

KEY NOTE SPEECH BY

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**TOPIC: CREATING A SUSTAINABLE LEGAL AND REGULATORY FRAMEWORK
FOR DOING BUSINESS IN AFRICA**

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Introduction

In order to create a sustainable legal framework for doing business, government(s) must create a sound, predicable regulatory environment that is central to whether or not economies perform well and whether that performance is sustainable in the long run.

Governments have the ability to design and enforce regulation to help ensure the existence of a level playing field for citizens and economic actors within a society.

Challenges in legal and Regulatory Framework

Africa's legal and regulatory framework ranks among the least friendly in the world. Some of the major constraints that across the divide are; perceived corruption, tax administration and rates, labour regulations, ease of getting operating permits and licenses, excessive business regulations, complicated procedures to get permits and lack of transparent rules in tax assessment. Collectively, according to the World Bank Enterprise Surveys database, 2010 the overall regulatory challenges are perceived as more severe than even infrastructure and access to finance.

Court impartiality is essential to business confidence. When courts are believed to be impartial and court decisions are properly enforced, businesses are more likely to engage in contractual transactions such as credit with suppliers and clients with the confidence that they can rely on a fair and timely legal resolution in case of a dispute. In addition, confidence in an impartial judiciary able and willing to penalize wrongdoing also discourages business corruption. According to the African Development Bank Report, 2011 majority of businesses in ADB countries (61%) rated courts in their countries as fully or somewhat impartial. A majority of respondents in East Africa trusted their court system. However perceptions in Central Africa and oil exporting countries were significantly worse at less than 30% than anywhere else in the continent.

Building Efficient and Transparent Institutions

Apart from impartial courts and predicable regulations, strong, efficient and transparent institutions not only contribute to business confidence and facilitate transactions; they also reduce transaction costs and opportunities for corruption. The strength of institutions relies on appropriate skills, a well-functioning judiciary and robust enforcement mechanisms. Such institutions ensure that procedures such as customs clearance and export/import documentation are streamlined and efficient, whilst detecting unlawful operations. The regulatory framework needs to be coupled with well functioning courts and legal penalties that discourage wrongdoing.

Hence an effective judiciary plays an important role in improving a country's business climate.

Reforming the Legal and Regulatory Environment in Africa

In recent years, African countries have adopted the increasing number of reforms seeking to transform the legal and regulatory environment and competition, free trade and Foreign Direct Investment (FDI). For example, the President of the Democratic Republic of Congo publicly stated that; *“the private sector initiative is limited, or even discouraged by the investment climate. We need to change this situation urgently. I have decided that the improvement of the investment climate should be a priority objective.”* He made the remarks during a workshop in Kinshasa on the Organization for the Harmonization of Business Law in Africa (OHADA) in February, 2010.

Reforms such as revamping tax codes, improving tax administration procedures and easing tax burdens, adopting insolvency laws, simplifying procedures for construction permits, improving contract enforcement, streamlining property registration, facilitating business starts ups and removing trade barriers have been a major milestone in improving the current regulatory environment in Africa. This wave of reforms has resulted in investors' renewed interest in Africa's emerging economies. In most African economies, it is easier and more affordable to start to start a business/company today than a decade ago as depicted in the following examples;

1.) Kenya

In 2013, Huduma centres (Huduma is a Swahili word which means “service”) were established by the government with the objective of offering many government services under one roof thus acting as a one stop shop and to improve accountability and transparency in provision of public service delivery. This has pushed Kenya to 92nd position and for the first time in seven years, Kenya appeared among the top 100 countries in the World Bank index of ease of Doing business. Since then there are 40 centres across the country and they serve 30,000 customers daily and offer 45 government services which vary from county to county.

In the area of business registration, the 2015 Companies Act eliminated the requirement to have registration documents notarized before a Commissioner for Oaths which reduced the procedural complexity and the time to start a business overall. In 2016 stamp duty was abolished on memorandum and articles of association and the statement of nominal capital.

In addition, the Special Economic Zones Act, 2015 (the SEZ Act) came into force on 15th December, 2015. The SEZ Act allows the Cabinet Secretary for Industry, Investment and Trade to create Special Economic Zones (SEZs) designated at geographical areas where business enabling policies will be implemented and sector appropriation on-site and off-site infrastructure and utilities are provided by the Kenyan government.

The National Assembly enacted the Investment Promotion Act, 2004 (IPA) which aims to reduce bureaucratic delays in relation to licensing, immigration and negotiating tax incentives and exceptions from the relevant authorities. The IPA established a corporate body/parastatal known as the Kenya Investments Authority (Keninvest) for purposes of implementing the goals of the legislation.

Kenya is open for business, not just for large companies or the private equity funds but increasingly for venture capitalists as well hence backing up start-up businesses. Kenya and in particular Nairobi is quickly emerging as a quite vibrant start up community.

His Excellency President Barak Obama of the United States of America echoed similar sentiments during the sixth Global Entrepreneurship Summit (GES) that was held in July 2015 in Nairobi as follows; *“The entrepreneurship spirit that people rely on to survive in the streets of Kibera can now be seen in new businesses across the country”*. His Excellency further stated that *“new investment is making Kenya a hub for regional trade.”*

2.) Rwanda

Rwanda has developed a robust one stop shop centre at the Rwandan Development Board (RDB) where the registration of business is fast tracked. Dealing with construction permits has been eased vide passing of new building regulations and mandated new time limits for the issuance of various permits.

In accessing credit; borrowers are allowed to inspect their own credit report and mandated that all loans must be reported to the central bank's public credit registry.

Trading across borders Rwanda has reduced the number of trade documents required and enhanced its joint border management procedures with Uganda and other neighbours thus facilitating trade logistics.

3.) *Cape Verde*

Whilst starting a business, Cape Verde eliminated the mandatory municipal inspection before a business begins operations and computerized the system for delivering municipal licenses.

In registering a property Cape Verde switched from fees based on a percentage of the property value to lower fixed rates.

They also abolished payment of stamp duties on sales and checks.

4.) *Zambia*

Just like Kenya, Zambia eliminated the minimum capital requirement while starting a business.

Trading across borders, the country set up a one stop border post with Zimbabwe and launched web-based submission of customs declarations and introduced scanning machines at border posts.

When it comes to enforcement of contracts Zambia introduced a court-case management system that provides electronic referencing of cases, database of laws, real time court reporting and public access to court records.

Conclusion

The legal and regulatory framework environment is critical for Public Service Delivery (PSD) in any country. Businesses are thriving and driving economic growth only where sound legal and regulatory environment characterized by a level playing field, transparent and supportive rules and regulations as well as strong enforcement institutions and mechanisms. A conducive legal and regulatory environment coupled with unwavering commitment from and cooperation amongst policy makers, the private sector and civil society are essential for Africa's legal and regulatory framework to thrive efficiently.

Closing Remarks

With those few remarks Ladies and gentlemen, on behalf of AFBA-Kenya and the AFBA fraternity I wish to express my gratitude to all of you for your time