HIGHLIGHTS OF KEY ACHIEVEMENTS OF THE JUBILEE GOVERNMENT IN THE BUSINESS REFORMS AND TRANSFORMATION AGENDA FOR THE LAST 10 YEARS

1.0. BACKGROUND

In the year 2014, Kenya was ranked 136th globally under the World Bank's Annual Doing Business Report. During that year, H.E. President Uhuru Kenyatta set the Country on an ambitious target of reaching top-50 in the Annual Global Rankings under the Ease of Doing Business. Consequently and for the first time in Kenya's history, the Doing Business Climate Agenda became pivotal as part of the Government's economic agenda.

IN 2014, Multi-institutional Business Environment Delivery Unit was established to coordinate reforms and had its membership drawn from various Ministries Departments and Agencies (MDAs) under the National Government. All National Government MDAs were subsequently directed to adopt and implement impactful legal, procedural, regulatory and administrative reforms in their service delivery and in partnership with the private sector.

In the year 2018, H.E the President, further strengthened this approach by issuing Executive Order No. 1 of 2020 which mandated the State Department for East African Community to:

1. Facilitate and enhance the Ease of Doing Business in Kenya;
2. Identify and recommend business reforms for promoting business and for making Kenya competitive locally, regionally and internationally; and,

3. Co-ordinate engagements of the Government of Kenya with the private sector in respect to business climate and business transformation.

In furtherance of the Executive Order, the Department of Business Reforms and Transformation (DBRT) was established under the State Department for East African Community to execute the mandate which involves developing, coordinating, facilitating and tracking the implementation of impactful reforms and transformation initiatives aimed at addressing bottlenecks in the business climate, trade and investment environment so as to improve the local, regional and global competitiveness of Kenya's private sector.

The reforms cut across all arms and levels of the National and County Governments and involve collaboration with the public sector, private sector, development partners and civil society organizations to identify and address bottlenecks in policies, laws and administrative processes that affect Kenya's Ease of Doing Business and private sector competitiveness. The Department has an approved staff establishment of 48 with 15 officers in-post and 14 currently ongoing recruitment at the Public Service Commission (PSC). These 14 positions were advertised in December 2021 and shortlisting completed as of 24th February 2022. There are 19 pending recruitments yet to be initiated at the PSC.

2.0. HIGHLIGHTS OF ACHIEVEMENTS

The following are the highlights of the Jubilee Administration's achievements under the Business Reforms and Transformation Agenda in the last ten years.

I. 15 New Acts enacted including: The Companies Act, (No. 17 of 2015), The Insolvency Act, (No. 18 of 2015), The Movable Property Security Rights Act, (No. 13 of 2017), The Business Registration Service Act, (No.15 of 2015), The Business Laws (Amendment) Act, (No.1 of 2020), The Small Claims Court (Amendment) Act, (No.5 of 2020) and the Business Laws (Amendment) (No.2) Act, (No.1 of 2021).

II. 59 subsidiary legislation instruments passed and implemented.
III. Movable assets worth over Kshs. 2 Trillion in value registered as collateral under the MPSR Act.
IV. Roll-out of the Ardhisasa/National Land Information Management System (NLIMS) piloted in Nairobi. Over 61,000 land transactions now facilitated per year.
V. Roll-out of e-filing, e-service system for the Commercial Courts in Nairobi.
VI. Small Claims Courts established with over 15 locations and adjudicators gazetted and court fees waived for 24 months to incentivize MSMEs. Over 7,000 cases determined in first year of operationalization releasing over Kshs. 1 billion in business capital held up in the judicial system.Over KES. 23 Billion worth of commercial disputes referred to alternative dispute resolution.
VII. More than 650,000 new companies have been registered since 2014 and daily registrations has increased from 30 to over 200. Increase in business registration revenues by 567% from KES. 150 Million to KES. 1 Billion in 2021.
VIII. Over 13 million businesses and citizens now registered on KRA i-Tax platform. 75% tax compliance rate achieved after introduction of I-Tax.
IX. 75% increase in value of new projects approved under NMS valued at KES. 995 Billion.
X. 50% reduction in time for resolution of insolvency cases.
XI. Over 216 cabinet level engagements on reforms and transformation
XII. Over 200 government processes re-engineered.
XIII. More than 1,256 engagement sessions held with the Private Sector.
XIV. Attained 1st rank globally on protecting minority investors under Ease of Doing Business.
XV. Attained 3rd most improved country rank globally in 2016/17 under Ease of Doing Business.
XVI. Attained 4th rank globally for getting credit under Ease of Doing Business.

XVII. Developed and launched the National Business Regulatory Toolkit and County Business Regulatory Toolkit.

Implementation of the reform agenda has also seen Kenya improve 80 places in annual global rankings from position 136 (2014) in the World Bank's Annual Doing Business Reports to position 56 (2019). Over the last 5 years, Kenya was consistently ranked among the top most improved countries globally and as 3rd most improved economy in Africa. Although the World Bank Group discontinued issuance of the Ease of Doing Business Ranking Report in September 2021 due to their own internal issues, the analysis of validated reforms implemented by the Kenya Government during the reform cycle 2020-21 indicated that the target of achieving a top 50 rank would have been attained by the Country. It is expected that a revamped programme currently being designed and tested to be known as the Business Enabling Environment Programme will resume effective January 2023.

[NOTE: An analysis of the key reforms implemented and their impact by thematic areas is annexed for reference together with hard copies of both the Business Climate Milestone Report 2014-2019 and the Business Climate Milestone Report 2020-21 which document the reforms in greater details.**]**

3.0. CHALLENGES & RECOMMENDATIONS

The Department faces the following key challenges in executing its mandate:

A. Lack of a legal framework to support institutionalization and successful execution of the mandate and enforcement of reforms. As currently established, the Department has the dual role of policy development as well as development of reform solutions, coordination of reform implementation, monitoring and evaluation across the government. To ensure that the department is well institutionalized, it is recommended that it be converted into a specialized fit for purpose agency of Government, well funded, staffed, equipped and with the necessary legal backing to support execution of the cross-cutting mandate;

B. Inadequate staffing to support coordination of Business Climate Reforms and Transformation Agenda across National and County Governments. The mandate of the Department requires coordination across all arms and levels of Government. The current in-post staff compliment of 15 against an approved establishment of 48 staff is overstretched. Expedited filling of vacant posts is required to enable the department operate efficiently and effectively;

C. Inadequate budget allocation to support capacity development and implementation of planned programme activities. Kshs. 12.74 Million allocated in FY2022-23 for programmes against annual requirements of Kshs. 100 Million. Additional funding is required to enable the department fully discharge its mandate;

D. Inadequate office space to support well coordinated working and observation of Government Covid-19 Health Protocols. The space currently occupied is inadequate for the staff and poorly ventilated, hence, the departmental offices would require to be relocated to more spacious and well ventilated offices; The offices also lack ICT infrastructure (Computers, Audio-visual equipment, etc.) to support efficient and effective execution of mandate. Equipping of the Departmental offices with ICT infrastructure, reliable internet connectivity and provision of telephones is required;

E. Resource constraints to support Partner Government Agencies in implementation of reforms initiatives. During the department's engagements with various partner government agencies, a recurrent set-back affecting reforms has been the inadequate allocation of resources to support initiatives. It is recommended that special budgetary provisions in the form of a fund be developed to support impactful initiatives developed across the government to reform public service delivery.

4.0. INSTITUTIONALIZATION OF REFORMS & TRANSFORMATION AGENDA

The Ministry has prepared a Memo and Legal Order seeking Cabinet approval for the establishment of the Business Reforms and Transformation Authority (BRTA) as a State Agency by Executive Order as a means of institutionalizing the development, regulation, coordination, facilitation and implementation of Kenya's Business Climate Reforms Agenda. In furtherance of this agenda, in January 2022, the Cabinet Secretary, Ministry of East African Community and Regional Development submitted a draft Legal Order to the Head of Public Service for review and approval for execution by H.E. the President.

Through the Executive Order, the Ministry intends that the Department of Business Reforms and Transformation will be converted into a specialized state agency to complement the policy and oversight mandate domiciled at the Ministry responsible for business climate reforms and transformation. The agency will be equipped and resourced to regulate, coordinate and facilitate the efficient and effective development and implementation of the Business Climate Reforms and Transformation Agenda across all levels of both National and County Government and in coordination with Independent Constitutional Commissions and other arms of government i.e. the Judiciary and the Legislature.

5.0. CONCLUSION

While the reforms implemented to date have significantly improved our business and investment climate, much work remains to be done in extending it to other areas of public service delivery that have been identified for reforms and transformation. A roll back of reforms would not serve Kenya's economic interests.

The Department therefore recognizes the need for renewed and continued commitment to implementing reforms that improve the country's business climate across all levels and arms of government. In particular, the Business Climate Reforms and Transformation Agenda must remain key to the Government's efforts in achieving the national economic growth targets as outlined under the Kenya Vision 2030 and "The Big Four Agenda" which in particular focuses on: Food security; Affordable housing; Manufacturing; and, Universal healthcare. The ambitious targets outlined in both national strategies require a conducive an enabling business climate for success.

Continued implementation of the reform agenda will therefore lead to not only an increase in tax revenues through expansion of the tax base as more companies formalize and register, it will improved the business climate by creating greater efficiencies in the economy and therefore spurring increased investment and trade which are necessary for poverty eradication and creation of more job opportunities. Ongoing efforts to address issues identified under the Corruption Perception Index will also help to improve governance in the public sector and unlock the much needed domestic and foreign direct investments.

In conclusion, therefore, we take this opportunity to thank the Jubilee Administration led by His Excellency, President Uhuru Muigai Kenyatta, CGH, and the Cabinet for the support accorded to the Department during the tenure. We look forward to continuing and building on the firm foundation of reforms with the next Administration.

State Department for East African Community
Ministry of East African Community & Regional Development

<u>Annexture;</u>

<u>KEY REFORMS IMPLEMENTED BY JUBILEE ADMINISTRATION BY THEMATIC REFORM AREAS</u>

1.0. STARTING A BUSINESS

1.1. Overview

- The reforms implemented have reduced the number of procedures from seven to just one, the time to register a business from 23 days to one day and resulted in an overall 60% cost saving on official fees from KES. 14,800 to KES. 10,650.

1.2. Reform highlights:

1.2.1 Unified Company Registration:-

- The process of Company Registration was simplified by enhancing its online company registration system to integrate and consolidate company registration with registrations for KRA PIN, PAYE, VAT, NHIF and NSSF into one simple online step on https://ag.ecitizen.go.ke/.
- Applications are now on a unified and enhanced online registration portal with payments made via (mobile money, bank transfers, pre-paid agency account) M-Pesa, Debit/Credit/Prepaid Card, Airtel Money, EazzyPay, E-Agent, KCB Cash, Equity Cash or Pesalink) and submits the application. The applicants will obtain Certificate of Incorporation, Official Search (formerly known as CR12 - List of directors/shareholders of the new registered company), KRA PIN, PAYE, VAT, NHIF and NSSF registrations electronically.

1.2.2. Waiver of the requirement for Single Business Permit for the first two years of incorporation:-

- Effective February 28, 2020, the Kenya Government made it easier for applicants to start a business by removing the necessity for all firms to get a single business permit for the first two years after incorporation/registration.

- As a result, the procedure, time (5 days) and cost (KES. 15,200 fee) associated with acquiring the Single Business Permit have been eliminated for newly incorporated companies.

1.2.3. Elimination of the procedure to obtain a Company seal:-

- By 2019 the Companies Act, 2015 had an optional requirement for the use of Company Seal. Effective March 18, 2020, the Kenya Government eliminated the use of company seal both in law and in practice by deleting all legal requirements for a Company seal through enactment of the Business Laws (Amendment) Act, (No. 1 of 2020) which made various amendments to the Companies Act, (No. 15 of 2015).

- The registration process is now automated and as a result, it has eliminated the sealing procedure, associated cost (KES. 3,500 for purchasing a seal) and time (2 days for obtaining a company seal) as a post business registration requirement in Kenya.

1.2.4. Waiver of Registration of business premises with the Directorate of Occupational Safety and Health Services (DOSH) as a post registration procedure:-

- Effective March 18, 2020, the Kenya Government made it easier to start a business by waiving the requirement of small and medium enterprises to register the business premises with the Directorate of Occupational Safety and Health as a post registration requirement for the first 12 months after registration of the business. The reform was achieved through a legal amendment effected through the Business Laws (Amendment) Act, (No. 1 of 2020) which amended the Occupational Safety and Health Act (No. 15 2007).

- This reform eliminated the DOSH registration procedure, cost (KES. 5,000 registration fee) and time (1 day required for registration with DOSH) as a post business registration requirement in Kenya.

1.3. Impact realized:

S.No.	Reforms	Impact
1.	Integration of the online company registration process for KRA PIN, PAYE, VAT, NHIF and NSSF registration in one simple online step on https://ag.ecitizen.go.ke/.	Reduction in total time taken to register a business to 1 day
2.	Waiver of the requirement by small and medium enterprises to register the business premises with the Directorate of Occupational Safety and Health (DOSH)	Reduction in cost by Ksh5,000 and one (1) day for time taken to register the business with DOSH
3.	Elimination of requirement to obtain a company seal	Reduction in cost of starting a business by Ksh3,500 and the reduction of time taken by two (2) day
4.	24-month waiver of Single Business Permit	Reduction in the cost of registering a business by Ksh 15,200 and reduction ij time by five (5) days

S.NO.	PARAMETER	2017	2018	2019	2020	2021	TOTAL	%
1	Private Companies	37,733	44,381	42,085	49,037	27,907	201,143	99%
	Annual increase/decrease	-	18%	-5%	17%	-43%	-	
2	Public Companies	52	66	77	103	44	342	0.2%
	Annual increase/decrease	-	27%	17%	34%	-57%	-	
3	Companies Limited by Guarantee	170	235	369	612	455	1,841	0.9%
	Annual increase/decrease	-	38%	57%	66%	-26%	-	
4	Foreign Companies	153	176	165	153	116	763	0.4%
	Annual increase/decrease	-	15%	-6%	-7%	-24%	-	
	TOTAL	**38,108**	**44,859**	**42,697**	**49,906**	**28,520**	**204,089**	**100.0%**
	Aggregate increase/decrease	-	18%	-5%	17%	-43%	-	

2.0. GETTING ELECTRICITY

2.1. Overview

- The reforms implemented target to reduce the time, cost and procedures associated with getting an electricity connection. The reforms further address issues of reliability of supply and transparency of tariffs by looking at the frequency and duration of power outages, transparency and access to tariff as well as existing deterrent aimed at limiting outages.

2.2. Reform highlights:

2.2.1. Introduction of Financial Deterrent to limit outages:-

- Kenya in April 2021 published, the Energy (Reliability and Quality of Electricity Energy Supply and Service) Regulations 2021 to operationalize section 167 (1) (l) of the Energy Act, 2019.
- The regulations prescribe the Guaranteed Performance Standard on capped electrical energy outages, penalties to be imposed by the Regulator on a utility for exceeding the limit of capped outages and reporting framework by utility relating to reliability and quality of supply and quality of services: Regulation 5 (1) sets the capped limit; Regulation 5(2) imposes a penalty for exceeding the said limit; First Schedule to the regulations imposes a penalty of Kshs. 20,000 per year on the utility company.

2.2.2. Reduction of time in getting electricity connection from 97 to 7 days:-

- By allocating dedicated resources and improved operational efficiency, the time it takes to get an electricity connection for a connection size of 100-200kva was reduced from 97 to 7 days. It now takes one (1) day to make application, receive quotation and make payment and six (6) days to receive external works, meter installation and electricity flow.
- The following measures have been put in place by Kenya Power & Lighting in an effort to reduce new connection timelines: A dedicated officer to seek wayleave consents; Prioritization of 100-200kva connections; KPLC has now enhanced its online application portal by issuing a customer with a work request number allowing a customer to track and receive notifications on the status of their applications; eliminating the need for follow up visits to KPLC - https://selfservice.kplc.co.ke

- Use of GIS database in identifying new connection site has aided in the quotation timelines, thus, eliminating the need for physical site visit in the majority of new applications. 100% update of Medium Voltage lines covering 2906.62 Km length of overhead section and 303.25Km length of underground section.

2.2.3. Improvement of Reliability Indices:-

- Kenya has rolled out changes that have resulted to an improvement of System Average Interruption Duration Index (SAIDI) to 11.5 hours per year from 11.7 in 2020/2021 and System Average Interruption Frequency Index (SAIFI) to 4.5 outages per year from 5.57 in 2020/2021. These changes include:

    i. Enhanced use of live line technology for new connections in operations to reduce:-
        a. Planned interruptions during maintenance from 100% to 30%
        b. Unplanned interruptions during maintenance from 100% to 50%;

    ii. Live line maintenance continues to ensure the number of interruptions per customer are reduced;

    iii. Through the use of preventative maintenance, the utility is now maintaining medium voltage connections including transformer dropper, trace maintenance, change of insulators and re-sagging of loose conductors;

    iv. Enhancing automation of distribution system – by installing 666 11kv load breaker switches for Nairobi and environs;

    v. Updated GIS data base for Nairobi covering medium voltage network – enhanced identification of fault for system maintenance;

    vi. Enhanced medium voltage maintenance and vegetation management.

2.3. Impact realized:

S/No.	Reforms	Impact
1.	Introduction of Financial Deterrent to limit outages	Imposes a penalty of Kes. 20,000 per year on the utility company on exceeding capped limit.
2.	Reduction of time in getting electricity connection	Reduction in time from 97 days to 7 days and reduction in procedures from 3 to 2
3.	Improvement of Reliability Indices	Continuous monitoring of quality and reliability of electricity supply creates a more stable manufacturing environment and allows for better planning in business processes.

3.0. DEALING WITH CONSTRUCTION PERMITS

3.1. Overview

- The reforms implemented under Dealing with Construction permits sector were aimed at enhancing efficiency by focusing on the procedures, time and costs of obtaining licenses and permits; submitting all required notifications; requesting and receiving all inspections and obtaining utility connections.

- The reforms in obtaining approvals for construction plans were also aimed at improving the building quality control index; evaluating the quality of building regulations; the strength of quality control and safety mechanisms; liability and insurance regimes; and, professional certification requirements.

3.2. Reform highlights:

3.2.1. Introduction of a risk-based approval system for architectural and structural plans:-

- Effective February 17, 2020, the Nairobi Metropolitan Services (NMS) increased the frequency of its technical committee meetings to weekly. Projects are now categorized as low, medium and high risk, and further differentiated by size, complexity and cost. The weekly Technical Committee meetings approve architectural plans for low-risk projects, after which structural plans are submitted and approved within two days.

- The reforms have reduced the time taken to approve low-risk project plans from 45 to 7 days and low-risk structural plans from 10 to 2 days.

3.2.2. Use of QR Codes to identify approved Architectural and Structural Plans:-

- Implementation of the QR Code system by the Nairobi Metropolitan Services (NMS) has eliminated the requirement to have approved Architectural and structural Plans physically stamped.

- Removal of the physical stamping procedure has also eliminated the 2 days required for the procedure as this is now a fully digitized process where a QR Code is embedded electronically at the bottom of all approved Architectural and structural Plans.

3.2.3. Automation of the application process for Summary Project Report (SPR) for Construction projects low-risk projects:-

- The National Environmental Management Authority (NEMA) launched an online application portal for low-risk projects, which has enhanced the efficiency of the approval process and ensured that these projects are approved within 5 days.

- Only 1 procedure is now required for low-risk project approvals from the previous 2.

3.2.4. Automation of water and sewer application and payment processes and publication of piping material requirements (cost and specifications on the Nairobi City Water and Sewerage Company (NCWSC) portal:-

- In February 2020, the Nairobi City Water and Sewerage Company (NCWSC) launched the portal: https://www.nairobiwater.co.ke/index.php/en/. through which the application and payment processes for water and sewer connections were automated. This has reduced the time required for the procedures from 2 to 1 day and the number of procedures from 2 to 1.

- Publishing of the piping requirements for connections has further eliminated customer enquiries, thereby reducing the time taken for inspection and water connection from 30 days to 14.

3.2.5. Development of the Geographic Information System (GIS) by the Nairobi City Water and Sewerage Company:-

- The Nairobi City Water and Sewerage Company (NCWSC) has implemented a GIS through which it has mapped the entire water distribution network and reduced the time and procedure associated with obtaining water and sewer connections. The GIS, which was launched on April 23, 2021 integrated the online water and sewer application portals and enabled customers to identify the location of their premises using google maps. This is an improvement from the previous requirement that a customer uploads a sketch or map to their premises to the online application.

- The use of the GIS has reduced the time taken by officials from Nairobi City Water and Sewerage Company to identify the premises during the connection visit.

- The NCWSC further enhanced the payment options for the new water or sewer connection providing a dial in serve using USSD Code *888# and selecting Option 6 for Water & Sewer on mobile phones followed by keying in of the assigned Reference Number as the Account Number. Customers can now also track the progress of their applications through the USSD Code.

3.2.6. Risk-based assessment and registration of projects by NCA:-

- On February 19, 2020, NCA introduced a risk-based assessment of projects which are now categorized as low-risk, medium risk and high-risk and further differentiated by the size and cost of the project.

- The revised approval procedure hastened the process of project registration and the registration of low-risk projects now takes 1 day from previous the 7.

3.2.7. Establishment of a risk-based approach to Environmental Impact Assessments (EIA) by National Environmental Management Authority (NEMA):-

- Effective dated April 30, 2019, the National Environmental Management Authority (NEMA) implemented a risk-based approval criterion for low-risk reports known as Summary Project Reports (SPR), which reduces the time taken for low-risk project approvals from 35 days to 5 days.

- This reform was implemented through Legal Notice No. 31 of 2019 - Amendment of the Second Schedule & Legal Notice No. 32 of 2019 - The Environmental (Impact Assessment and Audit) (Amendment) Regulations, 2019.

3.2.7. Introduction of new classes of Insurance, Product Liability, Professional Indemnity, Latent Defects Liability, Structural Defects Liability, Public Liability and others:-

- The Third Schedule of the Insurance Regulations, 1986 was amended in Part A through the Insurance (Amendment) Regulations, 2021 to introduce new classes of insurance Defects liability insurance.

- The new classes of insurance cover losses incurred by third parties as a result of Latent Defects or structural defects in Buildings. Professionals, contractors and property owners are now required to take out the cover.

3.3. Impact realized:

Chapter 11: The Construction Sector

Table 11.6: Value of Private Building Plans Approved and Reported Building Works Completed in Nairobi City County, 2016 – 2020

KSh Million

Year	Building Plans Approved	Building Works Completed[1]
2016	308,361.4	77,749.7
2017	240,752.0	86,128.4
2018	210,296.7	90,127.4
2019	207,624.9	93,982.3
2020*	153,575.4	100,041.3

Source: Nairobi City County

Excerpt: KNBS - Economic Survey 2021

S.No.	Reform	Impact
1	Introduction of a risk-based approval system for architectural and structural plans	Reduction of the time taken for architectural and structural plans from 55 days to 9 days.
2	Use of QR Codes to identify approved Architectural and Structural Plans	Reduction of the time taken to stamp plans from 2 days to 0 days
3	Automation of the application process for Summary Project Report (SPR) for Construction projects low-risk projects	Reduction of the time taken for approval of low risk projects from 30days to 5 days and the procedures from 2 to 1.
4	Automation of water and sewer application and payment processes and publication of piping material requirements (cost and specifications on the Nairobi City Water and Sewerage Company (NCWSC)	Reduction of total time taken to connect water from 30 to 14 days.
5	Development and integration of the Geographic Information System (GIS) to the water and sewer application portal at the Nairobi City Water and Sewerage Company	Elimination of the time taken to identity connection sites which has contribution to the reduction of total time taken to connect water from 32 to 14 days.
6	Risk-based assessment and registration of projects by NCA.	Reduction of time taken by NCA to register low-risk projects from 7 days to 1 day.
7	Establishment of a risk-based approach to Environmental Impact Assessments (EIA) by National Environmental Management Authority	Reduction of the time taken for approval of low risk projects from 30days to 5 days
8	Introduction of new classes of Insurance, Product Liability, Professional Indemnity, Latent Defects Liability, Structural Defects Liability, Public Liability and others.	Improvement of the Building quality standards by enforcing accountability by professional, contractor and the owners. Protection of lives and personal property.

4.0. TRADING ACROSS BORDERS

4.1. Overview:

- The implemented reforms were aimed at tackling barriers to trade and improving efficiencies in the import and export processes, addressing high trade costs; cumbersome and time consuming border procedures; Streamline the legal and regulatory environment; Conducting Business Process Reviews; Capacity Building; and, Stakeholder engagement and reform communication.

- The reforms implemented were also aimed at reducing the time and cost associated with the logistical process of importing and exporting goods. The reforms addressed two main areas of time and cost related to border and documentary compliance carried out by customs, port and agencies other than customs.

- Documentary compliance includes time and cost for obtaining, preparing, processing, presenting and submitting documents whether physical or electronic. Border compliance includes time and cost associated with compliance with customs regulations, other agency regulations and port handling.

4.2. Reform highlights:

4.2.1. Elimination of Kshs. 5,000 costs charged by Kenya Plant Health Inspectorate Services (KEPHIS) to undertake Phytosanitary Inspection for all exports:-

- On 29th April, 2020, Kenya published Legal Notice Number 79 of 2020, the Plant Protection (Fees and Charges) (Amendment) Rules 2020 which eliminated cost of Kshs. 5,000 associated with Phytosanitary Inspection fee for all exports.

- This reform has resulted in a direct impact on reduction of border compliance cost for phytosanitary inspections done by KEPHIS from Kshs. 5,000 to Kshs. 0.

4.2.2. Elimination of costs of KES.1,000 charged by the Kenya Plant Health Inspectorate Services (KEPHIS) to obtain a Phytosanitary Certificate:-

- On 29th April, 2020, Kenya published Legal Notice Number 79 of 2020, the Plant Protection (Fees and Charges) (Amendment) Rules 2020 which eliminated cost of obtaining Phytosanitary Certificate.

- This reform has resulted in a direct impact on reduction of border compliance cost for phytosanitary Certificates charged by KEPHIS from Kshs. 1,000 to Kshs. 0.

4.2.3. Elimination of Export Health Certificate fee charged by Port Health of Kshs. 1,000:-

- On 24th April, 2020, Kenya published Legal Notice No. 80 of 2020 - The Public Health (Fees) (Amendment) Rules 2020 which eliminated the cost of Export Health Certificate issued by Port Health.

- Export Health Certificate is a pre-requisite to customs issuing an export release.

4.2.4. Waiver by Kenya Bureau of Standards of the requirement to obtain a Certificate of Conformity:-

- On 28th February, 2020, Kenya published Legal Notice No. 11 of 2020, the Standards (Verification of Conformity to Standards and other Applicable Regulations of Imports) (Amendment), Regulation 2020 to implement the waiver of the requirement for Importers of brand-new motor vehicle spares to obtain a Certificate of Conformity.

- Implementation of this waiver has resulted in reduction of costs from $250 to zero (0) and time from 72 hours to zero (0) in February 2020.

4.2.5. Full roll out of the Integrated Customs Management System (ICMS) for exports:-

- Kenya fully rolled out ICMS for exports, significantly reducing border compliance time from 48 hours to 1 hour. ICMS has eliminated the need for Document Centre Processing officer to verify and issue a long room pass. Approval on the ICMS is system generated on real-time basis instantaneously with no human intervention.

- ICMS integration with Single Window allows customs to view all export permits approvals online. ICMS has eliminated all manual folders, as the system has an inbuilt Document Management System that allows exporters to attach all supporting documents making it readily available to customs officers – https://icms.kra.go.ke

4.2.6. Elimination of Pre-shipment physical inspection by customs for exports:-

- Kenya has eliminated the need for customs officer to physically witness stuffing of export containers at an exporter's warehouse. Exporters now process their export entries without waiting for an allocation of verification officer(s) or the need for a verification of stuffing certificate.

- An exporter loads their cargo onto containers for delivery to the port without any customs intervention. Upon arrival at the port the cargo is scanned 100% with no physical intervention, customs consequently release cargo for loading onto vessels.

4.2.7. Elimination of Head Verification Officer and Verification Officer processes by customs for exports:-

- Once an exporter makes a declaration, the ICMS system allocates a verification officer to that specific customs declaration. The said verification officer captures the stuffing report and upon entering all data escalates the entry to the Head Verification Officer for further processing.

- The Head Verification Officer confirms the data captured and upon confirmation of the data processes the release of the customs declaration. The release then triggers pre-advice process in Kenya Ports Authority system KWATOS to allow the payment of port charges and movement of cargo to the port.

- Kenya has eliminated the need for customs head verification officer and verification officer physically capture stuffing reports for direct exports, significantly reducing border compliance time from 48 hours to 30 mins.

4.2.8. Elimination of manual stamping of customs release by Kenya Plant Health Inspectorate Services (KEPHIS) & Port Health:-

- Prior to customs issuing their final release, measures to ensure that all permits and approvals needed for exports under the specific HS codes have been complied with by exporters had been put in place. For exports of tea, coffee herbs and spices, these permits include a Phytosanitary Certificate and Export Health Certificate.
- Exporters were required to ensure KEPHIS & Port Health physically stamped the customs release as a means of ascertaining that their permits had been issued. The integration of ICMS with the Single window and onboarding of KEPHIS & Port Health has eliminated the need for exporters to seek manual stamping from these two agencies for customs release. KEPHIS & Port Health approvals are now uploaded onto ICMS and KRA have electronic sight of the approvals.
- This reform has reduced border compliance time from 24 hours to 1 hour. It has eliminated the need for exporters moving between KEPHIS & Port Health offices with manual folders seeking the necessary stamps.
- ICMS automatically releases the goods and the exporter proceeds to the port for scanning thereafter Kenya Revenue Authority issues loading instructions electronically to Kenya Ports Authority.

4.2.9. Elimination of the cost to obtain a certificate of origin to export tea:-

- Kenya has eliminated the cost of US$. 40 charged by Kenya National Chamber of Commerce for all exports. This reform has resulted in a reduction of costs for exports from approximately US$. 40 to US$. 0. This information can be accessed: https://www.kenyachamber.or.ke/trade-information/.

4.2.10. Reduction of export documents:-

- Compliance documents required for exports were reduced from 9 to 5. The applicable documents required for exports now include: Commercial Invoice - generated by the exporters details of which includes all packing information; Certificate of Origin - obtained online within one (1) hour from Kenya National Chamber of Commerce; Phytosanitary Certificate; Customs Export Declaration; Export Health Certificate.

4.2.11. Roll out of Green Channel for importation of brand-new motor vehicle spare parts:

- In February of 2020, Kenya rolled out Green Channel expedited cargo facilitation framework. Green Channel declarations relate to consignments involving no risk/low-risk criteria. Clearance of goods is done without physical examination and ensures faster processing of cargo. Importers lodge their entries under the Green Channel in the KRA system and entries are processed online and within 1 hour obtain their release.

- The Green Channel program is product based and not customer profile based and therefore all importers of brand-new motor vehicle spare parts from China can process customs clearance under the green channel framework. Brand new motor vehicle spare parts categorization by Kenya Revenue Authority is a low risk product, which is not subjected to physical verification by customs as was stated in the Doing Business feedback, and this category of product is scanned 100%.

- Green Channel program so far includes importation of raw material used in manufacturing, tea, coffee, herbs, spices, brand new motor vehicle spare parts as is applicable to all imports of these products.

4.2.12. Risk based cargo clearance and 100% scanning of imports:-

- Implementation of rail-scanning technology in Mombasa for cargo destined for the Internal Container Depot Nairobi (ICDN). Cargo is scanned within minutes when the train is in motion and the images made available on i-scan, thereby enabling faster cargo release at the port and avoiding additional scanning on arrival at the ICDN.

- This transformational investment ensures that import cargo is scanned enroute to ICD Nairobi by rail scanners within 3-5 minutes for an entire train! This has reduced physical verification for ICD cargo to below the 20% threshold.

4.2.13. Elimination of verification sur-charge of US$. 80 & US$. 120 for 20 foot and 40-foot container respectively for imports by Kenya Port Authority:-

- Based on risk parameters, containers identified for physical verification and found to be fully compliant with their customs declarations, are now exempted from all verification surcharges.
- Kenya via a public notice issued by Kenya Ports Authority dated 25th April 2021 also waived physical verification surcharge for compliant traders.

4.2.14. Elimination of all customs manual processes at ICD:-

- Kenya has rolled out paperless processing for customs cargo clearance through implementation of internal administrative measures and stakeholder sensitization as a means of COVID 19 containment measures and ensuring a faster service delivery through automation.

4.2.15. Reduction of Import documents:-

- Kenya has reduced the compliance Documents required for Imports from 5 to 10. The applicable documents required for all exports now include: Bill of Lading; Commercial Invoice; Packing List; Customs Import Entry; and, Import Declaration Form (IDF); generated online within 5 minutes on the Integrated Customs Management System https://icms.kra.go.ke

4.3. Impact realized:

S/No.	Reforms	Impact
1.	Elimination of KES 5,000 costs charged by Kenya Plant Health Inspectorate Services (KEPHIS) to undertake Phytosanitary Inspection for all exports.	Reduction of border compliance cost for phytosanitary inspections done by KEPHIS from KES 5,000 to KES 0
2.	Elimination of costs of KES.1,000 charged by the Kenya Plant Health Inspectorate Services (KEPHIS) to obtain a Phytosanitary Certificate.	Reduction of border compliance cost for phytosanitary Certificates charged by KEPHIS from KES1000 to KES 0
3.	Elimination of Export Health Certificate fee charged by Port Health of Kes. 1,000	Reduction of border compliance cost for Export Health Certificate charged by Port Health from KES1000 to KES 0

S/No.	Reforms	Impact
1.	Elimination of KES 5,000 costs charged by Kenya Plant Health Inspectorate Services (KEPHIS) to undertake Phytosanitary Inspection for all exports.	Reduction of border compliance cost for phytosanitary inspections done by KEPHIS from KES 5,000 to KES 0
4.	Waiver by Kenya Bureau of Standards of the requirement to obtain a Certificate of Conformity	Reduction of costs from $250 to zero (0) and time from 72 hours to zero (0)
5.	Full roll out of the Integrated Customs Management System (ICMS) for exports	Reduction in border compliance time from 48 hours to 1 hour
6.	Elimination of Pre-shipment physical inspection by customs for exports	Reduction in border compliance for export from 2-3 days to 1 day
7.	Elimination of Head Verification Officer and Verification Officer processes by customs for exports.	Reduction in border compliance time from 48 hours to 30 mins
8.	Elimination of manual stamping of customs release by Kenya Plant Health Inspectorate Services (KEPHIS) & Port Health	Reduction border compliance time from 24 hours to 1 hour
9.	Elimination of the cost to obtain a certificate of origin to export tea	Reduction of documentary compliance costs for exports from approximately $40 to $0
10.	Reduction of export documents.	Reduction of export documentary compliance time and elimination of obsolete documents: • Certificate of Export is a post shipment document • Release order (now system based) • Packing List (details incorporated in the commercial invoice)
11.	Roll out of Green Channel for importation of brand-new motor vehicle spare parts.	Processing by customs online and customs release issued within 1 HOUR.
12.	Risk based cargo clearance and 100% scanning of imports.	Reduction of physical verification to below 20% thus reducing clearance time.

S/No.	Reforms	Impact
1.	Elimination of KES 5,000 costs charged by Kenya Plant Health Inspectorate Services (KEPHIS) to undertake Phytosanitary Inspection for all exports.	Reduction of border compliance cost for phytosanitary inspections done by KEPHIS from KES 5,000 to KES 0
13.	Elimination of verification sur-charge of \$80 & \$120 for 20 foot and 40-foot container respectively for imports by Kenya Port Authority.	Reduction in port handling costs for imports.
14.	Elimination of all customs manual processes at ICD.	Increased efficiency, transparency and accountability.
15.	Reduction of Import documents.	Reduction of import documentary compliance time and elimination of obsolete documents: • Cargo Release Order (generated and viewed electronically) • Terminal Handling receipts (electronic and viewed in real time) • Declarations of Customs Value (a field within IDF)

5.0. RESOLVING INSOLVENCY

5.1. Overview

- Kenya revamped its insolvency regime in line with best global practices of keeping viable businesses operating. Kenya's insolvency system seeks to inhibit the premature liquidation of distressed but sustainable businesses and enable creditors to recover a larger part of their investment while saving jobs and preserving business relations with suppliers and customers. The reforms are aimed at: Streamlining the legal and regulatory environment; Conducting Business Process Reviews; Capacity Building; Enhancing stakeholder engagement and reform communication.

- The reforms focussed on time, cost and outcome of insolvency proceedings involving domestic legal entities, recovery rate for creditors through reorganization, liquidation or debt enforcement proceedings, and the strength of the insolvency framework index. The index is calculated based on the quality of legal framework applicable to judicial liquidation and reorganization proceedings and the extent to which best insolvency practices have been implemented.

5.1. Reform highlights:

5.1.1. Increased recovery rate for insolvency matters:-

- Section 11 of the Business Laws (Amendment) (No.2) Act, (No. 1 of 2021) amended Section 474 of the Insolvency Act, 2015 to exempt the liquidator or administrator from the court's permission to make routine payments to unsecured creditors in an efficient and cost- effective manner.
- This reform has led to an improvement in the recovery rate when the company is in distress. The distressed company is, therefore, able to maintain its going concern status.

5.2.1. Reduction in time to resolve insolvency cases:-

- Section 12 – 52 of the Business Laws (Amendment) (No.2) Act, (No. 1 of 2021) amended the Insolvency Act, (No. 17 of 2015) by inserting a new Part IXA to introduce a pre-insolvency moratorium for 30 days and mechanism to operationalize the pre-insolvency moratorium.
- This seeks to allow businesses to explore options such as new investment or restructuring before entering into insolvency proceedings. Insolvency practitioners can confirm that businesses are now seeing a significant reduction in time. In addition to the amendments to the Insolvency Act (No. 17 of 2015), Kenya has published the Insolvency (Amendment) Regulations, 2021 through Legal Notice No. 64 of 2021.
- Further, Kenya through enhanced administration of insolvency proceedings including conducting insolvency cases has considerably reduced the time it

takes to resolve insolvency cases through enforcement of the provisions of the Insolvency Act, 2015.

5.3. Impact realized:

S/No.	Reforms	Impact
1.	Increased recovery rate for insolvency matters.	Increased rate of recovery by creditors for insolvency matters. Exemption of company liquidators and administrators from obtaining court's permission to make routine payments to unsecured creditors has improved recovery rates for companies in distress and enabled them to maintain status as a going concern. Enforcement of the provisions of the Insolvency Act has enhanced administration of insolvency proceedings reducing the time it takes to resolve insolvency cases
2.	Reduction in time to resolve insolvency cases. .	Reduction in time taken to resolve insolvency cases. Reduced insolvency through introduction of a 30-day pre-insolvency moratorium allowing businesses to explore new investment or restructuring options before entering into insolvency proceedings

6.0. PUBLIC PROCUREMENT

6.1. Overview:

- The public procurement reforms are aimed at improving efficiency by government and state-owned enterprises in bidding and contracting for purchase of goods, services, and works. The reforms focus on the process, time and cost of awarding a public contract for road maintenance.
- The reforms benchmarked the entire procurement process and examined the five main phases in the life of a government project to be implemented by a private company: budgeting and needs assessment; advertisement and bid submission; bid opening, evaluation and contract signing; contract management; and payment. It also benchmarks the legal framework regulating public procurement in an economy.

6.2. Reform highlights:

6.2.1. Reduction of procurement timelines:-

- The following are the regulatory reforms instituted in 2020 through the Public Procurement and Asset Disposal Regulations, 2020:

  A. Amended the time for preparation and submission of bids in an open tender procurement method from 26 days to 7 days under Regulation 86 of The Public Procurement and Asset Disposal Regulations, 2020;

  B. Prescribed a timeline of 1 day for the Head of Procurement of a Procuring Entity to submit a professional opinion to the Accounting Officer following completion of the evaluation process under Regulation 78 (2) of The Public Procurement and Asset Disposal Regulations, 2020;

  C. Under Regulation 90 (1) (b) of the Public Procurement and Asset Disposal Regulations, 2020, prescribed a timeline of 14 days for award of a tender for additional works to the same Bidder through direct procurement method under Section 103 of the Public Procurement and Asset Disposal Act, 2015;

  D. Under Regulation 150 sub regulation 1 of the Public Procurement and Asset Disposal Regulation, 2020, prescribed a timeline of 60 days for payment of performed contracts. This reform reduced the timeline for payment of performed contracts from 90 days to 60 days.

6.2.2. Improved transparency:-

- Publication a register for all awarded, ongoing and completed road construction and maintenance projects on the Kenya National Highways Authority website as a best practice for transparency of contract awards.

6.3. Impact realized:

S/No.	**Reforms**	**Impact**
1	Reduction of time taken for preparation and submission of bids	26 days to 7 days

S/No.	Reforms	Impact
2	Prescription of the time taken by the Procuring Entity to submit a professional opinion	Prescribed a timeline of 1 day
3	Prescription of the timeline for award of a tender for additional works	Prescribed a timeline of 14 days
4	Reduction of time taken for payment of performed contracts	from 90 days to 60 days
5	Accessible register of the planned, ongoing and completed road projects on the Kenya Website	More accountability and transparency in the bidding and contracting for road construction and maintenance