costs were estimated per trip, based on the dispersion of enterprises throughout a particular locality. In Nairobi, for example, where enterprises are fairly concentrated, the estimated cost per return trip was KSh 30. In Kajiado, where businesses are much more scattered, the estimated average return trip might cost KSh 80. Total travelling costs ranged from KSh 79 in Nyeri to KSh 337 in Nakuru (Table 8.4). The mean cost for the 145 firms providing the data is KSh 156.76. If this estimate is representative, then the total travelling cost for all licensed enterprises in Kenya would be KSh 81.4 million.

The survey asked entrepreneurs two different questions about the time they

Table 8.4 Travelling costs for licences by business location

Business location	N	Mean number of trips made	Estimated cost per trip (KSh)	Total travelling cost (KSh)
Nairobi	52	3.0	30	90
Nyeri	14	1.6	50	79
Kajiado	17	2.4	80	193
Nakuru	29	5.6	60	337
Kakamega	13	3.5	40	142
Siaya	20	2.1	50	103

Note: The significance of the F-statistic for the difference in mean number of trips by business location is .005.

took to get a licence. The first referred to the length of time from application to receiving the licence, while the second attempted to determine how much time the entrepreneur actually devoted to the licence acquisition process.

Out of the 220 licensed businesses, 215 (97.7%) responded to the question on the total length of time from application to receiving a licence. Nearly half (49.3%) received their licence in one day. For the rest, the time required ranged from 2 days to 6 months. The mean time required was 15.9 days. One reason for the variation in time spent is that some licensing bodies require businesses to produce additional documents and, in some cases, pay certain charges before being licensed. If the documents are not at hand, or the amounts assessed are in dispute, the licensing process can be stalled. Licensing authorities commonly asked for identification cards, letters from the landlord or a lease agreement, PIN certificates and plot numbers. Some Local Authorities required water bills to be paid before a licence could be issued or renewed; others demanded land rates payments. Enterprises attributed licensing delays of between one week and one year to such requirements. A second source of variation is the nature of the firm. Analysis of data showed that a limited liability company is four times as likely as a sole proprietorship to take 60 days or more to obtain a licence.

A smaller proportion of the licensed businesses reported the number of hours per day spent "chasing" licences. The mean was 2.9 hours per day during the search period, with half the entrepreneurs spending 2 hours per day or less. This works out to about a day and a half (14.5 hours) a week, or a total of 46.1 hours spent on the licensing process. Since licences, unlike registration, must be obtained or renewed every year, this means that the typical business owner spends approximately one week out of every year on the licensing process. Using the income figures presented in Table 8.2 as proxies for the incomes of the 220 licensed businesses yields an estimate of KSh 2,900 per year per enterprise as the

cost of the time spent in obtaining a licence. The total time cost for all of Kenya's estimated licensed micro and small enterprises is, therefore, estimated to be over KSh 1.5 billion.

Not surprising, given the high cost of entrepreneurial time, over a quarter of the firms (28.3%) sent someone else to obtain their licence(s) for them. Though not a majority, this is a significant percentage. Undoubtedly some of those performing this service were employees or relatives, but one-third (37.6%) of those who sent someone for their licence(s) paid for the service. The amounts paid ranged from KSh 20 to KSh 10,000. The mean was KSh 2,272, and half of the firms paid KSh 1,000 or less.

Compliance with the Trade Licensing Act

Compliance with the Trade Licensing Act is a particular case of the licensing discussed above and its costs follow the same pattern.

The direct cost of trade licensing, like the direct cost of licensing in general, is a combination of official and unofficial costs. The official cost is the licence fee. Unofficial costs are the bribes and other payments made to ease the process of obtaining the licence. As presented in Table 8.3, the official cost of a trade licence averages KSh 2,687 and the mean unofficial cost is KSh 2,358. The 82.0% compliance rate developed in Chapter 7 and Parker's (1994) finding that 60.6% of small and micro enterprises in Kenya are engaged in commerce and trade suggest that the country has a total of 352,000 firms in compliance with the act. Official costs, at an average of KSh 2,687 each, are therefore estimated to be KSh 946 million. Unofficial costs could be as high as KSh 830 million.

It is important to compare the official cost of trade licensing (KSh 946 million) found by the study to the estimated national figure of revenue from trade licensing by the DS (KSh 795 million or K£ 39.7 million). However, care must be taken while comparing the two figures since both were estimates. Furthermore, the sample of this study was not representative of the whole country. Having taken the two factors into consideration, the variation may be attributed to a number of factors, such as difference of calculation methods or the fact that not all licence fees reach the Ministry of Trade.

Travelling costs can also be estimated for the 352,000 licensed firms. If the per firm travelling cost of KSh 156.76 calculated above also applies to these firms, then the total travelling cost associated with compliance with the Trade Licensing Act is KSh 55.1 million.

Trade licensing takes, on average, less time than licensing in general. Over half (56.8%) of the firms reported receiving their licence in one day. The rest took between 2 days and 6 months. The mean was 9.8 days. The amount of time spent per day on "chasing" the licence was similar to that reported in general: 3 hours. Because trading businesses are generally less profitable than many other activi-

ties, the cost of this time is somewhat less (Table 8.2). The estimated mean cost of entrepreneurial time in trading enterprises is KSh 42.4 per hour. Therefore, the estimated annual cost of time spent seeking a trade licence is KSh 1,247 per enterprise. The cost of time for all enterprises with a trade licence is estimated at KSh 439 million per year.

Summary of Compliance Costs

The cost of complying with various registration and licensing requirements is substantial. Table 8.5 summarises these costs for the two acts that are presently the focus of the de-regulation effort. Note that official costs represent only 29.6% of the total cost in the case of registration of the business name and 41.7% in the case of trade licensing. This means that it should be possible to effect substantial savings to the enterprises without necessarily reducing the official revenue to the government. It is important to recognise that the data in Table 8.5 represent two different realities as far as the businesses are concerned. Complying with the Registration of Business Names Act is a one-time event. The estimated total cost of KSh 2,437 million thus represents the sum total of the costs incurred by the current population of business enterprises. Trade licensing, on the other hand, requires annual renewals, so the total of KSh 2,270 million is the estimated annual cost to business of complying with the Trade Licensing Act.

Table 8.5 Summary of costs of compliance with the Registration of Business Names Act and the Trade Licensing Act

Types of cost	Amount (KSh)	
	Registration of Business Names Act	Trade Licensing Act
Official	722 million	946 million
Unofficial	597 million	830 million
Travel	164 million	55 million
Time	954 million	439 million
Total	2,437 million	2,270 million

COSTS OF NON-COMPLIANCE

Businesses that do not comply with a specific regulation incur costs. These are much more difficult to pin down than the costs of compliance. The survey examined three broad groupings of such costs. The first consists of the money costs of preventing the authorities from taking punitive action as a result of the enterprise's failure to comply. The most common item in this category is the payment of "public relations" money to the enforcement officers, but other types of preventive action have also been taken by enterprises. The second group includes the financial consequences of punitive action actually taken by the authorities. The authorities are known to close businesses, evict firms from their premises, demolish premises and confiscate goods. Such actions have direct costs. Finally, both preventive measures and dealing with the consequences of the authorities' punitive action take time, and time has its own cost.

Non-compliance with the Registration of Business Names Act

Less than one-third ($n=90/293, = 30.7\%$) of the businesses are not in compliance with the Registration of Business Names Act. These are businesses with a name other than the surname(s) of the owner(s) that has not been properly registered with the Attorney-General's office in Nairobi. Although checks on business name registration are not common, 16.3% of all businesses reported being harassed as a result of lack of registration. It is important to note that harassment costs, unlike the cost of obtaining registration, are on-going. Businesses are subject to non-compliance costs for as long as they remain out of compliance with the law.

Firms that have failed to register their business names reported being harassed and suffering threats of eviction or demolition. Many of them, to ensure that the threats are not carried out, pay "public relations" money to the authorities. Nearly a quarter (23.3%) of those not in compliance reported that money has been demanded as a result of their not being registered. The amounts paid ranged from KSh 50 to KSh 30,000. When the mean payment of KSh 5,219 per firm is extrapolated to the entire population of small and micro enterprises, the estimated "public relations" amount is KSh 273 million.

Businesses reported that they were subject to eviction, demolition of their premises and confiscation of their property as a result of their lack of registration. The cost of eviction, reported by seven firms (7.8%), ranged from KSh 500 to KSh 80,000, with a mean cost of KSh 15,714. Demolition was reported by three firms (3.3%), at a mean cost of KSh 5,450. Five firms (5.6%) had their goods

confiscated. Their reported value ranged from KSh 2,500 to KSh 4,000, with a mean of KSh 3,250. When these amounts are extrapolated to the 224,000 unregistered businesses in the country, they total KSh 355.8 million. It should be emphasised that the numbers of reporting firms are small, so these means should be treated with great caution.

The enterprises were not asked to estimate the time taken in dealing with either preventive measures or punitive actions. We can, however, estimate time using information on the number of times in a year demands were made or punishments experienced. Authorities demanded "public relations" payments an average of 8.5 times per year. If each demand took only one half hour of an entrepreneur's time, then owners of non-complying businesses would spend 4.2 hours per year attending to such demands. At a mean cost per hour of KSh 63.6, this translates into a time cost of KSh 14.0 million. Coping with the punitive actions of the authorities takes more time than paying protection. We estimate that dealing with the consequences of an eviction, demolition or confiscation is likely to take at least one week. Therefore, the total cost of time for all unregistered businesses is estimated to be KSh 114 million.

Non-compliance with Licensing Requirements

Approximately one-quarter (24.0%) of all enterprises are unlicensed. Such firms are most vulnerable to punitive measures on the part of the Central Government and Local Authorities. Some incur costs attempting to prevent punitive action. Still punishments occur, both to those that have taken preventive measures and to those that have not, and these punishments usually have costs.

Almost half of the businesses (45.0%) reported being harassed at some time over their licence. Harassment apparently happens whether a business is licensed or not. Licensed and unlicensed businesses were equally likely to have been harassed. Some of this harassment may have happened in the past when the business had no licence or had failed to renew. It is, however, more than likely, that businesses are being harassed even when they hold valid licences. A similar finding has been reported in other studies (Macharia 1993).

Harassment takes various forms. The most common were the threats of eviction and demolition of premises. In a few cases, firms were subjected to pressure to pay minimum wages. A few were also threatened with bodily harm. The most tangible sign that such threats are taken seriously is the entrepreneurs' willingness to pay to prevent punishment. Approximately 15% of the unlicensed businesses in the sample reported paying "public relations" fees. The amounts ranged from KSh 50 to KSh 10,000, with a mean of KSh 1,986. These figures suggest that approximately 25,000 unlicensed businesses nationwide are making such payments and that the total paid is just over KSh 50 million.

The most common punitive action reported by the enterprises were eviction,

demolition of premises, confiscation of goods and arrest. Although owners estimated the costs of these actions, there were no means of verifying the estimates, so they must be treated with caution. The data do, however, show the types of actions and probably give a fair idea of the relative costs of the different measures.

Eviction was the most frequently reported punitive action. The mean cost of an eviction was KSh 19,064 (see Table 9.1). Arrest was next, both in frequency and cost. The mean cost was KSh 8,905. Demolition of premises was the next most costly punishment, at KSh 8,017 per occurrence. Finally, confiscation of goods cost businesses an average KSh 3,796 per occurrence. If these amounts and occurrences are representative, then the total cost of these four types of punitive action related to licensing could be as high as KSh 1.3 billion. Including less common actions, such as being taken to court or suffering physical harm, would drive the total even higher.

Table 9.1 Costs to enterprises of government punitive action related to licences

Action	Number Reporting	Cost	
		N	Amount (KSh)
Eviction	20	18	19,064
Arrest	10	10	8,905
Demolition of premises	6	6	8,017
Confiscation of goods	8	8	3,796

The enterprises were not asked to estimate the time taken in dealing with either preventive measures or punitive actions. Information on how many times in a year demands were made or punishments received can be used to estimate the time taken. Demands for payment of "public relations" money occurred on average 14.1 times per year. If each occurrence took only one half hour of an entrepreneur's time, then owners of unlicensed businesses would spend 7 hours per year attending to such demands. At a mean cost per hour of KSh 62, this translates into a time cost of KSh 5.2 million. Punitive action is even more time-consuming than paying for protection. Dealing with the consequences of an eviction, arrest and/or demolition is likely to take at least one week and possibly more. Using a very conservative estimate of one 6-day week spent on each of these, and assuming the representatives of our sample, we come up with a total time cost of government punitive action of KSh 308.2 million.

Non-compliance with the Trade Licensing Act

Trade licensing is, as already pointed out, a special case of licensing. The cost to the country's approximately 77,000 unlicensed trading businesses of failing to comply with the requirements of the Trade Licensing Act fall into the same three categories: costs of preventing punishment, cost of punishment that has occurred and cost of the time taken in either case.

The actual costs in each category might well be different for trading and other types of businesses. The small number of unlicensed trading businesses in our sample, however, does not provide adequate data for a separate analysis. We, therefore, use the mean costs derived in the previous section to estimate the costs of non-compliance with trade licensing.

Approximately 15% of the unlicensed businesses made "public relations" payments to prevent the authorities from taking punitive action. These 11,591 firms spent an average of KSh 1,986 each, for a total of KSh 23 million. Unlicensed businesses also incurred costs when authorities acted against them. Eviction, arrest, demolition of premises and confiscation of goods imposed costs on 14.7% of the unlicensed enterprises. At an expected cost of KSh 1,829 per enterprise, this translates into a total of KSh 141 million. Finally, business owners use precious time in making public relations payments and dealing with the consequences of punitive action. The public relations time is calculated at 7 hours per year at KSh 62 per hour for the firms making these payments. The total cost of such time is estimated to be KSh 34.3 million. The costs of punitive action are estimated at KSh 62 per hour for 48 hours for the 14.7% of unlicensed firms. This comes to KSh 201.6 million.

Summary of non-compliance costs

The high level of compliance with both the Registration of Business Names Act and the Trade Licensing Act means that although non-compliance is costly for individual firms, the total amount is considerably less than the compliance costs. Table 9.2 summarises these costs.

Businesses out of compliance with the Registration of Business Names Act pay an estimated KSh 273 million in public relations money to protect themselves from punitive action. Firms whose names are unregistered also suffer from evictions, arrests, demolitions and confiscation of goods. These costs are estimated at KSh 356 million annually. Finally, firms whose names are not registered spend time valued at KSh 128 million dealing with the consequences of their non-compliance. The total cost for the estimated 224,000 out-of-compliance firms is estimated to be KSh 757 million.

Unlicensed trading firms pay an estimated KSh 23 million in public relations money to prevent the authorities from taking action against them. Firms without

trade licences also incur costs when they are evicted, arrested, their premises demolished and/or their goods confiscated. These costs are estimated to amount to KSh 141 million annually. The most costly part of non-compliance with trade licensing is not the direct payments but the lost time. The estimated 77,000 entrepreneurs who do not comply with the Trade Licensing Act lose an estimated KSh 236 million annually as a result of the time needed to cope with actual or threatened punitive action.

Table 9.2 Summary of costs of non-compliance with the Registration of Business Names Act and the Trade Licensing Act

Type of Cost	Amount (KSh)	
	Registration of Business Names Act	Trade Licensing Act
Public relations payments	273 million	23 million
Evictions, arrests, demolitions, confiscations	356 million	141 million
Time	128 million	236 million
Total	757 million	400 million

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PERCEPTIONS ON REGULATIONS AND DE-REGULATION**Public Perceptions**

Suppliers, consumers and those members of the public staying near SMEs appreciated the role of SMEs and pointed out that they provide employment and income and should therefore be supported. It was observed that although SMEs play a key role in national development, they face a number of problems in running their operations. These problems include lack of business development facilities, inadequate infrastructure, poor location and access to services, shelter, insecurity, sub-standard products, lack of markets and unfair competition from large licensed businesses.

Larger registered enterprises have access to credit and other business development services, while SMEs operate with minimal capital and access to credit and are exposed to constant harassment from authorities. Although the members of the public view the nature of competition as unfair, critically it is not. It is competitive advantage derived from scale and organisation, compliance and management ability.

The survey also showed that the general public perceives both positive and negative aspects of SMEs. Positive aspects isolated by the public include provision of employment and income, provision of commodities and services close to consumers and flexible credit to known customers. In spite of positive aspects, the majority (85.2%) of respondents indicated problems associated with SMEs. Only 11.1% of respondents had not experienced any problems, whereas 3.7% did not respond to the question. The problems include pollution due to inappropriate disposal of refuse and other waste products, poor quality of products, noise related to metal and wood work, inflated prices, health risk due to sale of expired products or unsanitary delivery of goods and services, breach of supply contracts, criminal behaviour and offences. Examining both the positive and negative aspects of SMEs reveals that some aspects require regulations, while others require de-regulation. This infers that the issue of how much regulation or de-regulation is required for SMEs to prosper is a delicate matter which needs critical examination of each sector, sub-sector and specific enterprises.

Any policy geared for SMEs has to ensure that dealing with negative aspects does not compromise their positive aspects to the general economy. Two of the

key positive aspects—availing commodities close to consumers and providing employment and income—according to those residing near SMEs, were negated by their poor location. Those residing near SMEs observed that inconveniences such as noise, offensive odour and pollution are problematic to the public. They also noted that some of the entrepreneurs use their residences and compounds as storage points for their commodities. Although most of the respondents appreciated the access to commodities and services provided by SMEs, they had problems with the inconveniences and suggested that planning should be done in a way that does not encourage mixed use of space, especially of those enterprises which cause inconvenience to the residents or street users.

The public observed that the issue of enterprise location was not only a problem to the public but also to the enterprises themselves. SMEs are located in insecure locations and use structures (kiosks) which can easily be broken into. Most of them cannot afford to employ guards, although in cases where they operate from a cluster they are able to combine efforts and hire guards during the night. This allows most traders to store their unsold commodities in their sites of operation. Apart from insecurity from thieves, most SMEs are also exposed to harsh weather conditions, especially floods and scorching heat. The general insecurity under which the SMEs operate cause them to purchase fewer commodities even in cases where they have enough capital to invest more.

The suppliers of SMEs noted that SMEs suffer from stiff competition and poor location. During bad weather most of them cannot get their supplies due to poor communication. Most established businesses can afford to lower their prices and still make profits, whereas SMEs have a low capital base. Some suppliers noted that the SMEs pose unnecessary competition to registered businesses. Nevertheless, most suppliers had positive comments on being located next to SMEs. They pointed out that SMEs provided ready markets for their supplies, reduced their marketing costs, assisted in advertising their products and were convenient in terms of time and money.

The public had mixed reactions on the importance and benefits of regulations, with the majority pointing out that regulations encourage corruption. It was noted that both registration and licensing affect profits of small-scale enterprises. A number of respondents said that only large businesses should be subjected to registration and licensing. In cases where small-scale businesses have to be registered and licensed, the fee should be determined by business type and size and should range between KSh 200 and 500 per year. In Nyeri, most of the respondents in small businesses such as knitting and shoe making expressed fears that the cost of licensing not only discourages people from going into business, but also hampers any significant expansion. A method of payment acceptable to SMEs and other stakeholders should be designed in order to avoid inconveniences to SME operations.

Some respondents, mostly suppliers of SMEs, observed that registration and licensing is relevant for SMEs since it gives them credibility. Registered and licensed enterprises are easier to deal with: they can be traced and even sued in cases of breach of contract. One supplier further observed that "anyone willing to register is serious about business and cannot gamble". Apart from this, registration and licensing is relevant for security purposes for capital and credit.

Most SMEs perceive their positions in another way and only pay for registration and licensing because of the inconveniences associated with lack of licence. Given a choice, many people would not wish to pay. A probe on this issue shows that SMEs do not understand why they should pay for registration or licensing since they operate without most basic services and hardly get any support from the CG or I.As.

De-regulation Benefits to SMEs

The Government of Kenya has observed the difficulty SMEs face in coping with a regulated environment. While the larger businesses have the capacity and resources to get round the regulations when necessary or bend the rules in their favour, small enterprises get caught in them and are frequently excluded from mainstream economic activity (Kenya 1992). Avoidance and evasion of regulation is expensive and diverts efforts which should go into production and provision of services.

De-regulation as a concept is recent in Kenya, and many members of the public are still not aware of it. However, members of the public seem to have lost faith in government performance and are therefore not sure that the de-regulation programme will be put in place. The respondents noted that most SMEs do not comply with regulations, with a significant number not being aware of the regulations and the procedures for ensuring compliance. The regulations are also viewed as too cumbersome, rigid and expensive. There is need for information and awareness campaigns, a task which should be steered by the De-regulation Section in close collaboration with line ministries and Local Authorities.

It was noted that due to the small nature of SMEs, compliance reduces their profit margin, and most of them prefer to ignore it or bribe relevant officers. The methods for compliance are also problematic. Registration and licensing need bulk funds which most SMEs do not have. In a number of Local Authorities where a daily ticketing approach to licensing is applied, the compliance record is good. Such lessons should be used for designing appropriate licensing procedures relevant for promoting the growth of SMEs.

Lack of enforcement by authorities is another reason for lack of compliance. Local Authorities are known to enforce regulations in an erratic manner. Occasionally, for example in Nairobi, the enforcement is so stringent to the extent that both the Administration Police and the regular police force are used. On the other

hand, enforcement can be totally ignored for months, leaving SMEs to operate as they wish. The latter is often encouraged by a change of guard in municipal councils and in many cases is accompanied by corruption. The major reason for compliance was avoidance of harassment from the Local Authorities. Others complied in order to avoid possible legal action, whereas others need the registration and licences for accessing requirements of business and credibility.

Most SMEs operate small businesses with minimum working capital and find it hard to pay for required registration and licensing fees. Others simply do not want to pay tax, while a few others exploit the lack of enforcement. In cases where licences are expensive, the profit margin is reduced to a level where operating an enterprise becomes meaningless. Enterprise owners, who are largely sole proprietors, often do not have a Personal Identification Number (PIN) which is a requirement for transacting business. These factors expose SMEs to manipulation by the concerned authorities who are more interested in taking bribes than the required fee. The public felt that de-regulation should address some of these issues and ensure smooth operation of SMEs.

In the food industry, a number of consumers observed that a de-regulated environment might expose them to products which may not be fit for human consumption. The majority of respondents were in agreement that areas of health should be strictly regulated and enforcement put in place to ensure compliance. It was observed that the government is more committed to enforcing compliance in the food sector due to the public health risk involved. A consumer elaborated this point by noting that foods supplied or served by SMEs are sub-standard and expose unsuspecting consumers to health hazards. Most of the SMEs providing affordable food lack sanitary facilities and operate in an unhygienic manner, but because of their ability to bribe relevant officers, they continue their operations. The fear of the consequences of de-regulation to public health has been observed elsewhere and apparent conflicts noted. However, experience elsewhere shows that they are grossly exaggerated (Bannock 1994). It is thought that with good planning and coordination of all stakeholders, SMEs which deal in foods and related commodities can operate businesses without posing any health problems.

Some of the public who reside near SMEs noted that compliance with regulations would improve their living environment since most SMEs would not be located near their residences, especially if there were better planning and administration. In cases where SMEs are located near or within residential areas, they would have to certify a number of requirements, including ensuring a healthy environment and engaging in activities which are not a nuisance to the neighbourhood. In this respect, de-regulation should take into consideration the public's interests regarding possible inconvenient location and also their appreciation of availability of employment, income and commodities.

In the area of public transport, there was conflict of interest. Members of the

public who work closely with public transport, especially *matatus*, noted that total compliance with regulations can send those operating *matatus* out of business. If the growth of the sector is to be encouraged, regulations have to be relaxed. On the other hand, ordinary members of the public pointed out that *matatus* should be regulated to provide good service to the public. Again, this is a case where de-regulation has to strike a balance between those who are in the public transport business and those who use such services. The safety implications as reflected in the appalling death rate from road traffic accidents should be a key concern.

Government Ability and Commitment to De-regulation

The public was sceptical about the government's commitment to de-regulate businesses. This position is borne out of the general poor performance of government in the areas of service provision and enforcement of regulations. Most respondents said that in a regulated environment, people largely bribe to get licences. This means that the funds generated through regulation do not benefit the businesses or the general public but only a few individuals. The latter encourage SMEs to go against regulations and cannot provide the required support needed for a de-regulated environment.

It was further observed that SMEs are still operating the way they have always done. The licence fee has not been reduced, nor has the number of required licences been changed. One respondent thought that with de-regulation, the licensing authorities should be the ones to approach traders. This shows the level of information among members of the public. Reports from a number of trade offices revealed that there was a rush in January to get free trade licences, because most traders were either misinformed or did not believe that government could de-regulate business operations.

The few who said that the government was committed indicated that the government normally makes a follow-up of those who do not register businesses and those without licences. This shows concern, and once de-regulation is in place the government would ensure its operation. The government has also been concerned about the health of citizens and would not expose the public to health hazards. Putting regulations in place is the only way to ensure this.

The public gave a number of suggestions relating to regulations. Their key concerns were the increase in trade licensing fees and the number of licences that businesses are required to have. They noted that government action amounted to double taxation. In this respect, a few respondents suggested that there should be a centralised system of registration and licensing. This suggestion is contrary to what has been suggested in the de-regulation programme; that registration be decentralised and licences consolidated at a one-stop shop office. Considering the number covered in this survey, this observation should be taken with caution.

It was further observed that regulations should apply to owners of large businesses, whereas very small SMEs should have areas reserved for their operations without harassment. At the same time the value of investment should determine the nature and cost of a licence. Additionally, the government should educate SMEs on regulations and de-regulation, facilitate access to loans and assign honest employees conversant with SME operations to deal with them.

Another concern of the public was the method of apprehending street vendors and other itinerant traders. They condemned the "snap chase approach" and suggested that such traders should always be given a warning before being harassed and their commodities confiscated and/or destroyed. SMEs operate on very minimal capital, and punitive measures only serve to scare a number of them away from such businesses. There was a suggestion from some members of the public that mobile hawkers should be given a type of licence which allows them to hawk in any town which provides maximum opportunities for income.

Policy Makers' Perceptions

The survey included discussions with relevant officers in the urban centres covered. Their views on the benefits and costs of de-regulation were probed. A number of them felt that although regulations earn Local Authorities income, they were largely meant for control and not promotion of businesses. It was high time the whole approach changed. It was observed that although over 25% of traders do not bother to register or get a licence, the ones which do generate income for the councils. In one of the councils, it was noted that about 11% of the required annual budget for 1997/98 was raised from licensing fees.

Most policy makers within councils covered in the survey acknowledged the fact that the procedures for licensing are tedious and cumbersome and that de-regulation is necessary. The survey revealed that the government, SMEs and general public would benefit from de-regulation. In discussing the costs and benefits of de-regulation, all policy makers were found to be aware of the circular from the Ministry of Local Government on the need for de-regulation.

Municipal council policy makers perceived that the policy of one-stop-shop would not only be important for the government to collect revenue from licences but would also promote business development. They noted that the number of licences required is large and expensive, and most councils expected better operation once the one-stop-shop for licensing is in place. The procedures involved have kept a large number of businesses away from registration and licensing. Revised regulations and improved management are expected to increase the number of registered and licensed enterprises. In turn, the concerned authorities may end up collecting more fees than in a regulated environment where only a few opt to respect required regulations.

some of the councils had begun re-organising their various departments involved in licensing in preparation for the planned de-regulation programme requirement of one-stop-shop for handling all matters of licensing. Trade licensing has been unnecessarily linked to various departments dealing with land rates, water bills and landlord clearances. Although this is an easy method of revenue collection for most of the largely inadequate councils, it punishes innocent traders who have nothing to do with other fees except rent for premises.

Once the new one-stop-shop system is in operation, there would be less confusion among the SMEs. The government will also be able to block the many loopholes that have existed in the procedures of licensing; the councils, by retaining income generated from licensing, will be able to prioritise development issues and operate in a more efficient way. Less time will be spent in getting a licence in terms of paper work and trading time. Eventually, this may lead to more revenue collection.

Regulations as such need not be negative but should be geared for regulating against fraud and for property rights, health and safety (Bannock 1994). Discussions with public health policy makers revealed that there was a need for protection of foodstuffs, inspection where food business takes place and general environmental issues. They suggested that policy has to take health and hygiene conditions into consideration when the one-stop policy issue is implemented. In Nakuru, for instance, the officer interviewed at the Department of Public Health and Environmental Committee said that due to the strict health rules and controls of food business, Nakuru had not witnessed the recent cholera outbreak. It is worth noting that at the Nakuru Municipal Council the circular on de-regulation had been received but not much re-organisation had taken place at the time of the interview. In sum, the health officials felt that despite the importance of de-regulation, health standards and protection were considered as a priority.

Existing regulations covering SMEs are stringent and quite expensive to enforce. A county clerk of Olkajuado County Council noted that in terms of revenue, the Local Authority will not be drastically affected. He further observed that the de-regulation programme is largely aimed at foreign investors and marginally affects local businesses. It was further pointed out that the requirement for location of operation will still have to prevail since most of the Local Authorities have to provide services. The clerk noted that the council collects revenue even in residential premises, once they identify that such units are also used for businesses. Nevertheless, there are still some traders who totally escape any form of regulation and fee requirements. It is not clear whether such traders will find solace in a de-regulated environment.

Discussions were also held with policy makers at the Ministry of Trade and in different councils. The Ministry, through trade officers, directly deals with licensing at the Central Government level. Detailed discussions with the policy

makers at the Ministry revealed their worry over possible loss of revenue and employment. They also indicated that many officers who had been issuing licences at different stages within the Ministry would be jobless with the implementation of the one-stop-shop policy.

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CONCLUSIONS

This study has discussed the state of regulations relating to the Trade Licensing Act and the Registration of Business Names Act. It reveals that although compliance is expensive, a high percentage of enterprises comply with both acts. In the process, enterprises incur both official and unofficial costs. The latter include bribes and other payments made to ease the process of obtaining a licence or registration.

Businesses pay KSh 2.4 billion to comply with the Registration of Business Names Act and KSh 2.3 billion to comply with the Trade Licensing Act. These figures have to be treated with caution since they include older, lower amounts thought to be higher. It is also important to point out that registration of a business name is usually done only once in the lifetime of a business, so the amount reported represents the total one-time cost for all present businesses. The cost of trade licensing is annual, so the estimated total is incurred each year.

The study points out that the total non-compliance costs are less than compliance costs. Enterprises pay for protection from central government or local authority. Inability to pay for non-compliance results in punitive actions which mainly include business closure, eviction from premises, demolition of premises and confiscation of goods. It is not surprising, therefore, that many businesses choose to make "public relations" payments to avoid such punitive measures.

In the case of registered businesses, enterprises not only incur the costs of the registration fee but additional costs, in terms of travel, time and display of the registration certificate. Among these factors, time is the most tedious single cost of complying with the Registration of Business Names Act. This is partly because all registration is centralised in Nairobi, forcing business owners located elsewhere to take considerable travel time. Decentralising the registration process would substantially reduce the costs to the enterprises, but it may increase costs for the government in terms of setting up relevant offices locally and regionally.

A higher percentage of enterprises have knowledge of the Trade Licensing Act and how to comply with it compared to those with knowledge of the Registration of Business Names Act. This is partly explained by the fact that the Registration of Business Names Act is a one time requirement and not all businesses need to be registered; licensing is an annual requirement with some licenses being paid on a daily basis. This exposes enterprises to persistent harassment which forces them to get information not only about licensing but also strategies for evading the requirement.

Members of the public drawn from suppliers, consumers and those staying near SMEs recognised the importance and contribution of these businesses. However, they identified a number of problems affecting both businesses and the public: pollution, poor quality products, noise related to metal and wood work, health risks and lack of credibility, among others. Further, they pointed out that regulations encourage corruption and should be limited to large businesses.

The poor regulatory and enforcement regime made the public sceptical of the government's commitment to de-regulation. Those interviewed did not believe that the government would actually implement a de-regulation programme. Some expressed fears that de-regulation would expose the public to additional health hazards. The fears are especially strong in matters affecting public health, where most respondents thought strict regulations should be applied and enforced.

Many of the interviewed government officials recognised that licensing procedures are tedious and cumbersome, and that they have been unnecessarily linked to clearing arrears in other charges that may not be the responsibility of the business owner. Discussions with government officials support the general need for making the regulatory framework simpler and more fair.

The present study did not track the cost of administering the current regulatory regime. This is a gap that needs to be addressed in future research because the public costs may be significant. Studies in the UK put the costs of administering tax systems at about one-third of business compliance costs (Godwin 1995). If Kenya faces a similar ratio for its licensing and registration systems, then the administration burden to government could be as much as one billion KSh. Of course, even a streamlined regulatory regime will have to be administered, so that not all costs can be eliminated. Nevertheless, the scope for savings could be substantial.

The evidence also points to ways in which future studies could strengthen the case for more favourable regulatory regime. Such studies must, as suggested above, provide data on government administrative costs. Future studies also need to go beyond trade licensing and the registration of business names to include other sorts of licences and registration requirements. Further work in this area must also be more explicit about the benefits to the wider economy.

Lifting regulatory costs from entrepreneurs has net benefit to the economy as human and financial resources are shifted to productive economic activity. Multiplier effects ensure that the economy benefits by more than the value of the shifted resources. Finally, future studies should, as far as possible, build on the work of this benchmark. Conceptually, this means that future work should refine the institutional economics framework of the study. Methodologically, it requires developing a panel of firms that can be approached repeatedly so that on-going research can track changes in compliance and non-compliance costs as the regulatory environment changes.

In sum, the evidence from this benchmark study supports the need for continued effort to reduce the regulatory burden. It also highlights the need for regulatory reform to be accompanied by continued research on the impact of changes on individual businesses, households, local communities and the wider economy.

BIBLIOGRAPHY

- Abuodha, C. 1995. "Technology and Small and Micro Enterprise (SME) Development in Western Kenya." IDS Working Paper no. 502. Nairobi: University of Nairobi, Institute for Development Studies.
- Bannock, G. 1994. "De-regulation and Small and Micro Enterprises." Issue Paper 3. Nairobi: Small Enterprise Policy Implementation Programme of the Office of the Vice-President and Ministry of Planning and National Development.
- Daniels, L., Mead, D. and Musinga, M. 1995. "Employment and Income in Micro and Small Enterprises in Kenya: Results of a 1995 Survey." Research Paper No. 26. Nairobi: K-Rep.
- de Soto, Hernando 1989: *The Other Path: The Invisible Revolution in the Third World*. New York: Harper & Row Publishers.
- Gichira, R. 1991. "An Analysis of the Laws and Regulations Affecting the Development of the Informal Sector in Kenya." Research paper No. 5. Nairobi: K-Rep.
- Godwin, M. 1995. "The Compliance Costs of the United Kingdom Tax System." In Cedric Sanford, ed., *Tax Compliance Costs, Measurement, and Policy*. Bath: Fiscal Publications.
- Graham, A., Mitullah, W.V. and K'Opiyo, G. 1998. "Baseline Survey on Women Street Vendors in Kenya." Nairobi: DFID and MATRIX Development Consultants.
- Kenya, Republic of. 1986. "Sessional Paper No. 1 on Economic Management for Renewed Growth." Nairobi: Government Printer.
- Kenya, Republic of. 1992. "Sessional Paper No. 2 of 1992 on Small Enterprise and *Jua Kali* Development in Kenya." Nairobi: Government Printer.
- Kenya, Republic of. 1996. "Sessional Paper No. 2 of 1996 on Industrial Transformation to the Year 2020." Nairobi: Government Printer.
- Kenya, Republic of. 1997. "Improving the Legal and Regulatory Environment Through Trade Licensing Reform." Nairobi: De-regulation Section, Office of the Vice-President and Ministry of Planning and National Development.
- Kenya, Republic of, and United Nations Development Programme. 1994. Programme Support Document: Programme for Small Enterprise Development and Employment Creation. Nairobi: Ministry of Planning and National Development and Office of the Vice-President.
- Khayesi, M. 1997. "*Matatu* Workers in Nairobi, Thika and Ruiru Towns, Kenya: Analysis of Their Socio-Economic Characteristics, Career Patterns, and Conditions of Work." CDR Project Report. Nairobi: University of Nairobi, Institute for Development Studies.
- Kibwana, K. 1989. "Critical Aspects Regarding the Legal Regulations of the Informal Sector," *Lesotho Law Journal* vol 5(2): 357-388.
- Kinyanjui, M. N. 1997. "Employment in Small-Scale Enterprises in Kenya: Labour Force Characteristics and Working Conditions." CDR Project Report. Nairobi: University of Nairobi, Institute for Development Studies.

- Machana, K. 1993. "The State and the Informal Sector in Nairobi, Kenya." Working Paper No. 10. Nairobi: French Institute for Research in Africa.
- McCormick, D. 1988. *Small Manufacturing Enterprises in Nairobi: Golden Opportunity or Dead End?* Ph.D. dissertation. Baltimore: The Johns Hopkins University.
- Njeru, E., Njoka, J. and Kamau, A. 1997. "Small Scale Enterprises in Nairobi: The Socio-Cultural Factors Influencing Investment Patterns in Informal Sector Women Entrepreneurs." CDR Project Report. Nairobi: University of Nairobi, Institute for Development Studies.
- Nyamweya, P. 1995. "The Informal Sector in Kenya: A Baseline Survey of the Determinant Laws." Nairobi: Public Law Institute.
- Otunga, R., Opat, G. and Muyia, F. 1997. "A Study of Socio-economic Background of Women Entrepreneurs in the Informal Sector in Eldoret Town." CDR Project Report. Nairobi: University of Nairobi, Institute for Development Studies.
- Overseas Development Administration (ODA). 1994. "Small Enterprise Policy Implementation Programme." Final Report of the Small Enterprise Implementation Programme (SEPIP) Mission. Nairobi: British Aid to Small Enterprises (BASE), ODA.
- Parker, J. 1994. "Micro and Small Scale Enterprises in Kenya: Results of the 1993 National Baseline Survey." Gemini Technical Report No. 75. New York: Pact Publications.
- Sebstad, J., Neill, C. and Barnes, C. 1995. "Assessing the Impacts of Microenterprise Interventions: A Framework for Analysis." Washington, DC: United States Agency for International Development, Centre for Development Information and Evaluation.
- USAID. 1995. "Laws and Regulations Affecting Development and Growth of Micro and Small Enterprises in Kenya." Nairobi: African Economic and Financial Consultants (AEFC).
- Wegulo, F. 1997. "The Farm Sector Small-Scale Enterprise Interface and Development in the Mumias Area of Kakamega District." CDR Project Report. Nairobi: University of Nairobi, Institute for Development Studies.

... K. 1997. "The Small-Scale Informal Sector in Kenya." Working Paper
for the Nairobi French Institute for Research in Africa.

... D. 1988. Small Manufacturing Enterprises in Nairobi. Oxford University
Press, Oxford.

... A. 1997. "Small-Scale Enterprises in Nairobi: The Socio-
Economic Factors Influencing Investment Patterns in Informal Sector Women Enterprises."
CDR Project Report, Nairobi: Institute for Development Studies.

... P. 1997. "The Informal Sector in Kenya: A Review of the Existing
Literature." Nairobi: Institute for Development Studies.

... R. 1997. "A Study of Socio-Economic Background of
Women Entrepreneurs in the Informal Sector in Eldoret Town." CDR Project Report,
University of Nairobi, Institute for Development Studies.

... (ODA). 1994. "Small Enterprise Policy Implemen-
tation Program." Final Report of the Small Enterprise Policy Implemen-
tation Program. Nairobi: Ministry of Planning and National Development.

... J. 1994. "Micro and Small Scale Enterprises in Kenya: A Review of the
Existing Literature." Nairobi: Institute for Development Studies.

... J., Holt, C. and Barnes, C. 1995. "Assessing the Impact of Microfinance
Interventions: A Framework for Analysis." Washington, DC: World Bank Agency for
International Development, Center for Development Initiatives and Evaluation.

... D. 1992. "Law and Regulation Affecting Development and Growth of Small and
Medium Enterprises in Kenya." Nairobi: African Development Bank.

... Kenya. Republic of. 1991. "The Small and Medium Enterprises Development
Program." Nairobi: Ministry of Planning and National Development.

... R. 1997. "The Small-Scale Informal Sector in Kenya: A Review of the
Existing Literature." Nairobi: Institute for Development Studies.

... Ministry of Planning and National Development, Nairobi: Institute for
Development Studies.

Kenya, Republic of. 1991. "Improving the Legal and Regulatory Environment for
Trade Licensing Reform." Nairobi: Office of the Vice-President and Ministry of
Planning and National Development.

Kenya, Republic of. 1994. "United Nations Development Programme. 1994. Program
Support Document: Empowerment for Small Enterprise Development and Employers
Creation." Nairobi: Ministry of Planning and National Development and Office of
Vice-President.

Khayeri, M. 1997. "Women Workers in Nairobi, Thika and Ruiru Towns, Kenya: A Study
of Their Socio-Economic Characteristics, Career Patterns, and Conditions of Work."
CDR Project Report, Nairobi: University of Nairobi, Institute for Development Studies.

Kibwana, K. 1998. "Critical Aspects Regarding the Legal Regulation of the Informal
Sector." *Law and Development Journal* vol. 1(2), 357-368.

Kinyanjui, M. N. 1997. "Employment in Small-Scale Enterprises in Kenya: A Study of
Characteristics and Working Conditions." CDR Project Report, Nairobi: University
of Nairobi, Institute for Development Studies.

Appendix 1

LAWS OF KENYA

The Trade Licensing Act

CHAPTER 497

Revised Edition 1990 (1980)

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CHAPTER 497

THE TRADE LICENSING ACT

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

Section

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- 2—Interpretation.

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CHAPTER 497

THE TRADE LICENSING ACT

Commencement: 8th January, 1968

33 of 1967,
L.N. 19/1968,
17 of 1969,
7 of 1975,
13 of 1979,
8 of 1985,
10 of 1987,
20 of 1989,
10 of 1990.

An Act of Parliament to provide for the licensing of certain trades and businesses

PART I—PRELIMINARY

1. This Act may be cited as the Trade Licensing Act. Short title.

2. (1) In this Act, unless the context otherwise requires— Interpretation.
17 of 1969, s. 2,
8 of 1975, Sch.

“business” means a concern carrying on the occupation of—

- (a) a regulated trade;
- (b) importing or exporting goods;
- (c) commission agent or indent agent;
- (d) manufacturer’s representative;
- (e) produce dealer or produce broker;
- (f) business broker or management consultant;
- (g) insurance agent;
- (h) estate agent; or
- (i) any other occupation, whether similar to any of the foregoing or not, which the Minister may, by order, declare to be an occupation for the purposes of this definition;

“business transaction” means a transaction entered into with a business being a transaction connected with the occupation carried on by the concern which constitutes the business;

“commission agent” means a factor employed by his principal to sell goods delivered to the factor, for remuneration called commission;

“conditional licence” means a licence granted under section 8;

"general business area" means an area declared under section 3 to be a general business area for the purposes of this Act;

"licence" means a licence, other than a conditional licence, granted under this Act;

"licensee" means holder of a licence;

"licensing officer" means a person appointed to be a licensing officer under section 6;

"manufacturer's representative" means a person resident in Kenya in the year in question who acts as agent for a manufacturing or trading concern and receives remuneration from the concern on a retainer basis or on the basis of the orders which he obtains in Kenya, or both;

"regulated trade" means

- (a) wholesale or retail trade;
- (b) catering;
- (c) laundering or dry-cleaning;
- (d) hairdressing;
- (e) beauty culture;
- (f) shoe repairing;
- (g) motor vehicle repairing;
- (h) cinematograph film exhibition;
- (i) advertising; or
- (j) the sale by a manufacturer of goods manufactured by him;

"resident in Kenya", in relation to a particular year and in relation to—

- (a) an individual, means that the individual resides in Kenya, except for such temporary absences as the Minister may determine to be reasonable, and an individual shall be deemed to reside in Kenya if he has a home in Kenya and is present in Kenya at any time in that year;
- (b) a corporation, means that the control and management of the affairs of the corporation were exercised in Kenya in that year;

"specified goods" means any goods, or goods of any particular class, declared as such under section 4 for the purposes of this Act.

(2) For the purposes of this Act—

(a) a person conducts a business if he is—

(i) the owner or a part-owner of the business; or

(ii) the person controlling or a person partly controlling the business; or

(iii) a person interested in the business, but, subject to section 23 of the Penal Code, where a corporation conducts a business a person who is director or shareholder in that company does not by reason only of his directorship or shareholding conduct the business of that corporation;

Cap. 63

(b) a corporation is a citizen of Kenya if more than one-half of its capital is held by or on behalf of persons who are citizens of Kenya; and a statutory declaration made by a director or other person responsible for the management of the corporation that to the best of his knowledge and belief more than one-half of its capital is so held shall be prima facie evidence that it is so held; and

(c) a partnership is a citizen of Kenya if all the partners therein are citizens of Kenya, and not otherwise.

PART II—REGULATION OF BUSINESS

3. The Minister may, by order, declare the area, or any part of the area, of any city, municipality or township to be a general business area for the purposes of this Act.

General
business
areas.

4. The Minister may, by order, declare any particular goods, or goods of any particular class, to be specified goods for the purposes of this Act.

Specified
goods

5. (1) No person shall conduct any business, except under and in accordance with the terms of a current licence.

Restriction on
carrying on
business

(2) No person who is not a citizen of Kenya shall conduct a business—

(a) in any place which is not a general business area; or

(b) in any specified goods,

unless his licence specifically authorizes him to do so.

(3) No licensee shall enter into any business transaction unless the business with which the transaction is entered into is carried on under a licence.

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable to imprisonment for

a term of one year or to a fine not exceeding ten thousand shillings or to both.

(5) Where a person is convicted of an offence under this section, the Minister may--

(a) where he is the holder of a licence, in writing revoke the licence;

(b) in any case, in writing direct that no licence shall be granted to that person during such period (not exceeding ten years) as the Minister may think fit.

PART III—LICENSING OF BUSINESSES OTHER THAN THOSE PROVIDING PROFESSIONAL AND CONSULTANCY SERVICES

Licensing
officers

6. (1) There shall be so many persons appointed to be licensing officers for the purposes of this Act as may be necessary for the execution of this Act.

(2) The office of licensing officer shall be an office in the public service.

Partnerships.
17 of 1969, s. 3.

7. (1) Every licence or conditional licence granted in respect of a partnership shall be in the joint names of all the partners.

(2) In the event of any change in the constitution of a partnership which is the holder of a licence or a conditional licence, the remaining partners shall, within seven days of such change, give written notice thereof to the licensing officer.

(3) Notwithstanding any other provision of this Act, any licence or conditional licence held by a partnership shall, at the expiration of six months from the date of any change in the constitution of the partnership, or upon the issue of a licence in respect of the business concerned to the reconstituted partnership, whichever is the earlier, become void and shall forthwith be surrendered to the licensing officer for cancellation:

Provided that this subsection shall not apply in any case where—

(i) a change in the constitution of a partnership is occasioned by the death or retirement of a partner; and

(ii) no new partner is brought in to replace the deceased or retired partner; and

(iii) there are at least two partners remaining.

(4) In the event of any failure to give notice, or to surrender a licence, as required by this section, each of the remaining partners shall be guilty of an offence.

(5) In this section "remaining partners" means the partner or partners named in a licence or conditional licence who remain in the partnership after any change in the constitution thereof.

8. (1) A licensing officer may grant a conditional licence to a person who makes application therefor in the prescribed manner, and may attach any conditions thereto which he may think necessary.

Conditional
licences
17 of 1969, s. 3,
20 of 1989, Sch.

(2) A conditional licence shall not entitle the holder thereof to conduct any business but shall specify the kind of business and the premises in respect of which a licence is to be granted under subsection (6).

(3) The fee for the grant of a conditional licence shall be one-half of the fee specified in the First Schedule appropriate to the business and premises specified under subsection (2).

(4) A conditional licence shall be valid for a period of twelve months from the date of the issue thereof.

(5) An application for a conditional licence in continuation of one which is due to expire shall be made at least three months before the date of such expiration.

(6) At any time during the validity of a conditional licence, the holder thereof may apply to the licensing officer for a licence in respect of the business and the premises specified in the conditional licence, and if the licensing officer is satisfied that the conditions, if any, upon which such conditional licence was issued have been fulfilled he shall, upon payment of the appropriate fee and notwithstanding any other provision of this Act, grant such licence to the applicant.

(7) Where a licensing officer refuses to grant a conditional licence or attaches conditions thereto he shall give to the applicant, if so requested, the reasons in writing for his action.

9. (1) A person desirous of obtaining a licence shall make application therefor in the prescribed manner, and the licensing officer may—

Grant of
licence.
17 of 1969, s. 4,
20 of 1989, Sch.

(a) grant a licence accordingly, either without conditions or subject to such conditions as he may think fit, or refuse to grant a licence;

(b) where he decides to grant a licence and the applicant is not a citizen of Kenya, grant authority in the licence for the purposes of section 5 (2), or refuse to grant such authority.

(2) Where a licensing officer—

(a) refuses to grant a licence; or

(b) imposes conditions in a licence; or

(c) refuses to grant authority in a licence for the purposes of section 5 (2),

he shall give to the applicant, if the applicant so requests, the reasons in writing for his action.

(3) Except as otherwise expressly provided, the appropriate fee specified in the First Schedule shall be payable in respect of each business authorized by a licence.

(4) A licence shall be valid for a period of twelve months from the date of the issue thereof:

Provided that the Minister may direct that any particular licence or class of licence, whether defined by class of business or area of application or both, shall be valid for such other period as he may specify, and in any such case the fee payable for any such licence shall be varied proportionally.

(5) An application for the grant of a licence which is in continuation of or substitution for an existing licence shall be made at least three months before the expiry date of the existing licence.

(6) A licence shall specify the premises at which the licensee may conduct his business, and, where a business is conducted at more than one premises, a separate licence shall be required for each of such premises:

Provided that where a business is conducted by one management in premises divided by walls but otherwise communicating internally with one another only one licence shall be required for such business.

(7) The effect of a licence shall be to authorize the licensee to conduct a business or businesses specified in the licence at the premises so specified.

Amendment of
licence.
17 of 1969, s. 3.

10. (1) Subject to this Act, a person may make application in the prescribed manner for his licence to be amended, and the licensing officer may amend the licence—

(a) by substituting another kind of business for the kind of business specified in the licence, or adding another kind of business; or

(b) by substituting other premises for the premises specified in the licence,

by endorsing the licence accordingly.

(2) Where a licensing officer refuses to amend a licence under subsection (1), he shall give to the applicant, if the applicant so requests, the reasons in writing for his action.

(3) A licence amended under this section shall, notwithstanding the provisions of subsection (4) of section 9, be valid for a period of twelve months from the date of such amendment.

(4) There shall be payable upon an amendment of a licence under this section the appropriate fee specified in the Schedule in respect of each business authorized by such licence as so amended.

11. (1) Save as hereinafter provided, no licence shall be transferred to any person.

Transfer of
licences.
17 of 1969, s. 6.

(2) Any licensee who lends, transfers or assigns, or attempts or purports to lend, transfer or assign, his licence to any other person, and any person who borrows or makes use of a licence granted to another and not lawfully transferred under subsection (3), shall be guilty of an offence.

(3) Notwithstanding the foregoing provisions of this section, a licensing officer shall, if so requested, transfer a licence to any of the following persons in the appropriate event—

- (a) in the case of the death of the licensee, to surviving heirs or the legal personal representative of such licensee;
- (b) in the case of the bankruptcy of the licensee or assignment for the benefit of his creditors generally, to the lawfully appointed trustee or assignee;
- (c) in the case of a corporation in liquidation, to the lawfully appointed liquidator;
- (d) in any case where the licensee becomes subject to a legal disability, to any person lawfully appointed to administer his affairs,

and any licence so transferred shall, notwithstanding any other provision of this Act, continue to be valid for a period of twelve months from the date of such transfer.

(4) There shall be payable upon the transfer of a licence under subsection (3) a fee of ten per centum of the fee paid for the issue of such licence.

Display of licence and duplicates. 17 of 1969, s. 6.

12. (1) Every licence shall, except when lodged with a licensing officer for any of the purposes of this Act, be displayed in a prominent position on the premises in respect of which it was issued and where any licence is not so displayed the licensee shall be guilty of an offence and liable to a fine not exceeding five hundred shillings.

(2) Where, upon application in the prescribed manner, it is shown to the satisfaction of the licensing officer that a licence has been lost, destroyed or defaced, such officer shall, upon payment of a fee of five shillings, issue a duplicate of such licence to the licensee.

Principles of licensing. 17 of 1969, s. 7.

13. In the performance of his functions under sections 8, 9 and 10, a licensing officer shall—

(a) be guided by the principle that businesses carried on in any place which is not within a general business area ought, where practicable, to be controlled by citizens of Kenya, and that specified goods ought, where practicable, to be dealt in by citizens of Kenya, and in particular take into consideration—

(i) whether the activities in respect of which the licence is applied for ought to be and could be carried on by a business conducted by citizens of Kenya;

(ii) whether the activity will be in the public interest; and

(iii) any special programme of development in the area concerned; and

(b) satisfy himself that the applicant and every other person who will conduct the business has not—

(i) been adjudged bankrupt and not been discharged, or entered into a composition or a scheme of arrangement with his creditors which is still binding;

(ii) within the five years immediately preceding the date of the application, been convicted of an offence under the law relating to bankruptcy; or;

(iii) within the period specified in subparagraph (ii), been convicted of an offence under this Act, the Imports, Exports and Essential Supplies Act, the Restrictive Trade Practices, Monopolies and Price Control Act, the Trade Descriptions Act, the Weights and Measures Act or the Customs and Excise Act; and

Cap. 502.
Cap. 504.
Cap. 505.
Cap. 513.
Cap. 472.

THE INSTITUTE OF DIRECTORS OF COMPANIES

PROVISIONS OF THE COMPANIES ACT 1947

16. (1) The provisions of this Part apply to all persons conducting any business which involves professional or other services of a kind which are normally provided by persons of that class.

(2) The Minister may, by order published in the Gazette, direct that any business which involves professional or other services of a kind which are normally provided by persons of that class shall be treated as if it were a business of that class for the purposes of this Part.

17. (1) No person shall be a director of a company if he is not a person of good character and is not a person of good character who is not a person of good character.

(2) Each professional person shall be a person of good character and shall be a person of good character who is not a person of good character.

(3) Any person who contravenes subsection (1) or (2) shall be liable to a fine of not more than £100 and shall be liable to imprisonment for a term of not more than one year or to a fine not exceeding £100 or to both.

18. (1) Any person who wishes to obtain a professional licence shall make an application in the prescribed manner to the Minister and the Minister may, subject to such conditions as may be necessary, issue a licence to that person.

(2) Where the Minister refuses to issue a licence to any person or imposes conditions on a licence, he shall give to the applicant if the applicant so requests the reasons in writing for his refusal to issue a licence or for imposing conditions on a licence.

(3) The fees specified in the Table shall be paid to the Minister in the case of a licence applied for under this Part.

(4) A professional licence shall be valid for a period of one year commencing on the 1st January and ending on the 31st December of the year of expiry.

19. (1) Subject to this Act, a licence may be granted to any person in the prescribed manner for the professional business to be conducted and the Minister may impose such conditions as may be necessary on the licence.

(2) Where the Minister refuses to grant a licence to any person or imposes conditions on a licence, he shall give to the applicant if the applicant so requests the reasons in writing for his refusal to grant a licence or for imposing conditions on a licence.

**PART IV—LICENSING OF BUSINESSES PROVIDING
PROFESSIONAL AND CONSULTANCY SERVICES**

Application
of Part.
20 of 1989 Sch.

16. (1) The provisions of this Part shall apply to all persons conducting any business which provides professional and consultancy services other than a business set out in the Second Schedule.

(2) The Minister may, by order published in the Gazette, declare that any business to which this Part applies shall cease to be a business for the purposes of this Act.

Restriction
on carrying on
a professional
or consultancy
business.
20 of 1989 Sch.

17. (1) No person to whom this Part applies shall conduct any business providing professional or consultancy services except in accordance with the terms of a current professional licence.

(2) Each professional licence shall be in prescribed form and shall authorize the holder thereof to conduct his business throughout Kenya subject to any conditions set out by any other written law.

(3) Any person who contravenes subsection (1) or subsection (2) shall be guilty of an offence and shall be liable to imprisonment for a term of one year or to a fine not exceeding ten thousand shillings or to both.

Grant of
professional
licence.
20 of 1989 Sch.

18. (1) Any person who wishes to obtain a professional licence shall make an application in the prescribed manner to the Minister and the Minister may, subject to such conditions as may be necessary, issue a licence to that person.

(2) Where the Minister refuses to issue a licence or imposes conditions on a licence, he shall give to the applicant, if the applicant so requests, the reasons in writing for the refusal to issue a licence or for imposing conditions on a licence.

(3) The fees specified in the First Schedule shall be payable prior to the issue of a licence applied for under this Part.

(4) A professional licence shall be valid for a period of one year commencing on the 1st January and ending on the 31st December of the year of issue.

Amendment
of professional
licence.
20 of 1989 Sch.

19. (1) Subject to this Act, a licensee may make application in the prescribed manner for his professional licence to be amended and the Minister may endorse such an amendment on that licence.

(2) Where the Minister rejects an application made under this section, he shall give the applicant, if the applicant so requests, the reasons in writing for such rejection.

20. (1) Any person who is aggrieved by the action of the Minister under this Part in—

Appeals.
20 of 1989 Sch.

- (a) refusing to grant a professional licence, or revoking such licence;
- (b) imposing conditions on a professional licence; or
- (c) rejecting an application for the amendment of a professional licence,

may within twenty-one days of receipt by him of a written notice of such action, appeal to the appeals committee provided for in section 21 whose decision shall be final.

21. There shall be established by the Minister an appeals committee which shall consist of—

Establishment
of Appeals
Committee.
20 of 1989 Sch.

- (a) three members of the National Assembly;
- (b) two advocates; and
- (c) two persons experienced in one of the occupations specified in the definition of "business" in section 2 (1) of this Act.

PART V—ENFORCEMENT

22. (1) An administrative officer, a licensing officer or a police officer of or above the rank of Inspector may, upon production of evidence of his authority to any person reasonably requiring it—

Power to enter
premises and
require
information.

- (a) at any reasonable time, enter any premises which he has reasonable grounds for believing to be occupied by a business, and inspect such premises and any book, document or other thing found therein for the purpose of ascertaining whether this Act is being complied with; and
- (b) require any person appearing to be conducting the business or to be employed in it to give such information within his power as the officer may reasonably require to enable him to ascertain whether this Act is being complied with.

(2) Any person who hinders or obstructs an officer acting under subsection (1) shall be guilty of an offence.

23. For the purposes of this Act, a person conducting a business shall be responsible for the acts or omissions of any partner, agent or servant of his in so far as they concern his business, and if such partner, agent or servant commits any act or makes any omission which is an offence under this Act, or which would be an offence if committed by the person

Act of agent
or servant.

conducting the business, such person and his partner, his agent or his servant, as the case may be, shall each be guilty of the offence and liable to the penalty prescribed therefor:

Provided that—

- (i) where a person conducting a business is, by virtue of this section, charged with an offence under this Act, it shall be a defence to the charge to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements of this Act were complied with and was in a position to discharge that duty; and
- (ii) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court, the offence was committed wilfully.

False information.

24. Any person who makes a false statement or a statement which he has reason to believe is untrue—

- (a) in an application under this Act or otherwise to a licensing officer in connection with this Act; or
 - (b) to an officer acting under section 22 (1),
- shall be guilty of an offence.

Presumptions

25. (1) Where, in a prosecution for an offence under section 5, it is alleged that a person is not a citizen of Kenya, it shall be presumed that that person is not a citizen of Kenya until the contrary is proved.

(2) Where, in a prosecution for an offence under section 5, it is alleged that a person does not hold a current licence, it shall be presumed that that person does not hold a current licence until the contrary is proved.

General penalty.

26. Any person who is guilty of an offence under this Act for which no penalty is specifically provided shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding five thousand shillings or to both.

PART VI—SUPPLEMENTAL

Exemption

27. The Minister may, by notice in the Gazette, exempt any class of persons who are citizens of Kenya from any of the provisions of this Act.

Regulations

28. The Minister may make regulations for the better carrying out of the provisions and purposes of this Act, and, without prejudice to the generality of the foregoing, for—

(a) prescribing the forms to be used and the fees to be paid for anything done under this Act;

(b) prescribing the conditions subject to which licences are to be issued, with different conditions for different classes of cases where appropriate.

29. (1) Upon receipt of an application for a licence in continuation or substitution for an existing licence, the licensing officer shall issue to the applicant a written acknowledgement of such receipt which shall specify the name of the applicant and the business and the premises in respect of which the application is made.

Acknowledgement of application. 17 of 1969, s. 9

(2) If, at the date of expiry of a licence, the licensing officer has not granted a new licence and has not notified the licensee that such new licence has been refused, the acknowledgement issued under subsection (1) shall, for the purposes of this Act, be deemed to be a licence authorizing the person specified therein to conduct the business, at the premises, so specified.

(3) An acknowledgement which is deemed to be a licence under subsection (2) shall be valid as such until the date upon which the new licence applied for is granted or refused, and in the case of a refusal such acknowledgement shall be surrendered to the licensing officer.

(4) An applicant who fails to surrender an acknowledgement under subsection (3) within seven days after the receipt of a notification of refusal of a licence shall be guilty of an offence.

(ss. 9 (3) and 18 (3)).

8 of 1985 5.24
10 of 1988 5.43
10 of 1990 5.64

FIRST SCHEDULE

	Licence Fees	Annual Fees
		Sh.
B. 1 For a business carrying on the occupation of wholesale trade	General business area	2,200
	Urban area	1,320
	Rural area	880
B. 2 For a business carrying on the occupation of catering	General business area	2,220
	Urban area	550
	Rural area	110

B. 3	For a business carrying on the occupation of motor vehicle repair	General business area Urban area Rural area	3,300 1,100 440
B. 4	For a business carrying on the occupation of regulated trade	General business area Urban area Rural area	2,200 550 220
B. 5	For a business carrying on the occupation of any other occupation (miscellaneous occupations)	General business area Urban area Rural area	5,500 3,300 2,200
B. 6	For business carrying on the occupation of sale by a manufacturer of goods manufacture by him	General business area Urban area Rural area	6,600 3,300 2,200
B. 7	For a business carrying on the occupation of distribution of goods	General business area Urban area RMra area	2,200 1,100 800

SECOND SCHEDULE (s. 16).

	<i>Profession</i>	<i>Acts under which Licensed</i>
Cap. 244.	Pharmacists	The Pharmacy and Poisons Act.
Cap. 253.	Doctors, and Dentists ..	The Medical Practitioners and Dentists Act.
Cap. 257.	Nurses	The Nurses Act.
Cap. 299.	Surveyors	The Survey Act.
Cap. 366.	Veterinary Surgeons	The Veterinary Surgeons Act.
Cap. 525.	Architects and Quantity Surveyors	The Architects and Quantity Surveyors Act.
Cap. 526.	Auctioneers	The Auctioneers Act.
Cap. 530.	Engineers	The Engineers Registration Act.
Cap. 531.	Accountants	The Accountants Act.
Cap. 532.	Valuers	The Valuers Act.
Cap. 533	Estate Agents	The Estate Agents Act.
Cap. 535	Certified Public Secretaries ..	The Certified Public Secretaries Act.

SUBSIDIARY LEGISLATION**Order under section 2****THE TRADE LICENSING (DECLARATION OF OCCUPATIONS) ORDER**L.N. 72/1980.
L.N. 237/88.

1. This Order may be cited as the Trade Licensing (Declaration of Occupations) Order.
2. The businesses specified in the Schedule are declared to be occupations for the purposes of subsection (1) of section 2 of the Act.

SCHEDULE

- (a) Goods transport agents.
- (b) Business of hotel and motel which provide accommodation as well as boarding and lodging.
- (c) Professional and consultancy services.
- (d) Land developing agents.
- (e) Private investigators.
- (f) Tour operators, car hire services or travel agents.
- (g) Guard hire services and security services.
- (h) Building contractors including renovators.
- (i) Proprietor of a commercial college or secretarial bureau.
- (j) Business of operating driving schools.
- (k) Auctioneers.
- (l) Business of operating amusement parlours.
- (m) Business of warehousing, clearing and forwarding agents.
- (n) Transporters.
- (o) Business of operating private slaughterhouses.
- (p) Therapists, beauty/keep fit parlours.
- (q) Business of operating tailoring schools.
- (r) Business of kiosks.
- (s) Business of operating petrol stations.
- (t) Business of carrying on distributive trade.

Order under section 3**THE TRADE LICENSING (GENERAL BUSINESS AREAS) ORDER**L.N. 1/1973,
L.N. 10/1975,
L.N. 274/1977.

1. This Order may be cited as the Trade Licensing (General Business Areas) Order.
2. For the purpose of Part II of the Act the areas specified in the first column of the Schedule hereto, except the parts thereof specified in relation thereto in the second column, are declared to be general business areas for the purpose of the Act.

[Subsidiary]

SCHEDULE

Area	Excluded Parts of Area
<p>1. The area within Nairobi City surrounded by the following roads only— Mombasa Road, Nairobi Airport Road, Outer Ring Road, Jogoo Road, Likoni Road and Enterprise Road.</p>	The area known as Mbotela Estate.
<p>2. The area within Mombasa Island surrounded by the following roads— Dedan Kimathi Road, Mbarak Road and Mama Ngina Drive.</p>	
<p>3. Nakuru Municipality</p>	<p>(a) The areas immediately adjoining both sides of the following roads— Ibrahim Road, Nehru Road, Bondeni Road, Market Road, Harris Singh Avenue, Mosque Road, Kenyatta Avenue, Kenyatta Lane, Geoffrey Kamau Way, Lake Road, West Road, George Morara Avenue, Upper Factory Road, Timber Mill Road, Printing House Road, General Mathenge Road, George Morara Road, Watende Road and Kipchoge Avenue.</p> <p>(b) The areas known as Ibrahim Rahemtulla Estate, Nakuru South Estate, Shauri Yako Estate and Kivumbini Estate respectively.</p>
<p>4. Kisumu Municipality</p>	<p>(a) The areas immediately adjoining both sides of the following roads— Accra Street, Otieno Oyoo Street, Joshi Avenue, Achieng Oneko Street, New Station Road, Ogada Street, Odera Street, Oginga Odingsa Road, Paul Mbuya Road, Pandya Road, Makasembu</p>

SCHEDULE—(Contd.)

Area	Excluded Parts of Area
	<p>Street, Konzi Lane, Sam Street, Rahemtulla Kassam Road, Allah Bux Street, Temple Road, Obote Road and Otuoma Street.</p> <p>(b) The areas known as Kibuye Estate, Mosque Estate, Makasembo Estate, Shauri Moyo Estate, Ondiek Estate, Kaloleni Estate, Lumumba Estate, Nyalenda Estate, Omino Crescent and Pembe Tatu Estate surrounded by the Nairobi Road, Otieno Oyoo Street, Sailors Close, Karachi Road and Kakamega Road.</p>
<p>5. Eldoret Municipality</p>	<p>(a) The areas immediately adjoining both sides of the following roads— Uganda Road, Dharma Road, Kago Street, India Street, Muliro Street, Elijah Chemiyot Street, Nandi Road, Odinga Street, Oloo Street and Kenyatta Street.</p> <p>(b) The areas known as Shauri Yako Estate and Kivumbini Estate respectively.</p>
<p>6. Thika Municipality</p>	<p>(a) The areas immediately adjoining both sides of the following roads— High Street, Uhuru Street, Bedford Street, Cambridge Street, Broadway, Commercial Street, Kenyatta Highway, Cross Street, Workshop Road, Temple Road, Magoko Road and Stadium Road.</p> <p>(b) The area surrounded by the following roads— Kenyatta Highway, Industrial Road, Garissa Road and Station Road.</p>

[Subsidiary]

Order under section 4

L.N. 12/1968,
L.N. 193/1969,
L.N. 194/1969,
L.N. 262/1969,
L.N. 89/1971,
L.N. 147/1973.

THE TRADE LICENSING (SPECIFIED GOODS) ORDER

1. This Order may be cited as the Trade Licensing (Specified Goods) Order.

2. The goods shown in the Schedule hereto are declared to be specified goods for the purposes of the Act.

SCHEDULE

1. Maize and maize meal.
2. Sugar.
3. Charcoal.
4. Rice.
5. Fresh vegetables of all descriptions.
6. Biscuits.
7. Ghee and ghee products.
8. Cotton drills and twills of all types and colours (excluding made up articles).
9. Second-hand clothes.
10. Soap.
11. Matches.
12. Sweets.
13. Salt.
14. Khangas.
15. Grey cloth.
16. Cement (excluding special imported cement).
17. Beans of all types, peas of all types, grams of all types and njahi of all types.
18. Potatoes.
19. Corrugated iron sheet, barbed wires and nails.
20. Cigarettes.
21. Kerosene.
22. Onion.
23. Millet, wimbi and mtama.
24. Edible oils.
25. Meat—fresh.
26. Milk—fresh.
27. Groundnuts.
28. Tea leaves and coffee in tins, bottles and packets.
29. Soft drinks—mineral waters.
30. Jaggery.
31. Detergents (of all types).
32. Dry cells.
33. Charcoal irons.
34. Sufurias.
35. Second-hand gunny bags.
36. Blankets.
37. Building lime.

[Subsidiary]

38. Galvanized plain fencing wire.
39. Bicycles and bicycle spare parts.
40. Hinges of all sizes (Brass and galvanized).
41. Screws (wood).
42. Metal beds.
43. Shovels, spades.
44. Jambes—boes and forks.
45. Axes.
46. Pangas
47. Padlocks.
48. Lanterns.
49. Torches.
50. Shoes of all types including sandals.
51. Metal doors and metal windows.
52. Sand paper and Emery paper and cloth.
53. Firewood.
54. Razor blades.
55. Toilet paper.
56. Household insecticides.
57. Rat traps.
58. Wheat flour.
59. Bread.
60. Cocoa, Milo and Ovaltine—in tins, bottles and packets.
61. Whitewash.
62. Metal buckets.
63. Wall scrapers.
64. Putty scrapers.
65. Mattocks.
66. Picks.
67. Shoe laces.
68. Shoe polish.
69. Curios and trophies.
70. Hides and skins.
71. Motor vehicle tyres and tubes.
72. Handicrafts.

Exemptions under section 27

1. Any person carrying on the business of a hawker licensed by any local authority.
2. Any person carrying on the business of a charcoal dealer not having business premises built of permanent materials.
3. Any person trading from an open market, stall or temporary premises.

Regulations under section 28**THE TRADE LICENSING (FORMS) REGULATIONS**

1. These Regulations may be cited as the Trade Licensing (Forms) Regulations.
2. All persons conducting businesses shall make application in Form A.1, Form A.2, Form A.3 or Form A.4 in the Schedule for a licence.

L.N. 9/1968,
L.N. 154/1975,
L.N. 238/88,
L.N. 3/91.

[Subsidiary]

3. No person shall conduct any business unless he is in possession of a valid licence granted in the appropriate form in the Schedule.

SCHEDULE

FORM A.1

(r. 2)

THE TRADE LICENSING ACT

(Cap. 497)

APPLICATION FOR A LICENCE

(To be completed by a single person trading on his own account or by a sole proprietor of a business)

(A separate application must be submitted for each business or business establishment. Applicants are advised that it is an offence under section 15 of the Act to give false information in support of any application.)

1. (a) Name of Applicant
-
- (b) Postal address
- (c) Nationality Country of origin
- (d) If Kenya citizen indicate whether by—
 - (i) Birth
 - (ii) Naturalization Certificate No.
 - (iii) Registration Registration No.
- (e) Age
2. (a) Business name
- (b) State nature of business carried on
-
-
3. (a) Location of business premises
- Plot No. Street/Market
- Town/District
- (b) Has the locality of the premises been declared to be a general business area under section 3 of the Act?
-
4. Number and date of issue of previous licence held under the Act
5. Has the applicant made or does he intend to make any other application under the Act?
- If so, give details
-
-
-

FORM A.1—(Contd.)

6. Is the applicant an undischarged bankrupt or has he been convicted of a bankruptcy offence under the Bankruptcy Act (Cap. 53) during the previous five years?

7. Has any previous application for a licence been refused under the Act?
If so, give details

8. Has the applicant complied with the requirements of any other laws applicable to the business and the premises?

9. Any additional information which the applicant wishes to give in support of this application

I hereby declare as follows—

(a) that the information given in this application is true and correct; and

(b) that during the past five years I have not been convicted of an offence under the Act or any other law specified in section 11 (b) (iii) of the Act.

Date
Signature of Applicant

FOR OFFICIAL USE ONLY

Recommendation: License as detailed below/Refuse to license*
Business licence category Fee payable
Licence to be issued in the name of
in respect of premises situated at
Specific authorizations under section 5 of the Act

* Delete as necessary.

Licence No. Date Issued
Receipt No. Fee Paid
Issuing Officer
Date
Licensing Officer
Date

[Subsidiary]

FORM A.2

(r. 2)

THE TRADE LICENSING ACT
(Cap. 497)

APPLICATION FOR A LICENCE

(To be completed by persons trading in partnership)

(A separate application must be submitted for each business or business establishment. Applicants are advised that it is an offence under section 15 of the Act to give false information in support of any application.)

- 1. Name of Partnership or Business
-
-
- 2. Nature of business carried on
- 3. Give details of all partners as follows:—

	Name	Nationality	*Citizenship Details
(i)			
(ii)			
(iii)			
(iv)			
(v)			
(vi)			
(vii)			
(viii)			
(ix)			
(x)			
(xi)			
(xii)			
(xiii)			
(xiv)			
(xv)			
(xvi)			
(xvii)			
(xviii)			
(xix)			
(xx)			

* If Kenya citizen state whether by:—

- (i) Birth
 - (ii) Naturalization
 - (iii) Registration
- and give certificate number or registration number.

FORM A.2- (Contd.)

- 4. (a) Location of business premises
.....
Plot No. Street/Market
Town/District
(b) Has the locality of the premises been declared to be a general
business area under section 3 of the Act?
- 5. (a) Is more than one-half the capital of the partnership business
held by Kenya citizens?
-
(b) If not state the shares of all partners in the capital
-
- 6. Number and date of issue of previous licence held under the
Act
- 7. Has the partnership made/or does it intend to make any other
application under the Act?
- If so, give details
-
-
-
- 8. Are any of the partners undischarged bankrupts or have they
been convicted of bankruptcy offences under the Bankruptcy Act
(Cap. 53) during the previous five years?
-
-
-
- 9. Has any previous application for a licence been refused under the
Act?
- If so, give details
-
-
-
- 10. Has the partnership complied with the requirements of any other
laws applicable to the business and the premises?
-
-
-

[Subsidiary]

FORM A.2--(Contd.)

11. Any additional information which the partnership wishes to give in support of this application

12. Have any of the partners during the past five years been convicted of an offence under the Act or any other law specified in section 11 (b) (iii) of the Act?

I ... a partner in the partnership business of ... hereby declare as follows:--

That the information given in this application is true and correct to the best of my knowledge and belief.

Date ... Signature of Partner

FOR OFFICIAL USE ONLY

Recommendation: License as detailed below/Refuse to license*

Business licence category ... Fee payable

Licence to be issued in the name of ... in respect of premises situated at

Specific authorizations under section 5 of the Act

* Delete as necessary.

Licence No. ... Date Issued

Receipt No. ... Fee Paid

Issuing Officer

Date

Licensing Officer

Date

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[Subsidiary]

FORM A.3

(r. 2)

THE TRADE LICENSING ACT (Cap. 497)

APPLICATION FOR A LICENCE

(To be completed in respect of a Company registered under the Companies Act (Cap. 486).)

(A separate application must be submitted for each business or business establishment. Applicants are advised that it is an offence under section 15 of the Act to give false information in support of any application.)

- 1. Name of Company
2. Nature of business carried on
3. Whether private or public
4. Give details of all directors as follows:—

Table with columns: Name, Country of Residence, Nationality, *Citizenship Details. Rows (i) through (x).

If Kenya citizen state whether by:—

- (i) Birth
(ii) Naturalization
(iii) Registration and give certificate number or registration number.

- 5. (a) Location of business premises
Plot No. Street/Market
Town/District

[Subsidiary]

FORM A.3—(Contd.)

(b) Has the locality of the premises been declared to be a general business area under section 3 of the Act?

6. (a) State the nominal and issued share capital of the Company

(b) Is more than one-half of issued share capital held by Kenya citizens?

(c) Give details of the shareholding of the 10 largest shareholders as follows:—

Name	No. of Shares Held
(i)	
(ii)	
(iii)	
(iv)	
(v)	
(vi)	
(vii)	
(viii)	
(ix)	
(x)	

7. State nature of business carried on

8. Number and date of issue of previous licence held under the Act

9. Has the Company made or does it intend to make any other application under the Act?

If so, give details

10. Is any director of the Company an undischarged bankrupt or has he been convicted of a bankruptcy offence under the Bankruptcy Act (Cap. 53) during the previous five years?

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[Subsidiary]

FORM A.3—(Contd.)

- 11. Has any previous application for a licence been refused under the Act? If so, give details
- 12. Has the Company complied with the requirements of any other laws applicable to the business and the premises?
- 13. Any additional information which the Company wishes to give in support of this application
- 14. Have any of the directors during the past five years been convicted of an offence under the Act or any other law specified in section 11 (b) (iii) of the Act?

I a Director/Secretary of Ltd., hereby declare as follows:—

That the information given in this application is true and correct to the best of my knowledge and belief.

Date Signature of Director/Secretary

FOR OFFICIAL USE ONLY

Recommendation: License as detailed below/Refuse to license*
Business licence category Fee payable
Licence to be issued in the name of
in respect of premises situated at
Specific authorizations under section 5 of the Act

* Delete as necessary.

Licence No. Date Issued
Receipt No. Fee Paid
Issuing Officer
Date
Licensing Officer
Date

[Subsidiary]

FORM A.4

(r. 2)

THE TRADE LICENSING ACT
(Cap. 497)

(To be completed by manufacturers)

1. Name of business
2. Nature of manufacturing carried on
3. Give details of commodities manufactured—
 - (a)
 - (b)
 - (c)
 - (d)
 - (e)
 - (f)
 - (g)
 - (h)
 - (i)
 - (j)
 - (k)
4. (a) Location of business premises
 Plot No. Street/Market
 (b) Has the locality of the premises been declared to be a general business area under section 3 of the Act?
5. Whether a partnership or a company (and in the case of a company whether a private or public company)
6. Give details of all partners or directors as follows:—

	<i>Name</i>	<i>Country of Residence</i>	<i>Nationality/ Citizenship</i>
(i)
(ii)
(iii)
(iv)
(v)
7. In the case of companies—
 - (a) is more than one half of issued share capital held by Kenya citizens?
 - (b) state the nominal and issued share capital of the company

[Subsidiary]

FORM A.4—(Contd.)

(c) give details of shareholding as follows—

	<i>Name</i>	<i>No. of shares held</i>
(i)
(ii)
(iii)
(iv)
(v)
(vi)
(vii)
(viii)
(ix)
(x)

8. Number and date of previous licence held under the Act

9. Has the partnership or company made or does it intend to apply for another licence under the Act? If so give details

10. Is any director of the company an undischarged bankrupt or has he been convicted of a bankruptcy offence under the Bankruptcy Act during the previous five years? If yes, give details

Cap. 53.

11. Has any previous application for a licence been refused under this Act?

12. Has the partnership or company complied with the requirements of other laws applicable to the business and premises? If your answer is in the affirmative, in what respect have you complied?

13. Give details of your distributors and/or wholesalers as follows:—

	<i>Name</i>	<i>Nationality,</i>	<i>Citizenship</i>
(a)
(b)
(c)
(d)
(e)
(f)
(g)
(h)
(i)
(j)
(k)

[Subsidiary]

FORM A.4—(Contd.)

14. Any additional information which the partnership or company wishes to give in support of the application:—

.....
.....
.....

15. Have any of the partners or directors during the past five years been convicted of any offence under the Act or any other law specified in section 11 (b) of the Act?

.....
.....
.....

I a partner in the firm of/or director*/secretary* of Ltd., hereby declare that the information given in this application is true and correct to the best of my knowledge and belief.

.....
Signature of partner* or director*/secretary*

Date

* Delete whichever is inapplicable.

FOR OFFICIAL USE ONLY

Recommendation: Licence as detailed below/Refuse to license.*

Business licence: Category Fee payable eight hundred shillings.

Licence to be issued in name of

.....
in respect of premises situated at

Specific Authorization under section 5 of the Act

.....

Date issued

Fee Paid

Issuing Officer

Licence No.

Date

Date of Expiry

Receipt No.

Licensing Officer

Date

* Delete whichever is inapplicable.

FORM B

THE TRADE LICENSING ACT
(Cap. 497)
MANUFACTURER'S TRADE LICENCE
(under section 7 of the Act)

.....
(name of licensee)

is hereby licensed to carry on the following business occupation(s):

.....
.....

on premises situated at:

Plot No. in street/market
..... Town/County.

This licence expires on 31st December, 19....

Fee paid (in words):

KSh.

Place of Issue

Date

.....
Licensing Officer

FORM C

THE TRADE LICENSING ACT
(Cap. 497)
GENERAL TRADE LICENCE
(under section 7 of the Act)

.....
(name of licensee)

is hereby licensed to carry on the following business occupation(s):

.....
.....

on premises situated at:

Plot No. in street/market
..... Town/County.

This licence expires on 31st December, 19....

Fee paid (in words):

KSh.

Place of Issue

Date

.....
Licensing Officer

THE PORTRACTION OF BUSINESS NAMES
IN NEWYARD

THE NEWYARD BUSINESS NAME PORTRACTION ACT
1988

The Act is designed to provide a clear and concise framework for the registration and protection of business names in Newyard. It covers the following areas:

1. The definition of a business name and the requirements for its registration.
2. The process of applying for a business name and the role of the Registrar.
3. The duration of a business name registration and the conditions for renewal.
4. The rights and obligations of the registered proprietor.
5. The remedies available in the event of an infringement of a registered business name.
6. The provisions relating to the use of a business name in advertising and on signage.
7. The provisions relating to the use of a business name in contracts and other legal documents.
8. The provisions relating to the use of a business name in the course of trade.
9. The provisions relating to the use of a business name in the course of business.
10. The provisions relating to the use of a business name in the course of business.

CHAPTER 499

**THE REGISTRATION OF BUSINESS NAMES
ACT**

ARRANGEMENT OF SECTIONS

Section

- 1—Short title.
- 2—Interpretation.
- 3—Registrar, his deputy and assistants, and register.
- 4—Firms, individuals and corporations to be registered.
- 5—Registration by nominee, etc.
- 6—Manner and particulars of registration.
- 7—Statement to be signed by persons registering.
- 8—Time for registration.
- 9—Registration of changes.
- 10—Penalty for default in registration.
- 11—Disability of persons in default.
- 12—Penalty for false statements.
- 13—Particulars to be furnished to Registrar.
- 14—Certificate of registration.
- 15—Cancellation of entries in register.
- 16—Extension of time.
- 17—Restriction on registration of certain business names.
- 18—Prohibition notwithstanding registration.
- 19—Inspection of documents and provision of copies.
- 20—Certified copies to be evidence.
- 21—Branch offices.
- 22—Rules.
- 23—Publication of true names, etc.
- 24—Provisions with respect to offences.
- 25—Penalties for offences.
- 26—Trial of offences.
- 27—Application of Act.

CHAPTER 499

**THE REGISTRATION OF BUSINESS NAMES
ACT**

48 of 1951,
40 of 1956,
L.N. 300/1956,
L.N. 173/1960,
28 of 1964,
L.N. 374/1964,
14 of 1965,
29 of 1967,
10 of 1969,
11 of 1970,
7 of 1975,
10 of 1981.

Commencement: 29th September, 1951

An Act of Parliament to make provision for the registration of firms, individuals and corporations carrying on business under a business name, and for matters incidental thereto and connected therewith

1. This Act may be cited as the Registration of Business Names Act.

Short title.

2. (1) In this Act, unless the context otherwise requires—

In interpretation.
28 of 1964,
14 of 1965.

“business” includes every trade, occupation or profession;

“business name” means the name or style under which any business is carried on, whether in partnership or otherwise;

“firm” means an unincorporated body of two or more individuals, or of one or more individuals and one or more corporations, or of two or more corporations, who or which have entered into partnership with one another with a view to carrying on business for profit;

“foreign concern” means any firm, individual or corporation whose principal place of business is not situated within the Republic of Kenya;

“individual” means a natural person and does not include a corporation;

“initials” includes any recognized abbreviation of a forename;

“minor” means a person who has not yet attained the age of twenty-one years;

“register” means the register which the Registrar is required under section 3 to keep;

“Registrar” means the Registrar appointed under section 3;

(2) Where any person is required by this Act to furnish particulars of his nationality, he shall, if a British subject, also state his citizenship, if any.

(3) References in this Act to a change of name do not include a change of name which has taken place before the person whose name has been changed attained the age of two years.

Registrar,
his deputy and
assistants,
and registrar.
40 of 1956, s. 2.

3. (1) The Registrar-General or such other person as the Minister may appoint shall be the Registrar for the purposes of this Act.

(2) The Minister may appoint a Deputy Registrar and such Assistant Registrars as may, from time to time, be required for the purposes of this Act.

(3) The Deputy Registrar and every Assistant Registrar may, subject to the directions of the Registrar, perform any act or discharge any duty which the Registrar may lawfully do or is required by this Act to do, and, for such purposes, shall have all the powers, privileges and authority of the Registrar under this Act.

(4) The Registrar shall keep a register in the prescribed form in which shall be entered such particulars as are required by this Act and any rules made thereunder to be entered therein.

Firms,
individuals and
corporations
to be registered.

4. Subject to this Act—

(a) every firm having a place of business in Kenya and carrying on business under a business name which does not consist of the surnames of all individuals who are partners and the corporate names of all corporations which are partners, without any addition other than the forenames of individual partners or the initials of such forenames; and

(b) every individual having a place of business in Kenya and carrying on business under a business name which does not consist of his surname without any addition other than his forenames or the initials thereof; and

(c) every individual or firm having a place of business in Kenya, who, or a member of which, has either before or after the commencement of this Act changed his name, otherwise than, in the case of a woman, in consequence of marriage; and

(d) every corporation having a place of business in Kenya and carrying on business under a business name which does not consist of its corporate name without any addition,

shall be registered in the manner required by this Act:

Provided that—

(i) where two or more individual partners have the same surname, the addition of the "s" at the end of that surname shall not of itself render registration necessary;

(ii) where the business is carried on by a trustee in bankruptcy or by a receiver or manager appointed by the court, registration shall not be necessary;

(iii) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common shall not of itself be deemed to be a carrying on of a business, whether or not the owners share any profits arising from the sale thereof.

5. Where a firm, individual or corporation having a place of business within Kenya carries on business wholly or mainly as the nominee or trustee of or for another person or other persons, or another corporation, or acts as general agent for any foreign firm, the first-mentioned firm, individual or corporation shall be registered in the manner provided by this Act:

Registration by nominee, etc.

Provided that where the business is carried on by a trustee in bankruptcy or by a receiver or manager appointed by any court, registration under this section shall not be necessary.

6. (1) Subject to subsection (2) of section 17, every firm, individual or corporation required under this Act to be registered shall send by registered post or deliver to the Registrar a statement in writing in the prescribed form (hereinafter called the statement of particulars) which shall contain the following particulars—

Manner and particulars of registration. 7 of 1975, Sch.

(a) the business name;

(b) the general nature of the business;

(c) the full address of the principal place of business and the postal address of the firm, individual or corporation;

- (d) the full address of every other place of business;
- (e) where the registration to be effected is that of a firm, the present forenames and surname, any former forenames or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, the age, the sex, the usual residence, and any other business occupation of each of the individuals who are partners, and the corporate name and registered and principal office of every corporation which is a partner;
- (f) where the registration to be effected is that of an individual, the present forenames and surname, any former forenames and surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, the age, the sex, the usual residence, and any other business occupation of such individual;
- (g) where the registration to be effected is that of a corporation, its corporate name and registered and principal office;
- (h) where the registration to be effected includes a married woman, the forenames and surname of her husband in addition to her own forename and surname;
- (i) the date of the commencement of the business.
- (2) Where a business is carried on under two or more business names, each of those business names shall be stated.
- (3) Any firm, individual or corporation required to be registered under section 5 shall furnish the following particulars, in addition to those specified in subsections (1) and (2)—
- (a) where the firm, individual or corporation required to be registered carries on business as nominee or trustee, the present forenames and surname, any former forenames or surname, the nationality and, if that nationality is not the nationality of origin, the nationality of origin, and the usual residence or, as the case may be, the corporate name, of every person or corporation on whose behalf the business is carried on;
- (b) where the firm, individual or corporation required to be registered carries on business as general agent for any foreign concern, the business name and address of the concern as agent for whom the business is carried on:

Provided that if the business is carried on as agent for three or more foreign concerns it shall be sufficient to state the fact that the business is so carried on, specifying the countries in which such foreign concerns carry on business.

(4) On receipt of a statement of particulars, the Registrar shall, subject to section 17, enter the firm, individual or corporation in the register.

7. (1) Every statement of particulars shall, in the case of an individual, be signed by him, and in the case of a corporation be signed by a director or the secretary thereof, and in the case of a firm by all the individuals who are partners, and by a director or the secretary of all corporations which are partners:

Statement to be signed by persons registering.

Provided that in the case of a firm such statement of particulars may be signed by one individual who is a partner or a director or the secretary of a corporation which is a partner, if verified by a statutory declaration made by the signatory.

(2) No such statutory declaration stating that any person other than the declarant is a partner, or omitting to state that any person other than the declarant is a partner, shall be evidence for or against any such other person in respect of his liability or non-liability as a partner, and the High Court may, on the application of any person alleged or claiming to be a partner, direct the rectification of the register and decide any question arising under this section.

8. (1) Every statement of particulars required to be furnished under this Act shall be furnished within twenty-eight days after the firm, individual or corporation commences business under or commences to use the business name, or, in the case of a firm or individual carrying on business at the commencement of this Act, within twenty-eight days of such commencement.

Time for registration.

(2) When, in consequence of the death or retirement of one of the partners of a firm or of any person having changed his name or of any other happening, any firm or individual, not theretofore required to be registered under this Act, is required thereafter to be registered, the statement of particulars shall be sent by registered post or delivered to the Registrar within twenty-eight days after such happening.

CAP. 499 *Registration of Business Names* (Rev. 1990)

Registration of changes.
11 of 1970, Sch.,
10 of 1981, Sch.

9. (1) Subject to subsection (2) of section 17, whenever a change is made or occurs in any of the following particulars in respect of any firm, individual or corporation, that is to say—

- (a) the business name;
- (b) the address of the principal or any other place of business;
- (c) the nature of the business;
- (d) the names of the partners,

such firm, individual or corporation shall, within twenty-eight days after such change, send by registered post or deliver to the Registrar a notice in writing in the prescribed form specifying the nature and date of the change, signed and where necessary verified, in like manner as a statement of particulars:

Provided that the proviso to subsection (1) of section 7 shall not apply in the case of a notice under this section relating to a firm.

(2) On receipt of such notice, the Registrar shall, subject to section 17, make such entries, amendments or deletions in the register as he may deem appropriate.

Penalty for default in registration.

10. If any firm, individual or corporation by this Act required to furnish a statement of particulars or a notice of any change in the particulars without reasonable excuse makes default in so doing in the manner and within the time specified by this Act, every partner in the firm or the individual or corporation, as the case may be, so in default shall be guilty of an offence, and upon conviction the court shall order a statement of the required particulars or notice of the change in the particulars to be furnished to the Registrar within such time as may be specified in the order.

Disability of persons in default.

11. (1) Where any firm, individual or corporation required by this Act to furnish a statement of particulars or a notice of any change in the particulars specified in section 9 makes default in so doing, the rights of the defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect of the carrying on of which the statement of particulars or any change in particulars as aforesaid was required to be furnished shall not be enforceable by action or other legal proceedings whether in the business name or otherwise while such default continues:

Provided that—

- (i) the defaulter may apply to the court for relief against the disability imposed by this section, and the court

on being satisfied that the default was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief, either generally or as respects any particular contract, on such conditions, including the payment of the costs of the application by the defaulter, as the court may impose, so, however, that no such relief shall be given in respect of any contract if any party to the contract proves to the satisfaction of the court that, if this Act had been complied with, he would not have entered into the contract;

- (ii) nothing herein contained shall prejudice the rights of any other parties as against the defaulter in respect of any such contract as aforesaid;
- (iii) if any action or proceeding is commenced by any other party to a contract against the defaulter to enforce the rights of such party in respect of such contract, nothing herein contained shall preclude the defaulter from enforcing in that action or proceeding by way of counter-claim, set-off or otherwise such rights as he may have against that party in respect of such contract.

(2) In this section, "the court" means the High Court:

Provided that, without prejudice to the power of the High Court to grant such relief as aforesaid, if any proceeding to enforce any contract is commenced by a defaulter in a subordinate court, the subordinate court may, as respects that contract, grant such relief as aforesaid.

12. If any statement, notice or application sent or delivered to the Registrar contains any matter which is false in any material particular to the knowledge of any person signing it, or which that person has no reason to believe is true, that person shall be guilty of an offence and liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding two thousand shillings or to both.

Penalty for false statements

13. (1) The Registrar may require any individual or, in the case of a corporation, any director or the secretary or other officer performing the duties of secretary to furnish to him in writing such particulars as appear to the Registrar to be necessary to ascertain whether or not such individual or any firm of which he is a partner or appears to be a partner, or the corporation of which such person is a director or the

Particulars to be furnished to Registrar.

secretary or other officer as aforesaid, should be registered under this Act, or whether any alteration in the registered particulars should be made, and may require any such particulars to be verified by a statutory declaration:

Provided that, for the purposes of this section, the Registrar may require any person who is acting or purporting to act or appears to be acting on behalf of any such firm, individual or corporation as aforesaid whether under a power of attorney or otherwise, to furnish such particulars as aforesaid.

(2) If any person upon being required so to do under subsection (1) fails to supply such particulars as it is in his power to give, or furnishes particulars which are false in any material particular or which he has no reason to believe are true, he shall be guilty of an offence and liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding two thousand shillings or to both.

Certificate of registration, 11 of 1970, Sch.

14. (1) On the registration of any firm, individual or corporation under this Act, the Registrar shall issue a certificate in the prescribed form.

(2) On the registration of any change in the particulars registered in respect of any firm, individual or corporation, the Registrar shall issue a fresh certificate in the prescribed form.

(3) Every certificate issued under this section shall show the full names or name of the partners or individual, and in the case of any person who has changed his name his former name or names, and in the case of any person not of British nationality his nationality, and in the case of any individual whose nationality is not his nationality of origin his nationality of origin, and in the case of a minor the fact of minority shall be shown.

(4) A certificate issued under this section shall be sent by registered post or delivered to the firm, individual or corporation registering, who shall thereupon exhibit and thereafter maintain the same in a conspicuous position at the principal place of the business so registered:

Provided that—

(i) where a fresh certificate has been issued under subsection (2), the provisions of this subsection shall apply to such fresh certificate only and not to the certificate originally issued; and

(ii) where any certificate has been lost or destroyed or rendered illegible, a copy of such certificate certified by the Registrar may be exhibited in place of the original.

(5) Where a firm, individual or corporation registered under this Act has more than one place of business, the original certificate shall be exhibited and maintained as required by subsection (4) at the principal place of business and a copy of the certificate certified by the Registrar shall be exhibited and thereafter maintained in a conspicuous position in each of such other places of business.

(6) If any firm, individual or corporation fails to comply with any of the provisions of subsections (4) and (5), every partner in the firm, or such individual, or such corporation, as the case may be, shall be guilty of an offence.

15. (1) If any firm, individual or corporation registered under this Act ceases to carry on business, it shall be the duty of the persons who were partners in the firm at the time when it ceased to carry on business, or of the individual or if he is dead of his personal representative, or of the corporation, as the case may be, within three months after the business has ceased to be carried on, to send by registered post or deliver to the Registrar notice in the prescribed form that the firm or individual or corporation has ceased to carry on business:

Cancellation
of entries in
register.

Provided that if the firm, individual or corporation is bankrupt or in liquidation the notice aforesaid shall be delivered by the receiver, trustee or liquidator, as the case may be.

(2) On receipt of such notice as aforesaid, the Registrar may cancel the entry in the register relating to such firm, individual or corporation.

(3) Where the Registrar has reasonable cause to believe that any firm, individual or corporation registered under this Act is not carrying on business, he may send to the firm, individual or corporation by registered post a notice that unless an answer is received to such notice within twelve weeks from the date thereof the entry in the register relating to such firm, individual or corporation may be cancelled.

(4) If the Registrar either receives an answer from the firm, individual or corporation to the effect that the firm, individual or corporation is not carrying on business or does

not within twelve weeks after the date of the notice receive an answer, he may cancel the entry in the register relating to such firm, individual or corporation.

(5) If, in the case of any firm, individual or corporation registered under this Act, there occurs after the registration an event in consequence of which the continuance of the business under the business name under which such firm, individual or corporation has been carrying on business no longer entails registration under this Act, the firm, individual or corporation so continuing the business shall send by registered post or deliver to the Registrar notice of the happening of such event, and the Registrar may, on being so notified or on being notified under section 9 of the happening of such event, cancel the entry in the register relating to such firm, individual or corporation.

(6) On cancelling any entry under this section, the Registrar may require any certificate issued under this Act relating thereto to be surrendered to him for cancellation:

Provided that the person surrendering such certificate may require it to be returned to him after cancellation.

Extension of time.

16. Any period prescribed under this Act for the lodging of any statement or notice may be extended by the Registrar, on application being made in any particular case whether before or after the expiration of such period, and on payment of the prescribed fee, for such longer period as the Registrar may allow.

Restriction on registration of certain business names.
29 of 1967, 1st Sch., 10 of 1969, Sch., 7 of 1975, Sch., 10 of 1981, Sch.

17. (1) The Registrar shall refuse to register, or, in the case of an application under section 9, to register a change of business name of, any firm, individual or corporation carrying on, or proposing to carry on business under a business name—

- (a) which contains any word which, in the opinion of the Registrar, is likely to mislead the public as to the nationality, race or religion of the persons by whom the business is wholly or mainly owned or controlled;
- (b) which includes any of the words "Presidential", "Government", "Municipal" or any other word which imports or suggests that the business enjoys the patronage of the President or imports any connexion with the Government or with any municipality or other local authority;
- (c) which includes the word "co-operative" or its equivalent in any other language or any abbreviation thereof;

(d) which is identical with or is similar to that of a business or corporation existing, or is already registered under this Act or under the Companies Act, if in the opinion of the Registrar such registration would be likely to mislead the public;

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(e) which in the opinion of the Registrar is undesirable.

(2) Not less than seven days before commencing business under, or commencing to use, a business name, every firm, individual or corporation which after such commencement would be required under this Act to be registered shall, before posting or delivering to the Registrar the statement of particulars as required by section 6, or, in the case of a proposed change of business name, the notice of change required by section 9, send by registered post or deliver to the Registrar the prescribed fee together with a written request to be informed whether or not the business name to be proposed for registration as required by either of those sections may be registered; and the Registrar shall, within seven days of receipt of the prescribed fee, send by post or deliver to the address of such firm, individual or corporation a notification in writing stating whether or not such business name may be registered.

(3) Where the Registrar has stated that any business name or change of business name may be registered, the firm, individual or corporation which made the request shall be entitled to registration in that business name at any time within twenty-eight days of the date of the decision of the Registrar, and during that time no other firm, person or corporation shall be entitled to registration in, or of registration of change to that business name.

(4) If, after the commencement of this Act—

(a) any firm, individual or corporation is, through inadvertence or otherwise, registered under a business name under which registration under this Act ought to have been refused; or

(b) any change of ownership of a business occurs as a result of which a firm, individual or corporation is carrying on business under a business name which, on an application for registration under this Act, ought to have been refused,

the Registrar shall, by notice in writing, require such firm, individual or corporation to change such business name within such time as may be specified in such notice, and upon compliance with such notice the Registrar shall record such change

without requiring the payment of any fee; and if default is made in complying with his requirements the Registrar may cancel the entry in the register relating to such firm, individual or corporation:

Provided that, where the Registrar is satisfied that, having regard to the nature of any business and the nationality, race or religion of the persons employed therein, the retention of the business name would not be contrary to the public interest, he may in his absolute discretion permit the retention of such name subject to such conditions as he may think fit.

(5) Where registration of a business name or change of business name is refused under subsection (1), any person carrying on business under that name in circumstances which require registration under this Act shall be guilty of an offence.

(6) Any person aggrieved by a decision of the Registrar under this section may appeal to the High Court, whose decision shall be final.

Prohibition notwithstanding registration.

18. The registration of a firm, individual or corporation under this Act shall not be construed as authorizing the use of a business name, if apart from such registration the use thereof could be prohibited.

Inspection of documents and provision of copies.

19. Any person may, upon payment of the prescribed fee—

(a) inspect the register or any documents filed with the Registrar;

(b) require to be supplied with a certificate, duly certified by the Registrar, showing the subsisting entries in the register relating to any firm, individual or corporation registered under this Act; or

(c) require to be supplied with a copy of or an extract from any document filed with the Registrar duly certified by the Registrar to be a true copy or extract, as the case may be.

Certified copies to be evidence. 29 of 1967, 1st Sch.

20. (1) A copy of, or extract from, any document kept, filed or registered at the office of the Registrar, and purporting to be certified under the hand of the Registrar to be true copy or extract, shall in all legal proceedings be admissible as prima facie evidence of the contents of the document.

(2) The Registrar shall not, in any legal proceedings to which he is not a party, be compellable—

(a) to produce any document the contents of which can be proved under subsection (1); or

(b) to appear as a witness to prove the matters recorded in any such document, unless the court for special cause otherwise orders.

21. (1) The principal office of the Registrar shall be in Nairobi, but the Registrar may maintain other offices in such places as he may, with the approval of the Minister, determine, and may keep copies of the register in such offices.

Branch offices

(2) Any person may inspect any such copy of the register on payment of the prescribed fee.

(3) No such copy of the register, nor any extract therefrom, shall be received in evidence in any legal proceedings.

(4) Statements, notices, applications and other documents shall be sent or delivered to the Registrar at his principal office, and shall not be sent or delivered to any other office maintained under this section.

22. The Minister may make rules generally for better carrying out the provisions and purposes of this Act, and in particular may make rules for prescribing—

Rules.
L.N. 700/1954.
L.N. 173/1960

(a) the fees to be paid to the Registrar under this Act;

(b) anything required to be prescribed under this Act;

(c) the duties to be performed by the Registrar under this Act.

23. (1) Every firm, individual or corporation required by this Act to be registered shall, in all trade circulars and business letters on or in which the business name appears and which are issued or sent by the firm, individual or corporation to any person, have mentioned in prominent, legible Roman letters—

Publication of
L.N. 111/1955, etc.
40 of 1955, s. 3,
11 of 1970, Sch.

(a) in the case of an individual, his present forenames or the initials thereof and present surname, any former forenames or surname, his nationality if not Kenyan, and if his nationality is not the nationality of origin then his nationality of origin, and

(b) in the case of a firm, the present forenames or the initials thereof and present surnames, any former forenames and surnames, and the nationality if not Kenyan, and if the nationality is not the nationality of origin then the nationality of origin, of all the individuals and the corporate names of all corporations that are partners in the firm; and

(c) in the case of a corporation, the corporate name.

(2) Where any individual referred to in subsection (1) is a married woman, the words "wife of" followed by the forenames and surname of her husband shall be mentioned after and in addition to her own name.

(3) Where any individual referred to in subsection (1) is a minor, the words "minor" shall be added in brackets after his name.

(4) If any firm, individual or corporation fails to comply with the provisions of this section, every partner in the firm, or such individual, or such corporation, as the case may be, shall be guilty of an offence.

Provisions with respect to offences

24. (1) Where a corporation is guilty of an offence under this Act or any rules made thereunder, every director, secretary and officer of the corporation who is knowingly a party to the default shall be guilty of a like offence and liable to a like penalty.

(2) Where any firm or individual has committed any offence under this Act or any rules made thereunder, then, without prejudice to the liability of such firm or individual for such offence, every manager or other person concerned in the management of the business of such firm or individual shall, unless he proves that the offence was committed without his knowledge or consent, also be liable to be prosecuted, tried, convicted and punished for that offence.

Penalties for offences

25. Any person who is guilty of an offence under this Act for which no other penalty is specifically provided shall be liable to a fine not exceeding one thousand shillings and in default of payment to imprisonment for a term not exceeding three months.

Trial of offences.

26. Any offence under this Act or any rules made thereunder may be tried by a subordinate court of the first or second class.

Application of Act.

27. This Act shall apply to every firm, individual or corporation registered under any former enactment relating to business names.

SUBSIDIARY LEGISLATION

Rules under section 22

THE REGISTRATION OF BUSINESS NAMES RULES

L.N. 136/1975,
L.N. 248/1988.

1. These Rules may be cited as the Registration of Business Names Rules

2. Subject to any directions which may be given by the Registrar, every statement of particulars, notice of change, notice of cessation, application for extension of time or other document intended for registration or filing shall be upon paper of durable quality and of a size approximately two hundred and ninety-seven millimetres by two hundred and ten millimetres and shall have on the left hand part thereof a margin of approximately thirty millimetres.

3. The register shall be in the Form BN/1 in the Schedule.

4. Every statement of particulars lodged under section 6 of the Act shall be in the Form BN/2 in the Schedule.

5. Every certificate under section 14 (1) of the Act shall be in the Form BN/3 in the Schedule.

6. Every notice of change of particulars lodged under section 9 of the Act shall be in the Form BN/4 in the Schedule.

7. Every certificate under section 14 (2) of the Act shall be in the Form BN/5 in the Schedule.

8. Every notice of cessation of business lodged under section 15 (1) of the Act shall be in the Form BN/6 in the Schedule.

9. Every notice of the happening of an event, in consequence of which registration under the Act ceases to be necessary, lodged under section 15 (5) of the Act shall be in the Form BN/7 in the Schedule.

10. The following fees shall be payable--

	<i>Sh.</i>
On inquiry whether a proposed name may be registered	10
On lodging a statement of particulars if required under the Act	100
For the issue of a certificate of registration	20
On lodging a notice of change	100
For the issue of a fresh certificate under subsection (2) of section 14	20
On lodging a notice of cessation	10
For an official search in respect of any one business name	50
For inspecting the register in respect of any one business name	10
For a certified copy of a certificate of registration	20
For a certified copy of, or an extract from, any filed document	40
For a certificate that a firm, individual or corporation is not registered	50

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[Subsidiary]

Sh.

On application to lodge a statement of particulars or notice of change out of time—

- (i) for the first month or part thereof during which the default continues 50
- (ii) for each and every subsequent month (up to maximum of Sh. 200) 100

SCHEDULE (r. 3)

FORM BN/1

THE BUSINESS NAMES REGISTER

Number

Business name

Principal place of business

Postal address

Other places of business

Nature of business

Date of registration

PARTNERS OR PROPRIETOR

Name(s)	Any former name(s)	Nationality
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

[Subsidiary]

(r. 4)

SCHEDULE—(Contd.)

Form BN/2

STATEMENT OF PARTICULARS

Please read carefully the notes printed overleaf.

1. Business name _____
2. Nature of business _____
(State reference and date of Registrar's approval of name BNS/19/_____ of _____ 19____)
3. Date of commencement _____
4. Address of the principal place of business _____
(Plot No., Section and Name of Street or Road.)
5. Postal address _____
6. Address of any other places of business _____
(Branch Office under the above name.)

7. Particulars of proprietor or partners:—

Full name and former names if any, and (if a married woman) full name of husband	Nationality and Citizenship	Nationality of Origin	Age	Sex	Usual place of residence	Other business occupation

FEE: Sh. 100

Signed _____

[Subsidiary]

SCHEDULE—(Contd.)

NOTES

Item 1—Where a business is carried on under two or more business names, every such name must be given.

Item 2—The nature of the business should be given as clearly as possible. General words such as "shop" or "retail trade" are not sufficient.

Item 3—The date required is the date when business was begun under the business name, or when the change occurred which makes registration necessary. It should be noted particularly that a Statement of Particulars can only be lodged after a business is begun.

Item 4—This should be as complete as possible, and should contain the Land Office reference number.

Item 5—To be completed only if there are any branches operating under the business name.

Item 7—When the proprietor or a partner is a corporation, the name of the corporation should be given in the first column, the country in which it was incorporated in the second column and the address of the registered office (or in the case of a foreign company, the name and address of the person authorized to accept service) in the sixth column; the other columns should be left blank.

In the case of individuals, the age must be given in the fourth column; the words "full age" are not sufficient.

Any person who has changed his name must give all former names, unless the change occurred before he attained the age of two years.

Usual place of residence (in column 6) must show: locality, land office, plot and section number, or house number where applicable.

Signature—The statement must be signed by the proprietor or by all partners, as the case may be. A director or the secretary can sign for a corporation which is the proprietor or a partner. Where the statement is not signed by all partners, the Secretary for Registration printed at the end of the form before a Magistrate or Commissioner for Oaths, by one of the signatory partners.

STATUTORY DECLARATION
(See Section 7)

(to be made only in cases where all partners do not sign above statement)

I, _____

of _____ do solemnly and sincerely declare that the particulars set out herein are true and correct and I make this declaration conscientiously believing the same to be true and according to the Oaths and Statutory Declarations Act.

Declared at _____ this _____ day of _____, 19 _____

BEFORE ME,

Signature

Magistrate or Commissioner for Oaths

SCHEDULE—(Contd.)

[Subsidiary]

FORM BN/3

(r. 5)

CERTIFICATE OF REGISTRATION

I HEREBY CERTIFY that

carrying on business under the business name of

at

have/has been duly registered under No. pursuant to and in accordance with the provisions of the Registration of Business Names Act and the Rules made thereunder.

GIVEN under my hand at NAIROBI this day of One thousand nine hundred and

Registrar

FORM BN/4

(r. 6)

NOTICE OF CHANGE

To: The Registrar-General

NOTICE IS HEREBY GIVEN of the following changes in the particulars registered relating to the business carried on under the business name (registered under the No.), that is to say with effect from:—

DATED at this day of, 19...

[Signed]

FEE: Sh. 100

NOTES

- (1) Where a business is transferred or a new partner taken in, full particulars of the new proprietor or partner are required as shown below.
(2) The original Certificate of Registration should accompany this notice.
(3) This notice must be signed by the proprietor or by all partners, as the case may be. A director or the secretary can sign for a corporation which is the proprietor or a partner.

[Subsidiary]

SCHEDULE—(Contd.)

Full name and former names, if any, and if a married woman full name of husband	Nationality and Citizenship	Nationality of Origin	Age	Sex	Usual place of residence	Other business occupation
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SCHEDULE—(Contd.)

FORM BN/5 (r. 7)

CERTIFICATE OF REGISTRATION OF A CHANGE OF PARTICULARS

I HEREBY CERTIFY that a change of particulars has this day been registered in the Register of Business Names in respect of the business name of

which business name was originally registered under the provisions of the Registration of Business Names Act, on the day of, 19....., under No.

Consequent on the registration of such change in particulars

are now registered as carrying on business at

under the (said) business name (of)

GIVEN under my hand at NAIROBI this day of One thousand nine hundred and

Registrar

[Subsidiary]

SCHEDULE—(Contd.)

FORM BN/6

(r. 8)

NOTICE OF CESSATION OF BUSINESS

To: The Registrar-General

NOTICE IS HEREBY GIVEN that the business registered and carried on under the business name

(registered under the No.) has ceased to be carried

on, as from the day of, save for the purpose of winding up the said business.

DATED at this day of, 19.....

[Signed]

NO FEE PAYABLE.

NOTES

- (1) The Certificate of Registration should be submitted for cancellation.
(2) This notice must be signed by the proprietor or by all partners, as the case may be. A director or the secretary can sign for a corporation which is the proprietor or a partner.

[Subsidiary]

SCHEDULE—(Contd.)

FORM BN/7

(r. 9)

NOTICE OF HAPPENING OF AN EVENT RENDERING REGISTRATION (NECESSARY)

To: The Registrar-General

NOTICE IS HEREBY GIVEN THAT

[specify event which has happened]

in consequence of which registration under the Act of the business registered and carried on under the business name

(registered under the No.) has ceased to be necessary.

DATED at this day of, 19.....

[Signed]

NO FEE PAYABLE.

NOTES

- (1) The Certificate of Registration should be submitted for cancellation.
(2) This notice must be signed by the proprietor or by all partners, as the case may be. A director or the secretary can sign for a corporation which is the proprietor or partner.

Appendix 3

QUESTIONNAIRE FOR ENTERPRISES

Small-scale enterprises provide employment and income to a large majority of Kenyans; and many development agents are interested in supporting these activities. In order to support SMEs it is important to have adequate information on the sector. Towards this effort, IES, University of Nairobi, has been researching in the area of business development, financial services and de-regulation. This questionnaire is aimed at finding out effects of registration and licensing on SMEs, and we would like to discuss with you some of the issues relating to the matter.

SECTION 1: INFORMATION ON THE ENTERPRISE

1. Town / area
2. Nature of premise of operation
 - (a) Home / House
 - (b) Central commercial district
 - (c) Open air market
 - (d) Industrial site
 - (e) Roadside / Highway
 - (f) Residential shopping centre
 - (g) Mobile (e.g., hawker)
 - (h) Other, specify
3. Sector
 - (a) Manufacturing
 - (b) Commerce and trade
 - (c) Hotel, restaurant and tourism
 - (d) Food and food processing
 - (e) Construction and building
 - (f) Transport
 - (g) Fish trade
 - (h) Repairs
4. Name of the enterprise
5. Type of enterprise
 - (a) Sole proprietor
 - (b) Partnership
 - (c) Company
 - (d) Limited liability company
 - (e) Others specify
6. Type of activities
7. Position of the respondent
 - (a) owner (c) owner / manager
 - (b) manager (d) other, specify

SECTION 2: LICENSING AND REGISTRATION

A. Registration

8. Is your business registered?
 - (a) Yes
 - (b) No
 If no, go to question 12.
9. If yes when (year) was it registered?
10. If your business is registered, how long did it take you to register it? _____ weeks
11. With whom are you registered?
 - (a) A.G. Chamber
 - (b) Social services
 - (c) Other, specify
12. If not registered, which of the following is the reason?
 - (a) Too expensive to register a business
 - (b) Lack of money for registration.
 - (c) Not aware of the need to register it.
 - (d) Has not bothered
 - (e) Other, please specify
13. Have you ever been subjected to harassment due to lack of registration?
 - (a) Yes
 - (b) No
14. Which of the following have you experienced due to lack of registration?

Problems experienced	Year	No. of times/year	Cost
a. Eviction			
b. Threat of eviction			
c. Demolition			
d. Threat of demolition			
e. Demand to pay for "public relations"			
f. Pressure to pay minimum wages			
g. Physical bodily harm			
h. Others			
NB: If you can, put every year or specify year or even month.			

15. List circumstances leading to problems mentioned above.
 - (a) When operating in the open
 - (b) When operating in temporary structure
 - (c) Not having registration
 - (d) Others, specify
16. Has your business ever been closed due to lack of registration?
 - Yes
 - No